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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91222357
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial No. 86/527,451
Mark: S6 EDGE

EDGE GAMES, INC.)	
)	
Opposer,)	
)	
vs.)	Opposition No.: 91222357
)	<i>Merged with Opp. No.91224787</i>
)	<i>Mark S6 EDGE+</i>
SAMSUNG ELECTRONICS CO LTD.)	
)	
Applicant.)	Mark: S6 EDGE
)	

**OPPOSER'S MOTION TO COMPEL APPLICANT'S FURTHER AMENDED OR
SUPPLEMENTAL DISCOVERY RESPONSES TO OPPOSER'S FIRST
SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND OPPOSER'S
FIRST SET OF INTERROGATORIES AND MOTION TO SUSPEND PROCEEDINGS**

Comes Opposer Edge Games, Inc. ("Opposer") its motion to compel the applicant Samsung Electronics Co Ltd. ("Applicant") to comply with discovery requests: to both produce documents reasonably requested, to correct, supplement or further amend its supplemental responses to document production requests and to correct, supplement or further amend its inadequate or unacceptable supplemental responses to Opposer's First Set of Interrogatories. Opposer notes that, in regard to the Board's July 12, 2016 Order, it has first gained oral permission from the Board's Interlocutory Attorney to file this motion. To suspend proceedings during the pendency of this motion, with no other later filed motions being permitted or given consideration until this motion is ruled upon.

BACKGROUND

Opposer's First Set of Requests for Production of Documents and Opposer's First Set of Interrogatories were both served on Applicant on or about October 3, 2015 (see

Exhibit 1 to Langdell decl. attached to Opposer's first (prior) motion to compel at docket #12). While Applicant then served responses to both of Opposer's Discovery Requests (see **Exhibit 2** to Langdell decl. to Opposer's first motion to compel at docket #12), the responses and objections that Applicant provided were woefully inadequate and unacceptable.

On November 30, 2015 Opposer informed Applicant that its discovery responses were unacceptable and requested that the parties meet and confer to discuss (see **Exhibit A** to Langdell decl. hereto). There followed a number of good faith efforts by both parties to have a telephonic meet and confer, without success due to the busy time of year and clash of representative's schedules.

Consequently, not being able to get a telephonic meeting, on December 21, 2015, Opposer served on Applicant by letter a detailed summary of the deficiencies in Applicant's Discovery Responses and asked for a prompt response in the form of amended or supplemental Discovery Responses (see **Exhibit B** to Langdell decl. hereto). Applicant failed to respond to Opposer's letter seeking to resolve Opposer's discovery issues in writing.

During January and February 2016 Opposer continued to chase Applicant for a response to its November 2015 indications that Applicant's discovery responses were not acceptable, and to Opposer's December 21, 2015 list of detailed deficiencies in particular. But Applicant still failed to respond despite numerous reminders and requests to do so, and despite Opposer warning that it would be forced to file a motion to compel discovery responses if Applicant continued to fail to provide them.

On February 29, 2016 Opposer sent Applicant an email asking that they address the woefully overdue issue of their failure to address Opposer's December 21, 2015 letter by March 2, 2016, failing which Opposer would be forced to file the motion to compel discovery that it had repeatedly warned it would have to do if Applicant continued to ignore its

responsibilities in discovery (See **Exhibit C** to Langdell decl. hereto). Applicant once again failed to respond to Opposer, and accordingly Opposer filed its first motion to compel believing it had complied with Trademark Rule 2.12.0(a)(1).

The Board's Order dated June 30, 2016 ruled that despite Opposer's several communications attempting to meet and confer over the period December 2015 to March 2016, and despite Opposer making over 6 attempts to meet and confer by telephone with Applicant failing to make itself available at the times proposed by Opposer, the Board decided that all this effort by Opposer did not meet the requirements of 2.120(e)(1). In particular, the Board felt that despite all its effort over the prior four months, Opposer had "failed" to accept Applicant's invitation to meet and confer expressed in Applicant's email of March 11, 2016.

Believing this was an unfair decision, and in an attempt to move the proceedings along faster rather than interrupt the proceedings with a formal Motion for Reconsideration, the Board agreed to have a teleconference with the parties on July 12, 2016 to attempt to resolve Opposer's continuing issues with Applicant's failure to provide complete, acceptable discovery responses.

In this teleconference call Opposer noted that despite Applicant stating in March that it was happy to meet and confer, now a further four months later Applicant had failed to meet and confer with Opposer and had failed to address virtually any of Opposer's concerns detailed in its first motion to compel. In particular, Opposer noted that the Board had mis-read the email exchanges on March 11, 2016 which when given more consideration showed that Opposer did not "fail" to accept Applicant's invitation to meet and confer. On the contrary, the order of events was that Opposer asked Applicant to state its availability for a meet and confer by telephone, and instead of providing suggested dates, Applicant merely, and entirely unhelpfully, stated that it would be prepared to meet and confer. This entirely unhelpful response by Applicant was mis-read by the Board as an

invitation to meet and confer, and thus the Board misunderstood and thought Opposer was failing to accept an invitation went quite the opposite was the case (see **Exhibit D** to Langdell decln. hereto).

The Board issued its Order arising from the teleconference on July 12, 2016 (see docket #19). Rather than issue a motion to compel Applicant, the Board stated certain of Opposer's interrogatories Applicant need not respond to. The Board also called on Applicant to supplement its responses to Opposer's interrogatories and requests for production of documents no later than July 26, 2016. The Board also called on Applicant to make unequivocally clear whether responsive documents exist or not. The Board then stated that Applicant should produce all documents referenced in its original and supplementary responses no later than August 15, 2016. The underlying understanding coming out of this teleconference was that Applicant was being asked to make a best faith effort to address all of Opposer's concerns detailed in its December 2015 letter and in its first motion to compel.

