IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

AGIS SOFTWARE DEVELOPMENT LLC,	§ § §	Case No. 2:21-cv-00072-JRG (LEAD CASE)
Plaintiff,	§ §	**JURY TRIAL DEMANDED**
v.	§ §	
T-MOBILE USA, INC. and T-MOBILE US, INC.,	§ § §	
Defendants.	§ § § §	

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S SUR-REPLY
IN OPPOSITION TO INTERVENORS SMITH MICRO SOFTWARE, INC.
AND SMITH MICRO SOFTWARE, LLC'S MOTION TO INTERVENE AND
MOTION TO STAY PROCEEDINGS AS TO ITS ACCUSED TECHNOLOGY,
PENDING ADJUDICATION OF THEIR PENDING DECLARATORY JUDGMENT
ACTION AGAINST AGIS SOFTWARE DEVELOPMENT LLC (DKT. 114)**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Plaintiff AGIS Software Development LLC ("AGIS" or "Plaintiff"), by and through its undersigned counsel, hereby submits this sur-reply in opposition to Intervenors Smith Micro Software, Inc. ("SMSI") and Smith Micro Software, LLC's ("SMSL") (collectively, "Intervenors") Motion to Intervene and Motion to Stay Proceedings as to its Accused Technology Pending Adjudication of Their Pending Declaratory Judgment Action Against AGIS Software Development LLC (Dkt. 114) (the "Motion").

I.   INTRODUCTION

Intervenors' Motion to Stay Proceedings should be denied. Contrary to Intervenors' assertions, the customer-suit exception *and* the factors addressing whether a motion to stay is warranted both weigh against granting a stay here.

For the first time on reply, Intervenors suggest that this case should be severed because it is "bright-line easy and efficient." Intervenors, nor Defendants T-Mobile USA, Inc. and T-Mobile US, Inc., have moved for severance of this case. Nonetheless, Intervenors cannot dispute that the same patents, same infringement issues, and same validity issues exist such that staying the present case in favor of Intervenors' later-filed declaratory judgment action would result in a duplication of efforts, particularly where parties have already begun claim construction. Given the number of pending cases in this District, the guiding principles in the customer-suit exception cases of "efficiency" and "judicial economy" would be best served by denying Intervenor's motion to stay.

II.   A STAY IS NOT WARRANTED BASED ON THE CUSTOMER-SUIT EXCEPTION

It is undisputed that Intervenors' action for declaratory judgment was filed *after* the complaint was filed in the present case. *See* Resp. at 6. Accordingly, the first-to-file rule applies.

Staying the present action and permitting the *NDCA* Case to proceed would not resolve all issues with regard to the T-Mobile defendants. The *NDCA* Case does not address the T-Mobile

Fleet Management Solutions applications, systems, and servers, SyncUp FLEET, SyncUP DRIVE, SyncUP TRACKER, Geotab Drive, Geotab G08, Geotab G09, and MyGeotab which have been accused here.

Moreover, Courts have "declined to apply the customer-suit exception to cases when the manufacturer is charged with *indirect* infringement and the reseller is charged with *direct* infringement of a method patent because the two claims are not dispositive of each other—the outcome of the indirect infringement suit involving the manufacturer may not dispose entirely of all the claims in the direct infringement suit involving the customer." *Parallel Networks Licensing, LLC v. Superior Turnkey Sol.'s Grp., Inc.*, No. 4:19-cv-516, 2020 WL 2098203, at *2 (E.D. Tex. May 1, 2020) (citation omitted). The *NDCA* Case does not address, for example, claims of the '829 Patent, which includes limitations such as "performing, by one or more server devices" and "wherein the one or more server devices receive the first location information using an Internet Protocol." Ex. 1, '829 Patent at claims 1, 16. Moreover, the '728 and '724 Patents disclose "[a] method of establishing a cellular phone communication network for designated participating users . . . ." Ex. 2, '728 Patent at claim 7; Ex. 3, '724 Patent at claim 9. Accordingly, Intervenors' allegation that the *NDCA* Case would resolve "all issues as to the Family Products" (Reply at 2) is incorrect. T-Mobile is not merely a reseller of Intervenors' products, but rather, has directly infringed the method claims of the Asserted Patents. *See Parallel Networks*, 2020 WL 2098203, at *3 ("And Parallel Networks provided some evidence that Superior Turnkey directly infringed the method claims of the patents-in-suit by using, or providing and causing to be used, Citrix products.").

Based on publicly available information, "T-Mobile's primary location and parental controls platform was developed by Circle Media Labs." *See* Ex. 4, SMSI Coverage. Intervenors

DOCKET ALARM

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.