

Exhibit 1

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

- - -

ELM 3DS INNOVATIONS, LLC,)

)

Plaintiff,)

)

vs.)

Civil Action No.

) 14-1430-LPS-CJB

SAMSUNG ELECTRONICS CO.,)

LTD.,)

)

Defendants.)

- - -

Wilmington, Delaware

Monday, May 9, 2022

Discovery Dispute

- - -

BEFORE: HONORABLE CHRISTOPHER J. BURKE, Magistrate Judge

- - -

APPEARANCES:

FARNAN LLP

BY: MICHAEL J. FARNAN, ESQ.

and

BARTLIT BECK LLP

BY: MATTHEW R. FORD, ESQ.

(Chicago, Illinois)

and

BARTLIT BECK LLP

BY: JOHN M. HUGHES, ESQ., and

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1 APPEARANCES: (Continued)
 2 NOSSON D. KNOBLOCH, ESQ.
 (Denver, Colorado)
 3
 Counsel for Plaintiff
 4
 YOUNG CONAWAY STARGATT & TAYLOR, LLP
 5 BY: ADAM W. POFF, ESQ.
 6 and
 7 PAUL HASTINGS LLP
 BY: YAR R. CHAIKOVSKY, ESQ.
 8 (Palo Alto, California)
 9 and
 10 PAUL HASTINGS LLP
 BY: JAMES V. RAZICK, ESQ.
 11 (Washington, D.C.)
 12 Counsel for Defendants
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1 THE COURT: Let's go on the record, and,
 2 as we do, let me just state for the record that we're
 3 here this afternoon by way of a teleconference to resolve
 4 a discovery dispute in the matter of Elm 3DS Innovations,
 5 LLC, versus Samsung Electronics Co., Limited, et al.
 6 This is civil action number 14-1430-CJB in our court.
 7 And before we go further, let me have
 8 counsel for each side identify themselves for the record.
 9 We'll start first with counsel for the plaintiff's side,
 10 and we'll begin there with Delaware counsel.
 11 MR. FARNAN: Good afternoon, Your Honor.
 12 It's Michael Farnan. With me on the line are John
 13 Hughes, Matt Ford, and Nosson Knobloch from Bartlit Beck.
 14 And if it's acceptable to Your Honor, Mr. Hughes will
 15 make the presentation this morning -- I'm sorry -- this
 16 afternoon.
 17 THE COURT: Okay. Thank you. All right.
 18 We'll do the same for counsel for defendants' side and,
 19 again, let's begin with Delaware counsel.
 20 MR. POFF: Yes. Good afternoon, Your
 21 Honor. It's Adam Poff from Young Conaway for Samsung.
 22 And with me, from Paul Hastings, we have Yar Chaikovsky
 23 and James Razick, and Mr. Chaikovsky will be presenting
 24 on behalf of Samsung.

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1 THE COURT: Okay. Thank you. All right.
 2 And, Counsel, let me just say a few things
 3 by way of introduction or process. First of all, it's
 4 good to be back with you all again, it's a been a while,
 5 and it's good to be with you this afternoon. Second, I
 6 just wanted to just remind the parties, in particular, I
 7 think, plaintiff's side here, that if we have further
 8 discovery disputes in the case, pursuant to my guidelines
 9 with regard to discovery disputes, which I always note in
 10 my orders sending out a discovery dispute teleconference,
 11 one of the things I ask, and it's particularly helpful
 12 for me, that if the parties are going to attach exhibits,
 13 it's really helpful if the parties will highlight in
 14 yellow the portions in the exhibits that they attached
 15 that the Court should particularly focus on. I'm not
 16 sure that the plaintiff's side did that here, and so I
 17 just want to remind them to do that going forward because
 18 it really assists the Court.
 19 Okay. With regard to the merits of the
 20 issue, I also -- before I get there, I just also do want
 21 to say I have another motion hearing starting at 2:00 so
 22 we have about an hour to discuss this issue. Hopefully,
 23 we won't need all of it.
 24 But with all that said, let me turn to

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1 defendants' counsel because it's their motion. And I
 2 should say for the record that, here, the issue at play
 3 is that defendants are seeking an order that the
 4 plaintiff be required to produce certain information
 5 about any compensation that has or will go to Mr. Leedy,
 6 who is the now-deceased inventor here in the case for
 7 plaintiff's side. It will go to his surviving family
 8 members based on the results either of this litigation or
 9 of other matters.
 10 And so with that said, let me turn to
 11 defendants' counsel. And, Mr. Chaikovsky, you're going
 12 to be taking this up for defendants' side?
 13 MR. CHAIKOVSKY: That's correct, Your
 14 Honor.
 15 THE COURT: Okay. Why don't I jump in
 16 with some questions that I had, and I'll certainly give
 17 you the chance to fill in and tell me anything else you
 18 want to tell me about the dispute as well. And I guess
 19 maybe a good place to start is you say that discovery of
 20 this information is relevant to rebut any argument or
 21 suggestion by Elm at trial to the jury that the lawsuit's
 22 intended to benefit Mr. Leedy's surviving family members.
 23 And we know that plaintiff is willing --
 24 not only willing to stipulate with you jointly that it

