

**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
	§	
Plaintiff,	§	<u>JURY TRIAL DEMANDED</u>
	§	
v.	§	
	§	
SAMSUNG ELECTRONICS CO., LTD. and	§	
SAMSUNG ELECTRONICS AMERICA,	§	
INC.	§	
	§	
Defendants.	§	
	§	

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT, LLC'S
SUR-REPLY IN FURTHER OPPOSITION TO SAMSUNG'S MOTION FOR LEAVE
TO AMEND INVALIDITY CONTENTIONS UNDER P.R. 3-6(b) (DKT. 122)**

The Court should deny Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.’s (collectively, “Samsung”) motion for leave to amend invalidity contentions (Dkt. 122) because Samsung is unable to muster up a sufficient reason for not asserting the three long-known references on February 23, 2023. This is because either Samsung did not pay attention to the case or Samsung deliberately withheld the references as strategic choice.

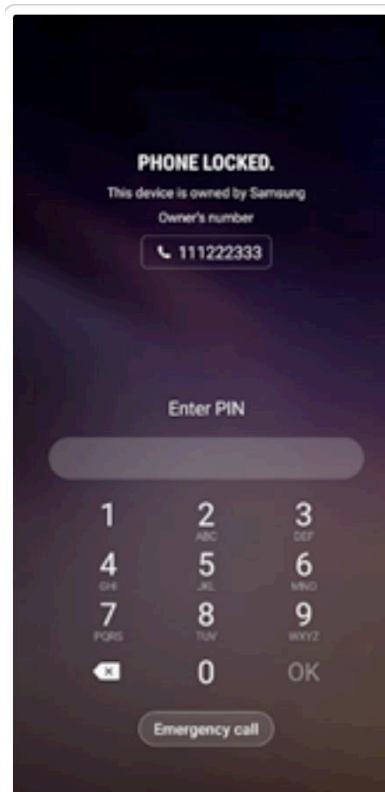
Samsung has abandoned their attempt to cast their conduct as “diligent in identifying and disclosing the additional references.” Dkt. 122 at 6. Samsung does not dispute that Samsung and their counsel have known about the Beyer-612 and Beyer-728 documents since at least November 14, 2019 and the Haney document since at least June 8, 2020. Samsung does not dispute their familiarity with these same references through subsequent history including, but not limited to: Samsung specifically asserting invalidity of the ’970 Patent in the *AGIS ITC* case based on Haney, Beyer-612, and Beyer-728 as early as June 8, 2020 and February 6, 2023. Dkt. 130 at 1-4.

Despite omitting from its Motion the long history of knowledge and familiarity with these references, Samsung refocuses on one excuse: the addition of FMD to the June 16, 2023 Second Amended Complaint raised the new issue of *generating an emergency¹ response*. This excuse is pure pretext and desperately misleading.

At the outset of the case, AGIS accused Samsung Knox which contains virtually identical features as compared to FMD, including the capability to initiate responses via a lock interface. Samsung’s claim that “the additional references disclose features that are directly comparable to AGIS’ allegations that FMD’s ‘Emergency Call’ icon, ‘Call Owner’ button, and ‘unlock option’

¹ *Generating an emergency response* is not a claim limitation of the ’970 Patent, and Samsung does not explain the application of the phrase to this case. Presumably, Samsung intends to refer to a claimed response from a recipient device. In responding to Samsung’s arguments, AGIS does not intend to limit or modify any existing infringement contentions and/or to propose an interpretation or meaning for any terms.

provide a ‘selected response’ or a ‘manual response’ as required by the asserted claims of the ‘970 Patent,” (Dkt. 122 at 7) ignores the fact that similar (if not identical) features are included in AGIS’ contentions of Samsung Knox. Each of the below features were accused in AGIS’ September 12, 2022 infringement contentions² for Samsung Knox using the figure reproduced below.



See Exhibit 8. Thus, the proposed amendments are not responsive to FMD, and there is no real excuse for Samsung to withhold the assertion of three documents from their February 23, 2023 invalidity contentions, despite having knowledge and familiarity with the documents since 2019-2020. The Court should not reward Samsung’s continuous misrepresentations and omissions.

The remainder of Samsung’s Reply is dedicated to recycling rejected arguments from other motions, including alleging delay in asserting infringement of FMD. Such arguments are

² This identification is not intended to limit or otherwise modify the scope of AGIS’ contentions.

irrelevant to the relief sought in this Motion, and they do not address the lack of importance of the proposed amendment and the prejudice to AGIS.

In the absence of a good reason for Samsung's lack of diligence, AGIS is unduly prejudiced by Samsung's inattention or deliberate disregard of the February 23, 2023 deadline for invalidity contentions. Samsung's long delay in asserting the documents undermines their importance, as does the undisputed fact that Samsung already has asserted 19 distinct prior art patents and publications and 4 prior art systems against the '970 Patent alone and 16 distinct prior art patents and publications and 5 prior art systems against the '838 Patent. *See* Dkt. 130 at 5 *citing* Exhibit 7 at 7-10, 28-35.

The inexcusable circumstances of Samsung's dilatory conduct in withholding the assertion of long-known documents would set a poor precedent and undermine the force of law behind the Court's docket control orders. For the reasons set forth herein, the Court should deny the Motion for leave to amend their invalidity contentions.

Dated: October 5, 2023

Respectfully submitted,

/s/ Vincent J. Rubino, III

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