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BY E-FILING

The Honorable Leonard P. Stark
United States District Court
for the District of Delaware
844 N. King Street
Wilmington, DE 19801

Re: *ELM 3DS Innovations, LLC v. Samsung Electronics Co., Ltd., et al.*,
C.A. No. 14-cv-1430-LPS

Dear Chief Judge Stark:

The Samsung Defendants (“Samsung”) respectfully respond to the Plaintiff Elm’s May 13, 2020 letter seeking leave to amend its complaint. To avoid duplication, Samsung incorporates all but section II.A of co-Defendant Micron’s letter. See D.I. 282.

Aside from the deficiencies identified in Micron’s letter, Elm’s allegations of pre-suit notice critically miss the mark by failing to allege that Samsung acted willfully or egregiously to infringe its patents. Instead, the amended complaint merely states that Samsung had notice of the patents—and even then, only as of the filing of the complaints, see D.I. 276-1 ¶ 47—which is an insufficient basis to justify a finding of willfulness. See *Halo Electronics v. Pulse Electronics*, 136 S. Ct. 1923, at 1936 (2016) (Breyer, J., concurring) (“‘willful misconduct’ [does] not mean that a court may award enhanced damages simply because the evidence shows that the infringer knew about the patent and nothing more”). Indeed, Elm cites no evidence to support a finding of willful conduct that would “transform simple knowledge into such egregious behavior.” *Id.*

Nor has Elm cited any evidence demonstrating that there was a meeting between Samsung and Elm in the early 2000s. Elm refers to no facts, let alone any learned through discovery, that supports its claim that such a meeting occurred, despite producing over 125,000 pages of materials. Instead, Elm affirmatively represents that the parties “have known about the factual underpinnings of Elm 3DS’s willful infringement allegations for five years now.” See D.I. 276 at 2. Yet, despite such knowledge, Elm deliberately delayed seeking leave to amend its complaint regarding alleged willfulness. Elm’s proposed amendments are insufficient to support its willfulness allegations, and are based on conduct known to Elm decades ago, making them futile.

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Moreover, even if Elm's allegations are credited (i.e., Elm shared the '167 patent with Samsung in the early 2000s), the '167 patent is not asserted in this case; and none of the asserted patents were filed, much less issued, at the time of that alleged meeting. Samsung cannot have willfully infringed patents that did not exist at the time of the alleged meeting, further demonstrating the futility of Elm's proposed amendments.

For the reasons set forth above and in Micron's letter, Samsung respectfully submits that the Court should deny Elm's motion for leave to amend its complaint.

Respectfully submitted,

/s/ Adam W. Poff

Adam W. Poff (No. 3990)

cc: Counsel of Record (via E-Filing and E-Mail)