

DARIN SNYDER (CA S.B. #136003)  
dsnyder@omm.com

LUANN L. SIMMONS (CA S.B. #203526)  
lsimmons@omm.com

MARK LIANG (CA S.B. #278487)  
mliang@omm.com

BILL TRAC (CA S.B. #281437)  
btrac@omm.com

AMY LIANG (CA S.B. #291910)  
aliang@omm.com

SORIN ZAHARIA (CA S.B. #312655)  
szaharia@omm.com

DANIEL SILVERMAN (CA S.B. #319874)  
dsilverman@omm.com

**O'MELVENY & MYERS LLP**

Two Embarcadero Center, 28th Floor  
San Francisco, California 94111-3823  
Telephone: +1 415 984 8700

*Attorneys for Plaintiff  
Google LLC*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

GOOGLE LLC,

**Plaintiff.**

v.

AGIS HOLDINGS, INC., ADVANCED  
GROUND INFORMATION SYSTEMS,  
INC., AND AGIS SOFTWARE  
DEVELOPMENT LLC

## Defendants

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

Hon. Judge Beth L. Freeman

**GOOGLE LLC'S OPPOSITION TO  
DEFENDANTS' MOTION TO  
DISMISS, OR IN THE  
ALTERNATIVE, TO TRANSFER**

Date: March 21, 2024

Time: 9:00 a.m.

Location: Courtroom 3

## TABLE OF CONTENTS

		<b>Page</b>	
1	I.	INTRODUCTION .....	1
2	II.	FACTUAL AND PROCEDURAL BACKGROUND.....	1
3	A.	The Parties.....	1
4	B.	'970 Patent Litigation History.....	2
5	III.	THIS COURT HAS PERSONAL JURISDICTION OVER THE AGIS ENTITIES .....	4
6	A.	Legal Standard For Personal Jurisdiction .....	4
7	B.	AGIS Entities Are Alter Egos For Purposes Of Personal Jurisdiction .....	4
8	1.	There Is Unity Of Interest And Ownership.....	4
9	2.	Justice Requires Disregarding AGIS's Putative Separate Identities.....	7
10	C.	AGIS Entities' Contacts With This District Confer Personal Jurisdiction .....	7
11	1.	AGIS's Contacts With Google Confer Personal Jurisdiction .....	8
12	a.	AGIS Purposefully Directed Activities At Google .....	8
13	b.	AGIS's Contacts With Google Relate To Google's Claims .....	9
14	2.	AGIS's Contacts With Third Parties Establish Personal Jurisdiction.....	10
15	D.	AGIS Has Consented To Jurisdiction In The Northern District Of California .....	11
16	E.	The Exercise Of Personal Jurisdiction Is Fair.....	12
17	F.	In The Alternative, Google Requests Jurisdictional Discovery .....	13
18	IV.	CLAIM PRECLUSION AND THE <i>KESSLER</i> DOCTRINE (COUNT III).....	13
19	A.	Legal Standards For Claim Preclusion And The <i>Kessler</i> Doctrine.....	13
20	B.	Google Has Sufficiently Pleaded Claim Preclusion And The <i>Kessler</i> Doctrine.....	14
21	V.	INEQUITABLE CONDUCT (COUNT IV).....	17
22	A.	Legal Standard Governing Inequitable Conduct.....	17
23	B.	Google Has Sufficiently Pleaded Inequitable Conduct.....	18
24	VI.	UNCLEAN HANDS (COUNT V).....	19
25	A.	Legal Standard Governing Unclean Hands.....	19
26	B.	Google Has Sufficiently Pleaded Unclean Hands.....	20
27	VII.	THIS CASE SHOULD NOT BE TRANSFERRED TO THE EDTX .....	21
28	A.	Legal Standard Governing Transfer.....	21
	B.	AGIS Fails To Show This Suit Could Have Been Brought In The EDTX.....	22
	C.	The EDTX Is Not More Convenient Than The NDCA .....	22

1                   **TABLE OF CONTENTS**  
2                   **(continued)**

	Page
3                 1. Google's Choice Of Forum Weighs Strongly Against Transfer.....	22
4                 2. Convenience Of Witnesses Weighs Strongly Against Transfer .....	22
5                 3. Access To Sources Of Proof Weighs Strongly Against Transfer .....	23
6                 4. Judicial Economy Weighs Strongly Against Transfer.....	24
7                 5. Remaining Factors Weigh Against Transfer Or Are Neutral.....	25
8                 VIII. CONCLUSION.....	25

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1                           **TABLE OF AUTHORITIES**

