

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ELM 3DS INNOVATIONS, LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 14-01430-LPS-JLH
)	
SAMSUNG ELECTRONICS CO., LTD.,)	
SAMSUNG SEMICONDUCTOR, INC.,)	
SAMSUNG ELECTRONICS AMERICA, INC.,)	
and SAMSUNG AUSTIN SEMICONDUCTOR,)	
LLC,)	
)	
Defendants.)	
)	

**SAMSUNG’S OPPOSITION TO ELM’S EMERGENCY MOTION
REGARDING RON EPSTEIN’S DEPOSITION**

Elm’s emergency motion to proceed with the deposition of Ron Epstein on October 4 should be denied. Samsung *never* agreed to proceed with Epstein’s deposition on October 4, and the record plainly supports that fact. Epstein is Elm’s sole corporate and fact witness in this litigation, which has spanned seven years and for which the parties are currently negotiating a further extension of fact discovery. Given the history of this case and the remaining time in discovery, Elm has no basis to bring this motion attempting to force his deposition to immediately proceed at this time.

The only support that Elm puts forth for its position is an incomplete statement from Samsung’s portion of the parties’ Joint Status Letter (D.I. No. 433). The portion that Elm omits with an ellipsis is set forth in full below:

In light of the asymmetry in protections the parties have against potential discovery abuse, Samsung is willing to proceed with a consecutive four-day deposition of Epstein beginning October 4, *provided that Elm be required to reserve additional deposition time after the four-day period if (1) Elm produces additional discovery after the deposition or in a manner that leaves Samsung insufficient time to review it before the deposition, and/or (2) the Court’s assistance is necessary for*

issues that arise during the deposition, such as the potential issues identified above. It is already apparent that Samsung will need additional deposition time if the outstanding issues with Elm's privilege log and the Epicenter Law engagement agreement are not resolved sufficiently in advance of the deposition, given the large number of Epstein's communications that remain in dispute and their clear relevance. The backstop of additional deposition time is necessary, given that Epstein is Elm's only deponent under Rule 30(b)(1) and Rule 30(b)(6). Alternatively, Samsung is willing to split the four-day deposition into two or more blocks that would ensure reasonable time for Samsung to seek and obtain any additional discovery it learns about during the deposition. Samsung respectfully requests the Court's guidance with respect to these issues on the forthcoming deposition of Epstein.

D.I. No. 433 at 11 (emphasis added). On Friday, September 24, the Court ordered that Epstein's deposition should proceed in a single four-day block. D.I. No. 434. Under that order, the provisos in Samsung's statement do not apply: the issues regarding Elm's privilege log have not yet been resolved, and the Court has not yet decided whether Samsung will receive an unredacted copy of Ron Epstein's compensation agreement. Moreover, just *yesterday, September 30*, Elm produced another batch of documents in response to Samsung's outstanding discovery requests. *See Ex. A.* Even if those documents satisfied all of Samsung's outstanding discovery requests (which is not the case), Samsung would need sufficient time in advance of Epstein's deposition to digest those documents, certainly more than one business day. Because Samsung's conditions for moving forward with Epstein's deposition on October 4 were not met and the Court denied Samsung's request, Elm cannot contend that there was an agreement to move forward on those days.

Nothing occurred after the Court's order that could have changed Elm's understanding. Samsung made no statements to Elm regarding Epstein's deposition. Elm made no effort to confirm Epstein's deposition before an email *yesterday, September 30 at 6 p.m. ET* from a paralegal employed by Elm's counsel requesting the identity of the court reporting firm for Epstein's deposition. *See Ex. B.* Elm's motion fails to point any effort on its part to confirm that

Samsung would be proceeding with Epstein's deposition on October 4. Nor does it identify any commitment or indication from Samsung that it would be doing so.

Elm has acknowledged the need for documents sufficiently in advance of its depositions of Samsung's witnesses. In July, Elm refused to proceed with the deposition of senior Samsung engineer Sunhyun Kim on the eve of his deposition because of a document production that Samsung had made a few days earlier, and even though Samsung had already prepared the witness for multiple days. *See* Ex. C. Unlike here, the date for that deposition had been ***mutually agreed and confirmed*** well in advance of the deposition. Elm was not even awaiting further document productions relevant to that deposition, which is different than the present situation for Epstein's deposition.

In short, Elm demands to proceed with a deposition on dates that Samsung never agreed to and without providing relevant, outstanding discovery to Samsung in advance of that deposition. Elm's "offer" to reserve the fourth day of Epstein's deposition for a later date, which was provided ***for the first time*** to Samsung yesterday evening after 9 p.m. ET, does nothing to alleviate the significant prejudice to Samsung that would result from being forced to proceed with Epstein's deposition on October 4. Samsung has been proceeding with the understanding that Epstein's deposition would be rescheduled for later in fact discovery after Elm produces and Samsung has a chance to digest all documents relevant to that deposition. Elm made no statement or inquiry contrary to that understanding before springing this deposition on Samsung with a seemingly innocuous email less than two business days before Elm contends that it was set to begin.

The record does not support Elm's alleged claim that Epstein's deposition was set to proceed on October 4. Even assuming that there was simply a misunderstanding between the

parties, Elm has no good reason for why Epstein's deposition should not be continued to a later date given the time remaining in fact discovery and the fact that the parties are currently negotiating a further extension to fact discovery. This emergency motion appears intended to prejudice Samsung by forcing Epstein's deposition to occur before Samsung is fully prepared and before it has all the relevant information. Elm's requested relief should be denied, and the parties should be ordered to agree upon and schedule four days for Epstein's deposition near the close of fact discovery.

Dated: October 1, 2021

Respectfully submitted,

YOUNG CONAWAY STARGATT &
TAYLOR, LLP

/s/ Adam W. Poff

Adam W. Poff (No. 3990)
Pilar G. Kraman (No. 5199)
Rodney Square
1000 North King Street
Wilmington, DE 19801
(302) 571-6600
apoff@ycst.com
pkraman@ycst.com

*Attorneys for Defendants Samsung Electronics
Co., Ltd., Samsung Semiconductor, Inc.,
Samsung Electronics America, Inc., and
Samsung Austin Semiconductor, LLC*