

**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,	§	<u>JURY TRIAL DEMANDED</u>
	§	
v.	§	
	§	
SAMSUNG ELECTRONICS CO., LTD. and	§	
SAMSUNG ELECTRONICS AMERICA,	§	
INC.,	§	
	§	
Defendants.	§	
	§	

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S SUR-REPLY IN
FURTHER OPPOSITION TO DEFENDANTS SAMSUNG ELECTRONICS CO., LTD.
AND SAMSUNG ELECTRONICS AMERICA, INC.'S MOTION TO STAY (DKT. 40)**

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I. INTRODUCTION

Samsung cannot use the *AGIS ITC* investigation as grounds to stay unrelated proceedings concerning different issues. AGIS has already agreed to a stay of the *AGIS-Samsung I* litigation pending the *AGIS ITC* litigation where the proceedings involve “essentially the same” issues concerning the infringement of the same Asserted Patents and the same accused Google applications. See *AGIS Software Dev. LLC v. Samsung Elec. Co.*, No. 5:22-cv-04825, Dkt. 165 (N.D. Cal. Jan. 19, 2023). The NDCA subsequently granted Samsung’s unopposed motion to stay *AGIS-Samsung I*. See *AGIS Software Dev. LLC v. Samsung Elec. Co.*, No. 5:22-cv-04825, Dkt. 166 (N.D. Cal. Jan. 20, 2023). Accordingly, the “unnecessary waste of judicial and party resources” alleged by Samsung (Dkt. 44 at 1) is unsupported where the parallel district court litigation involving common infringement claims has already been stayed.

There is no dispute that the Google applications accused in the *AGIS ITC* case are not “essentially the same” as Samsung Knox and Samsung Tactical products (including the non-Google situational awareness functionalities). Compare *AGIS I*, No. 2:19-cv-00362-JRG, Dkt. 1 (E.D. Tex. Nov. 4, 2019) with Dkt. 29.

There is no dispute that the *AGIS ITC* case revolves around Google applications. Samsung previously represented to this Court and to the Federal Circuit that the issues in *AGIS-Samsung I* (which are the same issues presented in the *AGIS ITC* case) center around Google applications and that “the accused products in the Samsung case are, after all, Google products.” See Ex. B, *In re Google LLC*, No. 2022-0140, Dkt. 2-1 at 26 (Fed. Cir. Apr. 4, 2022); see also *AGIS-Samsung I*, *AGIS Software Dev. LLC v. Google LLC*, No. 2:19-cv-00361-JRG, Dkt. 46 at 2 (E.D. Tex. Mar. 9, 2020); Ex. A, *In re Google LLC*, No. 2022-0126, Dkt. 2-1 at 23 (Fed. Cir. Feb. 23, 2022). This representation is consistent with Samsung’s pleadings in *AGIS-Samsung I*, where Samsung did not

identify the instant Samsung Accused Products as accused in the prior litigation. Dkt. 41 (“Opp.”) at 7.

There is no dispute that AGIS does not accuse Google applications in this case. *See generally* Dkt. 29. None of the claims in this case revolve around Google applications. AGIS has made that fact unmistakably clear and expressed. Ex. C at 4 (“For the avoidance of doubt, the term ‘Accused Products’ does not include the Google Find My Device application, the Samsung Find My Mobile application, and the Google Maps Mobile application with Share Location feature.”).

Accordingly, Samsung’s Motion should be denied because, based on Samsung’s prior representation, the present issues are not “essentially the same” to the issues in the *AGIS ITC* litigation.

II. ARGUMENT

A. The Issues in the *AGIS-ITC* Litigation and *AGIS-Samsung II* Are Not the Same

Samsung relies on its unsupported argument that AGIS’s Amended Complaint is “not limited to” the Samsung Knox and Tactical applications and software accused in this case and that the *AGIS-ITC* case identifies “representative examples” of the accused products and applications. Samsung’s speculation that AGIS will later amend its infringement allegations such that there is complete overlap between the *AGIS-Samsung II* and *AGIS-ITC* litigations is unfounded. Samsung admits that the exemplary applications identified in each complaint are different. Dkt. 44 (“Reply”) at 2.

It is undisputed that the *AGIS-ITC* case involves applications and services developed by Google. This was the basis for Samsung’s unopposed stay in the parallel *AGIS-Samsung I* litigation which involves the same Google applications and services. To argue now that the *AGIS-*

Samsung II case *could* involve the same accused products and functionalities in the future *if* AGIS attempts to amend its infringement allegations as a basis for a stay is mere speculation. Samsung's further rejection of AGIS's arguments by arguing AGIS's discovery requests do not accurately reflect the scope of the case is unsupported. AGIS's Amended Complaint does not identify and accused the Google applications and services.

Accordingly, Samsung's Motion should be denied.

B. A Discretionary Stay is Not Warranted

The Court should decline to institute a discretionary stay where (1) a stay will unduly prejudice or present a clear tactical disadvantage to AGIS; (2) a stay will not simplify the issues in question and trial of the case; and (3) a trial date has been set. *Opp.* at 7.

First, as shown above, the accused products and functionalities are not identical and thus, would result in a delay of 19 months here. *See Saxon Innovations, LLC v. Palm, Inc.*, No. 6:09-cv-272, 2009 WL 3755041, at *2 (E.D. Tex. Nov. 4, 2009) ("Granting Palm's request would prejudice Saxon by delaying this claim of infringement by at least eight months."). Samsung's unopposed stay of the *AGIS-Samsung I* case was stayed pending the resolution of the *AGIS-ITC* litigation where the *same* accused products and functionalities are at issue. Samsung Knox and the Tactical applications and services are not at issue in the *AGIS-ITC* litigation. Accordingly, AGIS would be forced to delay its infringement allegations against the Samsung Knox and Tactical applications and services pending an ITC investigation involving different accused products and functionalities. Samsung's claims that AGIS allegedly should have included the Samsung Knox and Tactical applications and services merely highlight that the accused products and applications are *not* the same.

Second, a stay will not simplify the issues in question and trial of the case. Determinations by the ITC are not binding on this Court. *See Saxon*, 2009 WL at 3755041, at *2. In addition, the

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