

**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

**JOINT STATUS LETTER TO THE HONORABLE JENNIFER L. HALL
REGARDING DISCOVERY DISPUTES**

Dated: June 26, 2020

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Electronics Co., Ltd., Samsung
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Dear Judge Hall:

Pursuant to the Court's Order, D.I. 293, Elm and Samsung submit this joint status letter.

The Court's May 27 Order required that Samsung "complete the chart set forth in Exhibit 30 to D.I. [281] with the modifications proposed in Samsung's letter." Samsung sent Elm an updated chart on June 19. Elm contends there are a number of deficiencies with that chart.

ISSUE 1: Package Type Information

Elm's Position: The updated chart is missing package type information for at least a third of the products.¹ Where Samsung provided package type information, it is in the form of internal process codes which are incomprehensible to Elm. Samsung says its package codes are explained in certain highly sensitive documents that Elm must review on a standalone computer at Samsung's counsel's office. In addition, Samsung has identified multiple package codes for many of the accused products, but did not indicate which of those codes relate to the relevant die. Elm contends that, for the above reasons, Samsung has failed to comply with the Court's May 27 Order and requests that the Court order Samsung to immediately remedy these deficiencies.

Samsung's Position: Samsung complied with the Court's Order. It completed the chart by inserting all of the information Samsung was able to locate after thoroughly investigating every accused product. For package type, Samsung explained to Elm that it could not locate all of the information for certain products, e.g., due to age. Samsung, not Elm, initially proposed including package type as a criteria, and explained that if adequate information cannot be located, Samsung would be amenable to an alternative approach or dropping package type all together, which Samsung is currently considering. Samsung is also amenable to correlating the package type codes to dies, but this issue was only recently raised by Elm and it is unclear why such a correlation is needed. Nevertheless, Samsung has been and continues to be available to confer with Elm to resolve these types of issues before prematurely involving the Court.

ISSUE 2: Identifying the Relevant Process Nodes

Elm's Position: Exhibit 30 included the following instruction: "Where more than one process node is used to make the die in the product, each relevant process node should be listed. In that case, the process node(s) on which the die with a thickness of 50 microns or less are made should be bolded." *See* D.I. 281, Ex. 30 at 7. The Court ordered Samsung to "complete the chart set forth in Exhibit 30 to D.I. [281] with the modifications proposed in Samsung's letter." Samsung's letter to the Court did not take issue with providing this information. *See* D.I. 286. Nonetheless, the chart Samsung provided did not indicate which process node related to the relevant die. Samsung has agreed to update the chart to include that information by July 3.

Samsung's Position: Elm's demand that Samsung bold certain nodes was not specified in its letter to the Court or required by the Court's Order. It was instead noted in Elm's nearly 500-page declaration in support. In any event, after Elm raised this issue on June 23, Samsung agreed it would endeavor to provide the information by the end of next week, July 3.

¹ Samsung also failed to identify die thickness and/or number of chips for hundreds of products.

ISSUE 3: Substantial Production of Information

Elm's Position: The Court's May 27 Order required that Samsung "complete substantial production of the information for the newly identified products." Samsung states that it complied with the "substantial production" portion of the Order by completing the chart for the newly identified products. Elm disagrees. Samsung's inclusion of those products in the chart was already mandated by the first part of the Court's order, requiring that Samsung complete the chart. Indeed, Elm's letter brief explained that completing the chart entailed "updating the chart to add all relevant products not already listed" and providing all the relevant information for those products. *See* D.I. 280 at 3. Samsung thus violated the Court's Order by failing to substantially complete, at a minimum, its production of core technical data for the newly identified products.

Samsung's Position: Samsung understood this portion of the Order to require Samsung to include the newly identified products in the updated chart and to substantially complete *the chart* for those new products, which is exactly what Samsung did. Elm's reading of the Court's Order would result in the illogical situation where the document production deadline for products identified in the past months is earlier than the deadline for products identified years ago. That does not make sense, and Samsung's discovery letter (which the Court largely adopted) did not suggest otherwise. Samsung fully intends to substantially complete production of documents underlying the information in the chart within the timeframe that the Defendants have proposed as part of an extension to the schedule.

ISSUE 4: Image Sensors Grouping

Joint Statement: The Court's Order instructed the parties to meet and confer regarding the image sensor products. Elm has proposed that the image sensors be grouped using essentially the same criteria that the parties intend to use for grouping the memory products. Samsung does not believe such a grouping would work because it believes that these products are completely different, and the same criteria are not sufficient to distinguish purportedly representative image products from one another. Samsung is still investigating a potential solution and will provide Elm a concrete proposal by July 3.

ISSUE 5: Downstream Product Inventory

Joint Statement: The Court's Order instructed the parties to meet and confer about downstream product inventory. The parties have agreed that, instead of providing downstream product inventory data for each of the relevant products, Samsung will provide a chart that will identify the downstream Samsung products that contain accused components (whether made by Samsung or others) which Samsung does not have in inventory. To collect this information, Samsung will need to investigate each of the more than 1,500 downstream products, which will take time. Nevertheless, Samsung will endeavor to provide this information by July 10. Samsung will also investigate downstream products in inventory, to the extent Elm is unable to purchase any such products in the market.

Dated: June 26, 2020

Respectfully submitted,

FARNAN LLP

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