

**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

FILED UNDER SEAL

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

Dated: July 10, 2020

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Dear Judge Hall:

Pursuant to the Court's Order, D.I. 312, Elm and Samsung submit this joint status letter. As described below, the parties have continued to work through the issues identified in the prior joint status letter, D.I. 310. Those efforts have included three telephonic meet and confers, totaling nearly an hour and a half. Those calls were attended by the following counsel:

- Elm's Counsel: Nosson Knobloch and Michael Farnan (Delaware counsel)
- Samsung's Counsel: Soyoung Jung, Allan Soobert, Phillip Citroen, and Adam Poff (Delaware counsel)

While the parties' issues have not all been resolved, they would like to continue working towards resolution and request the opportunity to further update the Court in two weeks.

ISSUE 1: Sales Data Errors in the Court-Ordered Chart

Elm's Position: Samsung's disclosures of relevant sales revenue have fluctuated wildly over the course of this case. *See generally* D.I. 280. That trend has unfortunately continued. The Court's May 27 Order instructed Samsung to identify summary sales data for each relevant product by June 19. On June 19, Samsung produced a chart identifying approximately [REDACTED] in revenue from US sales of relevant memory components. On July 6, Samsung produced an updated chart that reported nearly [REDACTED] in such revenue. On July 7, Samsung explained that the sales numbers were reduced solely because the updated chart [REDACTED] from after April 2017. The following day, Elm informed Samsung that its explanation could not account for such a [REDACTED] in revenue. Samsung has since acknowledged that its updated chart included inadvertent errors and has committed to correct them.

Every fluctuation in Samsung's disclosures imposes costs on Elm. Elm's experts have spent many hours analyzing Samsung's disclosures and identifying errors. More importantly, Samsung's fluctuating disclosures have prevented the parties from moving forward with other important discovery. Samsung asserts that such fluctuations should be expected in a case of this scope and complexity. But this case was filed nearly six years ago. At this late stage of the case, Samsung should be able to provide accurate information in discovery. Elm hopes that Samsung will correct these errors quickly.

Samsung's Position: The sales data in the charts served on June 19 and July 6 is merely a summary of Samsung's sales data previously produced in this case. While there have been occasional variations in this data, these variations are due, in part, to the change in scope of the accused products over time, the large number of products accused, the different Samsung entities involved, and the long damages window. Some variations are unsurprising given these complexities. The update to the chart noted by Elm above was only to adjust for the expiration of many patents covering wirebonded products on April 2017. In any event, Samsung has been and will continue to address any reasonable concerns raised by Elm concerning this data, and is actively addressing these variations, as the parties agreed during this week's meet and confers.

ISSUE 2: Technical Data Gaps in the Court-Ordered Chart

Joint Statement: Samsung remains unable to identify package type information, die thickness, and number of chips for many relevant products, at least in part due to the age of certain products. The parties are working together to devise a solution for addressing these data gaps. Among other things, the parties are contemplating narrowing the factors that need to be considered in grouping the relevant products. The parties are also negotiating how Samsung will provide certain highly confidential product packaging data to Elm's experts for review.

ISSUE 3: Image Sensor Grouping

Joint Statement: 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 has proposed two additional criteria. Samsung intends to update its chart to include data for the additional criteria it has proposed, and to produce documents related to those criteria. Samsung is aiming to produce this data today, and the parties will then meet and confer to finalize a representative products plan for the image sensor products.

ISSUE 4: Downstream Product Inventory

Joint Statement: Samsung has committed to produce 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. Samsung is aiming to produce that chart next week. Samsung has also committed to investigate its downstream products inventory, to the extent Elm is unable to purchase any such products in the market. The parties will continue to work together on these issues.

Dated: July 10, 2020

Respectfully submitted,

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/s/ Michael J. Farnan

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