

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

**LETTER TO THE HONORABLE JUDGE HALL
IN OPPOSITION TO SAMSUNG'S MOTION TO COMPEL**

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Dear Judge Hall,

The parties' dispute is narrow. Elm has agreed to produce financial documents to the extent they reflect the value of the patents asserted in this case. The only question is whether Elm must produce all of its financial documents, even those that do not reflect the value of the asserted patents. Elm opposes that production because the documents are irrelevant, and this is a fishing expedition into Elm's finances.

Elm has never been a complicated business. It did not make or sell products covered by the asserted patents. Instead, the company was an extension of its founder, Glenn Leedy. Mr. Leedy was an inventor and, as a company, Elm held the patents that Mr. Leedy obtained—including the asserted patents and several other patent portfolios.

Samsung points to three general categories of documents that it wants: Elm's tax returns, financial statements, and valuation documents. With respect to the tax returns, these documents do not contain relevant information. Elm is prepared to submit a representative tax return *in camera*. As far as Elm can tell, the tax returns it has located do not value the patents at all. Nor do they provide any other meaningful information that would be relevant to this case.

With respect to the remaining categories, Elm has agreed to produce documents to the extent they reflect the value of the asserted patents. Beyond that, however, it is unclear what relevance Elm's balance sheets and cash-flow statements have to a reasonable royalty from Samsung. Samsung's focus on Elm's finances for damages purposes has it backwards. Elm is not seeking lost profits. And therefore the damages inquiry examines Elm's "lost opportunity to obtain a reasonable royalty that the infringer would have been willing to pay if it had been barred from infringing." *AstraZeneca AB v. Apotex Corp.*, 782 F.3d 1324, 1334 (Fed. Cir. 2015). The focus is squarely on the value of Samsung's use of infringing technology—not valuing Elm's finances or any harm that occurred to Elm. Elm suspects that Samsung only wants these documents to disparage Elm's financial success, which has no bearing on the damages that Samsung owes.

Samsung's cited cases offer no support. To the contrary, they reinforce the same line that Elm has drawn between information valuing patents and financial information generally. For example, in *TQ Delta*, the plaintiff produced financial documents that were largely redacted to shield "anticipated expenditures and its finances." Special Master Order, *TQ Delta v. Adtran*, No. 14-954-RGA, D.I. 380 at 7–9 (D. Del. May 2, 2018). The Special Master rejected the defendants' request to un-redact the financial statements in their entirety. This redacted information is what Samsung is seeking here—Elm's financial information unrelated to the asserted patents or their valuation.

The remaining cases reinforce this divide. *Godo Kaisha IP Bridge 1 v. TCL Comm'n Tech. Holdings Ltd.* required the plaintiff to produce damages reports and depositions from another case involving potentially comparable patents. No. CV 15-634-JFB-SRF, 2018 WL 6978576, at *2 (D. Del. Mar. 8, 2018). *Robocast, Inc. v. Microsoft Corp.* involved actual valuations of comparable patents. No. 10-1055-RGA, D.I. 431 (D. Del. Jan. 16, 2014). And *SpectraLytics, Inc. v. Cordis Corp.* involved documents that valued the asserted patent or documents relating to a proposed sale of the business—not all the company's financial records. 650 F. Supp. 2d 900, 915 (D. Minn. 2009). Finally, *Blue Spike LLC* and *Van Romer* contain no analysis whatsoever. See *Blue Spike, LLC v. Vizjo, Inc.*, No. 8:17-cv-01172-DOC-KESx, 2018 WL 8646477, at *3 (C.D. Cal. Aug. 31, 2018); *Van Romer v. Interstate Prod. Inc.*, No. CV 6:06-2867-HFF, 2009 WL 10710851, at *1 (D.S.C. Mar. 20, 2009).

In an effort to avoid burdening the Court, Elm agreed to produce patent-related financial statements or tax documents and offered a mutual exchange to resolve the parties' remaining

disputes. This was unsuccessful. Elm disagrees with Samsung that Samsung has produced all relevant financial information or that Elm's requests are "duplicative." But Elm does not intend to press this Court to compel Samsung to produce its tax returns because they are not relevant to this case. Neither are Elm's.

Respectfully submitted,

/s/ Michael J. Farnan

Michael J. Farnan

cc: Counsel of Record (Via E-Mail)