

**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**

**LETTER TO THE HONORABLE JENNIFER L. HALL  
REGARDING SAMSUNG'S RESPONSES TO ELM'S INTERROGATORY NOS. 6-8**

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Dear Judge Hall,

Elm moves to compel Samsung to provide narrative responses to Interrogatories 6, 7, and 8. These interrogatories seek such core technical information as the dimensions and composition of the representative products.<sup>1</sup> Instead of substantively responding to these interrogatories, Samsung has invoked Rule 33(d), which permits a party to answer an interrogatory by identifying documents where “the burden of deriving or ascertaining the answer” from the documents “will be substantially the same for either party.” Samsung’s reliance on Rule 33(d) is improper.

The documents Samsung has identified are exceedingly difficult for Elm to decipher. They contain copious foreign language content, include nomenclature that is impossible for Elm to decode, and bury the requested information in a maze of extraneous data. Further, the portions of Samsung documents that Elm has been able to decipher include contradictory information about such basic features as die thickness and the dielectrics used in the products. Finally, the documents appear to be missing critical data sought in Elm’s interrogatories. Discovery in this case began nearly *seven* years ago. It is long past time for Samsung to provide complete, straightforward answers to basic questions about its products that are critical to the infringement analysis.

### ***Procedural History***

Elm served Interrogatories 6, 7, and 8 nearly two years ago. *See* Ex. 1. Samsung’s response invokes Rule 33(d) and identifies thousands of pages of documents. *See* Ex. 2. Elm did not immediately press Samsung for a narrative response because Samsung had indicated it would provide product-specific discovery only after the parties reached a representative products agreement. *See, e.g.*, Ex. 3 at 1–2. The parties finalized that agreement late last year. *See* D.I. 443. In that agreement, Samsung committed to provide early discovery on three “exemplar” products. *Id.* at 6. Elm identified the three exemplar products nearly five months ago. *See* Ex. 4. After receiving Samsung’s documents, Elm asked Samsung to supplement its interrogatory responses so that “Elm could evaluate the sufficiency of Samsung’s supplementation.” Ex. 5 at 4. Approximately one month later, Samsung produced an Exemplar Product Chart “correlating documents to the three exemplary products in relation to certain of Elm’s interrogatories.” Ex. 6. Elm promptly informed Samsung that its reliance on Rule 33(d) was improper, and that narrative responses were required. *See* Ex. 7. Samsung has refused to provide narrative responses, *see* Ex. 8, so Elm brought the instant motion.

### ***The Burden of Deriving the Relevant Information is Substantially Greater for Elm***

Samsung is in a far better position than Elm to interpret the documents cited in the Exemplar Product Chart. The documents are chock-full of impenetrable technical jargon and codes that Elm cannot decipher. [REDACTED]

[REDACTED] Courts have rejected reliance on Rule 33(d) where the cited records contain nomenclature more readily understandable to the responding party. *See, e.g., Boldstar Tech., LLC v. Home Depot, Inc.*, No. 07-80435-CIV, 2008 WL 11320212, at \*3 (S.D. Fla. Apr. 4, 2008) (ordering Home Depot to supplement interrogatory responses that cited documents containing

<sup>1</sup> Elm’s interrogatories actually seek this data for all accused products. But Elm’s motion is limited to the 194 representative products. In another effort to narrow this dispute, Elm only addresses a subset of the interrogatory responses that improperly rely on Rule 33(d). Elm hopes the Court’s guidance here will enable the parties to sort out their disputes over the other interrogatories.

“numerous columns with only numbers or alphanumeric codes and other undefined terms”); *Cornell Rsch. Found., Inc. v. Hewlett Packard Co.*, 223 F.R.D. 55, 76, 76 at n.18 (N.D.N.Y. 2003) (ordering HP to provide narrative responses where the cited documents included “nomenclature specific to HP”).

This problem pervades Samsung’s interrogatory responses. [REDACTED]

[REDACTED]

[REDACTED]

Elm can only guess.

