1   DARIN SNYDER (CA S.B. #136003)
    dsnyder@omm.com
2   LUANN L. SIMMONS (CA S.B. #203526)
    lsimmons@omm.com
3   MARK LIANG (CA S.B. # 278487)
    mliang@omm.com
4   BILL TRAC (CA S.B. #281437)
    btrac@omm.com
5   AMY LIANG (CA S.B. #291910)
    aliang@omm.com
6   SORIN ZAHARIA (CA S.B. #312655)
    szaharia@omm.com
7   DANIEL SILVERMAN (CA S.B. #319874)
    dsilverman@omm.com
8   **O'MELVENY & MYERS LLP**
    Two Embarcadero Center, 28th Floor
9   San Francisco, California 94111-3823
    Telephone: +1 415 984 8700
10

STACY YAE (CA S.B. #315663)
syae@omm.com
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, California 90071
Telephone: +1 213 430 6000

CASON COLE (TX S.B. #24109741)
ccole@omm.com
GRANT GIBSON (TX S.B.
#24117859)
ggibson@omm.com
O'MELVENY & MYERS LLP
2501 N. Harwood St., 17th Floor
Dallas, Texas 75201
Telephone: +1 972 360 1916

11 *Attorneys for Plaintiff*
    Google LLC

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13   **UNITED STATES DISTRICT COURT**

14   **NORTHERN DISTRICT OF CALIFORNIA**

15   **SAN JOSE DIVISION**

16

17 GOOGLE LLC,   Case No. 5:23-cv-03624-BLF

                    Plaintiff,   **AMENDED COMPLAINT FOR**
18   **DECLARATORY JUDGMENT**
    v.
19   **DEMAND FOR JURY TRIAL**
    AGIS HOLDINGS, INC., ADVANCED
20 GROUND INFORMATION SYSTEMS,
    INC., AND AGIS SOFTWARE
21 DEVELOPMENT LLC,

22   Defendants.

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                                            PLAINTIFF'S AMENDED COMPLAINT

Plaintiff Google LLC ("Google") brings this action for declaratory judgment against Defendants AGIS Holdings, Inc. ("AGIS Holdings"), Advanced Ground Information Systems, Inc. ("AGIS, Inc."), and AGIS Software Development LLC ("AGIS Software") (collectively "AGIS" or "AGIS Entities") and alleges:

NATURE OF THE ACTION

1.   This is an action for declaratory judgment of non-infringement, invalidity, and unenforceability of U.S. Patent No. 8,213,970 ("'970 Patent") (attached hereto as Exhibit L) against AGIS pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and the patent laws of the United States, 35 U.S.C. § 100 et seq., and for other relief the Court deems just and proper.

2.   Google requests this relief because AGIS has asserted in multiple cases that Google and others infringe the '970 Patent based on Google's Find My Device ("FMD") application.

3.   In 2017, AGIS Software asserted infringement of the '970 Patent based on FMD in cases filed in the Eastern District of Texas ("EDTX"), against Huawei, LG, ZTE, and HTC. *See AGIS Software Development LLC v. ZTE Corp.*, 2:17-cv-00517 (E.D. Tex.); *AGIS Software Development LLC v. LG Elecs. Inc.*, 2:17-cv-00515 (E.D. Tex.); *AGIS Software Development LLC v. HTC Corp.*, 2:17-cv-00514 (E.D. Tex.); *AGIS Software Development LLC v. Huawei Device USA Inc.*, 2:17-cv-00513 (E.D. Tex.). As part of those actions, AGIS Software served subpoenas on Google seeking discovery relating to FMD.

4.   In 2018, Google filed a petition for *inter partes* review ("IPR") challenging the patentability of claims 1 and 3-9 of the '970 Patent. *Google LLC v. AGIS Software Development LLC*, IPR2018-01079 (P.T.A.B.) (the "Google IPR"). The Patent Trial and Appeal Board issued a Final Written Decision determining that claims 1 and 3-9 were unpatentable. *Id.*, Paper No. 34 (Nov. 19, 2019). AGIS Software appealed the decision, which the Federal Circuit summarily affirmed. *AGIS Software Development, LLC v. Google LLC*, No. 20-1401, Dkt. 46 (Fed. Cir. Feb. 4, 2021).

PLAINTIFF'S AM. COMPLAINT FOR

5.   Before the PTAB's Final Written decision issued, in 2019, AGIS Software filed a complaint against Google in the Eastern District of Texas ("EDTX") asserting, among other claims, the '970 Patent against FMD. *AGIS Software Development LLC v. Google LLC*, No. 2:19-CV-00361-JRG (E.D. Tex. Nov. 4, 2019) ("*AGIS I*"). On May 15, 2020, a third-party *ex parte* reexamination ("EPR") request was filed challenging the patentability of claims 2 and 10-13 of the '970 Patent. While *AGIS I* was pending, AGIS Software amended the claims of the '970 Patent to overcome the prior art asserted during the EPR. After the EPR proceedings concluded, Google filed a Rule 12(b)(1) motion to dismiss AGIS Software's claims regarding the '970 Patent for lack of subject matter jurisdiction because AGIS Software had substantively amended the patent's asserted claims to avoid prior art. Before the EDTX court resolved that motion, the Federal Circuit ordered the case transferred to the Northern District of California ("NDCA"). *In re Google LLC*, No. 2022-140-42, 2022 WL 1613192, at *1 (Fed. Cir. May 23, 2022).

