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-RSP
Plaintiff,	§	**JURY TRIAL DEMANDED**
v.	§	
SAMSUNG ELECTRONICS CO., LTD. and SAMSUNG ELECTRONICS AMERICA, INC.,	§	
Defendants.	§	

PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S RESPONSE IN OPPOSITION TO DEFENDANTS' PARTIAL MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT UNDER RULE 12(B)(6) (DKT. 39)

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Plaintiff AGIS Software Development LLC ("AGIS" or "Plaintiff"), by and through its undersigned counsel, hereby submits this response in opposition to Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.'s (collectively, "Samsung" or "Defendants") Partial Motion to Dismiss Plaintiff's Amended Complaint Under Rule 12(b)(6) (Dkt. 39) (the "Motion").

I. BACKGROUND

Samsung requests partial dismissal of AGIS's claims for patent infringement on two grounds: (1) because the TAK apps are allegedly "developed and [] maintained by the United States Government, not Samsung," and (2) because AGIS has allegedly engaged in improper claim splitting. Mot. At 1-2. Samsung's arguments are without merit.

First, Samsung's request for relief is premature because it is directed to a defense that would operate as a limitation on damages. Among other accusations, AGIS has alleged infringement by Samsung's acts concerning Samsung Knox and situational awareness and location sharing features of Samsung Tactical, TAK, ATAK, and CivTAK. Samsung has not established that the Samsung Accused Products are developed exclusively "for the Government" and with the authorization and consent of the Government. Accordingly, the "exclusive remedy" is not against the U.S. Government in the United States Court of Federal Claims. As shown below, Samsung must establish that it is entitled to summary judgment on its 28 U.S.C. § 1498(a) claims and it has failed to do so. Samsung fails to point to any explicit authorization, a contract executed between Samsung and the U.S. Government, or any authorization or consent clause which would indicate that the Samsung Accused Products are exclusively developed for the Government and with the authorization and consent of the Government. Months before Samsung filed this Motion, AGIS informed Samsung's counsel of the correct case law and the fact that Samsung's own website offers the Accused Products to non-Government entities. Samsung's disregard for well-established

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