Applicant served on Opposer documents that were styled as amended discovery responses, sent on or about the deadline of July 26, 2016. However, these responses differed relatively little from those originally served on Opposer in November 2015, and remained woefully inadequate and unacceptable (see **Exhibit E** to Langdell decln. hereto). Accordingly, on August 27, 2016 wrote a meet and confer letter to Applicant itemizing in detail where Applicant's amended responses still fell far short of being acceptable (see **Exhibit F** to Langdell decln. hereto).

Applicant and Opposer reached a mutual agreement to extend the deadlines by which each was to produce documents to the other, and by which Opposer was to send its supplementary responses to Applicant. Accordingly both party's deadlines were extended from those stated by the Board in its June 30 and July 12 orders, to instead be late August. Applicant did serve some documents on Opposer, but yet again these documents fell

woefully short of the being all the documents referenced in Applicant's initial and supplemental responses (as the Board had asked in its July 12 Order). Certainly, since Applicant refused to state what documents it would be producing with any particularity, and refused (per the Board's Order) to state unequivocally which documents requested do not exist, it was impossible to tell which, if any, of the documents produced were documents referenced in either Applicant's initial or supplemental discovery responses.

Accordingly, on September 7, 2016 Opposer wrote a meet and confer letter to Applicant requiring it to produce the missing documents or else Opposer would be forced to file a motion to compel (**Exhibit G** to Langdell decln. hereto). The documents Applicant served in August that were marked confidential are in **Exhibit H** to Langdell decln. hereto (filed under seal) and those served as open discovery documents are attached as **Exhibit I** to Langdell decln hereto. As can be seen, given the scope of documents requested, the number of documents produced was relatively small (229). This fact is highlighted by observing that over 100 of the pages produced (pages 100-229) were merely a single product manual for a smart phone, a document that would appear to be readily available from Applicant's website with no indication as to what request this document was supposedly responsive to.¹ A sizable portion of the balance of what was produced is a single "MILK" report that appears to be about 50 pages long, and then some "filler" documents that do not seem to pertain to any of Opposer's document requests or the documents referenced in Applicant's responses. Further, the majority of this MILK report was heavily redacted when Applicant must surely know that it should not redact a document given it can produce it under the Board's Standard Protective Order. Last, the first two pages of the bundle were in Korean and also redacted. Opposer believes it is entitled to English language translation, but also entitled to unredacted copies produced under the Standard Protective Order.

¹ http://downloadcenter.samsung.com/content/UM/201503/20150302152451841/SM-G925F_UM_EU_Lollipop_Eng_Rev.1.0_150302.pdf

By mid-October, Opposer had still received no responses at all from Applicant to its August 27 or September 7 meet and confer letters, and Applicant's responses thus remained woefully insufficient and unacceptable. Opposer wrote yet again to ask Applicant to make acceptable responses and production or else Opposer would be forced to seek a motion to compel (**Exhibit J** to Langdell decln. hereto). Applicant responded in a nominal fashion on October 20, 2016 stating it would get back to Opposer "in a couple of days." (**Appendix K** to Langdell decln. hereto).

Also in mid-October (on or about October 12, 2016), without warning or explanation, Applicant suddenly sent to Opposer a declaration by Samsung bate stamped 230-231. There was no indication as to why this document, which was referenced by Applicant in its moving papers several months earlier, was not served on Opposer as directed to be done by the Board by August 15, 2016 (or by the mutually extended deadline of the end of August). It would appear that Applicant is set on retaining documents and sending them to Opposer piecemeal over a course of months as and when Applicant feels like producing documents in its possession, despite the Board warning Applicant not to do this. Further, the declaration produced is marked as confidential (and hence is attached hereto as part of **Exhibit H**, filed under seal). But on reading the declaration it appears to be merely sales and marketing figures of the kind Applicant openly stated in its Supplemental Interrogatory Responses. It is thus far from clear why the declaration would be confidential when the figures are elsewhere disclosed openly.

Because Opposer reasonably believed that with all its attempts to meet and confer from November 2015 to July 2016, and then the teleconference that acted as a meet and confer, and with Opposer's continued attempts to meet and confer of late August and early September, that thus Opposer now had reasonable grounds to file a motion to compel. Opposer received permission from the Board to file such a motion. To be completely certain, though, Opposer waited until October 24, 2016 to give Applicant one final chance to

respond to Opposer's numerous concerns over Applicant's deficient responses and document production.

Having waited to October 24, 2016, Applicant still failed to respond in an acceptable manner, and produced no further documents. Accordingly this Motion was filed.

ARGUMENT

A. Applicant's Boilerplate Objections in both its First Responses and Supplemental Responses were Improper and Dilatory

Applicant's First and Supplemental Responses recited almost identical boilerplate objections to each and every Interrogatory and Document Request, respectively.

B. Applicant's Amended Responses Failed to Remedy the Insufficiencies in the First Responses.

As detailed above and below, Applicant's supplemental responses were barely improved over its initial ones, and fell woefully short of being acceptable or sufficient.

C. Opposer's Interrogatories were not Burdensome, Oppressive, Overly-Broad, Vague or Ambiguous.

As detailed above and below, in no instance were Opposer's requests either burdensome, or oppressive, or overly-broad, or vague, or ambiguous. Or in the alternate, if the Board deems any request to be burdensome or over-broad then Opposer agrees to narrow scope such that the request is not overly-broad or burdensome. But in no instance has Applicant adequately justified its such objections and where it has done so to any extent, Applicant should have answered as best it can, and produce such response documents as it can, indicating why it is limiting its response or production so that Opposer may reasonably object if appropriate. To the extent that Applicant's objections attempt to shift the burden to Opposer, such effort is improper (See *Etienne v. Wolverine Tube, Inc.*, 185 F.R.D. 653, 656 (D Kansas 1999) ("[w]hen the discovery sought appears relevant the party resisting discovery bears the burden of establishing lack of relevance by demonstrating that the requested discovery does not come within the broad scope of relevance as defined under Fed. R. Civ. P. 25(b)(1) or is of such marginal relevance that the

potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure”). Thus Applicant’s attempt to shift this burden is an improper dilatory tactic to avoid its discovery obligations and should not be countenanced. See DL, 251 F.R.D. at 43 (“The party objecting to...discovery bears the burden of show[ing] why discovery should not be permitted.”) (citing *Alexander v. F.B.I.* 194 F.R.D. 299, 302 (D.D.C. 2000); *St. Paul Reinsurance Co. Ltd. V. Commercial Finan. Corp.* 198 F.R.D. 508 (N.D. Iowa)(a party must demonstrate tha the discovery request does not come within the scope of relevance as defined by Fed. R.Civ.P 26(b)(1)). Accordingly, Opposer’s requests are relevant and Applicant should be compelled to respond.

