

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 SUSAN R. BROWN'S  
MOTION FOR PROTECTIVE ORDER AS TO SUBPOENA FOR DOCUMENTS  
FROM DISSOLUTION OF MARRIAGE AND SUBPOENA FOR DEPOSITION**

Dated: February 17, 2022

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

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FOR THE DISTRICT OF DELAWARE**

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

**DEFENDANTS’ RESPONSE IN OPPOSITION TO SUSAN R. BROWN’S  
MOTION FOR PROTECTIVE ORDER AS TO SUBPOENA FOR DOCUMENTS  
FROM DISSOLUTION OF MARRIAGE AND SUBPOENA FOR DEPOSITION**

Defendants Samsung Electronics Co., Ltd., Samsung Semiconductor, Inc., Samsung Electronics America, Inc., and Samsung Austin Semiconductor, LLC (collectively, “Samsung”) hereby respond to the motion of Ms. Susan R. Brown for a protective order regarding Samsung’s document and deposition subpoenas. D.I. 470; Ex. 1.<sup>1</sup> Ms. Brown’s motion should be denied because she has responsive, non-privileged information that is relevant to the present patent case—namely the deposition transcript of Ms. Julia Leedy, which “address[es] the valuation issue” related to patents at issue in the divorce between Ms. Leedy and Mr. Glenn Leedy. D.I. 470 ¶ 8; Ex. 1 ¶ 8. This deposition transcript is relevant to the present patent case, as the value of the same patent family and some of the same patents asserted in this case was at issue in the Leedy divorce proceeding. But Ms. Brown improperly refuses to produce this transcript on the basis that it is

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<sup>1</sup> As explained below, Ms. Brown emailed her initial motion to Samsung on February 3 and asked that it be e-filed, which Samsung did (D.I. 470). On February 17, Ms. Brown served an amended motion on Samsung via email, which is attached as Exhibit 1.



attorney-client privileged or protected work product and that the deponent does not consent, without providing any support for either position. Ms. Brown's motion should be denied.

## **I. FACTUAL BACKGROUND**

On January 11, 2022, Samsung served a document subpoena and deposition subpoena on Ms. Brown seeking information regarding the value of patents at issue in the divorce proceedings between Mr. Leedy and Ms. Leedy, including the value of Elm Technology Corporation (an entity jointly owned by Mr. Leedy and Ms. Leedy to which the patents were assigned at the time). Ex. 2 (Subpoenas); Ex. 3 (Excerpts of the Nov. 18, 2012 Leedy Divorce Agreement) at 9. Some of the same patents and other patents from the same patent family are asserted against Samsung in the present case. Ex. 3 at 9, 17–18; Ex. 4 (Patent Related Exhibits to the Divorce Agreement) at 1–3. On January 26 and 27, 2022, Samsung and Ms. Brown discussed the subpoenas, and Samsung expressed its willingness to work with Ms. Brown to minimize any burden or inconvenience on Ms. Brown relating to the subpoenas.

During those conversations, Ms. Brown acknowledged that she had in her records the deposition transcript of Ms. Leedy from the divorce proceedings and that it included multiple references to patents—the value of which was at issue during the divorce. But Ms. Brown maintained that she could not produce the deposition transcript because it was attorney-client privileged or protected work product and that she would only produce it with Ms. Leedy's consent. Based on those discussions, Samsung agreed to extend the deadline for Ms. Brown to produce documents to allow time for further consideration. Ex. 5 (Jan. 2022 Email Chain Between Razick and Brown) at Jan. 27, 2022 Email from Razick to Brown. Samsung also provided Ms. Brown the contact information that it was aware of for Ms. Leedy's current attorney because of the possibility

that Ms. Leedy would consent to production and moot the issue. *Id.* at Jan. 31, 2022 Email from Razick to Brown.<sup>2</sup>

On February 3, 2022, Ms. Brown served Samsung with her motion for a protective order regarding both the document and deposition subpoenas. D.I. 470.<sup>3</sup> In that motion, she confirmed that she has possession of Ms. Leedy's deposition transcript and that it "address[es] the valuation issue" of the patents; Ms. Brown's motion also included minor additional detail regarding the contents of that transcript. *Id.* ¶ 8. While paragraph 8 of Ms. Brown's motion indicated that she attached relevant pages of Ms. Leedy's deposition transcript as Exhibit A, Ms. Brown subsequently confirmed to Samsung that this statement was in error. Ms. Brown did not intend to include any Exhibit A or deposition transcript pages and did not do so. And on February 17, Ms. Brown served an amended motion that removes the reference to an Exhibit A and removes some of the additional detail regarding Ms. Leedy's testimony. Ex. 1 ¶ 8. But the amended motion still makes clear that the deposition transcript "address[es] the valuation issue" of the patents and further suggests that Ms. Leedy offered, at least, her "opinion of the patents." *Id.*

Ms. Leedy's deposition testimony is relevant to issues in this case, including damages. But Ms. Brown refuses to produce that transcript on the basis of attorney-client privilege and/or work-product protection (*id.* ¶¶ 9–12) and Ms. Leedy's objection to its production (*id.* ¶¶ 5, 13). As explained below, neither is a proper basis to withhold production. And given Samsung's willingness to take any necessary deposition via Zoom or other videoconference platform at a date

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<sup>2</sup> As shown in this email, Samsung made clear that Ms. Leedy's consent was not necessary, nor was her potential lack of consent a proper basis to withhold production.

<sup>3</sup> Ms. Brown provided her motion via email to counsel for Samsung and Elm on February 3, 2022. She subsequently asked that Samsung e-file the document on her behalf, which Samsung did on February 4. D.I. 470.

and time that is convenient for Ms. Brown, Ms. Brown's motion with respect to a deposition should also be denied.

## II. ARGUMENT

Ms. Brown has not shown good cause for a protective order because Samsung's subpoenas to Ms. Brown 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)); see also *AbbVie Inc. v. Boehringer Ingelheim Int'l GmbH*, No. 17-cv-1065, 2018 WL 2337133, at \*1 (D. Del. May 23, 2018). Ms. Brown has not made this showing.

To the extent Ms. Brown'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 subpoena 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. Brown's motion should be denied. First, Ms. Leedy's deposition transcript is relevant, as Ms. Brown's motion acknowledges that it addresses the valuation issue of the patents, which was an issue in the divorce. Ex. 1 ¶ 8; Ex. 3 at 9, 17–18; Ex. 4 at 1–3; see *Pers. Audio, LLC v. Apple, Inc.*, No. 09-cv-111, 2011 WL 3269330, at \*10 (E.D. Tex. July 29, 2011) (finding patentee's offer to sell patent and then-pending application for \$5 million relevant and worthy of "substantial weight" in determining patent damages). That the final divorce agreement did not rely on Ms. Leedy's testimony and did not put a specific dollar value on the patents (Ex. 1 ¶ 8) does not render testimony regarding value irrelevant. Likewise, Ms. Brown's

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