IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELM 3DS INNOVATIONS, LLC, a Delaware limited liability company,) Plaintiff,) v.) SAMSUNG ELECTRONICS CO., LTD., a Korean business entity, SAMSUNG SEMICONDUCTOR, INC., a California corporation, SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation, and SAMSUNG AUSTIN SEMICONDUCTOR, LLC, a Delaware limited liability company,) Defendants.)	C.A. No. 14-1430-LPS PUBLIC VERSION

**DEFENDANTS' LETTER IN RESPONSE TO ELM'S LETTER REGARDING
SAMSUNG'S RESPONSES TO INTERROGATORY NOS. 6-8**

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Dear Magistrate Judge Hall:

Elm incorrectly alleges that Samsung failed to "substantively respond[]" to Elm's interrogatories. Samsung properly relied on Rule 33(d) by identifying responsive documents that it produced to Elm. Many issues raised by Elm can be resolved by its own diligence, while others require information not in Samsung's possession, custody or control. Altogether, none of the issues warrant placing an undue burden on Samsung for narrative interrogatory responses.

I.   Samsung's Reliance on Rule 33(d) to Respond to Elm's Interrogatories Is Proper

Fed. R. Civ. P. 33(d) provides that "[i]f the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records," and "if the burden of deriving or ascertaining the answer will be substantially the same for either party," the respondent may answer by "specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party," and "giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries." Rule 33(d) is met.

First, Elm's interrogatories seek detailed technical data, specifically, the following for each die in the accused products: identifiers (No. 6); dimensions (No. 6); type (No. 6); process node (No. 6); quantity (No. 6); identifiers for dielectrics (No. 7); composition of each dielectric (No. 7); material properties of each dielectric (No. 7); process parameters and equipment (No. 7); and dielectric stress data (No. 8). The answers to these questions, where available, can be ascertained in "business records" that Samsung produced to Elm after a reasonable search.

Second, given the numerous data sought and Samsung's highly technical documents, the burden of deriving the answers to interrogatories 6-8 will be substantially the same for both parties. To illustrate, Samsung compiled a few examples showing how Elm could readily glean the requested data from documents Samsung identified for Elm. Ex. A (exemplar image sensor product), and Ex. B (exemplar memory products). These disclosures respond to Elm's interrogatories seeking the "quantity of each type of die" (No. 6.e); "material composition" (No. 7.b); "process parameters and equipment" (No. 7.d); and "Stress Measurements" (No. 8.b).

Third, as Elm agrees, Samsung identified documents responsive to each part of Elm's interrogatories 6-8. D.I. 471, Ex. 6. Samsung thus provided Elm guidance to derive the requested information on its own. *R.W. Thomas Const. Mangemen Co., Inc. v. Corrugated Servs., Inc.*, 1995 WL 592539, *2 (E.D. Pa. Oct. 2, 1995) (on information "ascertainable from the files" produced, Rule 33(d) "permits a *shift of the burden to dig it out* once the respondents have specified the records from where the answer can be derived or ascertained") (emphasis added).

Fourth, many of the identified documents were first produced three years ago, and Elm had the opportunity to review them. While certain sensitive information ▮▮▮▮▮▮▮ was produced on a standalone computer and Elm was prohibited from copying from it, Elm was allowed to take notes during its review. D.I. 72 at 2. Indeed, Elm ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮ Elm's assertions about the prohibitions
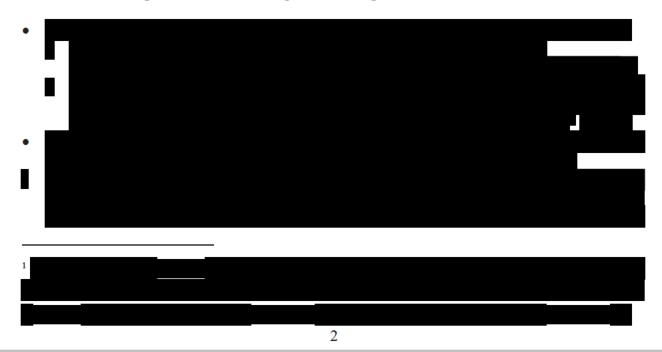
on this data are exaggerated, as is its unsupported claim that Samsung "cannot rely on documents sequestered on this standalone computer to respond to interrogatories." D.I. 471 at 2. Moreover, Elm has already deposed Samsung's engineers familiar with these documents, and has indicated its intent to depose additional witnesses. Thus, Elm has had and will have opportunities to ask Samsung's witnesses any outstanding questions it may have. Ex. P (Elm asking Samsung's witness about the term "NPW"); *Rensselaer Polytechnic Inst. v. Apple Inc.*, 2014 WL 1871866, at *5 (N.D.N.Y. May 8, 2014) (finding reliance on Rule 33(d) to cite source code and a deposition to explain anything that remained unclear as the most "efficient and effective means of obtaining the information sought").

