

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.,)
 SAMSUNG SEMICONDUCTOR, INC.,)
 SAMSUNG ELECTRONICS AMERICA,)
 INC., and SAMSUNG AUSTIN)
 SEMICONDUCTOR, LLC,)
)
 Defendants.)

C.A. No. 14-1430-LPS

REDACTED VERSION

**DEFENDANTS' RESPONSE IN OPPOSITION TO JULIETTE E. LIPPMAN'S
MOTIONS FOR PROTECTIVE ORDER**

Dated: February 16, 2022

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 Co., Ltd., Samsung Semiconductor, Inc.,
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 Samsung Austin Semiconductor, LLC*

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

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

**DEFENDANTS’ RESPONSE IN OPPOSITION TO JULIETTE E. LIPPMAN’S
MOTIONS FOR PROTECTIVE ORDER**

Defendants Samsung Electronics Co., Ltd., Samsung Semiconductor, Inc., Samsung Electronics America, Inc., and Samsung Austin Semiconductor, LLC (collectively, “Samsung”) hereby respond to the motions of Ms. Juliette E. Lippman, Esquire, for a protective order regarding the subpoenas for documents and a deposition issued to her in this case. D.I. 464, 465, 469.¹ Ms. Lippman’s motions should be denied because the primary basis for her opposition is that Samsung is seeking attorney-client privileged or work-product protected documents. But Samsung is not seeking such documents. Instead, Samsung seeks relevant, responsive documents relating to the value of patents asserted in this case and that are not privileged and not protected work product—such as deposition transcripts from the divorce where the patents were discussed.

¹ Because of the substantial overlap in arguments, Samsung is submitting this single opposition opposing the protective order motions regarding documents and a deposition. All cites to Ms. Lippman’s protective order motion regarding documents are to D.I. 469, which is Ms. Lippman’s amended motion.

I. FACTUAL BACKGROUND

Elm 3DS Innovations, LLC (“Elm”) asserts numerous patents against Samsung in this case where the named inventor is Mr. Glenn Leedy. Mr. Glenn Leedy was married to Ms. Julia Leedy when he purportedly invented the subject matter of these asserted patents and filed for several of them. *See* Ex. 1 (Excerpts of the Nov. 18, 2012 Leedy Divorce Agreement) at 9. In 2011, divorce proceedings were initiated between Mr. Leedy and Ms. Leedy. The value of the patents, including the value of Elm Technology Corporation—the entity that Mr. Leedy and Ms. Leedy jointly owned and to which the patents were assigned (Ex. 1 at 9)—was at issue during the divorce, which concluded in 2012. After becoming aware of the divorce through review of documents produced by Elm, Samsung obtained copies of all publicly available documents filed during the divorce proceedings. *See, e.g.*, Ex. 1. The divorce agreement—one of the documents obtained by Samsung—provides a formula designating how a portion of the proceeds from monetizing the patents would flow to Ms. Leedy. *Id.* at 17–18; *see also* Ex. 2 (Patent Related Exhibits to the Divorce Agreement) at 1–2. Thus, the divorce agreement confirmed that the value of the patents was at issue during the divorce. Furthermore, disclosures of witnesses during the divorce included experts regarding patent valuation. *See, e.g.*, Ex. 3 (Excerpt of July 2012 Witness List) at 2. Therefore, Samsung issued subpoenas to the divorce attorneys—including Ms. Lippman, who was Mr. Leedy’s divorce attorney, on January 12, 2022—seeking documents and a deposition relating to the value of the patents. D.I. 469-2 (Document Subpoena); Ex. 4 (Deposition Subpoena).

