

**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'S OPPOSED MOTION FOR LEAVE TO AMEND P.R. 4-3 DISCLOSURES

I. INTRODUCTION

Plaintiff AGIS Software Development LLC (“AGIS” or “Plaintiff”) respectfully moves this Court for leave to amend the P.R. 4-3 Disclosures. Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, “Defendants”) oppose this motion.

Pursuant to the Court’s First Amended Docket Control Order (Dkt. No. 66), the parties submitted the Joint P.R. 4-3 Claim Construction and Prehearing Statement, which provided the parties’ agreed and disputed terms. *See* Dkt. 67. Following the parties’ submission of the P.R. 4-3 Disclosure, an additional dispute arose regarding the agreed construction of the “group” term. Specifically, with respect to the agreed construction of “group” to mean “more than two participants associated together,” the parties disagree on whether the term “participants” should be interpreted to exclude “devices.” Accordingly, Plaintiff respectfully requests leave to submit an amended P.R. 4-3 Disclosure with respect to the “participants” term within the agreed construction of “group.”

II. LEGAL STANDARDS

Pursuant to Patent Local Rule 4-3, parties are to submit a “Joint Claim Construction and Prehearing Statement, which shall contain the following information: (1) The construction of those claim terms, phrases, or clauses on which the parties agree; (2) Each party’s proposed claim construction or indefiniteness position for each disputed claim term, phrase, or clause, together with an identification of all reference from the specification or prosecution history that support that position, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its position or to oppose any other party’s position, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses.”

The Court considers four factors in determining whether good cause is shown: “(1) explanation for failure to timely move for leave to amend, (2) importance of the amendment, (3) potential prejudice in allowing amendment, and (4) availability of 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 to amend the P.R. 4-3 Disclosures.

First, AGIS seeks to amend its P.R. 4-3 Disclosures to address a dispute regarding the “group” term. While the First Amended Docket Control Order set forth a deadline of June 16, 2023 to comply with P.R. 4-3 Disclosures, the parties have not submitted any claim construction briefing. *See* Dkt. 66. Any amendments come ahead of the briefing schedule and claim construction hearing, and thus, parties would have sufficient opportunity to address any disputes in its briefing. AGIS did not delay because it raised this issue shortly after the construction was entered. *See* Dkt. 70.

Three days after the June 16, 2023 deadline, AGIS requested that Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, “Defendants”) confirm that “devices fall within the scope of ‘participants’ and that Samsung will not argue that ‘participants’ must be limited to users.” *See* Ex. A, Email from E. Iturralde to Defendants, dated June 19, 2023. AGIS also disclosed that its position is that “devices fall within the scope of the ‘participants.’” *Id.* Confirming the parties’ material dispute over the scope of the “participants” term, Defendants expressly disagreed with AGIS’s position. Ex. B, Email from N. Sirota to AGIS, dated June 22, 2023. Regardless of any attempt to argue that, as a matter of procedure or timing,

the Court should not include this dispute in the claim construction proceedings, the fact remains that the parties' now dispute the scope of "participants" and there is plenty of time for the Court to hear the parties' positions and resolve the dispute. The parties and the Court stand to gain nothing from avoiding this potential *O2 Micro* issue. Ex. C, Email from E. Iturralde to Defendants, dated June 28, 2023. Despite Samsung's confirmation of a material dispute and the pre-briefing and pre-hearing stage of the case, Defendants inexplicably maintained that the issue should not be included in this case. To the extent Samsung argues delay or untimeliness, AGIS raised this issue on June 19, 2023 and provided Samsung ample opportunity to consider the issue. AGIS provided Samsung with a draft joint motion setting forth the parties' positions. Samsung declined and delayed conferring on the issue until July 10, 2023. AGIS now files this motion for leave one day after receiving a final confirmation of Samsung's position of opposition.

Second, AGIS's amendment is important to this case where any claim construction issues must be addressed prior to discovery, expert reports, and dispositive motions. As AGIS stated to Defendants, "this issue is relevant to infringement because Samsung intends to advance a non-infringement argument based on an interpretation that 'devices' are not within the scope of 'participant.'" Ex. D, AGIS's position is not speculative. In a co-pending case, Defendants' co-counsel, which also represents Google in the co-pending case, pursued non-infringement arguments alleging that the same agreed construction of the term "group" to mean "more than two participants associated together" should be further interpreted to exclude "devices". *AGIS Software Development LLC v. Google LLC*, No. 5:22-CV-04826-BLF, Dkt. 434 at 4 (N.D. Cal. Apr. 3, 2023) ("Thus, the 'group' limitations require (1) joining a group of more than *two users* with devices and (2) sharing location information bidirectionally among them."); *id.* at 12 ("FMD can only be used by a single user and does not support location sharing between different users.");

id. at 13 (“To the extent AGIS argues that in situations where a user has more than two devices, those devices—of the same single user—constitute a ‘group,’ that argument is foreclosed by the construction of ‘group’ as requiring ‘more than two participants,’ which refers to human users, not devices . . .”). AGIS timely raised this issue to the Defendants here shortly before it filed its briefing in opposition to Google LLC’s summary judgment motion. *See AGIS Software Development LLC v. Google LLC*, No. 5:22-CV-04826-BLF, Dkt. 452 (N.D. Cal. June 14, 2023). Defendants confirmed the dispute and rejected AGIS’s offer to stipulate that Defendants would not raise such non-infringement arguments in this case. Ex. E. Given the material dispute, which involves three of four Asserted Patents and all Accused Products, AGIS submits that a construction is necessary.

Third, it would be prejudicial to exclude the construction of “group” from claim construction where there is a dispute that requires resolution by this Court. The “group” term appears in three of the four Asserted Patents and requires construction for infringement. *See, e.g.*, Dkt. 72-3 at A-18 – A-33, 72-4 at B-19 – B-42, 72-7 at D1-18 – D1-33, 72-8 at D2-5 – D2-24. *See O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008) (“[C]laim construction requires the court to determine what claim scope is appropriate in the context of the patents-in-suit.”); *id.* (“Rather, ‘[c]laim construction is a matter of resolution of disputed meanings and technical scope, to clarify and when necessary to explain what the patentee covered by the claims, for use in the determination of infringement. When the parties present a fundamental dispute regarding the scope of a claim term, it is the court’s duty to resolve it.”) (internal citations omitted). There is no prejudice to Defendants where parties have not yet briefed the disputed claim terms and the Court will not hold the *Markman* hearing until September 6, 2023. Rather, it would only be prejudicial if the parties expend additional resources on arguing past each

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.