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 14 *AGIS Software Development LLC*

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

18 SMITH MICRO SOFTWARE, INC., AND
 19 SMITH MICRO SOFTWARE, LLC,

20 *Plaintiffs,*

21 v.

22 AGIS SOFTWARE DEVELOPMENT LLC,
 23 AND DOES 1 TO 10,

24 *Defendants.*

Case No. 5:21-cv-03677-BLF

**NOTICE OF MOTION AND MOTION TO
 TRANSFER TO THE UNITED STATES
 DISTRICT COURT FOR THE EASTERN
 DISTRICT OF TEXAS PURSUANT TO 28
 U.S.C. § 1404(a)**

Date: February 24, 2022

Time: 9:00 a.m.

Location: Courtroom 3

*[Declaration of Vincent J. Rubino, III and
 exhibit; and Proposed Order filed
 concurrently herewith]*

Hon. Beth Labson Freeman

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NOTICE OF MOTION AND MOTION TO TRANSFER

PLEASE TAKE NOTICE that, on February 24, 2022, at 9:00 a.m., or as soon thereafter as the matter may be heard before The Honorable Beth Labson Freeman in the United States District Court for the Northern District of California in the Robert F. Peckham Federal Building & United States Courthouse, Courtroom 3, 5th Floor, 280 South 1st Street, San Jose, California 95113. Defendant AGIS Software Development LLC (“AGIS Software” or “Defendant”) will and hereby does move the Court to transfer venue to the United States District Court for the Eastern District of Texas pursuant to 28 U.S.C. §1404(a).

This motion is made on the grounds that the Eastern District of Texas could exercise personal jurisdiction over AGIS Software and venue would be proper there pursuant to 28 U.S.C. §§ 1391 and 1400(b). AGIS Software is a limited liability company organized and existing under the laws of the State of Texas, with its principal place of business in Marshall, Texas. AGIS Software is not registered to conduct business in California; does not have a registered agent for service of process in California; does not have offices, employees, equipment, bank accounts, or other assets in California; is not subject to and has never paid taxes in California; does not manufacture or sell products in California; does not solicit or engage in business in California; has not signed contracts in California; does not recruit employees in California; and does not own, lease, or rent any property in California. Additionally, no lawsuit has ever been filed by AGIS Software in California for any reason. The Eastern District of Texas has subject matter jurisdiction over Smith Micro’s declaratory judgment claims relating to patent infringement under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

The balance of the private factors favors transfer. First, Plaintiff’s choice of forum should be accorded no weight as the first-to-file rule favors transfer. Second, litigation in California is inconvenient for AGIS Software, which is a limited liability company established and existing under the laws of Texas, with its principal place of business in Texas, and transferring this case to the Eastern District of Texas, is much more convenient for AGIS Software and its witnesses. Third, the relative ease of access to sources of proof weighs in favor of transfer, where AGIS Software maintains its documentary evidence in its Marshall, Texas office. Fourth, the Eastern District of

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1 Texas is already familiar with the subject matter and issues and could consolidate the case with other
 2 related cases, particularly where Smith Micro has already moved to intervene in the *AGIS Software*
 3 *Development LLC v. T-Mobile USA, Inc. et al.* Case.

4 The public interest factors strongly favor transferring this case to the Eastern District of
 5 Texas. A transfer will save judicial resources as Chief Judge Rodney Gilstrap is already familiar
 6 with the technical issues, and transfer would also protect against inconsistent rulings. Judge Gilstrap
 7 has already issued two claim construction orders for some of the same patents at issue in this case.
 8 There is also no dispute that Texas has a substantial local interest in adjudicating this dispute against
 9 AGIS Software, one of its residents. Lastly, the administrative difficulties flowing from court
 10 congestion favors the Eastern District of Texas, where time from filing to trial in the Eastern District
 11 of Texas is less than this District.

12 This motion is based upon this notice of motion, the accompanying memorandum of points
 13 and authorities, the accompanying declaration and exhibits, the pleadings and papers filed herein,
 14 as well as any other and further matters, papers, and arguments as may be presented before the Court
 15 prior to or at the time of the hearing.

16 DATED: September 21, 2021

Respectfully submitted,

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By: /s/ Benjamin T. Wang

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