

**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

FILED UNDER SEAL

AMENDED REPRESENTATIVE PRODUCTS AGREEMENT

Plaintiff Elm 3DS Innovations, LLC (“Elm”) and Defendants Samsung Electronics Co. Ltd., Samsung Semiconductor, Inc., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC, and Samsung Austin Semiconductor, LLC (collectively “Samsung”), hereby enter into this Representative Products Agreement.

On October 26, 2020, Samsung provided Elm an Excel file, attached hereto as Exhibit A. Samsung represents that the data in Exhibit A is accurate to the best of its knowledge after a reasonable investigation and lists every stacked semiconductor product with a minimum die thickness of 50 microns or below, along with summary technical and sales data for each listed product, to the extent found after a reasonable investigation.^{1 2} Samsung acknowledges that the parties are relying on this data to enter this agreement.

A. Memory Products

The “Memory” tab to Exhibit A lists ██████ accused memory products. The parties have agreed to organize those products into groups (the “Memory Product Groups”) that share the following characteristics, which are included in Exhibit A: “Min. Die Thickness”; “Process Node”;

¹ The parties are working together in good faith to reach a separate agreement regarding stacked semiconductor products that may be added to the case as a result of the Magistrate Judge’s December 4, 2020 ruling.

² As used herein, a “die” includes the silicon substrate, the active layer, and the polyimide layer.

and “TSV/Wire” (the “Relevant Criteria”). Any product that is missing one or more Relevant Criteria shall be considered individually as a separate Memory Product Group. To the extent the missing Relevant Criteria becomes known during discovery, the parties will work quickly to add the product to the Memory Product Group that shares the same Relevant Criteria, if one exists. The current Memory Product Groups are identified in Exhibit B, and include a total of ■ Memory Product Groups.

For each Memory Product Group, the parties agree that one product will be considered representative for purposes of the infringement issues in this case (the “Representative Memory Product”). A Representative Memory Product may be identified by “Memory Product Part Number” or “Corresponding Chip Part Number for Modules.” Proof that a Representative Memory Product infringes an asserted claim in this case will constitute proof that all the products in the same Memory Product Group also infringe that claim. Conversely, proof that a Representative Memory Product does not infringe an asserted claim in this case will constitute proof that all the products in the same Memory Product Group also do not infringe that claim. In addition, Samsung’s production of all relevant, nonprivileged documents responsive to Elm’s requests for production in its possession, custody, or control (and subject to Samsung’s written objections), including all core technical documents, that relate to a Representative Memory Product will discharge its obligation to provide such documents for the other products included within that Memory Product Group.

The parties agree that, where possible, the Representative Memory Product for each Memory Product Group will be the product in that Memory Product Group for which Samsung has supplied samples. If samples are not available for any of the products in a Memory Product Group, or if Samsung has supplied samples for more than one product in a given Memory Product Group, then the Representative Memory Product will be selected based on the following criteria:

First, of those products for which Samsung has supplied samples, the product with the greatest number of stacked chips will be the Representative Memory Product. If Samsung has supplied samples of multiple products in a Memory Product Group, and no single product has the greatest number of stacked chips, then the product for which Samsung has supplied samples with the highest “U.S. Component Sales” will be considered the Representative Memory Product. If the products for which Samsung has supplied samples do not have any “U.S. Component Sales,” the product for which Samsung has supplied samples that has the highest “U.S. Downstream Product Sales” will be considered the Representative Memory Product. Finally, if the products for which Samsung has provided samples do not have any “U.S. Component Sales” or any “U.S. Downstream Product Sales,” the product with the highest “Non-U.S. Component Sales” will be considered the Representative Memory Product. Notwithstanding the above, to the extent that samples of any particular Representative Memory Product cannot be produced within a reasonable amount of time, have quality control issues, cannot be purchased without a large minimum order, or have other constraints on availability, the parties will negotiate in good faith to determine if a different Representative Memory Product can or should be selected.

The parties note that this agreement depends on Samsung accurately disclosing the products for which it can provide samples (including accurate disclosure of the minimum order requirements and other constraints on availability). In the event that Elm later discovers that Samsung inaccurately stated that it could not provide samples for a given product (or that the product was only available with a very significant minimum order, following an unusually long and unexpected waiting period, or subject to other significant constraints), then the following procedures shall govern:

1. Elm will have the unilateral right to decide whether to select the product for which samples were newly-discovered (the “Newly Discovered Product”) as the Representative

Memory Product for the Memory Product Group of which it is a part, provided that there is a reasonable basis for doing so.

2. Regardless of Elm's decision, Elm reserves the right to, upon identifying a Newly Discovered Product, seek fees and costs reasonably incurred by Elm while analyzing a product other than the Newly Discovered Product. Samsung, in turn, reserves its right to oppose any such request.

To the extent Samsung does not have samples available for any product in a Memory Product Group, the parties agree that the Representative Memory Product for that group will be a product with corresponding "U.S. Downstream Product Sales" for which Elm is reasonably able to locate samples in the open market. Upon obtaining samples of a particular downstream product that it believes includes a product in that Memory Product Group that is an appropriate candidate for the Representative Memory Product for that Memory Product Group, Elm will promptly inform Samsung. Samsung will have two weeks to raise any objections to the selection of that Representative Memory Product. If no objection is raised, or after any objections are resolved, that product will then be considered the Representative Memory Product.

To the extent that Samsung does not have samples available for any product in a Memory Product Group and Elm is unable to reasonably and efficiently obtain samples in the open market within one month of finalizing this Agreement, then the Representative Memory Product for such groups will be selected using the following criteria: the product with the highest "U.S. Component Sales" will be considered the Representative Memory Product. If none of the products in the group have any "U.S. Component Sales," the product in the group with the highest "U.S. Downstream Product Sales" will be considered the Representative Memory Product. If none of the products in the group have any "U.S. Component Sales" or any "U.S. Downstream Product Sales," the product with the highest "Non-U.S. Component Sales" will be considered the Representative Memory

Product. Nothing in this Agreement will prevent Elm from asserting that any later-obtained samples of a product in a group are representative of other products in the group, regardless of whether such a later-obtained sample is of the selected Representative Memory Product. Nothing in this Agreement will prevent Samsung from asserting that any later-obtained samples of a product in a group are representative of other products in the group, regardless of whether such a later-obtained sample is of the selected Representative Memory Product, provided that Samsung make an equal number of samples of any such product available to Elm.

The current list of Representative Memory Products is provided in Column F of Exhibit B. As can be seen in Column F of Exhibit B, a Representative Memory Product has not yet been selected for ■ of the Memory Product Groups. In most cases, a Representative Memory Product has not been identified in Column F of Exhibit B because Samsung does not have samples available for any of the products in that group and/or does not sell downstream products that include any of the products in that group that Elm is able to purchase. With respect to these Memory Product Groups, Samsung agrees to provide all reasonably available information in its possession, custody, or control that would aid Elm in locating samples of products in the Memory Product Groups for which a Representative Memory Product has not been selected, including the following categories of information requested in Common Interrogatory No. 6 for an agreed-upon list of products that the parties will negotiate in good faith, to the extent found after a reasonable search:

1. An identification of every Downstream Product that includes the product;
2. An identification of the five customers who have purchased the greatest number of the product from Samsung, including the date of their last purchase;
3. An identification of the five customers who have most recently purchased the product from Samsung, including the date of their last purchase;

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