<p style="text-align: right;">Page 6</p> <p>1 will not make that argument or suggestion explicitly at 2 trial, but it's otherwise told me that, regardless of 3 whether there's a joint stipulation, it's not going to do 4 that.</p> <p>5 And so can you just further flush out your 6 view in light of that, in light of the fact that we know 7 plaintiff is not going to say at trial, Hey, jury, if you 8 give the plaintiff money, it's all going to go to 9 Mr. Leedy's children. Can you just kind of flush out 10 your view about how it is that, nevertheless, there's a 11 real concern here that that's what the jury is going to 12 think and so the defendant needs to get a bunch of 13 documents that will help it parse through exactly how 14 much goes to who and when.</p> <p>15 MR. CHAIKOVSKY: Sure, Your Honor. Again, 16 Mr. Chaikovsky from Paul Hastings.</p> <p>17 Your Honor, they did say that they will 18 not make that explicit comment on page 2 of Docket 507. 19 You know, the issue in this case, Your Honor, I think it 20 comes through in the letter briefs, is that they have -- 21 Elm, the plaintiff, has one fact witness in this case, 22 Ron Epstein. He is their only 30(b)(6) witness, their 23 only 30(b)(1) witness. He's the only person who will be 24 testifying on their behalf in this case as far as we</p>	<p style="text-align: right;">Page 8</p> <p>1 common sense and playing on the emotions of a jury will 2 net, you know -- in the absence of, I guess, perhaps some 3 explicit instruction otherwise, you know, the natural 4 inclination for any, you know, common sense person is 5 going to be the tie that the compensation's going to 6 those children.</p> <p>7 And the issue we've had in this case is we 8 know Ron Epstein's getting a good deal of compensation. 9 There are obviously certain people getting compensation, 10 which we're not entitled to in discovery, but at least 11 from the discovery perspective -- we're not saying at 12 trial. We're allowed to test the veracity of whether, 13 you know -- if they're going to get up and tell that 14 story, irrespective of the tie -- is any money actually 15 flowing to the family here? And we've actually, from Elm 16 themselves, not been able to obtain any of that 17 information in this litigation.</p> <p>18 They're not willing to disclose whether -- 19 be it his ex-wife or his children or anybody other than 20 Ron Epstein -- is actually getting any compensation 21 relating to this litigation. This is unusual compared to 22 any other case because, normally, we don't have a 23 passed-away solo inventor where there is one fact 24 witness, and perhaps a family member would testify. We</p>
<p style="text-align: right;">Page 7</p> <p>1 know, absent expert witnesses.</p> <p>2 And, you know, I think what's pertinent to 3 that commentary is what they said in the next paragraph 4 of their letter brief 507 on page 2, Your Honor, in that 5 they'll provide Mr. Leedy's background as a prolific 6 inventor; they will say that he passed away; they will 7 say that he's survived by his wife and two children. 8 And, in fact, just stating that, this legacy humanizes 9 the man, who dedicated his life's work to inventions. In 10 contradistinction, we have Samsung, a Korean entity that 11 is being accused of infringement.</p> <p>12 And, you know, with these facts, Your 13 Honor, they don't need to make the explicit tie for a 14 jury, right? It's ultimately when Ron Epstein, the sole 15 person, you know -- they'll do it in an opening; they'll 16 do it in close; they'll do it when Ron Epstein testifies. 17 There may be other opportunities, which they'll avail 18 themselves to say that this is about Glenn Leedy, the 19 individual who's passed away.</p> <p>20 And this is very different than a case 21 where we have the inventor alive, and then that 22 compensation goes to the inventor. But the issue is we 23 have a case against Samsung, a Korean entity, that -- 24 where they'll be talking about passed away, children, and</p>	<p style="text-align: right;">Page 9</p> <p>1 don't have that here. We have Ron Epstein testifying in 2 this situation.</p> <p>3 THE COURT: Mr. Chaikovsky, can I jump in 4 to ask you, I assume that if the plaintiff were to tell 5 us on this call, Look, fine, if it's a matter of 6 obviating this dispute, we don't have to say that 7 Mr. Leedy had children or has children that survived him. 8 If they said that, you know, we're not going to mention 9 the fact that he has children, would that obviate the 10 dispute?</p> <p>11 MR. CHAIKOVSKY: That's right, Your Honor. 12 I think they've provided that option. The reasonable 13 options are to say, There's Elm; we have patents; Samsung 14 infringes. That's what's relevant. And going to what 15 you just said, Your Honor, and then that obviates the 16 dispute.</p> <p>17 On the other hand, if they're going to get 18 up and say what they said in the letter, then we're 19 entitled to this discovery. That's right, Your Honor.</p> <p>20 THE COURT: Okay. And then one point you 21 made in your letter -- we know Mr. Epstein's role, and it 22 sounds like we know he's going to be a witness at a 23 trial. At one point in your letter, you said something 24 like, We need to know the amount of compensation</p>

