

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

16:00:03 ELM 3DS INNOVATIONS LLC,) Plaintiff,) Civil Action No.) 14-01430-LPS) v.) SAMSUNG ELECTRONICS) CO. LTD., et al.,) Defendant.)

Wednesday, December 2, 2020 1:00 p.m. Teleconference

BEFORE: THE HONORABLE JENNIFER L. HALL United States Magistrate Judge

APPEARANCES:

FARNAN LLP BY: BRIAN E. FARNAN, ESQ.

- and -

BARTLIT BECK LLP BY: KATHERINE L.I. HACKER, ESQ. MATTHEW R. FORD, ESQ. NOSSON D. KNOBLOCH, ESQ.

Counsel for the Plaintiff

Jennifer M. Guy, RPR (484) 467-4359 jenniferguyrpr@gmail.com

15:04:09

13:04:07 1 THE COURT: Good afternoon, 13:04:08 2 everyone. This is Jennifer Hall. We are here 13:04:11 3 on the phone today for a discovery 13:04:16 4 teleconference in Elm 3DS Innovations LLC v. 13:04:22 5 Samsung Electronic Company Limited, Civil 13:04:25 6 Action 14-1430-LPS. 13:04:31 7 May I have appearances, please, 13:04:33 8 starting with plaintiff's Delaware counsel? 13:04:36 9 MR. FARNAN: Good afternoon, 13:04:37 10 Your Honor. Brian Farnan on behalf of the 13:04:40 11 plaintiff, and with me is Kat Hacker who will 13:04:43 12 argue this afternoon on behalf of Elm ; Matthew 13:04:46 13 Ford, and Nosson Knobloch from Barlit Beck. 13:04:51 14 THE COURT: Good afternoon to 13:04:52 15 all of you. May I have appearances for 13:04:56 16 defendant? 13:04:57 17 MR. POFF: Good afternoon, Your 13:04:58 18 Honor; it's Adam Poff from Young Conaway on 13:05:02 19 behalf of Samsung. And with me from Paul 13:05:05 20 Hastings we have Allan Soobert, Liza Brann, 13:05:08 21 Phillip Citroen, Soyoung Jung. And with the 13:05:10 22 Court's permission, Mr. Soobert and Ms. Brann 13:05:12 23 will argue on behalf of Samsung. 13:05:14 24 THE COURT: Permission granted. Jennifer M. Guy, RPR (484) 467-4359 jenniferguyrpr@gmail.com

1 APPEARANCES, CONTINUED: 2 3 YOUNG CONAWAY STARGATT & TAYLOR BY: ADAM D. POFF, ESQ. 4 - and - 5 PAUL HASTINGS, LLP BY: ALLAN M. SOOBERT, ESQ. 6 ELIZABETH L. BRANN, ESQ. 7 PHILLIP W. CITROEN, ESQ. 8 SOYOUNG JUNG, ESQ. 9 Counsel for the Defendant

15:04:09

13:04:07

13:04:07

- 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

13:05:17 1 Good afternoon to all of you. 13:05:18 2 So I'll say for the record that 13:05:21 3 we are proceeding via teleconference. I am at 13:05:23 4 the courthouse socially distant from my 13:05:26 5 courtroom deputy, Ms. Garfinkel. My clerk has 13:05:29 6 dialed in remotely. The court reporter today 13:05:30 7 is Jennifer Guy; Ms. Guy is also dialed in 13:05:35 8 remotely. 13:05:36 9 I can tell you at the outset 13:05:38 10 that we've carefully looked at the letters 13:05:40 11 filed in support of the dispute. I have two 13:05:46 12 letters from each side. We've also looked at 13:05:50 13 the attachments and declarations that were 13:05:54 14 referenced in the letters, and by our count, 13:05:58 15 there was a total of 1,426 pages of additional 13:06:02 16 information that was submitted with the 13:06:04 17 three-page letters. If there's a particular 13:06:07 18 exhibit you want me to focus on, please give 13:06:09 19 me a second to bring it up, and then we can 13:06:12 20 walk through it on the phone today. 13:06:17 21 I do have some time today to 13:06:18 22 hear the disputes, and I understand there's a 13:06:20 23 lengthy history leading to at least one of 13:06:23 24 these disputes, as well, so hopefully we can Jennifer M. Guy, RPR

