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., Defendants.	CIVIL ACTION NO. 2:22-cv-263-JRG JURY TRIAL DEMANDED

SAMSUNG'S MOTION FOR LEAVE TO AMEND ANSWER TO ADD
ISSUE PRECLUSION AFFIRMATIVE DEFENSE

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Samsung moves to amend its Answer to AGIS's Second Amended Complaint ("SAC") to add an issue preclusion defense based on a recent summary judgment order (the "SJ Order") from the Northern District of California ("NDCA"). In particular, issue preclusion bars AGIS's claim that Samsung infringes U.S. Patent No. 9,467,838 ("'838 Patent") based on Google's Find My Device ("FMD") application.

The NDCA found that Google's FMD does not infringe the '838 Patent because it does not satisfy the "'sending data' limitation, which requires that a user select a 'user-selectable symbol … positioned on the … georeferenced map' corresponding to a second device and then 'send[] data' to the second device." SJ Order at 18–25. This limitation is an element of all claims of the '838 Patent. Despite the SJ Order's rulings, in this case, AGIS is continuing to allege that FMD infringes the '838 Patent, and it contends that FMD satisfies the "sending data" limitation based on the same accused features in FMD.

Samsung recognizes that issue preclusion will not attach to the SJ Order until the NDCA issues a final judgment on the issues for which the SJ Order granted summary judgment. To that end, on November 10, Google filed a motion in the NDCA for partial final judgment under Federal Rule of Civil Procedure 54(b), and this motion is contingent on the NDCA granting Google's motion. Once that judgment is entered, AGIS's identical claims against FMD in this case as to the '838 Patent are barred by issue preclusion. To avoid any delay and potentially needing to seek leave after fact discovery closes, Samsung now moves before the NDCA has issued final judgment.

Each of the four good-cause factors weighs in favor of granting Samsung leave to add this defense: (1) Samsung has expeditiously moved for leave to amend, indeed before a final judgment has even been entered based on recent NDCA SJ Order; (2) the defense is important because it could dispose of AGIS's claims of infringement of the '838 Patent based on FMD; (3) amendment

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