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I. INTRODUCTION

Plaintiff AGIS Software Development, LLC (“AGIS”) files this response in opposition to Defendants Samsung Electronics Co., Ltd. (“SEC”) and Samsung Electronics America, Inc.’s (“SEA”) (collectively, “Samsung” or “Defendants”) motion for leave to amend invalidity contentions Under P.R. 3-6(b) (Dkt. 122).

Samsung seeks leave to extensively supplement their invalidity contentions to add contentions and claim charts concerning the following three documents:

- (1) **Haney**: US Patent Publication. No. 2006/0223518 which is a publication of U.S. Patent Application No. 11/099,362 filed on April 4, 2005 and which issued as U.S. Patent No. 7,353,034 on April 1, 2008 (*See Exhibit 1*);
- (2) **Beyer-612**: US Patent Publication. No. 2006/0199612 which is a publication of U.S. Patent Application No. 11/308,648 filed on April 17, 2006 and which issued as U.S. Patent No. 7,630,724 on December 8, 2009 (*See Exhibit 2*); and
- (3) **Beyer-728**: US Patent No. 7,031,728 which issued on April 18, 2006 from U.S. Patent Application No. 10/711,490 filed on September 21, 2004.

None of these documents are new to Samsung. Samsung and its counsel have known about the Beyer-612 and Beyer-728 documents since at least November 14, 2019 and the Haney document since at least June 8, 2020. In fact, Samsung specifically asserted invalidity of the ’970 Patent based on Haney, Beyer-612, and Beyer-728 as early as June 8, 2020 and February 6, 2023. There is no excuse for Samsung’s omission of these documents from their February 23, 2023 invalidity contentions. Because Samsung’s delay is inexcusable and because Samsung cannot show good cause, the Court should deny the motion for leave to amend their invalidity contentions.

II. BACKGROUND

On November 4, 2019, AGIS filed a complaint against Samsung asserting the '123 and '829 Patents. *AGIS Software Dev., LLC v. Samsung Elecs. Co., et al.*, No. 2:19-cv-362-JRG, Dkt. 1 (E.D. Tex. Nov. 4, 2019) (“*Samsung I*”). 4, 2019) (“*Samsung I*”). Samsung was served on November 14, 2019. The attachments to the complaint include the asserted patents, which expressly identify the application and patent numbers of the proposed references identified as Beyer-612 and Beyer-728. *See, e.g.*, Exhibit 3. Thus, Samsung has known about the Beyer-612 and Beyer-728 documents since at least November 14, 2019.

Samsung I was consolidated with two other cases against Google and Waze and transferred to the Northern District of California (“NDCA”) in accordance with an order issued by the Federal Circuit. *Id.* at Dkt. 22, 139. On June 8, 2020, Samsung served joint invalidity contentions identifying the Haney, Beyer-612, and Beyer-728 documents. *See* Exhibit 4. Based on Samsung’s joint invalidity contentions, Samsung knew about the proposed Haney reference since at least June 8, 2020.

On December 22, 2022, the International Trade Commission (“ITC”) instituted an investigation (“*Samsung ITC*”) based on a complaint filed by AGIS against Samsung asserting the '970, '251, '838, '829, and '123 patents. *See* Exhibit 5. On February 6, 2023, Samsung filed a response to the *Samsung ITC* complaint identifying as prior art to the ' 970 Patent the Haney, Beyer-612, and Beyer-728 documents. *Id.* On April 28, 2023, Samsung served a notice of prior art in the *Samsung ITC* case identifying the Haney, Beyer-612, and Beyer-728 documents. *See* Exhibit 6.

Finally, there is no dispute that Samsung has been consistently represented by the same counsel across the *Samsung I*, *Samsung ITC*, and *Samsung II* cases. *See, e.g.*, *AGIS Software Dev.*,

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