IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELM 3DS INNOVATIONS, LLC, Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD., et al., Defendants.	C.A. No. 14-cv-1430-LPS JURY TRIAL DEMANDED
ELM 3DS INNOVATIONS, LLC, Plaintiff, v. MICRON TECHNOLOGY, INC., et al., Defendants.	C.A. No. 14-cv-1431-LPS JURY TRIAL DEMANDED
ELM 3DS INNOVATIONS, LLC, Plaintiff, v. SK HYNIX INC., et al., Defendants.	C.A. No. 14-cv-1432-LPS JURY TRIAL DEMANDED

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR REARGUMENT UNDER L.R. 7.1.5

INTRODUCTION

Defendants' motion is styled as a "Motion for Clarification Under Local Rule 7.1.5." D.I. 271. Local Rule 7.1.5 provides for reargument, not clarification. And the relief the Defendants seek is not clarification but reargument of an issue this Court has already decided: the construction of the terms "dice is substantially flexible" and "die is substantially flexible." The Court construed those terms to mean "A dice/die that is thinned to 50 µm or less and subsequently polished or smoothed such that it is largely able to bend without breaking." D.I. 267 at 2 (No. 1:14-cv-01430 *Markman* Order).

Local Rule 7.1.5. provides that reargument "shall be sparingly granted." Defendants have failed to provide adequate justification for reargument, so their motion should be denied.

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BACKGROUND

The Court's *Markman* Order groups the "substantially flexible" terms into three categories: Term 1 included terms that describe a substantially flexible substrate or semiconductor layer; Term 2 included terms involving a substantially flexible dice or die; and Term 3 included terms involving a substantially flexible circuit layer, integrated circuit, and similar terms. D.I. 267 at 2-3. The Court construed the dice and die terms as "[a] dice/die that is thinned to 50 μm or less and subsequently polished or smoothed such that it is largely able to bend without breaking." *Id.* at 2.

In the Memorandum Opinion accompanying the Court's *Markman* Order, the Court rejected the Defendants' contention that the substantially flexible terms were indefinite. D.I. 266 at 11-13. The Court also stated that it "now adopts" the Federal Circuit's construction of the "substantially flexible" claim terms. *Id.* at 6-8.

The Court's construction of the "substantially flexible" claim terms largely mirrors the Federal Circuit's construction. However, unlike the Court's *Markman* Order—which grouped the "substantially flexible" terms into three categories—the Federal Circuit grouped the terms into only two categories: (1) those that include a substantially flexible semiconductor substrate; and (2) those that include a substantially flexible circuit layer. *Samsung Elecs. Co. v. Elm 3DS Innovations, LLC*, 925 F.3d 1373, 1379-80 (Fed. Cir. 2019). The Federal Circuit construed the substrate terms as "a semiconductor substrate that is thinned to 50 μm [or less] and subsequently polished or smoothed such that it is largely able to bend without breaking." *Id.* at 1380. The Federal Circuit construed the circuit layer terms as "a circuit layer that is largely able to bend without breaking and contains a substantially flexible semiconductor substrate and a sufficiently low tensile stress dielectric material." *Id.* While the Federal Circuit did not explicitly state how it was construing the substantially flexible die or dice terms, it indicated that the "die" terms are similar to the "circuit" terms. *Id.* at 1377, n.5. The Federal Circuit also stated that "a substantially flexible circuit layer, and similar terms, must

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contain a substantially flexible semiconductor substrate and a sufficiently low tensile stress dielectric material." *Id.* at 1379. Finally, the Federal Circuit stated that "a substantially flexible die or integrated circuit . . . require[s] a low tensile stress dielectric under the proper claim construction." *Id.* at 1383. Elm thus agrees with the Defendants that the Federal Circuit's construction of the die and dice terms included the requirement of a low tensile stress dielectric; a requirement that is absent from the Court's construction.

