

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ELM 3DS INNOVATIONS, LLC, a  
Delaware limited liability company,

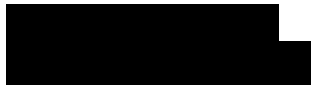
Plaintiff,

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.

REDACTED - PUBLIC VERSION  
(Filed April 27, 2022)  
C.A. No. 14-1430-CJB



**DEFENDANTS' LETTER BRIEF IN SUPPORT OF THEIR REQUEST FOR THE  
PRODUCTION OF COMPENSATION INFORMATION FOR MR. GLENN LEEDY'S  
SURVIVING FAMILY MEMBERS AND MR. GLENN LEEDY'S WILL**

Dated: April 20, 2022

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Dear Judge Burke:

Samsung submits this letter brief pursuant to the Court's order (D.I. 495) in advance of the May 9, 2022 discovery dispute hearing.

*First*, Samsung respectfully requests that the Court order Plaintiff Elm 3DS Innovations, LLC ("Elm") to produce information regarding how any damages award from this litigation would be distributed to the surviving family members of Mr. Glenn Leedy—the sole named inventor on the patents asserted in this case and Elm's former owner. Elm wants to tell the jury that Mr. Leedy spent his life dedicated to developing the technology in the asserted patents, that he passed away while this case was pending, and that he is survived by his family. Even though Elm has offered to not specifically state to the jury that damages will flow to Mr. Leedy's family, Elm wants the jury to assume that. In other words, once the jury hears about Mr. Leedy, his passing, and his family, any juror will reasonably assume that damages will go to those surviving family members. To rebut that assumption, Samsung should be able to explain to the jury what amount would actually go to the family, but Elm steadfastly refuses to produce the relevant information.

Samsung respectfully requests that the Court order Elm to produce information regarding how any proceeds from exploiting the asserted patents or related patents have gone to or will go to the surviving family members, including how any damages award from this litigation would be distributed to them. Such production should include any portion of Mr. Leedy's will related to the disposition of any interest in Elm, or that is otherwise related to how compensation has flowed to or will flow to his surviving family members. This compensation information is necessary for Samsung to rebut any suggestion to the jury that if it awards damages to Elm, those damages will benefit Mr. Leedy's surviving family members.

*Second*, Samsung requests that the Court order Elm to comply with Judge Hall's prior order requiring Elm to produce all portions of Mr. Leedy's will applicable to Ron Epstein's authorization to act on behalf of Mr. Leedy's estate. Elm has offered to produce certain portions showing [REDACTED] but refuses to produce all applicable portions.

## **I. BACKGROUND**

**Glenn Leedy's Work, Family, and Passing.** Prior to this lawsuit, Mr. Leedy co-owned with his then-wife Ms. Julia Leedy the company Elm Technology Corporation, which was the then-current assignee of the patents asserted in the present lawsuit. Ex. 1 (Excerpts of the Nov. 18, 2012 Leedy Divorce Agreement) at 9. They had two children and divorced in 2012. *Id.* at 1.

Subsequently, the patents were assigned to Plaintiff Elm 3DS Innovations, LLC ("Elm"), and on November 21, 2014, Elm filed this case asserting numerous patents, all of which named Mr. Leedy as the sole inventor. D.I. 1 ¶¶ 1, 4, 13, 15. Mr. Leedy was also Elm's president and sole owner. D.I. 1 ¶¶ 4, 28; Ex. 2 (Elm's Response to Interrogatory 4) at 22. On July 16, 2017, Mr. Leedy passed away. Ex. 3 ([REDACTED]) at 1. He is survived by Ms. Leedy and his two children. Ron Epstein—who currently purports to run

this litigation on Elm's behalf, Elm's lone Rule 30(b)(6) witness, and the purported [REDACTED] [REDACTED]. Ex. 2 at 23.

**Judge Hall's Prior Order.** During the course of this case, Samsung developed a potentially case-dispositive standing argument based on various transfers of Mr. Leedy's ownership interest in Elm and previously sought discovery from Elm regarding the same in a dispute decided by Judge Hall. Specifically, Samsung's prior discovery dispute letter sought the production of six bullet point categories of documents, including documents regarding "Epstein's authorization to act . . . on behalf of Glenn Leedy's estate (**including any applicable portions of Leedy's will**)." Ex. 4 (D.I. 423) at 3 (emphasis added). During the hearing on this issue, Judge Hall ordered that "Elm produce these bullet point documents that are on Page 3 . . . ." Ex. 5 (July 21, 2021 Hr'g Tr.) at 12:22-13:1.

