

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

AGIS SOFTWARE DEVELOPMENT LLC,	§	Case No. 2:22-cv-00263-JRG-RSP
	§	
Plaintiff,	§	<u>JURY TRIAL DEMANDED</u>
	§	
v.	§	
	§	
SAMSUNG ELECTRONICS CO., LTD.,	§	
ET AL.,	§	
Defendants.	§	
	§	
	§	

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S RESPONSE TO
SAMSUNG'S MOTION FOR LEAVE TO AMEND ANSWER TO ADD CLAIM
PRECLUSION AND *KESSLER* DOCTRINE AFFIRMATIVE DEFENSES (DKT. 101)**

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Defendants' Motion should be denied because the proposed claim preclusion and *Kessler* doctrine affirmative defenses are futile. Defendants premise their Motion on the dismissals in *Google I* and *Google II* but ignore one critical fact—Google and AGIS jointly moved and stipulated to dismissal in *Google I* **only** as to AGIS's causes of action under pre-reexamination, of original asserted claims of the '970 Patent which Google contended had been extinguished as a result of the reexamination, rendering AGIS's *Google I* infringement claims moot. Indeed, the *Google I* Dismissal Order explicitly states:

The Parties agree that this stipulation and motion to dismiss concern the asserted claims of the '970 Patent that issued on July 3, 2012. ***This dismissal does not cover the reexamination-amended claims of the '970 Patent that issued on December 9, 2021 and that are not asserted in this action.***

See Ex. P, Order Dismissing '970 Patent from *Google I*, n.1 (emphasis added). In seeking dismissal of the pre-reexamination original asserted claims of the '970 Patent, Google conceded that the reexamination-amended claims contained substantive, material differences from their original form, and therefore, the *Google I* dismissal cannot support a defense of claim preclusion as to the reexamination-amended claims of the '970 Patent. Defendants fail to identify any legal authority that supports their novel theory that the *Google I* dismissal operates as a judgment on the merits, and therefore, cannot apply the *Google II* voluntary dismissal defensively against AGIS.

Defendants further fail to articulate any legally supportable theory under which a dismissal against *Google* could operate as a judgment in favor of *Samsung*. Defendants' claim preclusion and *Kessler* doctrine arguments all ignore that the Accused Products in this action are different those accused in the *Google* actions, instead relying on overlap between accused functionality of FMD with respect to some (but not **all**) limitations. Accordingly, Defendants' Motion should be denied.

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