On January 27, 2022, prior to Ms. Lippman filing her motion for a protective order, Samsung spoke with Ms. Lippman regarding the subpoenas and made clear that Samsung was not seeking to break or have anybody waive any attorney-client privilege between Ms. Lippman and Mr. Leedy. Ex. 5 (Jan. 27, 2022 Email from Razick to Lippman). Samsung also made clear that it was willing to work with Ms. Lippman to identify mutually agreeable times and places for

document production (including via electronic means if that was easiest) and a deposition, if necessary. *Id.* Ms. Lippman stated that she would look for her files from the divorce proceeding and would speak with Samsung approximately a week later after doing so. *Id.* Later that evening, Ms. Lippman filed her motions. D.I. 464, 465. The Court subsequently ordered the parties to meet and confer. D.I. 467. On February 4, Ms. Lippman filed an amended motion regarding the document subpoena—in which she acknowledged that she has files from the divorce proceedings. D.I. 469 at 2 n.1.

On February 9, the parties conducted a meet and confer. Ms. Lippman confirmed that she has multiple categories of documents from the divorce proceedings, which the parties discussed. Samsung reiterated that it was only seeking non-privileged and non-work product documents relating to the value of the patents. In particular, Ms. Lippman confirmed that she has deposition transcripts from both Ms. Leedy and Mr. Leedy. While Ms. Lippman would not reveal details because she maintained that the depositions are privileged, it seemed apparent to Samsung that at least the deposition transcript of Mr. Leedy mentioned his patents. Samsung brings the present opposition because Samsung still seeks Ms. Lippman's compliance with the document and deposition subpoenas. The issue is that Ms. Lippman is maintaining the position that documents like deposition transcripts from the divorce proceeding are protected from disclosure by the attorney-client privilege or the work-product doctrine. Samsung is aware of no basis for this position, and Ms. Lippman has provided no support. Thus, Samsung requests that Ms. Lippman's motions be denied and that she produce these documents. In particular, Ms. Lippman should produce all non-privileged, non-work product documents—including deposition transcripts—regarding or relating to the value of the patents at issue in the divorce, including any regarding or relating to the value of Elm Technology Corporation.

II. ARGUMENT

Ms. Lippman has not shown good cause for a protective order because Samsung's subpoenas to Ms. Lippman do not subject her to "annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c)(1). The party requesting a protective order bears the burden of establishing good cause and must demonstrate "that disclosure will cause a 'clearly defined and serious injury.'" *Dommel Properties, LLC v. Jonestown Bank & Tr. Co.*, No. 1:11-cv-02316, 2013 WL 4855427, at *7 (M.D. Pa. Sept. 11, 2013) (quoting *Glenmede Tr. Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995)). Ms. Lippman has not made this showing.

To the extent Ms. Lippman's motion is considered a motion to quash, she has not met her heavy burden to quash the subpoenas. "The party seeking to quash the subpoena² bears the burden of demonstrating that the requirements of Rule 45 are satisfied." *Robocast, Inc. v. Microsoft Corp.*, No. 1:13-mc-00104-RGA, 2013 WL 1498666, at *1 (D. Del. Apr. 12, 2013) (citation and quotation marks omitted). "Courts have described this as a heavy burden." *Id.*

Document Subpoena. Ms. Lippman's motion regarding documents should be denied because Samsung is not seeking attorney-client privileged or work-product protected documents, and documents like deposition transcripts are not privileged or protected work product. *See* D.I. 469 ¶¶ 5–6 (seeking a protective order based on privilege or work product); *see supra* Section I. Samsung's subpoenas seek documents and communications relating to the value of the patents at issue in this case and related patents—some of which were also at issue in the divorce—and the value of the entity to which the patents were assigned, Elm Technology Corporation. *See, e.g.*,

² While styled as a motion for a protective order as opposed to a motion to quash, the primary basis for Ms. Lippman's opposition—including in her motions and based on the parties' meet and confers—is that the requested information is privileged or other protected matter, which requires quashing or modifying a subpoena under Federal Rule of Civil Procedure 45(d)(3)(iii). As explained in this opposition, Samsung does not seek privileged or protected matter.

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