Initially, the scope of appropriate discovery is broad. Pursuant to Fed. R. Civ. P. 26(b)(1), “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense.” Further, “discovery is to be considered relevant where there is any possibility that the information sought may be relevant to the subject matter of the action.” *United States v. Int’l Bus. Machines Corp.* 66 F.R.D. 215, 218 (S.D.N.Y. 1974); *Jewish War Veterans of the U.S. of Am. Inc. v. Gates*, 506 F. Supp. 2d 30, 41 (D.D.C. 2007)(“Generally speaking ‘relevance’ for discovery purposes is broadly construed.”); *Smith v. MCI Telecommunications Corp.* 137 F.R.D. 25, 2 (D. Kan. 1991)([r]elevancy is broadly construed at the discovery stage of the litigation and a request for discovery should be considered relevant if there is **any possibility** that the information sought may be relevant to the subject matter of the action.”) (emphasis added).

D. Applicant clearly did not produce all responsive documents referenced in either its First or Supplemental Responses by August 15, 2016 or otherwise.

As is detailed above and below, it is clear that the little document production Applicant did do in August 2016 in response to the Board’s July 12, 2016 Order was not remotely close to being all responsive documents referred to by Applicant in its First or

Supplemental Responses. Accordingly, Applicant should be compelled to produce all such responsive documents referred to in its responses forthwith.

APPLICANT'S AMENDED RESPONSES TO OUR FIRST SET OF INTERROGATORIES CONTINUE TO BE INSUFFICIENT AND UNACCEPTABLE

Opposer's August 27, 2016 meet and confer letter gave detail of where Applicant's responses are still insufficient and unacceptable. It is exhibited to Langdell decln. hereto (**Exhibit F**). Here are the continuing insufficiencies for each interrogatory:

Interrogatory 3: Applicant first stated in its original responses that it had no licensees. Now in the amended version Applicant states that it has what it terms an "implied license agreement" with Samsung Electronics America, Inc. This is unacceptable: what does Applicant mean by an "implied" license agreement? Is this "license" supported by any documents that exist? If so they should have been stated with particularity and produced. Is Applicant stating that it does not itself conduct commerce in the United States, but rather conducts commerce via its US subsidiary and hence there is some kind of license agreement implied by this arrangement? If so, Applicant needs to clarify this since it goes to whether applicant itself trades in the US using the mark in question, and/or whether it ever intends to trade itself in US commerce. As to Applicant's objections, Opposer notes that Applicant may not object on the basis of privilege unless it identifies the specific documents being protected, clarifies that they are listed in a produced privilege log, and clarifies to Opposer why it believes privilege is valid so that Opposer may object if appropriate. As to objections on the basis of confidentiality or trade secrets, Applicant may not so object since such documents and information can be produced under the Board's Standard Protective Order, and marked as such.

Interrogatory 10: The response is still on its face not acceptable. TMBP 414(6) states that research reports are discoverable. While Applicant identifies a single report, it does not specifically state that there are no other documents responsive to this request. Applicant needs to make clear there are no further documents, and that they do not exist. Last, as covered in the document production section below, Applicant failed to produce the entirety of this identified “MILK” report. Given the Board’s Standard Protective Order, all of the report should have been produced. As to Applicant’s objections, Opposer notes that Applicant may not object on the basis of privilege unless it identifies the specific documents being protected, clarifies that they are listed in a produced privilege log, and clarifies to Opposer why it believes privilege is valid so that Opposer may object if appropriate. As to objections on the basis of confidentiality or trade secrets, Applicant may not so object since such documents and information can be produced under the Board’s Standard Protective Order, and marked as such.

Interrogatory 12: Applicant's response is still not responsive to the interrogatory. It should be corrected and amended to identify as requested. Instead of identifying as requested, Applicant instead merely states in vague terms that if any documents responsive to this request exist then it will produce them. No such documents were produced, and in any event this response is not responsive since Applicant fails to answer the query at all. The interrogatory needs to be responded to with identifying as requested, along with a specific supporting documents being identified by name and description of their content so that Opposer can determine if further produced documents are responsive to this interrogatory. As to Applicant’s objections, Opposer notes that Applicant may not object on the basis of privilege unless it identifies the specific documents being protected, clarifies that they are listed in a produced privilege log, and clarifies to Opposer why it believes privilege is valid

so that Opposer may object if appropriate. As to objections on the basis of confidentiality or trade secrets, Applicant may not so object since such documents and information can be produced under the Board's Standard Protective Order, and marked as such.

Interrogatory 14: Applicant's response is still not responsive to the interrogatory. It should be corrected and amended to identify as requested. Instead of identifying as requested, Applicant instead merely states in vague terms that if any documents responsive to this request exist then it will produce them. No such documents were produced, and in any event this response is not responsive since Applicant fails to answer the query at all. The interrogatory needs to be responded to with identifying as requested, along with a specific supporting documents being identified by name and description of their content so that Opposer can determine if further produced documents are responsive to this interrogatory. As to Applicant's objections, Opposer notes that Applicant may not object on the basis of privilege unless it identifies the specific documents being protected, clarifies that they are listed in a produced privilege log, and clarifies to Opposer why it believes privilege is valid so that Opposer may object if appropriate. As to objections on the basis of confidentiality or trade secrets, Applicant may not so object since such documents and information can be produced under the Board's Standard Protective Order, and marked as such.

