

1 Alfred R. Fabricant (pro hac vice)
ffabricant@fabricantllp.com
2 Peter Lambrianakos (pro hac vice)
plambrianakos@fabricantllp.com
3 Vincent J. Rubino, III (pro hac vice)
vrubino@fabricantllp.com
4 Enrique Iturralde (pro hac vice)
eiturralde@fabricantllp.com

5 **FABRICANT LLP**
411 Theodore Fremd Ave., Suite 206 South
6 Rye, New York 10580
7 Telephone: (212) 257-5797
8 Facsimile: (212) 257-5796

9 Benjamin T. Wang (CA SBN 228712)
bwang@raklaw.com
10 Minna Y. Chan (CA SBN 305941)
mchan@raklaw.com

11 **RUSS AUGUST & KABAT**
12424 Wilshire Boulevard, 12th Floor
11 Los Angeles, California 90025
12 Telephone: (310) 826-7474
13 Facsimile: (310) 826-9226
14 *Attorneys for Defendants AGIS Holdings, Inc.,
Advanced Ground Information Systems, Inc.,
and AGIS Software Development LLC*

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN JOSE DIVISION**

18 **GOOGLE LLC**

19 *Plaintiff,*

20 v.

21 **AGIS HOLDINGS, INC., ADVANCED**
22 **GROUND INFORMATION SYSTEMS,**
23 **INC., AND AGIS SOFTWARE**
24 **DEVELOPMENT LLC,**

25 *Defendants.*

Case No. 5:23-cv-03624-BLF

Hon. Judge Beth L. Freeman

**NOTICE OF MOTION AND MOTION TO
DISMISS, OR IN THE ALTERNATIVE,
TO TRANSFER TO THE EASTERN
DISTRICT OF TEXAS; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date: March 21, 2024
Time: 9:00 a.m.
Location: Courtroom 3

*[Declaration of Malcolm K. Beyer, Jr; and
Proposed Order filed concurrently herewith]*

26 **PLEASE TAKE NOTICE** that, on March 21, 2024, at 9:00 a.m., or as soon thereafter as the
27 matter may be heard before The Honorable Beth L. Freeman in the United States District Court for the
28 Northern District of California in the Robert F. Peckham Federal Building & United States Courthouse,

1 Courtroom 3, 5th Floor, 280 South 1st Street, San Jose, California 95113. Defendants AGIS Holdings,
2 Inc. (“AGIS Holdings”), Advanced Ground Information Systems, Inc. (“AGIS, Inc.”), and AGIS
3 Software Development LLC (“AGIS Software”) (collectively, “Defendants”) will and hereby move the
4 Court for: (1) an order dismissing the Complaint for Declaratory Judgment filed by Plaintiff Google LLC
5 (“Google”) pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure; (2) an order dismissing
6 Count III of Google’s Complaint; (3) an order dismissing Count IV of Google’s Complaint pursuant to
7 Rule 9 of the Federal Rules of Civil Procedure; (4) an order dismissing Count V of Google’s Complaint;
8 or (5) in the alternative, to transfer to the Eastern District of Texas pursuant to 28 U.S.C. §§ 1404(a).

9 This Motion is made on the grounds that the Court lacks personal jurisdiction over each
10 Defendant. AGIS Holdings is a Florida corporation with its principal place of business in Florida, at 92
11 Lighthouse Drive, Jupiter, Florida 33469. AGIS Holdings is not registered to conduct business in
12 California; does not have a registered agent for service of process in California; does not have offices,
13 employees, equipment, bank accounts, or other assets in California; is not subject to taxes in California;
14 does not manufacture or sell products in California; does not solicit or engage in business in California;
15 does not sign contracts in California; does not recruit employees in California; and does not own, lease,
16 or rent any property in California.

17 Similarly, AGIS Software is a limited liability company organized and existing under the laws
18 of the State of Texas, with its principal place of business in Marshall, Texas. AGIS Software is not
19 registered to conduct business in California; does not have a registered agent for service of process in
20 California; does not have offices, employees, equipment, bank accounts, or other assets in California; is
21 not subject to taxes in California; does not manufacture or sell products in California; does not solicit or
22 engage in business in California; does not sign contracts in California; does not recruit employees in
23 California; and does not own, lease, or rent any property in California. Additionally, no lawsuit has ever
24 been filed by AGIS Software in California for any reason. AGIS Software denies that it is an agent and
25 alter ego of AGIS, Inc.

