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I. INTRODUCTION

Plaintiff AGIS Development Software LLC (“AGIS”) respectfully requests that the Court deny Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.’s (collectively, “Samsung”) Motion for Leave to Amend Answer to Add Issue Preclusion Affirmative Defense (“Motion”). *See* Dkt. 155. Samsung’s Motion should be denied because: (1) Samsung has failed to satisfy the good cause factors; and (2) Samsung’s proposed issue preclusion affirmative defense is futile and contrary to governing precedent that renders issue preclusion inapplicable to non-final partial summary judgment orders under the strict standard of finality.

First, Samsung’s Motion should be denied as untimely and waived for failure to comply with the affirmative pleading requirements under Fed. R. Civ. P. 8(c)(1). There is no dispute that Samsung’s request for leave to amend its Answer is untimely, well after the deadline to file amended pleadings following AGIS’s Second Amended Complaint. Samsung failed to plead an issue preclusion affirmative defense, despite having notice of AGIS’s infringement allegations of U.S. Patent No. 9,467,838 (the “’838 Patent”) against non-party Google devices implementing the Find My Device (“FMD”) application at least as of 2019; receiving two extensions; filing two Answers; and failing to add such defense in its recent pending motion for leave to add claim preclusion and *Kessler* doctrine affirmative defenses.

Second, Samsung erroneously premises its Motion on a *non-final partial* summary judgment order (“SJ Order”) issued by the Northern District of California (“NDCA”), which found that non-party Google’s Accused Products implementing the FMD application do not infringe the ’838 Patent. Several causes of action remain pending before the NDCA case, which is set for trial in August 2025. Samsung fails to identify any legal authority supporting its novel theory that the non-final partial SJ Order as to non-party Google can be asserted defensively under the doctrine

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