

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT 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-00263-JRG-RSP

JURY TRIAL DEMANDED

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE
TO STATE A CLAIM UNDER RULE 12(B)(6)**

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I. INTRODUCTION

Plaintiff AGIS Software Development LLC's ("AGIS's") Complaint against Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, "Samsung") sets forth allegations of infringement of four AGIS patents by a collection of apps known as the Team Awareness Kit, or "TAK," suite of apps, the Android version of which is ATAK. *See* Dkt. 1, Case No. 2:22-cv-00263-JRG-RSP, ¶ 16 (hereinafter "Complaint"). As made clear in the below excerpt from AGIS's Complaint, TAK was developed and is maintained by the United States Government, not Samsung:

WHAT IS TAK?

The Android Team Awareness Kit (ATAK), for civilian use, or Android Tactical Assault Kit (also ATAK) for military use - is a suite of software that provides geospatial information and allows user collaboration over geography.

ATAK was originally developed by the Air Force Research Laboratory (AFRL) and is now maintained by the TAK Product Center (TPC).

Id. at ¶ 17, p. 11. The Complaint also demonstrates U.S. Government ownership and control of the accused TAK apps. *See, e.g., id.* (screenshot of TAK video bearing a U.S. Government confidentiality designation); *id.* at ¶ 24, p. 19 (describing TAK as a "Government-off-the-shelf (GOTS) software application," meaning it is owned and controlled by the U.S. Government). And the U.S. Government's TAK website confirms that the accused TAK apps are owned by the U.S. Government and their use requires proper authorization:

The TAK capability suite is **a United States Government (USG) owned product**. Use of these USG owned products outside of test and evaluation require the proper authority to operate (ATO) paperwork granted by your organization's headquarters (HQ). Before installing and/or using any of the products, ensure you are within the guidelines of your organization.

Ex. A, TAK.gov, <https://tak.gov/products> (last accessed Nov. 18, 2022) (emphasis added). AGIS's

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