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1 Mr. Leedy's children will get because it's relevant to
 2 know how much compensation Mr. Epstein's going to get.
 3 But from what I could tell from the
 4 documents, it looks like there have been statements made
 5 that, in essence, Mr. Epstein's going to get a certain
 6 set percentage of any recovery, presumably after fees and
 7 costs, et cetera.
 8 I guess I wasn't sure how it is that
 9 getting information about exactly how much money the
 10 children are going to receive necessarily is going to
 11 shed much more light on how much money Mr. Epstein is
 12 going to receive. Because I understand the latter could
 13 be said to be relevant to bias, but I just couldn't see
 14 how the two were connected.
 15 MR. CHAIKOVSKY: Yeah. So I think that
 16 this last point, Your Honor, is a secondary argument.
 17 Obviously, if we were to discover information that -- and
 18 so it shouldn't be a primary focus, but if we were to
 19 discover information regarding payments and/or percentage
 20 or whatever, you know -- we're not looking for the
 21 accounting they're worried about. That's not what we're
 22 looking for. But that contradistincts, right, what
 23 Mr. Epstein's getting in light of what the family's
 24 getting or his ex-wife's getting. There's a chance, but

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1 that's a completely secondary argument. It's not a
 2 driver, you know.
 3 But you should know that Mr. Epstein is
 4 the, you know -- they keep pointing to he's the -- he was
 5 the trustee for the wife's trust. He is now the trustee
 6 for the children's trust. That's the position -- by the
 7 way, they're taking great standing that he's the trustee.
 8 And so we have this individual who's the only witness
 9 who's a trustee for the children's trust, and, you know,
 10 we're not able to get from them a lot of information.
 11 I think it's kind of -- if you focused on
 12 page 1 of their letter brief, you know, it's kind of
 13 interesting that they go into -- they say the executor of
 14 Mr. Leedy's estate. Well, guess who that happens to be,
 15 Your Honor. That's Mr. Epstein. He happens to be
 16 everything in this case. They didn't put his name in
 17 their brief on page 1 of 507, but that's who it is.
 18 And Mr. Epstein was forced to hire
 19 additional counsel. Well, I think that that's kind of
 20 funny, Your Honor. Yeah, sure. Hilgers Grabin was
 21 added, you know, pursuant to the kind of going back and
 22 forth with Ms. Lippman, who is one of the divorce
 23 attorneys that Judge Hall ordered documents to be
 24 produced.

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1 But I will tell you who got involved right
 2 away was Mr. Epstein's first counsel, not additional
 3 counsel, Bartlit Beck, both in the form of -- actually,
 4 Nosson Knobloch's on the phone here. After, for example,
 5 Judge Hall granted our motion to compel on March 30th,
 6 Nosson Knobloch, on April 13th, actually instructed
 7 Ms. Lippman not to release any documents until she
 8 receives further advice.
 9 So we have Bartlit Beck, Mr. Epstein's
 10 attorney or Elm's attorney -- I'm not sure -- instructing
 11 Ms. Lippman, who's been ordered by Judge Hall to make a
 12 production -- to actually instructing her, again, two
 13 weeks after the order, not to produce anything. And
 14 these are kind of the troubling aspects we've been
 15 dealing with in dealing with Bartlit Beck.
 16 And now we've got Hilgers Grabin on this.
 17 And they try to say it's us trying to insinuate ourselves
 18 into the passed-away gentleman's personal life. No,
 19 it's -- Your Honor focused it at the outset. It's, Hey,
 20 if you want to tell the story of Elm and Elm's patents
 21 are infringed and Samsung infringes, and as for large dog
 22 eyes, we'll paint that story. But if they're going to
 23 tell the story about a passed away gentleman, and he's
 24 got a wife, and he's got surviving children, and there's

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1 a trust in their name, well, Your Honor, that opens the
 2 door. And, you know, they're trying to stop discovery
 3 into that for some reason, despite Mr. Epstein looking
 4 like he has control over everything.
 5 THE COURT: Okay. Mr. Chaikovsky, in your
 6 letter, and this is related, but at one point you said
 7 that you "Suspect that only a small portion of the
 8 litigation proceeds will actually go to the children."
 9 And I guess my question is -- and, obviously, in every
 10 case, there's going to be fees and costs, you know, every
 11 patent case, one can assume there's going to be fees and
 12 costs that a patentee, through the use of their counsel,
 13 will have to expend so, literally, you're not going to
 14 get every dollar.
 15 But beyond that, it sounded like from your
 16 letter you said you have some additional suspicions that
 17 you know about Mr. Epstein and the percentage he's
 18 supposed to get. You know about what Mr. Leedy's wife's
 19 percentage is supposed to be. But you have some
 20 suspicions, maybe beyond that, that the children aren't
 21 going to get the remainder.
 22 So I guess my question is: What
 23 suspicions? Like, what are you talking about? Why do
 24 you suspect that only a small portion of the litigation

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