## **II. COMPENSATION INFORMATION FOR MR. LEEDY'S SURVIVING FAMILY MEMBERS IS RELEVANT AND SHOULD BE PRODUCED**

Elm should be ordered to produce information regarding how any proceeds from exploiting the asserted patents or related patents have flowed to or will flow to Mr. Leedy's surviving family members, including as a result of any damages award in this present lawsuit. Specifically, Elm should be ordered to supplement its response to Interrogatory 4 to provide this information and also produce any portion of Mr. Leedy's will related to the disposition of any interest in Elm,<sup>1</sup> or that is otherwise related to how compensation has flowed to or will flow to his surviving family members.<sup>2</sup> This information is relevant to rebut any argument or suggestion by Elm to the jury that this lawsuit is intended to benefit Mr. Leedy's surviving family members.

As an initial matter, both Judge Hall and Elm have recognized that the compensation flowing to Ron Epstein as a result of these patents or this litigation is relevant and should be produced. *See, e.g.*, Ex. 9 (Oct. 30, 2020 Hr'g Tr.) at 17:18-24 ("[Judge Hall]: So Elm, they're allowed to ask Mr. Epstein if he is going to get a payout of the litigation, if he is involved in the litigation funding. I mean that is clearly relevant to bias; right? [Elm]: Yes. And to be clear, we have already produced any documents showing compensation Mr. Epstein would get in this case or because of this case."); Ex. 5 at 45:18-46:6 ("[Samsung]: Because Mr. Epstein is a witness for Elm, we already discussed this with Your Honor on a previous call, but his compensation is relevant by a termination clause. [Judge Hall]: I agree with that principle completely. . . . But anything that has to do with his compensation, that, to me, sound like it could be relevant to bias."); Ex. 2 at 23-24. The compensation flowing to Mr. Leedy's family

<sup>1</sup> During the afternoon this letter brief was due, Elm offered to produce "that portion of the will showing disposition of the assets in Mr. Leedy's will." Ex. 6 at 1. But given the late hour of this offer, Samsung maintained this portion of its request; Samsung will inform the Court if the parties are able to resolve this portion of their dispute.

<sup>2</sup> Elm has never suggested that Interrogatory 4 does not call for this information or that the will is not responsive to a request for production. If Elm belatedly makes this argument, requests for production 37, 40, 73, 82-84, 86-87, and 93 encompass this information. Exs. 7-8.

members should be treated the same. That compensation information—including Mr. Leedy’s will—may also bear on Mr. Epstein’s compensation. For example, if the surviving family members are receiving little compensation, that suggests Mr. Epstein may be receiving more.

Furthermore, Elm’s complaint in this action spends myriad paragraphs discussing Mr. Leedy and his role with Elm, as well as detailing his purported work in inventing the subject matter claimed in the asserted patents. D.I. 1 ¶¶ 15-32. At trial, Elm will discuss Mr. Leedy and his work and background—including his family.<sup>3</sup> While Elm offered during a meet and confer to consider a narrow stipulation that Elm would not make the specific argument that monetary damages will go to Mr. Leedy’s ex-wife and his children, Elm reserved the right to present Mr. Leedy’s story and background, which would include his family. Once the jury hears Mr. Leedy’s story, including about his family and passing, the jury will reasonably assume that any compensation that would have gone to him from exploiting these patents or from a damages award in this case will now go to his surviving family members. Elm wants the jury to make that assumption. But Samsung suspects that only a small portion of any proceeds will actually go to Ms. Leedy<sup>4</sup> or Mr. Leedy’s surviving children, and Samsung is entitled to this information to show the jury that this suit is not for the benefit of Mr. Leedy’s family.

While Elm also argues that this information (including Mr. Leedy’s will) is private, that is not a valid basis to withhold production. There is a protective order in this action, and Elm can designate such information pursuant to that protective order, if appropriate.

### **III. ELM MUST COMPLY WITH JUDGE HALL’S PRIOR ORDER**

As discussed above, Judge Hall previously ordered Elm to produce all portions of Mr. Leedy’s will applicable to Mr. Epstein’s authorization to act on behalf of Mr. Leedy’s estate. *See* Section I, *supra*. But Elm is only willing to produce the affirmative “[REDACTED].” Ex. 6 at 1. While Elm has represented that [REDACTED], Elm intends to redact information on successor executors. *Id.* So Samsung will not be able to determine whether a successor possibly [REDACTED]. Additionally, Elm has not confirmed that it will produce any other portion that bears on any other person or entity having authority to administer, dispose of, or otherwise govern Mr. Leedy’s estate (or any portion thereof), or confirmed there are no other portions. *Id.* These would also be applicable portions of Mr. Leedy’s will and subject to Judge Hall’s prior order. Elm should be ordered to produce them.

\* \* \*

Samsung respectfully requests that the Court grant Samsung’s requested relief and issue the attached proposed order (Ex. 10) requiring Elm to produce this relevant information.

<sup>3</sup> Samsung reserves all rights to move *in limine* regarding Elm’s trial presentation.

<sup>4</sup> The public 2012 divorce agreement suggests [REDACTED] will go to Ms. Leedy. Ex. 1 at 17-18. But Samsung does not know whether there have been any interim agreements or if this information is otherwise accurate and complete.

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