13:06:26 **1** take our time and sort out exactly what
 13:06:29 **2** happened here.
 13:06:31 **3** So let's start with the dispute
 13:06:35 **4** brought by Elm. Ms. Hacker, go ahead.
 13:06:38 **5** MS. HACKER: Good afternoon,
 13:06:41 **6** Judge Hall. This is Kat Hacker from Bartlit
 13:06:46 **7** Beck on behalf of Elm.
 13:06:48 **8** The terminology and what the
 13:06:50 **9** Court referred to as the lengthy history of
 13:06:51 **10** this issue makes what actually is otherwise a
 13:06:54 **11** very simple issue seem complex. At its heart,
 13:06:57 **12** what we're here about today can be decided
 13:07:00 **13** based on three undisputed facts. First,
 13:07:04 **14** Samsung agrees that the products we're talking
 13:07:08 **15** about fall within the scope of the claims of
 13:07:11 **16** the asserted product; second, Samsung admits
 13:07:15 **17** it has not produced information about those
 13:07:18 **18** products; third, fact discovery is still open
 13:07:20 **19** in this case. That's it.
 13:07:22 **20** The parties disagree about who
 13:07:24 **21** knew what about Samsung's interpretation of
 13:07:28 **22** these terms when. But where we are now is Elm
 13:07:31 **23** uncovered the fact that Samsung produced
 13:07:35 **24** discovery about products that fall within the

Jennifer M. Guy, RPR
 (484) 467-4359
 jenniferguyrpr@gmail.com

13:07:38 **1** scope of Elm's patents. Whatever the parties'
 13:07:41 **2** disagreement about the reason for that, Elm
 13:07:43 **3** has a right as the patentholder to seek
 13:07:45 **4** information and eventually compensation for
 13:07:47 **5** products that infringe its patents.
 13:07:49 **6** The details of this dispute come
 13:07:55 **7** from confusion about what terms refer to what
 13:07:58 **8** parts within a semiconductor. So Elm included
 13:08:02 **9** a very basic diagram as Exhibit G to its
 13:08:08 **10** letter brief to help explain the issues. If
 13:08:11 **11** the Court has the sealed letter brief, I
 13:08:13 **12** believe it's on page 62 of that PDF, that
 13:08:20 **13** diagram, what you see at the bottom in green
 13:08:24 **14** is what everyone agrees is silicon substrate.
 13:08:28 **15** That is part of what the claims in this case
 13:08:29 **16** focus on and what the issue turns on.
 13:08:32 **17** The claims here require a
 13:08:33 **18** substantially flexible substrate which the
 13:08:38 **19** Federal Circuit and this court construed to
 13:08:40 **20** mean a semiconductor substrate/semiconductor
 13:08:40 **21** layer that is thinned to 50 microns or less
 13:08:40 **22** and subsequently polished or smoothed such
 13:08:58 **23** that it is able to bend without breaking. The
 13:08:59 **24** bluish portions on top of that green layer are

Jennifer M. Guy, RPR

13:09:01 **1** dielectric material. Essentially insulation
 13:09:04 **2** keeps the electrical current running only
 13:09:07 **3** through the gray portions or the metal to form
 13:09:10 **4** circuits.
 13:09:11 **5** Samsung is right in its letter
 13:09:13 **6** that the claims and the parties here use the
 13:09:17 **7** terms circuit layers, die, integrated circuit,
 13:09:20 **8** and integrated circuit layers interchangeably.
 13:09:25 **9** Where the parties disagree is that Elm was
 13:09:27 **10** also under the impression until recently that
 13:09:29 **11** we all understood that to refer to the inner
 13:09:34 **12** portion of the picture on Exhibit G, because
 13:09:36 **13** what we all agree on is in the context of
 13:09:39 **14** these claims, the claims only require that
 13:09:42 **15** portion, the green layer, to be less than 50
 13:09:46 **16** microns. In fact, the Court's claim
 13:09:48 **17** construction uses the term semiconductor
 13:09:52 **18** substrate and semiconductor layer to mean the
 13:09:55 **19** same thing.
 13:09:55 **20** Just last week after Elm
 13:09:57 **21** submitted its letter brief, it actually
 13:09:59 **22** deposed Ms. Hyung, the Samsung employee who
 13:10:04 **23** submitted the declaration Samsung now relies
 13:10:08 **24** on in its response letter. We're happy to