Interrogatory 23: This response is still not acceptable. Opposer is entitled to know what documents Applicant has that are responsive to this interrogatory. Insofar as Applicant believes that this request is overly burdensome, then Opposer limits it to those documents that Applicant currently has in its possession, custody or control and which it is at all likely to rely on at trial. We again reference TMBP 414(2). It is central to such proceedings that Applicant identify by name and produce sufficient documents to justify why they should be permitted to own the mark. Applicant should not be permitted to withhold the identity of

documents they'll rely on while they complete research, rather they have to identify the ones they have so far (as at Nov 2015) and then supplement their list as and when more docs come to their possession. But in the 12 months that has ensued there is still no list or supplemental list, and no documents other than a few public documents have been identified and no documents produced. As to Applicant's other objections referencing its "General Objections and General Statements," Opposer notes that Applicant may not object on the basis of privilege unless it identifies the specific documents being protected, clarifies that they are listed in a produced privilege log, and clarifies to Opposer why it believes privilege is valid so that Opposer may object if appropriate. As to objections on the basis of confidentiality or trade secrets, Applicant may not so object since such documents and information can be produced under the Board's Standard Protective Order, and marked as such.

Interrogatory 24: We are surprised by this repeated response and somewhat amazed that Applicant did not correct it in its amended responses. To state even now after all that has been brought to its attention that Applicant is *still* not aware of any use of the mark EDGE in US commerce by Opposer or any of its licensees is plainly a falsehood. Opposer further notes that Applicant's response to Interrogatory 25 appears to contradict its response to Interrogatory 24 since it willingly admits being aware of at least one of Opposer's EDGE marks. As to Applicant's other objections referencing its "General Objections and General Statements," Opposer notes that Applicant may not object on the basis of privilege unless it identifies the specific documents being protected, clarifies that they are listed in a produced privilege log, and clarifies to Opposer why it believes privilege is valid so that Opposer may object if appropriate. As to objections on the basis of confidentiality or trade secrets, Applicant may not so object since such documents and information can be produced under the Board's Standard Protective Order, and marked as such.

Interrogatory 25: Opposer asks the Board to check here that Applicant is not just playing with semantics. Applicant should confirm that it is its position that it did no check at all of the US trademark register for the mark EDGE prior to February 2015. Or if there was an earlier check of the US trademark register, then it must amend its response to this interrogatory accordingly. That is, Applicant must state when it first became aware of any of Opposer's marks, such that if this was prior to February 2015 when it alleges it became aware of a pending application for the mark EDGE PC, then Applicant must state with clarity when that earlier time was. . As to Applicant's other objections referencing its "General Objections and General Statements," Opposer notes that Applicant may not object on the basis of privilege unless it identifies the specific documents being protected, clarifies that they are listed in a produced privilege log, and clarifies to Opposer why it believes privilege is valid so that Opposer may object if appropriate. As to objections on the basis of confidentiality or trade secrets, Applicant may not so object since such documents and information can be produced under the Board's Standard Protective Order, and marked as such.

Interrogatory 26: TMBP 414(10) states that Opposer is entitled to this information. It should be amended accordingly and was not acceptably amended. Opposer did not ask whether Applicant is in any other trademark litigation or dispute regarding the mark S6 EDGE (which is the entirely different question Applicant chose to answer). Opposer has a right to details of all trademark disputes or litigation Applicant is involved in relating to smart phones and/or tablet computers since any other such action may have bearing on this action. The Board already ruled against Opposer in Applicant's favor that Opposer is at least obliged to give the basic details of any such litigation or trademark dispute when responding to Applicant's interrogatories, thus it is only fair and equitable that the Board make the same order against Applicant to compel it, too. . As to Applicant's other objections

referencing its “General Objections and General Statements,” Opposer notes that Applicant may not object on the basis of privilege unless it identifies the specific documents being protected, clarifies that they are listed in a produced privilege log, and clarifies to Opposer why it believes privilege is valid so that Opposer may object if appropriate. As to objections on the basis of confidentiality or trade secrets, Applicant may not so object since such documents and information can be produced under the Board’s Standard Protective Order, and marked as such.

Interrogatory 28: Applicant's amended response is not fully responsive to the interrogatory. Applicant is required to state the dollar amounts for sales by Applicant in the US commerce. Applicant must clarify whether the figures it provides are for its own sales of S6 EDGE phones. Since in answer to the prior interrogatory regarding licenses, it has raised the question that Applicant itself does not sell the S6 EDGE phone in US commerce, but perhaps rather sells it through a non-party other company (possibly its US subsidiary), accordingly, Applicant must clarify if these sales are (a) solely in relation to US commerce and (b) if they were made by Applicant, by its US subsidiary, or by other trading partners or licensees. Finally, Applicant only provides figures through February 2016 whereas Opposer believes it is entitled to figures to the date Applicant is responding. . As to Applicant’s objections including those referencing its “General Objections and General Statements,” Opposer notes that Applicant may not object on the basis of privilege unless it identifies the specific documents being protected, clarifies that they are listed in a produced privilege log, and clarifies to Opposer why it believes privilege is valid so that Opposer may object if appropriate. As to objections on the basis of confidentiality or trade secrets, Applicant may not so object since such documents and information can be produced under the Board’s Standard Protective Order, and marked as such.

Interrogatory 29: Applicant's amended response is not fully responsive to the interrogatory. Applicant is required to state the dollar amounts for marketing by Applicant in the US commerce. Applicant must clarify whether the figures it provides are for its own marketing of S6 EDGE phones. Since in answer to the prior interrogatory regarding licenses, it has raised the question that Applicant itself does not market the S6 EDGE phone in US commerce, but perhaps rather markets it through a non-party other company (possibly its US subsidiary), accordingly, Applicant must clarify if the marketing is (a) solely in relation to US commerce and (b) if it was done by Applicant, by its US subsidiary, or by other trading partners or licensees. Finally, Applicant only provides figures through February 2016 whereas Opposer believes it is entitled to figures to the date Applicant is responding. . As to Applicant's objections including those referencing its "General Objections and General Statements," Opposer notes that Applicant may not object on the basis of privilege unless it identifies the specific documents being protected, clarifies that they are listed in a produced privilege log, and clarifies to Opposer why it believes privilege is valid so that Opposer may object if appropriate. As to objections on the basis of confidentiality or trade secrets, Applicant may not so object since such documents and information can be produced under the Board's Standard Protective Order, and marked as such.

