

Samsung filed its Sur-Reply in opposition to AGIS’s Motion on July 26, 2023. Dkt. 91. In its sur-reply, Samsung made certain misrepresentations regarding the prior litigation history between the parties and conflates the various versions of FMD. Specifically, Samsung alleges that “AGIS could have accused ‘new versions’ of FMD at the outset of this case, but it deliberately chose not to” and that “[r]ather than accusing FMD from the start . . . AGIS strategically delayed while repeatedly represented to Samsung and this Court that it would not accuse FMD to avoid a stay pending its ITC action—representations on which Samsung reasonably relied.” Dkt. 91 at 4-5. These statements are based on express and implicit misrepresentations. Accordingly, AGIS seeks leave to address the misrepresentations made in Samsung’s Sur-Reply.

As submitted in its request for a hearing, AGIS noted that the requested Google FMD information is relevant to Samsung’s position in opposition to this motion that AGIS unduly delayed in amending its infringement contentions, and it supports the timeliness of AGIS’s addition of Find My Device to the Amended Complaint on June 16, 2023 (Dkt. 69), which was filed in accordance with the Court’s deadline to file amended pleadings (Dkt. 66 at 5), and to which Samsung filed a responsive Answer on June 30, 2023 (Dkt. 80).

Prior to Mr. Dinu’s deposition, AGIS believed that it could not accuse Samsung devices with FMD in this Court based on the record relied upon by the Federal Circuit in the petition for mandamus. However, new information obtained during a June 15, 2023 deposition of Google’s engineer, Sorin Dinu, in a now-terminated ITC investigation has revealed that Google has made deliberate and material misrepresentations to this Court and the Federal Circuit in an effort to gain transfer. The Dinu Deposition demonstrates that Samsung’s Sur-Reply incorrectly conflates FMD versions (*e.g.*, 2017 versus present) and that AGIS could not have accused new versions of FMD in this case until June 15, 2023. *See, e.g.*, Dinu Tr. at 48:3-49:17; 59:1-60:5; 60:12-62:13; 63:13-67:6; 70:5-76:2; 76:5-77:16; 78:11-79:19; 81:3-82:19; 92:2-16; 93:1-13; 96:2-16; and Exhibits 12, 13, 14,

15, and 16.

Briefing on AGIS's Motion closed on July 26, 2023. Local Rule CV-7 allows for additional briefing with the Court's leave. L.R. CV-7(f), (k). There is good cause to allow AGIS to supplement its briefing. To determine whether there is "good cause," the Court must consider: (1) the explanation for the failure to timely [include the evidence and arguments]; (2) the importance of the [evidence and arguments]; (3) potential prejudice in allowing the [evidence]; and (4) the availability of a continuance to cure such prejudice. *See Reliance Ins. Co. v. Louisiana Land & Expl. Co.*, 110 F.3d 253, 257 (5th Cir. 1997) (considering good cause to supplement). First, AGIS could not have addressed Samsung's arguments in its Motion or Reply because Samsung first raised the arguments in its Sur-Reply. Second, as described above, the supplemental brief is directly relevant to Samsung's new arguments in its Sur-Reply regarding various versions of Find My Device and the alleged availability of these versions. Third, there is no prejudice to Samsung because AGIS is merely addressing the arguments that Samsung has *already* made. Fourth, even if there was any alleged prejudice, a continuance is not necessary where the hearing is scheduled for August 22, 2023, and thus, to the extent necessary, Samsung would have sufficient opportunity to respond.

Accordingly, AGIS respectfully requests that the Court grant its motion for leave to file a supplemental brief in support of its Motion for Leave to Amend its Disclosure of Asserted Claims and Infringement Contentions, in response to Defendants' Sur-Reply in Opposition to Plaintiff AGIS Software Development LLC's Opposed Motion for Leave

Dated: August 11, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on August 11, 2023, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Alfred R. Fabricant
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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(h), the undersigned hereby certifies that counsel for Plaintiff met and conferred with counsel for Defendants on August 8, 2023. Defendants have indicated they oppose.

/s/ Alfred R. Fabricant
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