Jennifer M. Guy, RPR
 (484) 467-4359
 jenniferguyrpr@gmail.com

13:10:11 **1** provide the Court with a highlighted version
 13:10:13 **2** of that transcript after this hearing if it
 13:10:13 **3** would be helpful, as we just received it.
 13:10:16 **4** What happened in that deposition was very
 13:10:18 **5** interesting. Ms. Hyung herself said she did
 13:10:22 **6** not know that the term die included not just
 13:10:27 **7** the silicon substrate, but also these
 13:10:31 **8** additional blue, gray, and other layers, until
 13:10:43 **9** she started working with the legal team on
 13:10:44 **10** this case. Her quote exactly was, "Question:
 13:10:45 **11** Prior to speaking with the researcher in late
 13:10:47 **12** '18 or early 2019, you did not know that a die
 13:10:51 **13** included a substrate and an active layer and
 13:10:57 **14** polyamide layer, correct?
 13:10:58 **15** "Answer: Right, I did not
 13:11:01 **16** know."
 13:11:02 **17** By that point in time, Ms. Hyung
 13:11:05 **18** had been a Samsung employee for almost 20
 13:11:09 **19** years. She had been a semiconductor engineer
 13:11:13 **20** at Samsung for two years, yet even she did not
 13:11:16 **21** understand the term "die" to mean what Samsung
 13:11:19 **22** now says it means. If Samsung's own employee
 13:11:24 **23** did not understand that, it's hard to
 13:11:26 **24** understand how Elm could have. But now

Jennifer M. Guy, RPR

13:11:33 1 somehow Samsung says it was obvious that
 13:11:36 2 substrate was something different from a
 13:11:39 3 circuit layer or a die. That is not just
 13:11:42 4 consistent with how this dispute held.
 13:11:45 5 After the Federal Circuit's
 13:11:47 6 ruling, Elm asked Samsung to identify all the
 13:11:49 7 relevant products that had a "circuit layer of
 13:11:53 8 50 microns or less." That was the one and
 13:11:58 9 only time that Samsung responded by saying it
 13:12:01 10 was confused by what Elm meant when it used
 13:12:04 11 the term "circuit layer." So Elm immediately
 13:12:07 12 explained very clearly that it was "using the
 13:12:10 13 term circuit layer as a broad term covering
 13:12:15 14 any semiconductor layer on which circuits are
 13:12:21 15 formed." Elm's explanation that this is a
 13:12:24 16 broad term that included any semiconductor
 13:12:27 17 layer on which circuits are formed clearly
 13:12:31 18 indicates that bottom green semiconductor
 13:12:35 19 substrate layer that you see in Exhibit G.
 13:12:38 20 In discovery that Elm served
 13:12:40 21 after that, Elm very clearly defined "die" to
 13:12:44 22 mean the same thing. It's defined by "any
 13:12:48 23 die" -- or it referred to die in incident
 13:12:52 24 discovery requests as "any die with a
 Jennifer M. Guy, RPR
 (484) 467-4359
 jenniferguyrpr@gmail.com

13:14:31 1 that may be deposited on the die."
 13:14:34 2 In response, Samsung included 21
 13:14:38 3 paragraphs of objection, but no objection to
 13:14:40 4 the term "die" or to this "for the avoidance
 13:14:43 5 of doubt, thickness" explanation.
 13:14:46 6 What we have now discovered is
 13:14:49 7 Samsung had a problem here, and it's actually
 13:14:53 8 known about this problem for close to two
 13:14:54 9 years. Another piece of information that was
 13:14:57 10 revealed during Ms. Hyung's deposition last
 13:15:00 11 week is that Samsung discovered as early as
 13:15:03 12 December 2018, two years ago, that it
 13:15:07 13 supposedly does not keep information on just
 13:15:10 14 the thickness of that green substrate layer.
 13:15:14 15 Instead, the thickness measurement it
 13:15:17 16 supposedly keeps in the regular course of
 13:15:18 17 business contain other additional layers
 13:15:22 18 included with that.
 13:15:23 19 Now, we have some concerns about
 13:15:24 20 whether Samsung's search for this information
 13:15:27 21 constitutes a reasonable investigation, but we
 13:15:31 22 can put that aside for today and just assume
 13:15:36 23 that what Samsung says it keeps in the regular
 13:15:39 24 course of business is true. It's
 Jennifer M. Guy, RPR
 (484) 467-4359
 jenniferguyrpr@gmail.com