6.   The *AGIS I* case was assigned to Judge Beth Labson Freeman in this District. *AGIS Software Development LLC v. Google LLC*, No. 5:22-CV-04826-BLF ("the NDCA Case"). Google then refiled in this District its motion to dismiss the '970 Patent for lack of subject matter jurisdiction. In response, AGIS Software dismissed the '970 Patent with prejudice. *See* the NDCA Case, Dkts. 437, 438. Other aspects of the NDCA Case remain pending before Judge Freeman.

7.   Before AGIS Software agreed to dismiss the '970 Patent with prejudice from the NDCA Case, it filed a duplicative action against Google in the Western District of Texas, asserting the amended claims of the '970 Patent against the same Google FMD application. *AGIS Software Development LLC v. Google LLC*, No. 6:23-CV-00160-DC-DTG ("the WDTX Case").

8.   On April 4, 2023, the WDTX court granted Google's unopposed motion to stay the WDTX Case. *See* WDTX Case, Dkt. 11. As stated in the unopposed motion to stay, AGIS Software agreed to transfer the WDTX Case to this District following the stay: "[t]he parties have agreed that if and after the requested stay has been lifted, AGIS will not oppose a motion by

1   Google to transfer this case to the Northern District of California following the stay." *See* WDTX

2   Case, Dkt. 10 at 3 n.1.

3   9.   On July 20, 2023, while the case was still stayed, AGIS Software voluntarily

4   dismissed the WDTX Case, stating that the dismissal was without prejudice pursuant to Federal

5   Rule of Civil Procedure 41(a)(1)(A)(i). *See* WDTX Case, Dkt. 12.

6   10.   Google denies that it has infringed or is infringing any claims of the '970 Patent,

7   denies that any claim of the '970 Patent is valid or enforceable, and denies that AGIS can assert

8   any claim of the '970 Patent against Google.

9   11.   An actual and justiciable controversy therefore exists under 28 U.S.C. §§ 2201-

10   2202 between Google and AGIS regarding the '970 Patent.

THE PARTIES

12   12.   Plaintiff Google LLC is a subsidiary of Alphabet Inc. with its principal place of

13   business located at 1600 Amphitheatre Parkway, Mountain View, California 94043.

14   13.   According to Florida public records, Defendant AGIS Holdings, Inc. is organized

15   and existing under the laws of the State of Florida, and maintains its principal place of business at

16   92 Lighthouse Drive, Jupiter, FL 33469.

17   14.   According to Florida public records, Defendant AGIS, Inc. is organized and

18   existing under the laws of the State of Florida, and maintains its principal place of business at 92

19   Lighthouse Drive, Jupiter, FL 33469.

20   15.   On information and belief, Defendant AGIS Software is an agent and alter ego of

21   AGIS, Inc and AGIS Holdings, Inc.. According to AGIS Software's allegations in another

22   litigation between the parties, AGIS Software is a Texas limited liability company, having its

23   principal place of business at 100 W. Houston Street, Marshall, Texas 75670. Exhibit K ¶ 1.

JURISDICTION AND VENUE

25   16.   This is a declaratory judgment action for patent non-infringement, invalidity, and

26   unenforceability arising under the patent laws of the United States, Title 35, United States Code,

27   Section 100 *et seq*. This Court has subject matter jurisdiction over this controversy pursuant to 28

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PLAINTIFF'S AM. COMPLAINT FOR

1   U.S.C. §§ 1331, 1338(a), 2201 and 2202.

2   **I.   AGIS Software And AGIS, Inc. Accused Google Of Infringing The '970 Patent Based On FMD**

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4   17.   AGIS Software asserted the '970 Patent against FMD and Google in *AGIS I*,

5   which was transferred to the NDCA, in the WDTX Case, and, along with AGIS, Inc., in

6   International Trade Commission ("ITC") Investigation No. 337-TA-1347 ("ITC Action"). AGIS

7   Software dismissed its '970 Claims from the NDCA Case, voluntarily dismissed the WDTX case,

8   and, along with AGIS, Inc., voluntarily withdrew its complaint in the ITC Action.

9   **II.   Google Seeks Declaratory Judgments That It Does Not Infringe The '970 Patent And That The '970 Patent Is Invalid And Unenforceable**

10   18.   Google denies that it infringes or has infringed the '970 Patent through the

11   making, using, distributing, sale, offering for sale, exportation, or importation of FMD or any

12   related services for FMD or through the making, using, distributing, sale, offering for sale,

13   exportation, or importation of devices that may be configured to run FMD.

14   19.   AGIS's infringement allegations, asserted in related actions, threaten actual and

15   imminent injury to Google that can be redressed by judicial relief and warrants the issue of a

16   declaratory judgment, under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq*.

17   20.   An actual and justiciable controversy with respect to the '970 Patent exists

18   between Google and AGIS Software, and also exists between Google and AGIS, Inc., and AGIS

19   Holdings under an alter ego theory.

20   **III.   AGIS Is Subject To The Specific Jurisdiction Of This Court**

21   21.   AGIS Software, AGIS, Inc., and AGIS Holdings are each subject to this Court's

22   specific jurisdiction, pursuant to due process and/or the California Long Arm Statute. As an

23   initial matter, the facts supporting personal jurisdiction individually over AGIS Software and

24   AGIS, Inc. also confer jurisdiction over each other AGIS entity because: (A) AGIS Software,

25   AGIS, Inc., and/or AGIS Holdings are alter egos of each other, such that contacts with the State

26   of California by any of the AGIS Entities should be considered in the personal jurisdiction

27   analysis for each AGIS Entity; and (B) AGIS Software is a sham entity created to avoid

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