

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.
AND SAMSUNG ELECTRONICS
AMERICA, INC.,

Defendants.

Case No. 2:22-cv-00263-JRG

JURY TRIAL DEMANDED

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S OPPOSED
MOTION FOR LEAVE TO AMEND ITS DISCLOSURE OF ASSERTED CLAIMS AND
INFRINGEMENT CONTENTIONS**

I. INTRODUCTION

Plaintiff AGIS Software Development LLC (“AGIS”) respectfully moves this Court for leave to amend its Infringement Contentions pursuant to P.R. 3-6(b) (the “Motion”). Plaintiff seeks leave to supplement its Infringement Contentions to address functionalities in Defendants Samsung Electronics Co., Ltd. (“SEC”) and Samsung Electronics America, Inc.’s (“SEA”) (collectively, “Samsung” or “Defendants”) Accused Products pursuant to AGIS’s timely filed Amended Complaint pursuant to this Court’s Docket Control Order, attached hereto as Exhibits E and G. Other than removing unasserted claims, the remaining Exhibits A-D and F have not been changed. A redlined copy of AGIS’s Disclosures of Asserted Claims and Infringement Contentions is attached for the Court’s reference is attached hereto as Exhibit H.

AGIS first noticed this Motion the same day that the Second Amended Complaint was filed. However, Defendants delayed in the necessary meet and confer with AGIS necessary for filing of this Motion until today. Accordingly, AGIS’s Motion is timely and in accordance with the filing of the Second Amended Complaint.

II. LEGAL STANDARDS

Local Patent Rule 3-1 requires a Plaintiff to state “[s]eparately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality (‘Accused Instrumentality’) of each opposing party of which the party is aware[,]” “[a] chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(¶ 6), the identity of the structure(s), act(s) or material(s) in the Accused Instrumentality that performs the claimed function.” P.R. 3-1.

Local Patent Rule 3-6 requires a party seeking to amend or supplement any Infringement Contentions, “other than as expressly permitted in P.R. 3-6(a), may be made only by order of the Court, which shall be entered only upon a showing of good cause.” P.R. 3-6(b).

The Court considers four factors in determining whether good cause is shown: “(1) the explanation for the failure to timely move for leave to amend, (2) the importance of what the Court is excluding, (3) the potential prejudice if the Court allows the thing that would be excluded, and (4) the availability of a continuance to cure such prejudice.” *S&W Enterprises, L.L.C. v. South Trust Bank of Alabama, NA*, 315 F.3d 533, 536 (5th Cir. 2003).

III. DISCUSSION

The good cause factors weigh in favor of granting AGIS’s motion for leave. AGIS seeks to supplement its infringement contentions to address functionalities in Defendants’ Accused Products pursuant to AGIS’s Amended Complaint.

First, AGIS seeks to supplement its infringement contentions in accordance with the Second Amended Complaint, and accordingly there is no failure to meet the deadline. On June 16, 2023, AGIS filed its Second Amended Complaint pursuant to the deadline set forth by this Court in the First Amended Docket Control Order. *See* Dkt. 66 at 5. AGIS was diligent in seeking to amend its infringement contentions. AGIS immediately noticed this Motion on the same date, June 16, 2023 but was unable to file due to Defendants’ delay in responding to AGIS’ repeated requests to meet and confer regarding the Motion. AGIS now files this Motion on the same date of the meet-and-confer teleconference in which Samsung finally confirmed that it opposes this Motion. Accordingly, the requested supplementation is timely and in accordance with the Second Amended Complaint, which was filed in compliance with this Court’s Docket Control Order.

Second, AGIS's supplementation is important to this case where not allowing this supplementation may result in additional litigation to settle AGIS's claims against Samsung, rather than resolving these infringement claims in this suit. *See Commonwealth Sci. and Industrial Research Org. v. Mediatek Inc.*, No. 6:12-cv-578, 2014 WL 12616679, at *2 (E.D. Tex. Aug. 4, 2014) ("However, it is important for the Court and the parties to deal with all possible infringement claims under the '069 Patent in the instant case, rather than requiring additional litigation. Accordingly, CSIRO's proposed amendments are important and favor granting leave under factor 2."). In the Second Amended Complaint, AGIS stated that the Accused Products "include Find My Device, an application provided on all Samsung devices with Android operating systems, including but not limited to the above-listed Accused Products." Dkt. 69 at 9.

Third, it would be prejudicial to exclude the supplementation to AGIS's infringement contentions and there is no potential prejudice against Defendants. *Commonwealth Sci. and Industrial Research Org.*, 2014 WL 12616679, at *2 ("Under factor 3, Defendants face little prejudice based on CSIRO's proposed amendments. The only prejudice identified by Defendants is an obligation to respond to additional discovery requests. CSIRO's discovery requests concerning 802.11ac **are already relevant since that revision is included in CSIRO's amended complaint.**"). Like *Commonwealth Sci. and Industrial Research Org.*, there would be no prejudice to Defendants who would already be required to respond to additional discovery requests relevant to Find My Device as this revision is included in AGIS's Second Amended Complaint. AGIS's Second Amended Complaint clarified that any allegations against Find My Device are limited to U.S. Patent Nos. 8,213,970 and 9,467,838. *Id.* at 9, n.4. The Second Amended Complaint did not include any additional patents or claims. Accordingly, Defendants will not suffer any significant harm from the proposed supplementation.

Fourth, AGIS submits that a continuance is not necessary where parties have not exchanged any claim construction briefing, the Court has not yet ruled on claim construction, the final pre-trial election of asserted claims and prior art is nearly four months away, and the deadline to complete fact discovery is October 12, 2023. *Commonwealth Sci. and Industrial Research Org.*, 2014 WL 12616679, at *2 (“Finally, CSIRO’s proposed amendments demonstrate no need for a continuance.”).

Accordingly, AGIS has demonstrated good cause for leave to amend its infringement contentions and respectfully requests the Court grant its motion for leave.

Dated: June 28, 2023

Respectfully submitted,

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