Interrogatory 30: Discovery has not "recently commenced" and thus Applicant should not be permitted to use this excuse to fail to provide all names currently identified as witnesses. As to Applicant's objections including those referencing its "General Objections and General Statements," Opposer notes that Applicant may not object on the basis of privilege unless it identifies the specific documents being protected, clarifies that they are listed in a produced privilege log, and clarifies to Opposer why it believes privilege is valid so that Opposer may object if appropriate. As to objections on the basis of confidentiality or trade secrets,

Applicant may not so object since such documents and information can be produced under the Board's Standard Protective Order, and marked as such.

Interrogatory 33: For clarity, Opposer needs to know if Applicant is stating McClair Ryan. If so, this should be made clear in the amended response. Further, Opposer believes it is entitled to names of persons. As to Applicant's objections including those referencing its "General Objections and General Statements," Opposer notes that Applicant may not object on the basis of privilege unless it identifies the specific documents being protected, clarifies that they are listed in a produced privilege log, and clarifies to Opposer why it believes privilege is valid so that Opposer may object if appropriate. As to objections on the basis of confidentiality or trade secrets, Applicant may not so object since such documents and information can be produced under the Board's Standard Protective Order, and marked as such.

Interrogatory 34: Applicant's response falls woefully short of acceptable: it is not credible that the only document that provided Applicant with information used to respond to these interrogatories was the sole one referenced in the response. As to Applicant's objections including those referencing its "General Objections and General Statements," Opposer notes that Applicant may not object on the basis of privilege unless it identifies the specific documents being protected, clarifies that they are listed in a produced privilege log, and clarifies to Opposer why it believes privilege is valid so that Opposer may object if appropriate. As to objections on the basis of confidentiality or trade secrets, Applicant may not so object since such documents and information can be produced under the Board's Standard Protective Order, and marked as such.

Interrogatory 35: Applicant's response is not acceptable. While it is possible that Applicant has not identified all of the documents it intends to rely on a trial, it is also certain that Applicant has identified some. An acceptable response to this interrogatory identifies all such documents that have not been otherwise identified in the responses to the earlier interrogatories. The response should be amended accordingly. Review of the small bundle of documents so far produced shows no document that appears to be responsive to this interrogatory. Applicant should be required to identify with clear description the responsive documents so that Opposer can check any given document has actually been produced in any future production. Further and most egregiously, discovery has not “recently commenced” since it commence on August 22, 2015, over a year ago, and is within a few days of ending; even by July 26, 2016 discovery had been going for almost one year, not “recently commenced.” At this point Applicant might be expected to have identified most documents it intends to rely on at trial since trial is now, after well over a year of discovery, relatively just a matter of some weeks away.

APPLICANT'S DEFICIENT RESPONSES TO OUR FIRST DOCUMENT PRODUCTION REQUESTS

GENERAL POINTS

First, in respect to the method and mode of production. In Opposer's first motion to compel (filed March 15, 2016; docket #12), Opposer could not have been clearer that it was invoking its right to have Applicant mail copies of all produced documents to it rather than simply making any such documents available to view at an agreed location and time:

In each case where it is stated that Applicant will make documents available for viewing at a mutually acceptable location, we respond that the rules (see TBMP 401 et seq) state that we are entitled to copies of all said documents. And for avoidance of doubt, we hereby request copies of

all said documents, making viewing in person moot since we require actual copies of physical documents as is our right. Further, the Board actively promotes the parties sending physical copies to each other as the preferred method of document production. To make discovery and production easier for both parties, we propose that Applicant photocopy and send all document production to us, and in turn Opposer will photocopy and send all its document production to Applicant.

Further, the Board's Order of July 12, 2016 referenced Applicant sending all produced documents to Opposer (presumably by mail), and indeed when Applicant eventually did produce some documents it was by mail. There was thus no reasonable doubt between the parties that production of all referenced documents would be on Opposer by mail. Despite this, in the instances in its supplemental responses to request for document production where Applicant confirmed it had documents to produce, in all cases it still wrongly stated such documents will be produced at some unidentified place and at some unidentified time and date. Hopefully, Opposer hardly needs to point out to the Board that this was entirely unacceptable. At the least, given the Board's July 12, 2016 Order, it would have been proper for Applicant to state that it would produce any such documents by August 15, 2016 (since this is what the Order calls for Applicant to do).

In any event, in its first motion to compel, Opposer noted that even if production by mail had not already been invoked, simply stating that documents will be produced at some to-be-determined future place, date and time is not in line with Board Rules and Procedure. At the least, a party admitting it has documents to produce is required to state when it will produce them for view, and where it will produce them. Thus regardless, this revised response by Applicant remains woefully insufficient and at odds with Board Rules.

Second, the Board's Order of July 12, 2016 also called for Applicant to unequivocally state whether a given document exists or not. This directive was given in response to Opposer requesting in the teleconference that Applicant not be permitted to answer in general terms such as "such documents if they exist will be produced ..." but rather be required to state what documents are going to be produced, and where specific documents are asked for but do not exist then Applicant must clearly state this is the case.