26 Further, AGIS, Inc. is a Florida corporation with its principal place of business in Florida, at 92
27 Lighthouse Drive, Jupiter, Florida 33469. AGIS, Inc. is not registered to conduct business in California;
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1 does not have a registered agent for service of process in California; does not have offices, employees,
2 equipment, bank accounts, or other assets in California; is not subject to taxes in California; does not
3 manufacture or sell products in California; does not solicit or engage in business in California; does not
4 sign contracts in California; does not recruit employees in California; and does not own, lease, or rent
5 any property in California.

6 Count III fails as a matter of law and should be dismissed because Google failed to plead a viable
7 claim under the *Kessler* doctrine or claim preclusion. Google premises Count III on a joint motion
8 dismissing the '970 Patent before the Northern District of California that expressly limited the parties'
9 agreement as not covering the reexamination-amended claims of the '970 Patent. In seeking dismissal
10 of the pre-reexamination original asserted claims of the '970 Patent, Google conceded that the
11 reexamination-amended claims contained substantive, material differences from their original form,
12 and therefore, the first dismissal cannot support Count III as to the reexamination-amended claims of the
13 '970 Patent and should be dismissed.

14 As to Count IV, Google alleges the '970 Patent is unenforceable due to inequitable conduct
15 during the '970 Patent reexamination based on an alleged failure to disclose a prior indefiniteness
16 determination concerning the claim term "symbol generator" in another non-asserted U.S. Patent No.
17 7,031,728 (the "'728 Patent"). However, Count IV is deficient for failure to meet the materiality
18 requirement and for futility. The non-asserted '728 Patent is not at issue in this case. The term "symbol
19 generator" is not recited in any claims of the '970 Patent. The prior decision found the non-asserted '728
20 Patent term "symbol generator" indefinite for failure to disclose a corresponding algorithm. None of this
21 concerns the '970 Patent, and Google does not and cannot show how the prior order is material to
22 patentability of the '970 Patent's recitation of "means for presenting a recipient symbol on the
23 geographical map corresponding to a correct geographical location of the recipient PDA/cell phone."
24 Because Google fails to meet the heightened pleading standard of Rule 9(b) of the Federal Rules of Civil
25 Procedure, Count IV should be dismissed.

26 Similarly, Count V alleges the '970 Patent is unenforceable because of deceit and bad faith during
27 the reexamination of the '970 Patent and should be dismissed for the same reasons as Count IV.

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1 Additionally, Count V alleges a protective order violation based on the presence of Fabricant LLP and
2 Zhong LLP attorneys at an examiner interview during the reexamination of the '970 Patent. But the
3 protective order in question expressly permits attorney participation in reexamination proceedings when
4 it states that nothing in the protective order is intended to preclude Fabricant “from participating directly
5 or indirectly in reexamination.” Because there are no plausible facts supporting that Fabricant LLP
6 engaged in any conduct precluded by the protective order, Google fails to meet the proper pleading
7 standard or plausibly allege unclean hands and should be dismissed.

8 In the alternative, transfer is appropriate because the EDTX is clearly the more convenient forum
9 and is already handling pending AGIS cases involving Google’s Find My Device (“FMD”) and U.S.
10 Patent No. 8,213,970 (“the '970 Patent”), where Google is participating as a non-party and has already
11 began producing information. The transfer factors and judicial economy favor transfer.

12 The Motion will be and is based on this Notice of Motion and Motion, the accompanying
13 Memorandum of Points and Authorities, the accompanying Declaration, the pleadings and papers filed
14 herein, as well as upon such other and further matters, papers, and arguments as may be presented to the
15 Court.

16 DATED: October 16, 2023

Respectfully submitted,

RUSS AUGUST & KABAT

By: /s/ Benjamin T. Wang

Benjamin T. Wang

FABRICANT LLP

Alfred R. Fabricant

ffabricant@fabricantllp.com

Peter Lambrianakos

plambrianakos@fabricantllp.com

Vincent J. Rubino, III

vrubino@fabricantllp.com

411 Theodore Fremd Ave., Suite 206 South

Rye, New York 10580

Telephone: (212) 257-5797

Facsimile: (212) 257-5796

Benjamin T. Wang (CA SBN 228712)

bwang@raklaw.com

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Minna Y. Chan (CA SBN 305941)
mchan@raklaw.com
RUSS AUGUST & KABAT
12424 Wilshire Boulevard, 12th Floor
Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-9226

Attorneys for Defendants
AGIS Holdings, Inc., Advanced Ground
Information Systems, Inc., and AGIS
Software Development LLC

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