

**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.,

Defendant.

CIVIL ACTION NO. 2:22-cv-263-JRG
(LEAD CASE)

JURY TRIAL DEMANDED

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

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TABLE OF EXHIBITS

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Plaintiff's Exhibits Filed With Plaintiff's Opening Brief (Dkt. 72)	
A (Dkt. 72-2)	AGIS's Amended Disclosure of Asserted Claims and Infringement Contentions
B (Dkt. 72-3)	AGIS's Amended Exhibit A for U.S. Patent No. 9,820, 123 to its Disclosure of Asserted Claims and Infringement Contentions
C (Dkt. 72-4)	AGIS's Amended Exhibit B for U.S. Patent No. 9,749,829 to its Disclosure of Asserted Claims and Infringement Contentions
D (Dkt. 72-5)	AGIS's Amended Exhibit C1 for U.S. Patent No. 8,213,970 to its Disclosure of Asserted Claims and Infringement Contentions
E (Dkt. 72-6)	AGIS's New Exhibit C2 for U.S. Patent No. 8,213,970 to its Disclosure of Asserted Claims and Infringement Contentions
F (Dkt. 72-7)	AGIS's Amended Exhibit D1 for U.S. Patent No. 9,467,838 to its Disclosure of Asserted Claims and Infringement Contentions
G (Dkt. 72-8)	AGIS's New Exhibit D2 for U.S. Patent No. 9,467,838 to its Disclosure of Asserted Claims and Infringement Contentions
H (Dkt. 72-9)	Redline of AGIS's Amended Disclosure of Asserted Claims and Infringement Contentions
Defendants' Additional Exhibits Filed With This Brief	
1	List of AGIS District Court and ITC Cases Pulled from Docket Navigator
2	AGIS's 2017 Complaint Against ZTE
3	AGIS's 2017 Complaint Against Apple
4	AGIS's 2017 Complaint Against LG
5	AGIS's 2017 Complaint Against HTC
6	AGIS's 2017 Complaint Against Huawei
7	AGIS's 2019 Complaint Against Google (Google I)
8	AGIS's 2019 Complaint Against Samsung (Samsung I)
9	AGIS's 2019 Complaint Against Waze
10	AGIS's 2022 ITC Complaint against Google, Samsung, and 11 Other Respondents
11	Initial Determination on AGIS's June 15, 2023 Motion to Terminate ITC Investigation
12	AGIS's 2023 Complaint Against Google (Google II)
13	Google's Unopposed Motion to Stay the Google II Case
14	AGIS Email Chain Noticing Samsung of its Intention to File the Pending Motion for Leave
15	AGIS Email Chain Raising "Group" Claim Construction Issue
16	AGIS Supplemental Claim Construction Brief on "Group" from the ITC Investigation
17	AGIS Infringement Claim Chart from the Google I Case for FMD for the '970 Patent
18	AGIS Infringement Claim Chart from the Google I Case for FMD for the '838 Patent

I. INTRODUCTION

AGIS's belated attempt to inject into this case infringement theories that it has known about and been litigating for six years should be denied. AGIS seeks leave to amend its infringement contentions to add a new accused product, Google's Find My Device ("FMD") application, but its motion omits any mention of AGIS's six-year history of litigations against FMD across dozens of cases and its prior representations to this Court, just a few months ago, that this case does *not* concern FMD. Since 2017, AGIS has asserted its patents, including U.S. Patent Nos. 9,467,838 ("838 Patent") and 8,213,970 ("970 Patent"), across 35 different district court and International Trade Commission ("ITC") cases, including three previous cases against Samsung. From the beginning, AGIS asserted the '838 and '970 Patents and related patents against FMD. Yet, when AGIS filed this case a year ago, AGIS affirmatively chose not to accuse FMD to avoid stay and dismissal. In fact, in January 2023, in opposing Samsung's motions to stay and dismiss this case because of claim splitting and redundancies with other pending cases against Samsung, AGIS represented that this case does not concern Google software, including FMD, and that AGIS's claims against FMD were separately being addressed in its other cases.

Against this backdrop, AGIS cannot meet its burden of demonstrating good cause to add new infringement allegations against FMD. At the outset, AGIS has been far from diligent in proposing to add these FMD allegations, given that it has known about them for at least six years and intentionally omitted them from this case when it was filed a year ago to avert a stay or dismissal. AGIS also lacks good cause under the four factors that courts in this District consider in evaluating motions to amend contentions: (1) AGIS offers no justification for its delay in adding FMD allegations, which AGIS has litigated in other cases since 2017; (2) AGIS's deliberate omission of FMD from this case and prior representations that this case does *not* concern FMD belie AGIS's claims about the importance of the proposed amendment; (3) Samsung would be

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