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10 *Attorneys for Plaintiff*
 11 *Google LLC*

12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**
 14 **SAN JOSE DIVISION**

15
 16 GOOGLE LLC,
 17
 Plaintiff,
 18
 v.
 19
 20 AGIS HOLDINGS, INC., ADVANCED
 GROUND INFORMATION SYSTEMS,
 INC., AND AGIS SOFTWARE
 21 DEVELOPMENT LLC,
 22
 Defendants.

Case No. 5:23-cv-03624-BLF
**AMENDED COMPLAINT FOR
 DECLARATORY JUDGMENT**
DEMAND FOR JURY TRIAL

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

5 NATURE OF THE ACTION

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

11 2. Google requests this relief because AGIS has asserted in multiple cases that
12 Google and others infringe the ’970 Patent based on Google’s Find My Device (“FMD”)
13 application.

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

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

28

PLAINTIFF’S AM. COMPLAINT FOR

1 5. Before the PTAB’s Final Written decision issued, in 2019, AGIS Software filed a
2 complaint against Google in the Eastern District of Texas (“EDTX”) asserting, among other
3 claims, the ’970 Patent against FMD. *AGIS Software Development LLC v. Google LLC*, No.
4 2:19-CV-00361-JRG (E.D. Tex. Nov. 4, 2019) (“*AGIS I*”). On May 15, 2020, a third-party *ex*
5 *parte* reexamination (“EPR”) request was filed challenging the patentability of claims 2 and 10-
6 13 of the ’970 Patent. While *AGIS I* was pending, AGIS Software amended the claims of the
7 ’970 Patent to overcome the prior art asserted during the EPR. After the EPR proceedings
8 concluded, Google filed a Rule 12(b)(1) motion to dismiss AGIS Software’s claims regarding the
9 ’970 Patent for lack of subject matter jurisdiction because AGIS Software had substantively
10 amended the patent’s asserted claims to avoid prior art. Before the EDTX court resolved that
11 motion, the Federal Circuit ordered the case transferred to the Northern District of California
12 (“NDCA”). *In re Google LLC*, No. 2022-140-42, 2022 WL 1613192, at *1 (Fed. Cir. May 23,
13 2022).

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

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

24 8. On April 4, 2023, the WDTX court granted Google’s unopposed motion to stay the
25 WDTX Case. *See* WDTX Case, Dkt. 11. As stated in the unopposed motion to stay, AGIS
26 Software agreed to transfer the WDTX Case to this District following the stay: “[t]he parties
27 have agreed that if and after the requested stay has been lifted, AGIS will not oppose a motion by
28

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.

11 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.

24 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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1 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

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

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**
10 **And That The '970 Patent Is Invalid And Unenforceable**

11 18. Google denies that it infringes or has infringed the '970 Patent through the
12 making, using, distributing, sale, offering for sale, exportation, or importation of FMD or any
13 related services for FMD or through the making, using, distributing, sale, offering for sale,
14 exportation, or importation of devices that may be configured to run FMD.

15 19. AGIS's infringement allegations, asserted in related actions, threaten actual and
16 imminent injury to Google that can be redressed by judicial relief and warrants the issue of a
17 declaratory judgment, under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*

18 20. An actual and justiciable controversy with respect to the '970 Patent exists
19 between Google and AGIS Software, and also exists between Google and AGIS, Inc., and AGIS
20 Holdings under an alter ego theory.

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

22 21. AGIS Software, AGIS, Inc., and AGIS Holdings are each subject to this Court's
23 specific jurisdiction, pursuant to due process and/or the California Long Arm Statute. As an
24 initial matter, the facts supporting personal jurisdiction individually over AGIS Software and
25 AGIS, Inc. also confer jurisdiction over each other AGIS entity because: (A) AGIS Software,
26 AGIS, Inc., and/or AGIS Holdings are alter egos of each other, such that contacts with the State
27 of California by any of the AGIS Entities should be considered in the personal jurisdiction
28 analysis for each AGIS Entity; and (B) AGIS Software is a sham entity created to avoid

PLAINTIFF'S AM. COMPLAINT FOR

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