As the Board can see from Applicant's supplemental responses, not only did Applicant continue the unacceptable habit of simply stating that documents if they exist will be produced, but Applicant also in all instances fails to either state that requested documents do not exist or give any detail of the documents that do exist that it will be producing. Absent at least some detail as to what documents it would be producing, Opposer has no way to review any bundle of produced documents to check if the documents referenced in its original or supplemental responses have actually been produced. Opposer thus makes these two general notes that apply to most of Applicant's supplemental responses for document production, and calls for the Board to compel Applicant to both comply with the spirit and word of the Board's July 12 Order, and be required to state with sufficient specificity what documents it will be producing so that Opposer can check they have indeed finally been produced.

Third, Opposer objects to Applicant being permitted to object on grounds of privilege unless the specific document being protected by privilege is identified and is clarified to be listed on Applicant's timely served Privilege Log. Applicant must also state why it believes it has the right to claim privilege on such a document, so that Opposer may have a reasonably opportunity to challenge the basis of the objection, if appropriate

Opposer also objects wherever Applicant has sought to invoke an objection to produce any document based on confidentiality or trade secret: it is well established that these are not valid grounds since any such document can (and should) be produced under

the Board's Standard Protective Order and labeled as such. There is thus no valid objection on such grounds that would permit Applicant not to produce any given document, or for Applicant to redact any such document if produced.

Fourth, Applicant should perhaps be admonished for repeated reliance on a basis for objection and refusal to produce any given document due to a claim that the request is burdensome, vague, ambiguous or overly broad, or similar where Applicant is then using such objections as a way to fail to produce documents that Opposer has a right to receive. In most instances where Applicant seeks to invoke such objections it is clear that the request was not burdensome, vague, ambiguous or overly broad. But insofar as Applicant may have any reasonable basis at all for such objection, Applicant should be required to state with specificity the reason why a given request is burdensome, vague, ambiguous or overly broad. And in any event, Applicant should be required to produce such documents as it can reasonably be expected to produce, given that Applicant has an obligation to produce such documents sufficient to either prove its case or prove Opposer's case.

Last, Opposer generally requests that Applicant be admonished for its repeated use of phrases such as "to the extent they exist and are located after reasonable inquiry." Opposer has a right to have produced all relevant, responsive documents at the time of requesting them that are in Applicant's custody, possession or control. Further, Applicant is bound by Board Rules to do prompt supplemental production as and when its further inquiry or search reveals further responsive documents.

Opposer asks all of the above for each and every original and supplemental document request response, whether or not Opposer specifically refers to any of the above objections or issues in its specific details of insufficiency below.

SPECIFIC RESPONSE ISSUES AND OBJECTIONS BY DOCUMENT REQUEST

Request 1: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 2: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 3: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 4: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 5: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 6: This response is not acceptable. See Opposer's GENERAL POINTS above. It is not credible that documents relating to Applicant granting a license to its U.S. company, Samsung Electronics America, could be burdensome. Applicant states that this license arrangement is "implied" (whatever that might mean). A license either exists or it does not exist, and if it is argued to exist by virtue of "implication" then documents relating to this claim and supportive of such an "implied" license need to be produced. There are unlikely to be many of them.

Request 11: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 12: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 13: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 14: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 15: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 17: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 25: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 26: This response is not acceptable. See Opposer's GENERAL POINTS above. It is not credible that there are no documents responsive to this request since it is clearly obvious that at some point Applicant became aware and such documents that relate to that point in time must be identified and produced.

Request 27: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 28: This response is not acceptable. See Opposer's GENERAL POINTS above. In addition, Applicant has no right to refuse to produce such documents where such relate to the key points of any such trademark dispute or litigation that the Board Rules require a party to divulge.

Request 30: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 31: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 32: This response is not acceptable. See Opposer's GENERAL POINTS above. It is not credible that there are no such non-privileged documents (none on any privilege log) and if such objection is to be invoked it must be accompanied by a description of each document such that Opposer can dispute its privilege if appropriate, and Applicant must clarify that such document is listed on Applicant's Privilege Log (if it exists and if it was timely served).

Request 35: This response is not acceptable. See Opposer's GENERAL POINTS above. It is not credible that the objections are valid and there should be no need for the parties to further meet and confer. Applicant should be required to identify and produce responsive documents or in the event it still believes the request is overly broad, burdensome, etc, then Applicant should be required to produce such responsive documents as it reasonably can, clarifying what documents it is not producing and why.

Request 36: This response is not acceptable. See Opposer's GENERAL POINTS above.

Request 37: This response is not acceptable. See Opposer's GENERAL POINTS above. In addition, Applicant's refusal to produce any such documents is clearly not acceptable, not least since discovery has not "recently commenced" – it commenced over a year ago in August 2015 and is within days of ending. It is not credible that Applicant, at this late juncture, has no

such documents to produce and indeed likely has a sizable bundle of such documents it can and should produce responsive to this request.

Accordingly, **Opposer asks:**

(i) That Applicant be compelled to serve forthwith on Opposer further amended and further supplemental responses to both Opposer's First Set of Document Requests and Opposer's First Set of Interrogatories, including dealing with all deficiencies in their prior responses, which include at the least those identified above and any others that the Board may see fit to order be supplemented or amended. And that such further supplemental responses be served on Opposer within 7 days of the Board's Order.

(ii) That Applicant be compelled to clearly identify, produce and serve on Opposer all responsive documents, by copying and mailing same to Opposer, within 7 days of the Board's Order on this motion. And that Applicant be compelled to clearly state that any given requested document does not exist if that is Applicant's stated position on the request in question. Such detail of each document already produced or newly produced should be described in such detail that Opposer can check that the produced documents include those referenced by Applicant in its sets of responses.

(iii) That the Board test whether redaction of any produced document is permissible, and where it is not to compel Applicant to produce the entire unredacted document.

(iv) That where a document is in a foreign language (e.g. bate stamped 001 and 002), Applicant should be compelled to provide an English language translation (as well as ensuring there is no redaction unless such is deemed proper by the Board).

(v) That Applicant be bared from producing at trial, or relying upon, any document that it fails to produce and serve on Opposer at this time as a result of the Board's order arising from this motion, or otherwise.

