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14                    UNITED STATES DISTRICT COURT

15                 NORTHERN DISTRICT OF CALIFORNIA

16

17 | SMITH MICRO SOFTWARE, and | Case No. 5:21-cv-03677-BLF |
   SMITH MICRO SOFTWARE, LLC,

18                                    [Related to Case Nos. 5:21-cv-03076-
              Plaintiffs,              BLF and 21-cv-04653- BLF]
19
   v.                                 **PLAINTIFFS' OPPOSITION TO**
20                                    **DEFENDANTS MOTION TO**
   AGIS SOFTWARE                      **DISMISS COMPLAINT FOR**
21 DEVELOPMENT LLC, and DOES          **DECLARATORY JUDGMENT**
   1 to 10,
22                                    Date:      February 27, 2022
              Defendants.             Time:      9:00 a.m.
23                                    Ctrm.:     3

24                                    Judge Beth Labson Freeman

25

26       Plaintiffs Smith Micro Software, Inc. ("SMSI") and Smith Micro Software,

27 LLC ("SMSL") (jointly "Smith Micro" or "Plaintiffs") oppose Defendant AGIS

28 Software Development LLC's Motion to Dismiss (Dkt. 28; "the Motion").

# TABLE OF CONTENTS

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## TABLE OF AUTHORITIES

**Page(s)**

**Federal Cases**

## I.     INTRODUCTION

This Court has previously addressed the issue of whether Defendant's predecessor-in-interest as to the Patents-in-Suit, AGIS, Inc., is subject to specific jurisdiction in this state. *Life360, Inc. v. Advanced Ground Sys., Inc.*, 2014 WL 5612008 (ND Cal Case No. 5:15-cv-00151-BLF).  The Motion does not dispute the holding in that case, or establish why it's holding is not applicable here..

Rather, Defendant's Motion in essence asserts that even though this Court has already decided that specific jurisdiction exists as to Defendant's predecessor-in-interest parent company based upon its many intentional and directed contacts with the state of California, the successor-in-interest subsidiary company and current holder of the Patents-in-Suit, AGIS Software, is completely isolated from that contact, and therefore specific jurisdiction does not extend to it.

This argument has been already been addressed and rejected by the Federal Circuit, as follows:

> We also agree with Dainippon that the parent-subsidiary
> relationship between CFM and CFMT leads to the conclusion that
> the imposition of personal jurisdiction over CFMT is "reasonable
> and fair," one of the due process factors cited in *Akro. See also*
> *Genetic Implant*, 123 F.3d at 1458, 43 USPQ2d at 1788.  Stripped
> to its essentials, CFM contends that a parent company can
> incorporate a holding company in another state, transfer its patents
> to the holding company, arrange to have those patents licensed back
> to itself by virtue of its complete control over the holding company,
> and threaten its competitors with infringement without fear of being
> a declaratory judgment defendant, save perhaps in the state of
> incorporation of the holding company. This argument qualifies for
> one of our "chutzpah" awards.  *See  Refac Int'l, Ltd. v. Lotus Dev.*
> *Corp.*, 81 F.3d 1576, 1584, 38 USPQ2d 1665, 1671 (Fed.Cir.1996);

*Checkpoint Sys., Inc. v. United States Int'l Trade Comm'n*, 54 F.3d
756, 763 n. 7, 35 USPQ2d 1042, 1048 n. 7 (Fed.Cir.1995) (noting
that "chutzpah" describes "the behavior of a person who kills his
parents and pleads for the court's mercy on the ground of being an
orphan"). While a patent holding subsidiary is a legitimate creature
and may provide certain business advantages, it cannot fairly be
used to insulate patent owners from defending declaratory judgment
actions in those fora where its parent company operates under the
patent and engages in activities sufficient to create personal
jurisdiction and declaratory judgment jurisdiction. After
considering all of the relevant factors, we conclude that the court
erred in holding that it lacked personal jurisdiction over defendant
CFMT.

*Dainippon Screen Manufacturing Co, Ltd. v. CMFT, Inc.*, 142 F.3rd 1266, 1271
(Fed. Cir. 1998).

The Court also confirmed that it was not necessary to "pierce the corporate
veil" in order to reach this conclusion.  [*See*  Footnote 4: "Agreeing that the parent-
subsidiary relationship in this case is legally proper, Dainippon does not seek here
to pierce the corporate veil."].  Therefore, the Motion's assertion that the Complaint
does not contain sufficient factual allegations to do so is irrelevant.[1]

This Court's prior ruling as to AGIS being subject to specific jurisdiction
her applies equally to AGIS Software.

## II.      THE UNCONTESTED REVEVANT FACTS

Defendant correctly states, on page 4 (10 of 23) of the Motion, that "the court

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[1] Equally irrelevant is that the situation in *Dainippon Screen* involved the parent
corporation attempting to evade jurisdiction based upon the in-state contacts of the
subsidiary, which is the converse of the situation here – a distinction without
significance.  The same principle applies.

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