		<b>Page</b>
2	<b>CASES</b>	
3	<i>ActiveVideo Networks, Inc. v. Trans Video Elecs., Ltd.</i> , 4                           975 F. Supp. 2d 1083 (N.D. Cal. 2013) .....	10
5	<i>Acumed LLC v. Stryker Corp.</i> , 6                           525 F.3d 1319 (Fed. Cir. 2008).....	14
7	<i>AGIS Software Dev. LLC v. Google LLC</i> , No. 2:19-CV-00361-JRG (E.D. Tex.).....	passim
8	<i>AGIS Software Dev. LLC v. Google LLC</i> , No. 5:22-CV-04826-BLF .....	3
9	<i>AGIS Software Dev. LLC v. Google LLC</i> , No. 6:23-CV-00160-DC-DTG .....	3, 14
10	<i>AGIS Software Dev. LLC v. Samsung Elecs. Co.</i> , No. 2:22-cv-263-JRG-RSP .....	3, 4
11	<i>Allergan USA, Inc. v. Sun Pharm. Indus. Ltd.</i> , 2022 WL 11819975 (D. Del. Oct. 20, 2022) .....	20
12	<i>Apple Inc. v. VoIP-Pal.com, Inc.</i> , 506 F. Supp. 3d 947 (N.D. Cal. 2020) .....	12
13	<i>Apple Inc. v. Zipit Wireless, Inc.</i> , 30 F.4th 1368 (Fed. Cir. 2022).....	4
14	<i>Aspex Eyewear, Inc. v. Marchon Eyewear, Inc.</i> , 672 F.3d 1335 (Fed. Cir. 2012).....	15, 16
15	<i>Brain Life, LLC v. Elekta Inc.</i> , 746 F.3d 1045 (Fed. Cir. 2014).....	14
16	<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462 (1985).....	4, 8, 12
17	<i>Dainippon Screen Mfg. Co. v. CFMT, Inc.</i> , 142 F.3d 1266 (Fed. Cir. 1998).....	6, 7
18	<i>Elecs. for Imaging, Inc. v. Coyle</i> , 340 F.3d 1344 (Fed. Cir. 2003).....	9
19	<i>Erfindergemeinschaft UroPep GbR v. Eli Lilly &amp; Co.</i> , 2017 WL 275465 (E.D. Tex. Jan. 20, 2017).....	21
20	<i>Exergen Corp. v. Wal-Mart Stores, Inc.</i> , 575 F.3d 1312 (Fed. Cir. 2009).....	17
21	<i>Finjan, Inc. v. Juniper Network, Inc.</i> , 2018 WL 4181905 (N.D. Cal. Aug. 31, 2018).....	21
22	<i>Fresenius USA, Inc. v. Baxter Int'l, Inc.</i> , 721 F.3d 1330 (Fed. Cir. 2013).....	15

1                   **TABLE OF AUTHORITIES**  
 2                   **(continued)**

	Page
3 <i>Gilead Scis., Inc. v. Merck &amp; Co.</i> , 4                 888 F.3d 1231 (Fed. Cir. 2018).....	19
5 <i>Google Inc. v. Eolas Techs. Inc.</i> , 6                 2014 WL 2916621 (N.D. Cal. June 4, 2014) .....	11
7 <i>Google Inc. v. Rockstar Consortium U.S. LP</i> , 8                 2014 WL 1571807 (N.D. Cal. Apr. 17, 2014) .....	6, 7
9 <i>Graphics Properties Holdings, Inc. v. Google, Inc.</i> , 10                2014 WL 6629021 (D. Del. Nov. 20, 2014) .....	19
11 <i>In re Genentech, Inc.</i> , 12                566 F.3d 1338 (Fed. Cir. 2009).....	24, 25
13 <i>In re Google Inc.</i> , 14                2017 WL 977038 (Fed. Cir. Feb. 23, 2017).....	25
15 <i>In re Google LLC</i> , 16                2022 WL 1613192 (Fed. Cir. May 23, 2022) .....	passim
17 <i>In re Juniper Networks, Inc.</i> , 18                14 F.4th 1313 (Fed. Cir. 2021).....	24
19 <i>In re PersonalWeb Techs. LLC</i> , 20                961 F.3d 1365 (Fed. Cir. 2020).....	17
21 <i>In re Samsung Elecs. Co.</i> , 22                2 F.4th 1371 (Fed. Cir. 2021).....	23
23 <i>Inamed Corp. v. Kuzmak</i> , 24                249 F.3d 1356 (Fed. Cir. 2001).....	12
25 <i>Jack Henry &amp; Assocs., Inc. v. Plano Encryption Techs. LLC</i> , 26                910 F.3d 1199 (Fed. Cir. 2018).....	11
27 <i>Jazz Pharms., Inc. v. Roxane Lab'ys, Inc.</i> , 28                2013 WL 6858765 (D.N.J. Dec. 30, 2013) .....	20
29 <i>Laitram Corp. v. NEC Corp.</i> , 30                163 F.3d 1342 (Fed. Cir. 1998).....	15
31 <i>Laub v. U.S. Dep't of Interior</i> , 32                342 F.3d 1080 (9th Cir. 2003).....	13
33 <i>Levi Strauss &amp; Co. v. Abercrombie &amp; Fitch Trading Co.</i> , 34                719 F.3d 1367 (Fed. Cir. 2013).....	16
35 <i>Life360, Inc. v. AGIS, Inc.</i> , 36                No. 15-cv-151-BLF, 2015 WL 5612008 (N.D. Cal. Sept. 21, 2015) .....	11
37 <i>Lyft, Inc. v. AGIS Software Dev. LLC</i> , 38                2022 WL 1991265 (N.D. Cal. June 6, 2022) .....	5

# Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

### API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

### LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

### FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

### E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.