(vi) That these proceedings be suspended pending the outcome of this motion, with no other motions being permitted to be filed after this motion is filed (or, if filed, given no consideration) until this motion has first been given a final ruling.

October 24, 2016

Respectfully submitted,

/Tim Langdell/
By: Dr Tim Langdell
For Opposer in *pro se*

CERTIFICATE OF SERVICE

I hereby certify that pursuant to CFR 2.101(b), on October 24, 2016 a true and correct copy of the foregoing OPPOSER'S MOTION TO COMPEL APPLICANT'S FURTHER AMENDED OR SUPPLEMENTAL DISCOVERY RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND OPPOSER'S FIRST SET OF INTERROGATORIES AND MOTION TO SUSPEND PROCEEDINGS TOGETHER WITH DECLARATION OF DR TIM LANGDELL IN SUPPORT THEREOF WITH EXHIBITS was served via First Class Mail, postage prepaid in full on Applicant at:

DIANE J MASON
LECLAIRRYAN
44 MONTGOMERY ST, STE 3100
SAN FRANCISCO, CA 94104-4705
UNITED STATES

DATED: October 24, 2016

/Tim Langdell/
Dr Tim Langdell

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial No. 86/527,451
Mark: S6 EDGE

EDGE GAMES, INC.)	
)	
Opposer,)	
)	
vs.)	Opposition No.: 91222357
)	Merged with Opposition No.
)	Application Serial No. 86/527,451
SAMSUNG ELECTRONICS CO LTD.)	
)	
Applicant.)	Mark: S6 EDGE
)	

**DECLARATION OF DR. TIM LANGDELL IN SUPPORT OF OPPOSER'S
MOTION TO COMPEL APPLICANT'S FURTHER AMENDED OR
SUPPLEMENTAL DISCOVERY RESPONSES TO OPPOSER'S FIRST
SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND OPPOSER'S
FIRST SET OF INTERROGATORIES AND MOTION TO SUSPEND
PROCEEDINGS**

I, Tim Langdell, declare as follows:

1. I am the CEO of the Opposer corporation, Edge Games, Inc. ("Opposer"). I have personal knowledge about the matters described in this Declaration as set forth below.

2. On or about October 3, 2015 Opposer served on Samsung Electronics Co. Ltd. ("Applicant") Opposer's First Set of Interrogatories and First Set of Requests for Production of Documents (herein after collectively the "Requests"). A copy of those requests may be found in **Exhibit 1** of Langdell decln. attached to Opposer's first (prior) motion to compel (see docket #12). Attached as **Exhibit 2** to

that same prior declaration are the First Responses that Applicant served on Opposer to the Requests.

3. In the period from mid-October 2015 to December 2015 the parties were in contact, primarily via email, to discuss an oral telephonic meet and confer to cover not only issues Opposer had with Applicant's Responses, but also to discuss issues that Applicant claimed it had with Opposer's Responses to Applicants discovery requests. This process was mutual, with each side proposing times and dates for a telephone meeting and with each side equally failing to be able to agree such proposed times as convenient, and on at least one occasion I believe Applicant indicated it would be available but when I attempted the call on behalf of Opposer, Applicant was not available.

4. While Opposer had formally notified Applicant that its responses were unacceptable on November 30, 2015 (see **Exhibit A** hereto), with the parties failing to connect for telephonic discussion, I decided that on behalf of Opposer I would compose a detailed meet and confer letter covering Opposer's concerns with Applicant's deficient responses to the Requests, and this was served on Applicant on December 21, 2015 (see **Exhibit B** hereto). With this letter, Opposer invited Applicant to resolve the outstanding issues with the Requests via writing so as to avoid the need for Opposer to file a motion to compel.

5. By February 29, 2016 Applicant had still not responded to the December 21, 2015 letter, and thus I caused a further communication to be sent to Applicant stating that Opposer needed to receive responses on discovery deficiencies that were many weeks overdue (see **Exhibit C** hereto). In this communication Opposer asked for a response by March 2, 2016 else Opposer

would feel forced to have to file a motion to compel Applicant to respond to the Requests.

6. Applicant once again failed to respond, and accordingly Opposer filed its first motion to compel at that time. Prior to filing the first motion, though, in an attempt to try yet again to resolve the issues in good faith, I did attempt once again to set up a telephone meet and confer with Applicant's attorney, Ms. Mason, while she at first suggested she would make herself available, a few hours later she reneged on the agreement to meet and confer by filing a motion.

7. Since the attempts to meet and confer telephonically during the October to December period had failed, I did not have high hopes that this revised attempt to resolve matters telephonically would bear fruit. On March 11, 2016 Ms. Mason and I exchanged emails in which she threatened to file a motion to compel against Opposer if we did not address Applicant's discovery concerns, and I responded saying in like kind that Opposer would have to file a motion to compel against Applicant if it did not similarly address Opposer's concerns. I then proposed that we have a meet and confer telephone call the following week in which we would discuss both parties discovery concerns about the other party's objections prior to either party filing a motion to compel. My email asking Ms. Mason for her availability to do a meet and confer telephone call was timed at **2:10pm** on March 11. At **2:22pm** Ms. Mason replied indicating she will make herself available the following week (the email the Board mis-read as Ms. Mason making an offer to me), presumably since she is responding to my email, for a call to discuss both parties concerns prior to either party filing a motion to compel. Then before I had a chance to respond to Ms. Mason with a time to discuss both parties discovery concerns, Ms. Mason suddenly wrote me at **5:43pm** on the same day we had agreed to have a

meet and confer before either party would file a motion, and to her new email she attached a copy of a motion to compel. I then responded at **6:07pm**, also on the same day, March 11, stating that I took this to be Ms. Mason renegeing on the agreement to meet and confer - presumably with no intention of ever having a meet and confer. I thus stated that having given up hope of any reasonable response from Ms. Mason, Opposer responded that all attempts at a meet and confer having failed, accordingly Opposer had no option other than to file its motion to compel, too (attached hereto as **Exhibit D**). Thus the Board can see it is not true that Ms. Mason made me an offer to meet and confer that I failed to accept. On the contrary, the parties agreed to meet and confer before either would resort to filing a motion to compel, and then about 3 hours later Ms. Mason renegeed on the agreement to meet and confer by filing Applicant's motion.