13:12:55 1 thickness of 50 microns or less" and went on
 13:12:58 2 to state, "This thickness measurement refers
 13:13:00 3 only to the semiconductor die itself and not
 13:13:05 4 to the dielectric metal or other material that
 13:13:10 5 may be deposited on the die." Once again,
 13:13:15 6 Elm's explanation very clearly eliminated the
 13:13:18 7 blue and green material on top of that green
 13:13:21 8 substrate and only focused on what Samsung now
 13:13:24 9 refers to as a semiconductor substrate.
 13:13:29 10 THE COURT: Ms. Hacker, that
 13:13:31 11 last statement, where is that in the record?
 13:13:36 12 I missed that.
 13:13:38 13 MS. HACKER: I can find that for
 13:13:39 14 you right now. It's Exhibit F, it's Elm's
 13:13:56 15 fifth set of interrogatories, and on page 2 of
 13:13:59 16 that. So if you're in the PDF of Elm's
 13:14:04 17 letter, on what is page 55 of the PDF, page 2
 13:14:07 18 of the fifth set of interrogatories, the
 13:14:10 19 instruction number 6 says, "The term 'relevant
 13:14:13 20 die' means any die with a thickness of 50
 13:14:17 21 microns or less. For the avoidance of doubt,
 13:14:21 22 this thickness measurement relates only to the
 13:14:25 23 semiconductor die itself and not to the
 13:14:28 24 dielectric, metal, and any other materials
 Jennifer M. Guy, RPR

13:15:41 1 understandable if Samsung did not have perfect
 13:15:44 2 information, that's not unusual in cases like
 13:15:46 3 this. And there are many solutions to that
 13:15:48 4 problem that the parties could have worked
 13:15:50 5 through together. But instead of coming to
 13:15:53 6 Elm to discuss the issue, Samsung just sat
 13:15:56 7 silent about what it discovered for the next
 13:15:59 8 18 months. As the Federal Circuit issued its
 13:16:04 9 ruling, as Elm sent emails explaining what it
 13:16:06 10 meant by circuit layer, as Elm issued
 13:16:10 11 discovery specifically targeted to the
 13:16:12 12 thickness of that semiconductor substrate
 13:16:16 13 without any dielectric or metal or anything
 13:16:19 14 else on top of it, Samsung said nothing about
 13:16:22 15 the fact that it believed that it did not have
 13:16:25 16 this information. Instead, Samsung just
 13:16:27 17 produced different information to Elm without
 13:16:32 18 explaining the difference. Samsung eliminated
 13:16:35 19 nearly two-thirds of its potentially
 13:16:37 20 infringing products from any of its discovery.
 13:16:41 21 That timeline makes it
 13:16:44 22 particularly troubling that Samsung now relies
 13:16:47 23 on Ms. Hyung's declaration from May of this
 13:16:50 24 year to claim that somehow Elm was the party
 Jennifer M. Guy, RPR

13:16:53 **1** who delayed here. Samsung found out it did
 13:16:57 **2** not have information on substrate thickness in
 13:17:00 **3** December of 2018. Keep in mind that was
 13:17:04 **4** before the Federal Circuit issued its
 13:17:07 **5** position, before Elm ever sent the email
 13:17:10 **6** Samsung now argues was Elm narrowing the scope
 13:17:14 **7** of this case beyond the Federal Circuit and
 13:17:16 **8** this court's claim construction ruling.

13:17:19 **9** Despite knowing since December
 13:17:21 **10** of 2018 that it did not have the information
 13:17:24 **11** Elm was asking for, the first thing Samsung
 13:17:27 **12** can point to showing that it revealed its
 13:17:31 **13** problem to Elm was months later in May of
 13:17:36 **14** 2020, only after Elm had filed a motion to
 13:17:40 **15** compel. When Elm saw that declaration from
 13:17:42 **16** Ms. Hyung, it took it as a red flag that
 13:17:45 **17** Samsung was now saying something different
 13:17:48 **18** than what Elm understood the parties to be
 13:17:50 **19** referring to over the life of this case.

