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Plaintiff AGIS Software Development LLC (“AGIS”), by and through its undersigned counsel, submits this response in opposition to LG Electronics, Inc.’s (“LG”) Motion to Supplement the Record in Support of its Pending Motion to Dismiss Pursuant for Lack of Personal Jurisdiction or, in the Alternative, to Transfer Venue to the Northern District of California (513 Dkt. 46).

### **I. BACKGROUND**

LG’s motion to supplement the record on its motion to transfer venue should be denied because LG is seeking to capitalize on its own failure to provide adequate discovery to AGIS about the features and functionalities of the accused infringing applications. AGIS has attempted for months to obtain the information it needs from LG itself, only to be stonewalled by LG, which has failed and refused to provide the relevant discovery and denies that it has such information. Relevant portions of LG’s Objections and Responses to AGIS’s First Set of Interrogatories 1-10 are annexed as Exhibit A. AGIS has effectively been forced to seek that information via deposition and document subpoenas served on non-party Google LLC (“Google”). LG now seizes upon that, disingenuously arguing that this somehow “undermines the credibility of its previous efforts to discount the relevance of Google’s witnesses, source code and other information to this action” and that this supports the transfer of this action to the Northern District of California pursuant to 28 U.S.C. § 1404(a). (514 Dkt. 66 at 3). To be clear, AGIS has not, on its own, acknowledged that Google possesses the relevant information or that Google witnesses are knowledgeable of the relevant facts. AGIS simply has had no choice but to serve Google with document and deposition subpoenas in the hope of obtaining what LG has refused to provide. LG

should not now be permitted to take advantage of its own failure to produce as a guise to strengthen its case for a transfer of venue to what LG perceives will be a more favorable forum.

The thrust of LG's motion is that AGIS's subpoena, addressed to Google's Mountain View, California headquarters, is proof positive that this action should be transferred to the Northern District of California. This is simply not the case. There is no evidence before this Court as to what responsive documents and witness testimony Google possesses, merely the cursory declarations from two Google employees that were submitted by LG's co-defendant ZTE months ago. (Dkt. 51-4,5).<sup>1</sup> Most telling is the fact that in response to AGIS's subpoenas, Google objected and refused to produce the relevant information *on the grounds that the information is or may be in LG's possession*. See Google LLC's Objections and Responses to Plaintiff AGIS Software Development, LLC's Deposition and Document Subpoenas (hereinafter, "Google's Objections and Responses"), a copy of which is annexed as Exhibit B.<sup>2</sup> AGIS is thus caught in the middle, between LG and Google, neither of whom is willing to produce information about the accused applications. To this day, LG has not identified any documents or witnesses in the proposed transferee district that are central to the outcome of this case, that so dramatically tip the balance of the public and private interest factors as to justify transfer of venue at this time.

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<sup>1</sup> Declarations of Google employees Andrew Oplinger and William Luh virtually identical to those referred to and relied upon by LG here (517 Dkt. 51-4, 5), were already considered by this Court in connection with Huawei Device (Dongguan) Co., Ltd.'s ("Huawei") Motion to Transfer Venue (513 Dkt. 36-4, 5). The Court found, "[n]otably, Huawei does not identify with any particularity any specific Google employees that they anticipating calling at trial or any documentation they plan to present as evidence." (513 Dkt. 140).

<sup>2</sup> Specifically, Google objected to the subpoena "to the extent that it requests documents or information that can be requested with much less burden from one or more parties to the litigation. In particular, Google objects to producing documents duplicative of those the named-defendants have [sic] already produced or may produce in their respective litigations." See Google's Objections and Responses at ¶ 7.

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