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

AGIS SOFTWARE DEVELOPMENT LLC, Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD. and SAMSUNG ELECTRONICS AMERICA, INC., Defendant.	CIVIL ACTION NO. 2:22-cv-263-JRG ████████████ JURY TRIAL DEMANDED

**<u>SAMSUNG'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF
ORDER GRANTING MOTION FOR LEAVE TO AMEND TO ADD FIND MY DEVICE
(DKT. 115)</u>**

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I.   INTRODUCTION

AGIS does not dispute that its infringement contentions in this case are substantively identical to its contentions in *AGIS I* or that its infringement theories in both cases accuse FMD's frontend, ████████ functionality. Nor does AGIS dispute that FMD's frontend—the accused functionality—has not materially changed since *AGIS I*. And while AGIS's response goes to great lengths to describe ████████████████████ to try to justify its prior statement to the Court that the accused FMD features here are "very different" from the accused FMD features in *AGIS I*, AGIS fails to identify a single ████████████████ that is material to AGIS's infringement allegations and, accordingly, to this case. The record is clear that AGIS's FMD allegations in this case are entirely duplicative of its allegations being litigated in NDCA. Because litigating these same FMD allegations here will be judicially inefficient, Samsung respectfully requests that the Court reconsider its prior decision and not add FMD to the case. Reconsideration and reversal of the prior decision is also warranted for the independent reasons that AGIS unjustifiably delayed requesting leave and then misled the Court to obtain leave.

Finally, AGIS argues that the Dinu Transcript was not new and accuses Samsung of withholding the transcript from the Court. But Mr. Dinu is a Google engineer, and access to his transcript was limited under the protective order in the ITC Action to outside counsel only in that case—Samsung did not have the right to produce the Dinu Transcript here. Google produced the Dinu Transcript promptly after the Court granted AGIS's motion for leave to add FMD—exactly as AGIS and Google had agreed. After the transcript was produced, Samsung filed its motion for reconsideration.

II.   ARGUMENTS

A.   Contrary To AGIS's Prior Representations, Judicial Efficiency Compels Reconsideration And Denial Of AGIS's Request To Add FMD

Contrary to AGIS's prior assurances to the Court that the features of FMD accused in this case are "very different" from the accused features in the NDCA cases, the record demonstrates that the NDCA cases actually involve the same FMD functionality. Judicial efficiency, therefore, would be best served by allowing AGIS and Google's disputes about whether FMD infringes the '970 and '838 Patents to be resolved in the two actions in NDCA in which these disputes were already being litigated before FMD was added to this case.

1.   The '970 Patent FMD Claims In The DJ Action Are The Same As The '970 Patent FMD Claims Recently Added Here

In the DJ Action filed by Google, Google contends that FMD does not infringe the '970 Patent. Mot. at 3 (citing *Google LLC v. AGIS Holdings, Inc.*, No. 5:23-cv-03624 (N.D. Cal. July 21, 2023)). The DJ Action was filed after the Dinu deposition and thus addresses the same version of FMD and same allegations that AGIS requested leave to add here. Unable to distinguish the DJ Action claims from its '970 Patent claims here, AGIS merely argues that it has not yet answered the DJ Action Complaint. But AGIS fails to explain how its answer status is relevant to Google's request for reconsideration here—nor could it.[1] The pertinent fact—a fact that is not disputed by AGIS—is that the same '970 Patent FMD claims that AGIS seeks to assert here were already being litigated and continue to be litigated in the DJ Action in NDCA. Reconsideration is, thus, warranted because it would be judicially inefficient to include those claims in this case, as doing

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[1] AGIS also fails to explain that the reason it has yet to answer the DJ Action Complaint is that AGIS has requested two extensions to its response deadline. *See Google LLC v. AGIS Holdings, Inc. et al.*, No. 5:23-cv-03624-BLF, Dkts. 27, 35 (N.D. Cal. Aug. 2, 2023 and Sept. 15, 2023).

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so would create a duplicative proceeding and risk conflicting outcomes.

        2.   **The '838 Patent FMD Claims In The *AGIS I* Cases Are Not Materially Different From The '838 Patent FMD Claims Recently Added Here**

Regarding AGIS's allegations that FMD infringes the '838 Patent, AGIS does not dispute that its infringement contentions here are nearly identical to those in *AGIS I*. *See* Mot. at 4 (explaining that AGIS's contentions are nearly identical); *see* Opp. *generally* (no response). AGIS does not dispute that its contentions are based on the frontend, ███████ functionality of FMD. Nor does AGIS dispute that, as described in Samsung's Motion, Mr. Dinu expressly testified ███

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See Mot. at 5–6 ████████████████████████

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█████████████). Indeed, Mr. Dinu explained that ████████████████████

██████████████████████████. Mot. at 6 (citing Ex. A at 100:19–101:3). And AGIS does not even attempt to argue that there have been any material changes to the frontend of FMD.

Instead, AGIS identifies five alleged ███████████████ and argues that those ████████████████ render its allegations here materially different from its allegations in the *AGIS I* case. *See* Opp. at 1–9. AGIS's argument fails.

First, AGIS fails to identify any difference between its infringement allegations here and those in the *AGIS I* case based on these alleged █████████—AGIS cannot and does not identify any material difference in its infringement allegations at all. Indeed, AGIS does not identify any citations to or reliance on ██████████████ in any of its FMD infringement contentions. This is because, as explained in Samsung's Motion, AGIS accuses FMD's frontend

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functionality, and ██

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Mot. at 6. Indeed, AGIS itself admits that ████████████████████████████

███ Opp. at 9 n2.

Second, the ████████████████████ AGIS lists in its Introduction (Opp. at 1) are in fact

not ████████████████, but instead all describe ████████████████████████████████

████████████████████████████████ and that, critically, did not change

any ***accused*** FMD functionality. *See* Mot. at 5–6. In fact, AGIS's discussion of ██████████████

cites to the same document, ██

████████████████████████████ *See* Opp. at 3–9 (citing Ex. B as support ██████████████

████████). AGIS also cites Mr. Dinu's testimony that █████████████████████████████

████████ (Opp. at 10), but ████████████████████████████████. Ex. A at 77:7–78:10.

And Mr. Dinu testified that ███

████████████████████████ Ex. A at 77:22–78:4 ████████████████████████████

████). In sum, ████████████████ AGIS identifies in its Opposition (1) are limited to ██████████

████████, (2) are part of ██████████████████████████████████, and most importantly (3) are

immaterial to AGIS's infringement allegations, which accuse the frontend of FMD.

The undisputed evidence shows that AGIS misled the Court when it said the accused

features here are "very different" from the accused features in the *AGIS I* cases—the accused

features are the same. Mot. 6. The newly produced evidence showing that the FMD frontend has

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