LEGAL STANDARD

"Pursuant to Local Rule 7.1.5, a motion for reconsideration, including a motion brought pursuant to Rule 59(e) to alter or amend judgment, should be granted only 'sparingly.'" *Shahin v. Del. Fed. Credit Union*, C.A. No. 10-475-LPS, 2014 WL 12603505, at *1 (D. Del. May 15, 2014). "A motion for reargument under Local Rule 7.1.5 is the 'functional equivalent' of a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e)." *MobileMedia Ideas, LLC v. Apple Inc.*, 966 F. Supp. 2d 433, 437 (D. Del. 2013) (denying motion to reargue claim construction). "The purpose of a motion for reargument or reconsideration is to 'correct manifest errors of law or fact or to present newly discovered evidence.'" *Id.* "A court should exercise its discretion to alter or amend its judgment only if the movant demonstrates one of the following: (1) a change in the controlling law; (2) a need to correct a clear error of law or fact or to prevent manifest injustice; or (3) availability of new evidence not available when the judgment was granted." *Id.* (citing *Max's Seafood Cafe ex rel. Lou–Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999)).

ARGUMENT

Elm acknowledges that the Federal Circuit's construction of the die terms appears to have included a low tensile stress dielectric requirement that is absent from the Court's construction. Elm does not, however, agree with the Defendants' motion for reargument because Defendants have failed to show that the Court's construction is clearly erroneous. As the Court noted, it is not bound

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by the Federal Circuit's construction of these terms. *See* D.I. 266 at 8, n.7 ("The Court is not required to adopt the PTAB's or Federal Circuit's construction."). The Defendants have provided no reason—other than the fact that the Federal Circuit included the low tensile stress dielectric requirement in its construction—that the Court should import this requirement into its construction. Defendants have cited no evidence, and presented no principled argument, supporting their argument that a substantially flexible die must include a low stress dielectric, let alone a dielectric with low *tensile* stress. Indeed, Dr. Shefford Baker explained in a declaration attached to Elm's *Markman* brief that the direction of the stress (*i.e.*, whether it is tensile or compressive) "does not matter" because regardless of the direction, "a stress of a given magnitude leads to a certain curvature." D.I. 240-1 at 32 (Baker Declaration). The bar is high for a party to seek reargument, and Defendants have the burden of coming forth with more to support a motion for reargument. Because they failed to do so, the Court should deny their motion.

The Federal Circuit relied upon three pages in the prosecution history to support its conclusion that "a substantially flexible circuit layer, and similar terms, must contain a substantially flexible semiconductor substrate and a sufficiently low tensile stress dielectric material." *Samsung Elecs. Co.*, 925 F.3d at 1379 (citing J.A. 10314, J.A. 10316, and J.A. 16038, attached hereto as Exhibit A). Critically, none of those portions of the prosecution history discuss the "die" or "dice" terms. Instead, they all discuss what is needed for a substantially flexible "circuit layer." *See* Ex. A (Page 10314 discussing what is needed "[f]or a circuit layer to be substantially flexible," Page 10316 discussing the requirements for achieving a "substantially flexible circuit layer," and Page 16038 noting that the prior art failed "to teach that at least one of the first and second circuit layers is substantially flexible"). In light of this history, the Court's exclusion of the tensile stress requirement from its construction of the die terms is not clearly erroneous.

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Elm further disagrees with the Defendants' assertion that the Court's construction of the "die" terms reflects an "inadvertent omission[]." D.I. 271 at 1. To the contrary, the Court's construction of the die terms makes good sense because it aligns with the more natural reading of Claims 60 and 70 of the '239 patent—the two claims in which the die terms appear. Claims 60 and 70 both recite a "die having an integrated circuit formed thereon." If "die" itself was synonymous with an "integrated circuit" or "circuit layer," then the "having an integrated circuit formed thereon" language would be surplusage. In addition, Claims 1 and 13 of the '239 patent recite substantially flexible substrates "having integrated circuits formed thereon," or "having active circuitry formed thereon," respectively. On the other hand, similar claims that recite a substantially flexible "circuit layer" or "integrated circuit" do not generally include these sorts of circuitry limitations. *See, e.g.*, '570 Patent, Claim 58; '004 Patent, Claim 1. The Court may therefore have grouped the "die" terms with the "substrate" terms because the patent claims are in line with that grouping.

CONCLUSION

Defendants have failed to identify any clear error in the Court's construction of the "die" or "dice" terms, so their motion for reargument should be denied.

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