

**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

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO STAY

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I. INTRODUCTION

AGIS's opposition to Samsung's stay motion ignores the extensive overlap of issues among AGIS's ITC and district court lawsuits against Samsung and seeks to undermine the judicial efficiency and fairness that 28 U.S.C. § 1659(a) was enacted to protect. The purpose behind § 1659(a) is to avoid exactly what AGIS is doing here—forcing Samsung to address different infringement proceedings against the same “imported goods in two forums at the same time.” H.R. Rep. No. 103-826(I), at 140, *as reprinted in* 1994 U.S.C.C.A.N. 3773. Samsung is currently defending allegations from AGIS in three different jurisdictions, with the *same four patents* and *same accused products* at issue in both the ITC and in this case.¹ The manifest judicial inefficiency caused by AGIS's calculated campaign of harassment warrants a stay in this case.

First, a stay is mandatory because all the requirements under § 1659(a) are met, including that the ITC case and this case involve the same patents and same accused products. AGIS's attempt to portray the two cases as relating to mutually exclusive allegedly infringing applications and features is misleading and ignores the large net that AGIS casts with its infringement allegations in each complaint. *Second*, even if a stay is not mandatory, AGIS's assertion of multiple infringement actions for the same patents against the same defendants and same products is an unnecessary waste of judicial and party resources. AGIS has identified no prejudice that would be caused by granting a stay of this early-stage case, and simplification of many, if not all, of the key issues in this case after a stay is unrefuted. Thus, all of the factors this Court weighs when deciding whether to enter a stay favor entry of one here.

¹The three pending matters are (1) *AGIS Software Dev. LLC v. Google LLC*, No. 5-22-cv-04825 (N.D. Cal) (formerly No. 2:19-cv-00361-JRG (E.D. Tex.)) (“*AGIS I*”); (2) this case (“*AGIS II*”), and (3) *In re Certain Location-Sharing Systems, Related Software, Components Thereof, and Products Containing Same*, No.337-TA-1347 (USITC) (“the ITC case”). Samsung intends to seek a stay of *AGIS I* within the next few days. On January 12, 2023, AGIS was asked whether it would oppose a stay in the *AGIS I* case based on the ITC case. AGIS has not yet given its position.

II. ARGUMENT

A. A Stay Is Warranted Under 28 U.S.C. § 1659(a) Because the Issues Are the Same

AGIS does not dispute that Samsung is a respondent in the ITC Proceeding, that the same four patents asserted here are also asserted in the ITC case, or that all 264 Samsung Galaxy devices accused of infringement here are also accused of infringement in the ITC case. AGIS argues, however, that a stay under 28 U.S.C. § 1659(a) is not mandated because the “specific infringement allegations” in both cases are directed towards different applications that are supported by the accused Samsung Galaxy devices, and thus, the issues are not completely the same. But AGIS’s assurances regarding the focus of each case are inconsistent with what AGIS has pled.

AGIS argues that in this case the “specific infringement allegations are against the Samsung Knox application and third-party applications like TAK” and in the ITC case “certain Google apps and/or services” are at issue. AGIS Opp. to Mot. to Stay, ECF 41 (hereinafter “Opp.”) at 6. However, as pointed out in Samsung’s motion, the Amended Complaint of this case accuses Samsung Galaxy devices which include software “*not limited to*” those specific applications. *E.g.*, Am. Compl., ¶ 16 (emphasis added). Similarly, AGIS’s allegations in the ITC case are not limited to “Google applications or Google software.” Opp., 1,7. Instead, AGIS’s ITC Complaint states that the specific applications identified in the ITC Complaint are “*representative examples*” of applications on Samsung’s allegedly infringing Galaxy devices—the same Galaxy devices AGIS accuses here.² Tellingly, AGIS does not address this explicit language used in its pleadings. Thus, the scope of this case and the ITC case, as pled by AGIS, are identical; both complaints assert the same four patents against the same Galaxy devices, albeit with different exemplary applications identified in each complaint. A stay under § 1659(a) is therefore appropriate.

² The ITC Complaint lists 265 products, including all 264 products alleged to infringe in this case. *See* ITC Compl., Exhibit 1, ECF 40-2, ¶¶ 149, 150.

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