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-CJB **REDACTED VERSION**

DEFENDANT SAMSUNG'S RESPONSIVE DISCOVERY DISPUTE LETTER

Dated: June 3, 2022

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Dear Judge Burke,

Samsung respectfully asks this Court to deny Elm's requests in its May 27, 2022 letter. As Elm's letter admits, during the parties' meet and confers, Samsung agreed to investigate and produce further documents responsive to Elm's requests. While Samsung did so in good faith, Elm inexplicably pressed forward with its letter without an impasse,[1] and advanced new issues ***never before raised*** with Samsung.[2] Nevertheless, Samsung's earlier productions, along with the documents it has now produced, have ample information mooting Elm's requests. To the extent Elm has further concerns, Samsung can address them without burdening the Court.

I. There Is No Dispute Over The Production Of Warpage Data

Elm opens by emphasizing the importance of dielectric stress in this case, and incorrectly suggests that Samsung has taken inconsistent positions on the production of such information. D.I. 518 at 1. [REDACTED] Such stress, however, is of little relevance to any dielectric stress in a final product—which has led Elm to pursue other types of data (*e.g.*, warpage), to calculate dielectric stress in the products that Samsung ultimately sells.

There is likewise no dispute over the production of warpage data for the Court to address. Elm incorrectly contends that Samsung has "refused" to produce warpage data (D.I. 518 at 1); Samsung merely questioned whether it is reasonable (and proportional to the needs of the case) to produce "***all*** the warpage data associated with the accused products," as Elm requested. *Id.*; Ex. 8 at 4. And, Elm has failed to justify the need to produce such an enormous volume of data across all products. In any event, as Elm concedes, the parties are "negotiating what additional warpage data Samsung will produce," and there is no dispute for the Court to resolve. *Id.*

II. Information on "How" Samsung Measures Warpage Has Been Produced

Elm incorrectly contends that Samsung has failed to produce documents showing "how" warpage measurements are taken, overlooking or misapprehending the data and documents that

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[1] This has been an unfortunate pattern. *See* D.I. 255, n.1 ("Elm inexplicably proceeded with its motion to compel this data, despite there clearly being no dispute"); D.I. 473, n. 3 ("the issues addressed herein were communicated to Samsung for the first time in Elm's opening letter").

[2] Parties are expected to reasonably work on issues, rather than prematurely approach the Court. *AgroFresh Inc. v. Hazel Technologies, Inc.*, No. 1-18-cv-01486 (D. Del. Mar. 4, 2020) ("before any future discovery dispute is brought . . . [counsel] . . . must engage in reasonable efforts to resolve the issue in dispute or confirm they are at an impasse"); *Nordetek Environmental, Inc. v. RDP Technologies, Inc.*, No. 09-4714, slip op. at 6 (E.D. Pa. Nov. 28, 2011) (denying motion to compel, finding plaintiff's "'inexplicable rush to the Courthouse' . . . inexcusable"). Exs. F-G.

[3] [REDACTED]

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have been produced. Samsung has produced ample responsive information.[4] If any legitimate concerns remain, Samsung remains willing to work with Elm to address them.

First, Elm complains that

Second, Elm reframes the issue presented in its request for a discovery teleconference, moving away from its demand D.I. 518 at 2. The reason for Elm's maneuver is clear; Ex. C at 2.

Third, Elm raises entirely new questions , which were raised ***for the first time <u>after</u>*** Elm's request for a discovery teleconference. Regardless, Samsung again diligently investigated these issues, and produced documents that address Elm's newfound questions. *See* Ex. A at 11 . Further questions can be addressed by conferring or deposition, as needed.

III. <u>Information on "When" Samsung Measures Warpage Does Not Exist</u>

Elm incorrectly suggests that Samsung has failed to maintain warpage data. As Samsung has repeatedly explained, [7] *Id.*; Ex. D.

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[4] Indeed, Samsung produced over 900,000 pages of documents responsive to Elm's requests.

[5] Elm has also previously and unnecessarily raised to the Court similar alleged deficiencies about units and other data that were readily ascertainable from Samsung's documents. D.I. 473 at 2-3.

[6]

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And, any further questions can be addressed by deposition, as needed.

Elm has no basis, other than speculation, to infer that Samsung's representations are not trustworthy.[8] Discovery cannot, of course, be based on speculation. *Invesas Corp. v. Renesas Elecs. Corp.*, 287 F.R.D. 273, 279 (D. Del. 2012) ("'[R]equested information is not relevant . . . if the inquiry is based on the party's ***mere suspicion or speculation.***'") (citation omitted) (emphasis added). Without a legitimate basis for this discovery, Elm's request should be denied.

IV. Document Retention Policies Are Not Discoverable

Samsung agreed to produce any non-privileged retention policies it finds,

Elm's request for "comprehensive" retention policies is unwarranted and impermissible. Courts in this district have denied motions to compel such documents under the default discovery order:

> The Default Discovery Standard reads: "Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B)." Default Discovery Standard at 1(d)(iii). ***The court finds that document retention and destruction policies fit squarely within the meaning of the "duty to preserve information."*** *Id*. Accordingly, such documents are privileged under the Default Discovery Standard.

Novanta Corp. v. Iradion Laser, Inc., No. 2016 U.S. Dist. LEXIS 126042, *9 (D. Del. Sept. 16, 2016) (emphasis added). Elm's request should be denied on this basis alone. But even if Samsung's policies were not privileged, they are not "relevant to any party's claim or defense" under Rule 26, and thus not discoverable. *See Tessera, Inc. v. Broadcom Corp*., 2017 U.S. Dist. LEXIS 178929, *7-8 (D. Del. Oct. 24, 2017) ("[T]he question is whether Tessera has made a sufficient record to demonstrate relevance—that is, whether Tessera has demonstrated, ***beyond citing to mere 'suspicion or speculation[,]' that the discovery will flesh out facts regarding an infringement issue that is necessarily in the case***.") (citation omitted) (emphasis added).

These requests amount to a fishing expedition in support of a baseless theory that Samsung has failed to preserve evidence. The requested documents bear no relation to Elm's infringement theories, and Elm has no valid purpose for them other than to try to gain a strategic advantage over Samsung. Elm's request for retention policies should therefore be denied.

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[8] Elm tries to justify its demand by claiming that "less than 2%" of "five million memory have warpage measurements, in another issue raised for the first time before the Court.

[9]

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Respectfully,

/s/ Adam W. Poff (No. 3990)

cc: All Counsel of Record (Via email)

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