

**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 TO AGIS'S RESPONSE TO DEFENDANTS' OBJECTIONS TO THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

AGIS’s response (D.I. 60) mischaracterizes Samsung’s Objections to the Magistrate Judge’s Report and Recommendation (D.I. 55). Products having apps pre-loaded on them when sold to the consumer that were accused in *AGIS I* should be dismissed from this case due to claim splitting. D.I. 55 at 6. These products (illustrated in the blue circle) were indisputably at issue in *AGIS I*, and cannot be relitigated here.



Rather than address this issue, AGIS quibbles about the difference between “pre-loaded” and “loaded,” and mischaracterizes Samsung’s objections as a purported “attempt to limit discovery” to only “devices shipped by Samsung pre-loaded with the accused applications and services.” D.I. 60 at 3. Samsung’s Objections, however, were clear that by “pre-loaded,” Samsung meant having apps loaded “when sold to consumers,” not when shipped by Samsung. *See* D.I. 55 at 1, 2, 6. Samsung’s use of “pre-loaded” therefore includes loading by either Samsung or a third party before sale to consumers.¹ However, whether the TAK or Knox apps accused here are loaded by Samsung or a third-party is irrelevant. The relevant inquiry is whether the accused products in this case when sold to consumers have any of the *AGIS I* apps already loaded on them. If so, these overlapping products (as shown at the intersection in the Venn diagram above) were already accused in *AGIS I*, and must be dismissed from this case. *See* D.I. 55 at 8 (requesting dismissal of “Counts III and IV of AGIS’s Amended Complaint as to all products with at least one of the Find My Device, Google Maps and Find My Mobile apps accused in *AGIS I* pre-loaded when sold to customers.”). Because AGIS does not address this issue, Samsung’s objections remain unrebutted.

¹ To the extent AGIS is now trying to argue that Samsung could somehow be liable for products that do not have the accused apps loaded on them when sold to consumers, that is directly contrary to representations made by AGIS at the hearing. *See* Hearing Tr., D.I. 55-1, at 43:4-23, 45:3-16, 48:16-49:4; *see also id.* at 54:24-55:9.

Dated: May 15, 2023

Respectfully submitted,

/s/ Melissa R. Smith

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served May 15, 2023, with a copy of this document via the Court's CM/ECF system.

/s/ Melissa R. Smith
