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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:

Samsung respectfully submits this response to Elm's letter regarding the parties' stipulation to amend the schedule (D.I. 339).

There is no dispute for the Court to resolve, and indeed, Elm and Samsung jointly submitted the agreed-upon stipulation to amend the schedule. Nevertheless, Elm decided to file its own letter purporting to summarize the circumstances requiring the amendment. Samsung would ordinarily not burden the Court with a responsive letter where there is no dispute before Your Honor except that Elm's letter omits important facts and mischaracterizes the record, requiring correction.

***First***, Elm accuses Samsung of ignoring deadlines and disregarding the Court's order requiring completion of the chart on accused products for selecting representative products. That is not true. Samsung complied with the Court-ordered June 19 deadline, as evidenced by three joint status reports informing the Court of the parties' progress in addressing the requested information.[1] (See D.I. 310, 314, and 318.) And, in the final joint status report, the parties agreed that there were no outstanding issues to resolve.[2] (See D.I. 318.)

[1] Elm incorrectly states that the Court "largely granted" its motion to compel; Samsung agreed to complete the chart after Elm presented it for the first time with its May 19 letter (D.I. 286), and the Court entered an order memorializing that agreement (D.I. 293).

[2] Elm misleadingly states that Samsung has "refused" to produce documents until the parties have selected representative products, but that has been the agreed-upon plan all along and one of the very reasons for a representative products agreement. Elm has even informed the Court

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Samsung diligently provided the information it had after an exhaustive, good-faith investigation. There are over a thousand accused products at issue in this case, many of which were discontinued years ago and require tedious manual searches for the data required for selecting representative products. It is not surprising that some data cannot be found, as Elm acknowledges, and that there were inadvertent errors in the large volume of complex data that was ultimately compiled. In any event, Elm concedes that Samsung has corrected any errors as they have been identified.[3]

***Second***, Elm's accusation of Samsung not meeting the substantial completion deadline is misleading and one-sided, taken out of the appropriate context. Samsung informed Elm before August 28 deadline that Samsung had inadvertently misidentified a custodian (who shares the same name with another employee), and needed additional time to collect documents from the correct custodian. Elm did not object. Samsung also informed Elm that it expected to produce documents shortly past the August 28 deadline as a result of unforeseen delays in processing large volumes of documents at home networks, pursuant to work-from-home practices and in light of the COVID-19 pandemic. Elm again did not object. And, Elm omits the critical fact that it itself failed to meet the August 28 deadline, having not yet produced inventor notebooks that it had agreed to provide.

In light of these issues, and before the substantial completion deadline, Samsung (with Defendants Micron and SK hynix in related cases) approached Elm to amend the schedule, since it was apparent that all parties—including Elm—would benefit from additional extensions of time. Given the circumstances, Defendants reasonably expected to reach the agreement ultimately reflected in the instant stipulation to amend the schedule. But Elm simply refused at the time and threatened to seek relief, giving no explanation for why after weeks of consenting to Samsung's production of certain documents after August 28, it suddenly objected to an amended schedule that would align with the parties' existing expectations. It is evident from the joint stipulation that Elm agrees with an amended schedule that addresses supplemental document productions and corresponding discovery allowances for both sides. Elm clearly has no basis to object, as a contributor to the circumstances requiring the amendment. It is, therefore, disingenuous for Elm to now burden the Court with its erroneous accusation that Samsung has unilaterally disregarded the schedule.

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that such an agreement is intended to benefit both parties in streamlining the case (see D.I. 288), which includes alleviating Samsung's burden in discovery. And, it is likewise inappropriate to attribute any delay to Samsung alone; for example, Samsung served an updated chart on July 17 and Elm did not raise any concerns about it until August 21.

[3] Elm's accusation that Samsung omitted "billions of dollars in relevant sales information" exaggerates the significance of this data. This data was for downstream product sales, i.e., consumer products that incorporate the accused memory and image sensor components, which themselves sell for only a fraction of the downstream product sales. It is the quantity of downstream products sold that is relevant to show the total number of allegedly infringing units contained therein, not the entire market value of the downstream products. In any event, Samsung updated the chart with this data promptly after discovering its inadvertent omission.

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Should Your Honor have any questions regarding these matters, counsel for Samsung are available at the Court's convenience.

Respectfully submitted,

/s/ *Adam W. Poff*

Adam W. Poff (No. 3990)

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

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