

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-CJB
JURY TRIAL DEMANDED

SCHEDULING ORDER

This 23rd day of April, 2022, the Court having conducted an initial Rule 16 scheduling and planning conference pursuant to Federal Rule of Civil Procedure 16(b) and Local Rule 16.1 on May 18, 2015, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a)(1) Initial Disclosures and E-Discovery Default Standard.** This deadline has already passed. The parties have exchanged these disclosures.
2. **Joinder of Other Parties and Amendment of Pleadings.** This deadline has already passed.
3. **Application to Court for Protective Order.** This deadline has already passed. The Court has entered a protective order. *See* D.I. 117.
4. **Papers Filed Under Seal.** When filing papers under seal, counsel shall follow the District Court's policy on Filing Sealed Civil Documents in CM/ECF and section G of the Administrative Procedures Governing Filing and Service by Electronic Means. A redacted version of any sealed document shall be filed electronically within seven (7) days of the filing of the sealed document.

Should any party intend to request to seal or redact all or any portion of a transcript of a court proceeding (including a teleconference), such party should expressly note that intent at

the start of the court proceeding. Should the party subsequently choose to make a request for sealing or redaction, it must, promptly after the completion of the transcript, file with the Court a motion for sealing/redaction, and include as attachments: (1) a copy of the complete transcript highlighted so the Court can easily identify and read the text proposed to be sealed/redacted; and (2) a copy of the proposed redacted/sealed transcript. With its request, the party seeking redactions must demonstrate why there is good cause for the redactions and why disclosure of the redacted material would work a clearly defined and serious injury to the party seeking redaction.

5. **Courtesy Copies.** The parties shall provide to the Court two (2) courtesy copies of all briefs and any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits, etc.). This provision also applies to papers filed under seal. Unless ordered differently by the Court, such copies must be provided to the Court by no later than noon the business day after the filing is made electronically.

6. **Disclosures.** Absent agreement among the parties, and approval of the Court:

- a. By **September 14, 2022**, Plaintiff shall elect no more than 36 total claims and provide final infringement contentions.
- b. By **October 12, 2022**, Defendant shall elect no more than 36 prior art references and provide final invalidity contentions.
- c. The parties, if they think it necessary, should set times in the schedule for reducing the number of asserted claims and asserted prior art used for anticipation and obviousness combinations. The usual points where the Court will consider such limits are before claim construction and after a ruling on claim construction.

7. **Discovery.** Unless otherwise ordered by the Court, the limitations on discovery set forth in Local Rule 26.1 shall be strictly observed.

a. Discovery Cut Off. All discovery in this case shall be initiated so that it will be completed on or before **August 31, 2022**.

b. Document Production. Document production shall be substantially complete by **July 11, 2022**.

c. Requests for Admission. A maximum of 25 requests for admission are permitted for each side. Deadline for service of Requests for Admission has passed, except that Elm may serve any additional Requests for Admission related to the Representative Products no later than **July 18, 2022**.

d. Interrogatories.

i. Each side has served the maximum allowable total of 30 interrogatories, except that Elm may serve no more than three additional interrogatories related to the representative products by **July 18, 2022**. These limits include contention interrogatories.

ii. The Court encourages the parties to serve and respond to contention interrogatories early in the case. In the absence of agreement among the parties, contention interrogatories, if served, shall first be addressed by the party with the burden of proof. The adequacy of all interrogatory answers shall, in part, be judged by the level of detail each party provides; *i.e.*, the more detail a party provides, the more detail a party shall receive.

e. Depositions.

i. Limitation on Hours for Deposition Discovery. Plaintiff is limited to a total of 75 hours of taking testimony of party fact witnesses by deposition upon oral examination, excluding depositions of expert witnesses. Each Defendant is limited to 50 hours of taking testimony of party fact witnesses by deposition upon oral examination, excluding depositions of expert witnesses. The time limits under this Paragraph do not include third-party depositions taken pursuant to Federal Rule of Civil Procedure 45. The time limitations set forth in Federal Rule of Civil Procedure

30(d)(1) shall apply, except where an individual is presented for a deposition pursuant to Rule 30(b)(6), in which case a deposition may continue for multiple days, subject to the seven hour per day limit. By agreement of the parties, depositions conducted in a foreign language will be allocated at a factor of 1.5, such that each 1.5 hours of deposition time in a foreign language will count as one deposition hour.

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this Court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district. Exceptions to this general rule may be made by order of the Court. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

f. Disclosure of Expert Testimony.

i. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before **November 16, 2022**. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before **December 22, 2022**. Reply expert reports from the party with the initial burden of proof are due on or before **January 12, 2023**. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition.

ii. Expert Report Supplementation. The parties agree they will not permit expert declarations to be filed in connection with motions briefing (including case-dispositive motions, apart).

iii. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court. Briefing on such motions is subject to the page limits set out in connection with briefing of case dispositive motions.

g. Discovery Matters and Disputes Relating to Protective Orders.

i. Any discovery motion filed without first complying with the following procedures will be denied without prejudice to renew pursuant to these procedures.

ii. Should counsel find, after good faith efforts—including verbal communication among Delaware and Lead Counsel for all parties to the dispute—that they are unable to resolve a discovery matter or a dispute regarding a protective order, the parties involved in the discovery matter or protective order dispute shall file a joint letter in substantially the following form:

Dear Judge Burke:

The parties in the above-referenced matter write to request the scheduling of a discovery teleconference.

The following attorneys, including at least one Delaware Counsel and at least one Lead Counsel per party, participated in a verbal meet-and-confer (in person and/or by telephone) on the following date(s):

Delaware Counsel: _____

Lead Counsel: _____

The disputes requiring judicial attention are listed below:

[provide here a non-argumentative list of disputes requiring judicial attention]

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