

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

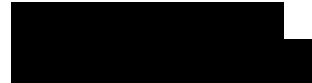
Plaintiff,

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-CJB



REDACTED VERSION

**PARTIES' JOINT STATUS UPDATE REGARDING
COMPENSATION INFORMATION**

Dated: May 23, 2022

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Dear Judge Burke:

Pursuant to the Court's May 9 order, the parties met and conferred regarding their dispute about compensation information for Ms. Leedy and Mr. Leedy's children. The parties were unable to resolve the dispute and submit this joint status update. If the Court would like additional argument, the parties propose adding this issue to the currently scheduled June 8 teleconference.

Samsung's Position. Elm unequivocally told Samsung prior to the last hearing that Elm was going to mention Mr. Leedy's ex-wife and children at trial. As a result, that was Samsung's sole focus during prior briefing and argument. Only after Elm's about face (after realizing it was losing the discovery dispute) and the further consideration permitted by the Court post-hearing, Samsung identified that any stipulation along the lines identified by the Court would not work because the Leedy family was already part of the case. The hypothetical discussed at the last hearing, that Elm asserts infringement against Samsung with no mention of Mr. Leedy's family, is inconsistent with the current state of discovery and the case.

For example, Elm has long been aware that Ms. Leedy and Mr. Leedy's children are already part of the case via documents produced from the divorce between Mr. Leedy and Ms. Leedy, as well as on standing and ownership issues—as Samsung noted at the end of the hearing. Ex. 1 at 34:4-15; D.I. 423 at 1-3; Ex. 2. After the hearing, Elm proposed a stipulation premised on Elm not mentioning Mr. Leedy's family unless Samsung opens the door. But neither that stipulation nor any other is workable because the door is already open and cannot be closed.

Samsung is already aware of a document from the Leedy divorce that, for example, shows the apparent value that Mr. Leedy placed on the patent portfolio—including the patents at issue here. *See, e.g.*, Ex. 3 ([REDACTED]). That document—which Samsung intends to rely on—necessarily introduces Ms. Leedy and also includes issues related to Mr. Leedy's children. If it were possible to avoid mention of Mr. Leedy's family in these contexts, Samsung would. But neither Samsung nor Elm has been able to come up with a workable solution.

In addition to valuation documents from the divorce, Mr. Leedy's children are already at issue in this case because Mr. Leedy's interest in Elm is currently assigned to two trusts for the benefit of Mr. Leedy's children—for which Ron Epstein is the trustee. To the extent there are factual issues related to standing or ownership for the jury to decide, Mr. Leedy's children (and his ex-wife by implication) will be introduced. Furthermore, discovery remains ongoing. For example, documents from the divorce were recently produced and are still being produced, and depositions remain outstanding—including of Ron Epstein. There may be additional reasons that Ms. Leedy and Mr. Leedy's children are implicated in this case, including at trial.

During the post-hearing meet and confer and correspondence, Elm did not substantively address Samsung's arguments and, instead, focused on an isolated statement from the hearing where Samsung stated that if Elm were to avoid mention of Mr. Leedy's children, that would obviate the dispute. Ex. 4 at 2 (citing Ex. 1 at 9:8-16). But Elm ignored Samsung's subsequent clarifications identifying potential issues. Ex. 1 at 26:6-28:5, 34:4-15.

Thus, as the parties have been unable to reach a workable stipulation, Samsung respectfully requests that the Court order Elm to produce compensation information as the Leedy family is necessarily implicated in the case.

Elm's Position. Elm asks the Court to deny Samsung's requested discovery as moot. Elm will not introduce evidence or argument regarding Mr. Leedy's children or his ex-wife. That was Samsung's stated justification for this discovery, and Elm's offer moots the dispute. If Samsung wants to introduce evidence of the Leedy heirs at trial for some reason, it is free to do so. But Samsung's plan to introduce irrelevant evidence does not entitle it to irrelevant discovery.

Samsung's statement of its position perfectly illustrates the games that Elm has had to deal with in trying to move past this dispute. Samsung first said that it wanted information on the Leedy heirs' inheritance because it does not want Elm arguing at trial that any recovery will go to the heirs. So Elm proposed a stipulation that it would not make this argument, which Samsung summarily rejected. D.I. 507, Ex. B. Then, Samsung told Elm and the Court that it still needed this discovery because the jury may infer that the children stand to gain from any award. D.I. 501 at 2-3. So Elm agreed not to mention Mr. Leedy's children or ex-wife at trial. Ex. 4 at 3. Samsung had agreed with the Court that such a stipulation would "obviate[] the dispute." Ex. 1 at 9:8-16. But it again summarily rejected Elm's proposal. Ex. 4 at 2.

Now, after the hearing and briefing, Samsung pivots to a new theory for why it should get discovery into the Leedy heirs' inheritance. For the first time, Samsung says that *it* intends to introduce evidence of Mr. Leedy's heirs at trial. Samsung's latest theory is based on a single document that shows divorce-attorney squabbling over Mr. Leedy's opinion t [REDACTED]. It contains a passing reference to his children (though not by name, and the reference would be easy to redact). It is not credible that Samsung would ever choose to show the jury a [REDACTED]. Regardless, why would the jury have any questions about what Mr. Leedy's children stand to inherit based on a passing reference to their existence in divorce proceedings? Samsung just wants the discovery to harass Elm and jockey for settlement leverage through the Leedy heirs' finances, as shown by its shifting rationales. Elm should not have to produce this deeply personal (and utterly irrelevant) information.

Samsung now introduces other theories that it has known of for months but left out of the briefing. For example, Samsung has long known that the children's trusts own Elm, but now says that this fact may need to be shared with the jury so it can address Elm's "standing or ownership." But Elm owns the patents, not the trusts. That is indisputable. And any role that Mr. Epstein plays as a trustee for Mr. Leedy's heirs has no bearing on infringement or damages. It's a non sequitur for Samsung to say it needs irrelevant discovery because it may raise irrelevant matters about Mr. Epstein at trial.

The Leedy heirs' inheritance has never been relevant. It is even less relevant now given Elm's agreement to a stipulation which Samsung's counsel admitted would "obviate the dispute." Elm asks the Court to deny Samsung's motion.

Respectfully Submitted,

/s/ Adam W. Poff
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cc: All Counsel of Record (via Email)

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