Further compounding the disproportionate burden on Elm is Samsung’s reliance on numerous documents with foreign language content. *See, e.g.*, Exs. 10, 14–16, 18 (documents with significant Korean content). Courts routinely reject reliance on foreign language documents in interrogatory responses made pursuant to Rule 33(d). *See, e.g., Sungjin Fo-Ma, Inc. v. Chainworks, Inc.*, No. 08-CV-12393, 2009 WL 2022308, at \*5–6 (E.D. Mich. July 8, 2009) (reliance on Korean documents improper where “Plaintiff can readily refer to the documents and extract the information necessary to provide an English language answer”); *Gamevice, Inc. v. Nintendo Co.*, No. 18-CV-01942-RS (TSH), 2019 WL 2763008, at \*2 (N.D. Cal. July 2, 2019) (same for Japanese documents).

Finally, the Exemplar Product Chart repeatedly cites a “standalone computer.” Ex. 6. The documents on this computer are available to Elm under extraordinarily restrictive conditions, including restrictions on copying. *See* Ex. 11 at 3; D.I. 72. Rule 33(d) requires that the receiving party be permitted to “make copies, compilations, abstracts, or summaries” of the documents. Samsung cannot rely on documents sequestered on this standalone computer to respond to interrogatories.

[REDACTED]

But “Rule 33(d) requires the specification of records from which the answer to [Interrogatories 6, 7, and 8] may be obtained **without further explanation.**” *Scanlon v. Curtis Int’l, Ltd.*, No. 1:19-cv-00937-NONE-SKO, 2020 WL 7360543, at \*8 (E.D. Cal. Dec. 15, 2020) (citation and quotation omitted) (emphasis added). It is not enough for Samsung to offer to iteratively address “specific concerns Elm may have” about Samsung’s documents. Ex. 8. That process would significantly delay discovery. Indeed, Samsung still has not resolved a discrepancy Elm raised a month ago. *See* Ex. 13. Samsung should provide complete, final interrogatory responses.

### ***Samsung’s Responses Contain Contradictory Data***

The limited portions of the documents cited in the Exemplar Product Chart that Elm has been able to decode provide contradictory data regarding fundamental features of the exemplar products. [REDACTED]

[REDACTED]

[REDACTED] these discrepancies about issues central to infringement also call into doubt the data in the Representative Products Agreement. Samsung represented to this Court that the data there was “accurate to the best of its knowledge,” and acknowledged that Elm was “relying on this data.” *Id.* at 1. Samsung cannot backtrack now from the information provided in that agreement.

[REDACTED] Without additional guidance from Samsung, Elm cannot determine which dielectrics are included in this product.<sup>2</sup>

Samsung is in a far better position than Elm to decode its technical documents. It is simply “implausible for [Samsung] to contend that the plaintiff stands on equal footing when it comes to determining how [Samsung’s] own products operate.” *Laserdynamics, Inc. v. Asus Comput. Int’l*, No. 2:06-CV-348, 2009 WL 153161, at \*2 (E.D. Tex. Jan. 21, 2009) (ordering narrative responses and sanctioning the defendant for its improper reliance on Rule 33(d)). [REDACTED]

[REDACTED] Someone at Samsung must know the size and arrangement of the dies in this product, and the dielectrics that it uses. Elm has tried and failed to derive this type of data from Samsung’s documents. Samsung should provide narrative responses.

***Samsung’s Documents Do Not Provide Complete Answers to Elm’s Interrogatories***

In the absence of narrative responses or documents that clearly answer Elm’s interrogatories, it is exceedingly difficult to pinpoint data missing from Samsung’s responses. But after carefully studying Samsung’s documents, Elm has identified a troubling omission that is worth highlighting.

[REDACTED] But Samsung’s response is silent on the issue, thus leaving Samsung the wiggle-room to surprise Elm at trial with testimony that might undermine Elm’s infringement positions. Such gamesmanship should not be tolerated.

***Conclusion***

In contrast to Elm, the burden on Samsung to supply narrative responses to these interrogatories should be minimal. Samsung has represented that the documents listed in the Exemplar Product Chart contain the requested data. To make that representation, someone at Samsung must have reviewed the documents and figured out what they say. Elm is merely asking that Samsung share that information. Accordingly, Elm respectfully requests that the Court order Samsung to provide complete narrative responses, in English, to Elm Interrogatories 6–8.

<sup>2</sup> [REDACTED]

Respectfully submitted,

/s/ Michael J. Farnan

Michael J. Farnan

cc: Counsel of Record (Via E-Mail)