

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Delaware

Elm 3DS Innovations, LLC

Plaintiff

v.

Micron Tech., Inc. et al. (-1430), Samsung Elecs. Co., Ltd. et al. (-1431), SK hynix, Inc. et al. (-1432)

Defendant

Civil Action No. 14-1430, -1431, -1432 (LPS)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Kenneth Su, 5546 Rutgers Rd, La Jolla, CA, 92037-7821

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Exhibit A.

Table with 2 columns: Place: Mutually agreeable place TBD or by electronic means; Date and Time: 12/28/2020 12:00 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place; Date and Time

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 12/11/2020

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Rose Prey
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) SK hynix, Inc., who issues or requests this subpoena, are:

Rose Prey, Greenberg Traurig LLP, 200 Park Ave., New York, NY 10166, (212) 801-6473

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom



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**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day’s attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_ *Server’s signature*

\_\_\_\_\_ *Printed name and title*

\_\_\_\_\_ *Server’s address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

## EXHIBIT A

### DEFINITIONS

The following definitions are applicable to terms employed in this Notice:

1. “Patent-at-Issue” and “Patents-at-Issue” shall mean United States Patent Nos. 7,193,239; 7,474,004; 7,504,732; 8,035,233; 8,410,617; 8,629,542; 8,653,672; 8,791,581; 8,796,862; 8,841,778; 8,907,499; 8,928,119; and 8,933,570.

2. “Related Patent” and “Related Patents” shall include, whether or not abandoned and whether or not issued, (a) any patent or patent application that claims priority to the Patents-at-Issue, (b) any patent or patent application that claims priority from any patent or patent application to which the Patents-at-Issue claims priority, (c) any patent or patent application on which the Patents-at-Issue depends for priority, (d) any patent or patent application identified in the Related U.S. Application Data for the Patents-at-Issue, (e) any patent or patent application that claims priority from any patent or patent application identified in the Related U.S. Application Data for any of the Patents-at-Issue, (f) any reissue or reexamination of any of the aforementioned patents or patent applications, and (g) any foreign counterpart patent or foreign counterpart application of any of the aforementioned patents or patent applications (a foreign counterpart patent and foreign counterpart application shall include any foreign patent or foreign patent application in which a claim for priority has been made in either a U.S. application or a foreign application based on the other, or that the disclosures of the U.S. and foreign patent applications are substantively identical).

3. “Prior Owner” and “Prior Owners” shall mean all of the persons and entities with a prior ownership or financial interest in any of the Patents-at-Issue or Related Patents.

4. “You” shall mean Kenneth Su and any person or entity acting or purporting to act on his behalf.

5. The term “Epicenter” shall mean and include Epicenter IP Group LLC and all related entities, parents, subsidiaries (either wholly or partly-owned) or divisions, any entity under its control, any proprietorship, joint venture, partnership or other business cooperation in which it is involved, and any predecessor or successor entities and any of its officers, directors, agents,

attorneys, consultants, employees, and any other persons acting, or purporting to act for or on its behalf.

6. The terms “Defendants” refer to SK hynix Inc., SK hynix America Inc., Hynix Semiconductor Manufacturing America Inc., and SK hynix Memory Solutions Inc. (collectively, “SK hynix”); Micron Technology, Inc., Micron Semiconductor Products, Inc., and Micron Consumer Products Group, Inc. (collectively, “Micron”); Samsung Electronics Co., Ltd., Samsung Semiconductor, Inc., Samsung Electronics America, Inc., and Samsung Austin Semiconductor, LLC (collectively, “Samsung”) and their officers, directors, employees, agents, representatives, attorneys, affiliates, successors, and assigns, and to persons and entities acting or purporting, to act on behalf of SK hynix, Micron, or Samsung.

7. The terms “Elm” and “Elm 3DS” refer to Elm 3DS Innovations LLC and its employees, agents, representatives, attorneys, affiliates, predecessors, successors, and assigns, and to persons and entities acting or purporting to act on behalf of Elm 3DS Innovations LLC, including, but not limited to Elm Technology Corporation Glenn J. Leedy.

8. The term “person,” unless otherwise specified, means any natural person, firm, partnership, association, corporation, business, proprietorship, government or quasi-governmental body, agency or commission, or any other organization or entity.

9. The term “Tezzaron” shall mean and include Tezzaron Semiconductor Corporation, Tachyon Semiconductor Corporation, ASIC Designs Incorporated and all related entities, parents, subsidiaries (either wholly or partly owned) or divisions, any entity under its control, any proprietorship, joint venture, partnership or other business cooperation in which it is involved, and any predecessor or successor entities and any of its officers, directors, agents, attorneys, consultants, employees, and any other persons acting, or purporting to act for or on its behalf.

10. The term “document” and its plural shall refer to anything that would be a “writing” or “recording” as defined in Rule 1001 of the Federal Rules of Evidence, or a “document,” as defined in Rule 34 of the Federal Rules of Civil Procedure, and refers to all handwritten, typed, printed, electronic, or otherwise visually or aurally reproduced materials, and all originals and

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