As a result, Samsung's reliance on Rule 33(d) for interrogatories seeking technical and data-intensive information is proper, as courts have consistently found. *Novanta Corp. v. Iradion Laser, Inc.*, 2016 U.S. Dist. LEXIS 126042, at *24-25 (D. Del. Sep. 16, 2016) (permitting Rule 33(d) response to interrogatory seeking data on research, design, manufacture, development, and testing of accused products); *Gillette Co. v. Dollar Shave Club, Inc.*, 2018 WL 3528720, at *2 (D. Del. July 23, 2018) (finding reliance on Rule 33(d) proper based, in part, on the breadth of the information sought); *ParkerVision, Inc. v. Qualcomm Inc.*, 2013 U.S. Dist. LEXIS 2753, at *8-9 (M.D. Fla. Jan. 8, 2013) ("production of business records" proper for interrogatory asking to "[i]dentify and describe all differences between" products); *Caliper Techs. Corp. v. Molecular Devices Corp.*, 213 F.R.D. 555, 557 (N.D. Cal. 2003) (denying request for narrative response to interrogatory seeking identification of the components of accused systems).

II.   Elm Lacks Diligence and Seeks Information Unavailable to Samsung

Any failure by Elm to comprehend the data in Samsung's documents is largely due to its own lack of diligence, as most of its complaints can be addressed by a reasonably thorough review of Samsung's documents. For the few remaining items, Samsung has no information to provide after a reasonable search, and thus no ability to even provide narrative interrogatory responses. These issues are explained below, in the general order presented in Elm's letter brief.

[REDACTED]

- **Korean content:** Elm ignores directly responsive data that can be derived without translation, [REDACTED], and focuses on less relevant content. Most relevant terms in Samsung's documents are in English [REDACTED] and a few frequently used words can be readily translated (*see* n.1).

- [REDACTED] his is not an issue of Samsung failing to meet its discovery obligations. Instead, Elm should meet and confer with Samsung about any issues that could arise with such differences, and seek resolution of those issues as needed.

- [REDACTED]

- [REDACTED]

Elm's belief that Samsung may be better positioned to analyze its documents does not change the propriety of Rule 33(d). The effort to derive the answer does not need to be exactly the same, and Elm's claims of burden are inflated. Further, Rule 33(d) is proper where the requested information is related to infringement allegations, which are plaintiff's burden to prove. *MasterObjects, Inc. v. Amazon.com, Inc.*, No. 20-cv-08103, D.I. 190 at 5 (N.D. Cal. Dec. 03, 2021) (Ex. S) ("Despite appreciating the reasons why plaintiffs make these requests [for narrative responses on how the accused system works], courts have been consistently unwilling to grant them. Plaintiffs who initiate litigation must prove their allegation; defendants cannot be compelled to do the work for them."); *Caliper Techs.*, 213 F.R.D. at 557 ("MDC is obliged only to give the information to Caliper, not to explain it"). Likewise, Samsung should not be forced to do ***all the work*** in mining, interpreting and translating data into narrative form for Elm's convenience. Instead, Elm should be required to perform a reasonable review of Samsung's documents, and otherwise meet and confer with Samsung in good faith.[3] Elm does not dispute that Samsung has been cooperative in addressing Elm's questions without the Court's involvement (D.I. 471 at 2), and Samsung has not refused any request from Elm to provide further information or clarity. Elm's motion should, therefore, be denied.

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[2] [REDACTED]

[3] Despite Elm's meet and confer obligations, and Samsung's repeated requests to Elm to specify the issues that may warrant its request for narrative responses, most of the issues addressed herein were communicated to Samsung for the first time in Elm's opening letter brief. *See* Ex. T.

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