13:17:52 **20** So Elm sent a product to the lab
 13:17:54 **21** for measurement to see for itself exactly what
 13:17:58 **22** was going on here. That was at the end of May
 13:18:01 **23** and in June, at the height of the COVID
 13:18:07 **24** pandemic, and things took longer than Elm

Jennifer M. Guy, RPR
 (484) 467-4359

jenniferguyrpr@gmail.com

13:18:07 **1** would have preferred with lab closures
 13:18:09 **2** happening across the country. But once Elm
 13:18:11 **3** got those measurements back, it immediately
 13:18:14 **4** questioned Samsung about what was going on
 13:18:16 **5** here.

13:18:16 **6** That was the first time in this
 13:18:20 **7** case that Samsung admitted it actually only
 13:18:23 **8** produced information on products where the
 13:18:26 **9** entire die, including the green, blue, gray,
 13:18:30 **10** and even more material were altogether less
 13:18:34 **11** than 50 microns as opposed to all products
 13:18:38 **12** where just the green material was less than 50
 13:18:40 **13** microns.

13:18:44 **14** That might seem like a minor
 13:18:46 **15** difference, so to give the Court the scope
 13:18:48 **16** here, based on the incomplete information we
 13:18:51 **17** have right now, Elm's best estimate is that
 13:18:53 **18** these products that Samsung has not produced
 13:18:57 **19** information about could account for billions
 13:19:00 **20** of dollars of sales. Billions with a B, not
 13:19:04 **21** millions. That in itself should be enough to
 13:19:08 **22** indicate whether it was Elm that agreed to
 13:19:09 **23** forego discovery on these products.

13:19:12 **24** Now, Samsung expresses a lot of
 Jennifer M. Guy, RPR

13:19:15 **1** concern about the timing here, given that fact
 13:19:18 **2** discovery is currently set to close on January
 13:19:20 **3** 15th. But that date is not realistic, no
 13:19:23 **4** matter what the outcome is here today. Elm
 13:19:26 **5** has served a dozen deposition notices that
 13:19:29 **6** Samsung has yet to schedule. The parties are
 13:19:31 **7** still negotiating product agreements. Samsung
 13:19:34 **8** has told us that it will need at least two
 13:19:37 **9** weeks after the parties' finalize that
 13:19:39 **10** agreement to finish discovery related to those
 13:19:42 **11** products. And there's still no trial date set
 13:19:45 **12** in this case, at the insistence of Samsung and
 13:19:48 **13** the defendants.

13:19:49 **14** So as frustrated as Elm is with
 13:19:51 **15** the continued delays and the continued
 13:19:55 **16** difficulty it has had in just getting a list
 13:19:58 **17** of the products that are within the scope of
 13:20:00 **18** Elm's claims here, the already unrealistic
 13:20:05 **19** fact discovery deadline in January should not
 13:20:08 **20** prevent Elm from getting this discovery.

13:20:10 **21** Finally, Samsung tries to make
 13:20:13 **22** it seem like it's impossible to give Elm the
 13:20:16 **23** information it's seeking here. To be clear,
 13:20:18 **24** Elm is not asking for Samsung to produce

Jennifer M. Guy, RPR
 (484) 467-4359

jenniferguyrpr@gmail.com

13:20:21 **1** information it does not have. We understand
 13:20:24 **2** that we can't force any party in litigation to
 13:20:26 **3** abide by that obligation. Elm just wants
 13:20:29 **4** information on products that have a similar
 13:20:32 **5** substrate that has a thickness of 50 microns
 13:20:35 **6** or less. If Samsung truly does not have or
 13:20:38 **7** keep information on substrate thickness of
 13:20:42 **8** just the green layer, then Elm would ask that
 13:20:45 **9** Samsung produce discovery for products with a
 13:20:48 **10** die with all the layers together of 65 microns
 13:20:56 **11** and less. From there, the parties can
 13:20:59 **12** finalize a representative product agreement,
 13:21:01 **13** and Elm can take on the burden of measuring
 13:21:03 **14** the substrate thickness of those products to
 13:21:05 **15** be determine if the substrate is indeed 50
 13:21:10 **16** microns or less. But Samsung should not be
 13:21:12 **17** able to leverage the information asymmetry it
 13:21:15 **18** naturally has as a defendant to exclude more
 13:21:18 **19** than two-thirds of the potentially
 13:21:19 **20** infringing products from this case.

13:21:22 **21** THE COURT: Okay. I have a few
 13:21:25 **22** questions. So the way I looked at the record,
 13:21:29 **23** at least at some point in time, the parties
 13:21:32 **24** were exchanging lists of stacked products that
 Jennifer M. Guy, RPR

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.