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Plaintiff AGIS Software Development LLC (“AGIS” or “Plaintiff”), by and through its undersigned counsel, hereby submits this sur-reply in further support of its opposition to Defendants T-Mobile USA, Inc. and T-Mobile US, Inc.’s (collectively, “Defendants” or “T-Mobile”) Motion to Dismiss (Dkt. 46) (the “Motion”).

Defendants incorporate by reference the entirety of Defendant Uber Technologies, Inc., d/b/a Uber’s (“Uber”) Motion to Dismiss (“Uber’s Motion”) and the arguments set forth by Uber, despite non-overlapping patents specific to Defendants. *See* Dkt. 86. Defendants’ reliance on *Borman v. Shamrock Energy Sols., LLC* is unpersuasive where third-party plaintiff, Shamrock Energy Solutions, LLC, filed a motion for summary judgment, and Defendants incorporated by reference their own memoranda on a motion to dismiss where parties “argued at length” whether the *Marcel* Exception to the Louisiana Oilfield Indemnity Act applied. 421 F. Supp. 3d 382, 386 (E.D. La. 2019). The Court denied the motion as premature and the motion for summary judgment which “suffer[ed] from no such temporal deficiency,” was brought to the Court when that issue became ripe. *See id.* Defendants do not argue that the same issue is applicable here. Nonetheless, AGIS has responded to both Defendants’ and Uber’s Motions. In addition, despite relying on Uber’s briefing and arguments in support of its Motion, Defendants appear to take issue with AGIS responding to the *same arguments* with the *same responses*, reaching the conclusion that AGIS is expected to develop new arguments in response. Nonetheless, AGIS has already responded to the specific arguments set forth by Uber and, to the extent Defendants merely reference and incorporate by reference Uber’s Reply, AGIS incorporates by reference its sur-reply to Uber’s Motion. *See generally* Dkt. 69.

I. THE ’728 PATENT IS DIRECTED TO PATENT ELIGIBLE SUBJECT MATTER

As set forth in its sur-reply to Uber’s Motion, AGIS is not collaterally estopped from arguing for claim construction of the terms of the ’728 Patent. Dkt. 69 at 7-8. Uber’s arguments

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