8. I thus note that in the Board's Order of June 2016 and in the subsequent teleconference with the Board and the parties, the Board mistakenly interpreted Ms. Mason to have made an offer to meet and confer that I had failed to accept. That is not an accurate interpretation of what took place – it was me, not Ms Mason, who was inviting Applicant to meet and confer and by responding the way she did, Ms Mason effectively rejected my invitation by filing her motion to compel when we had agreed to meet and confer before either party would file a motion.

9. When the Board denied Opposer's first motion to compel, a teleconference took place with the Board and the parties in sizable part to see if the remaining issues Opposer had with Applicant's deficient responses to the Requests could be resolved in such a call. The result was the Board's July 12, 2016 Order. I note that with Opposer's first motion to compel followed by the detailed teleconference with the Board, there could be no excuse reasonably offered by

Applicant as to why it was not entirely clear as to what its deficiencies in its discovery responses were. No longer surely could anyone suggest Opposer had not tried all possible to resolve the issues with Applicant.

10. Applicant was asked by the Board to serve its Supplemental Responses on Opposer by late July and did indeed serve two new response documents. However, those supplemental responses still fell woefully short of being acceptable or sufficient (see **Exhibit E** hereto).

11. Applicant was also asked in the Board's Order to produce all responsive documents referenced by Applicant in either its First or Supplemental Responses by August 15, 2016. Because both parties wished an extension of time in which to serve documents on the other, both parties agreed to extend the mid August deadlines to the end of August.

12. At the end of August 2016 having received no indication from Applicant that it intended to correct or further amend its supplemental responses to the Requests, Opposer wrote a detailed letter (see **Exhibit F** hereto) summarizing all of the continuing deficits in Applicant's supplemental responses.

13. Around August 29-30, 2016 or so Opposer did receive the first ever bundle of produced documents from Applicant. However, this production too was woefully short of being a complete set of all documents references by Applicant in its two sets of responses and there was no indication which document was supposed to relate to any given document referenced in Applicant's original or supplemental responses.

14. I noted that Applicant had once again been deliberately vague in its supplemental responses, stating merely that it would produce any responsive documents it has if any exist, without stating what documents it indeed had, which

documents it would be producing, and which requested documents did not exist. Thus when the bundle arrived I had no way to definitively check if the small bundle of documents that had been produced included any of the promised documents. Certainly, one of the only specifically mentioned documents (a declaration regarding sales and marketing figures) was definitely absent in the August production.

15. Of the few documents Applicant did produce the first pages were in Korean and I believe Opposer was entitled to an English translation. Moreover, I noted that these Korean pages were redacted. There was also a lengthy 'MILK' report which was also extensively redacted, which, again, I believed was against TTAB rules since Applicant should be producing complete, unredacted, documents – under the Board's Standard Protective Order if appropriate. But it was not clear to me that this report was really either confidential or trade secret. It seem clear, though, that an unredacted copy of the MILK report would be important to these proceedings, and a document Opposer has a right to receive without redaction. The remainder of the bundle, I noted, consisted of “fluff” documents regarding Applicant's smart phones, most (if not all) of which I believe is readily available on the Internet, and a sizable portion of which (around 129 of the 229 pages produced) was taken up with a very lengthy manual for a phone that has at best only a modicum of relevance to the action and which was also easily available on the Internet.

16. I thus determined that Applicant's production was deliberately woefully inadequate, and accordingly I caused another letter to be written to Applicant on September 7, 2016 detailing all of the deficiencies in Applicant's production (see **Exhibit G** hereto). The documents Applicant produced and marked confidential are attached hereto as **Exhibit H** (and filed under seal), whereas the

open, non confidential, documents served on Opposer are attached hereto in

Exhibit I.

17. Eventually, *two months* after Applicant was asked by the Board to produce all referenced documents, Ms. Mason suddenly sent an email to me dated October 12, 2016 to which she said she was attaching a declaration responsive to Opposer's document requests Nos. 30 and 31. Nothing was attached to that email but the document in question did arrive by mail some days later. The declaration -- produced some two months after the deadline of August 15th given by the Board -- is included in **Exhibit H** (filed under seal) along with the other confidential documents produced previously in late August.

18. On inspecting the declaration, however, I cannot see what information it contains to warrant a designation of either confidential or trade secret given that the declaration contains sales and marketing figures, and yet Applicant had already openly stated its sales and marketing figures in its (open) Supplemental Responses to Opposer's Interrogatories. Further, I noted that Applicant gave no explanation as to why this document was not included in the August production given the Board asked that Applicant produce all documents at that time -- not two months later in October. It is not credible that it really took Applicant that long to draft and execute such a declaration. The only reasonable conclusion is that Applicant is deliberately seeking to delay proceedings and prevent Opposer from timely receiving discoverable information and documents to which it is entitled.

19. By mid-October 2016 Applicant had still not responded to the meet and confer letters of late August and early September, and thus I wrote Applicant yet again asking for responses and warning Opposer would have to file a motion to compel responses if they are not forthcoming at that time (See **Exhibit J**).

Eventually, on October 20, 2016, I received a response from Ms. Mason indicating she would address Opposer's issues within the "next couple of days." (See **Exhibit K**).

20. Opposer has thus made over a year of good faith attempts to resolve the discovery disputes that are the subject of the present motion. But by this time in the afternoon of October 24, 2016, Applicant had still not served acceptable responses or produced any of the missing documents, and thus Opposer filed the instant new Motion to Compel, Opposer having tried very hard over more than a year since serving the Requests on Applicant to get Applicant to respond acceptably.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, declares that all the statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

Executed this 24th day of October, 2016 in Pasadena, California.

/Tim Langdell/

TIM LANGDELL