

**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.

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

JURY TRIAL DEMANDED

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S REPLY IN SUPPORT
OF ITS OPPOSED MOTION FOR LEAVE TO AMEND ITS DISCLOSURE
OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS (DKT. 85)**

There is no dispute that AGIS has complied with this Court's deadline to amend its Complaint. *See* Dkt. 66 (stating the deadline to file amended pleadings is June 16, 2023). Defendants do not dispute this fact. AGIS's Motion for Leave to Amend its Infringement Contentions is merely to comport its infringement contentions with its Amended Complaint. Defendants' claims that AGIS intentionally omitted FMD from the present case in order to avert a stay or dismissal, or that this was AGIS's "orchestrated strategy to avoid a stay or dismissal," have no evidentiary basis and are based on speculation.

AGIS's bases for amending the complaint are irrelevant to this Motion. AGIS has demonstrated there is good cause for AGIS's motion for leave to amend its infringement contentions. Further, AGIS has been diligent in seeking to amend its infringement contentions as AGIS sought to file the instant Motion the same day as the Second Amended Complaint. Any delay in filing this Motion was due to Samsung's delay and Samsung's unavailability to meet and confer, as required by this Court's Standing Order, regarding AGIS's motion until the filing date of the Motion.

Second, Defendants cannot dispute that there is no pending litigation against Samsung by which FMD is accused against the '970 and '838 Patents. Indeed, the '970 and '838 Patents are not asserted against Samsung in any other case. Because the '970 and '838 Patents are not asserted against Samsung in the AGIS I litigation, AGIS could not have asserted FMD against Samsung in the AGIS I litigation. In addition, the claims of the '970 Patent were amended following reexamination. Even assuming AGIS had asserted the '970 and '838 Patents in the AGIS I litigation accusing older versions of FMD of infringement, Samsung would have moved to dismiss the claims of the '970 Patent from that litigation, much like Google LLC (which is represented by the same co-counsel) has done in the NDCA litigation. To the extent prior versions of FMD are

accused in another case, such accusations concern different patents and different Accused Products. Accordingly, AGIS's supplementation is important to this case, where not permitting the supplementation would result in additional litigation to resolve AGIS's claims against Samsung for the current new versions of FMD on Samsung devices. AGIS has sought to add the new versions of FMD to the instant case in an effort to streamline proceedings concerning the '970 and '838 Patents, which are not presently asserted against Samsung in any other jurisdiction. Samsung's efforts to prevent AGIS from updating its infringement contentions to address the new versions of FMD accused in the Second Amended Complaint reeks of gamesmanship.

Third, there is no prejudice to Samsung in allowing the supplementation. AGIS has comported with the Court's deadline for amendment of its complaint and Samsung cannot show otherwise. Defendants' arguments that they would be prejudiced by having to conduct discovery on FMD are without merit, particularly where Defendants' discovery is already wholly deficient. To date, Defendants have made two document productions and failed to provide fulsome responses to fourteen interrogatories, despite having received AGIS's requests in October 2022. Nearly three months remain in fact discovery, leaving more than sufficient time for the parties to exchange discovery regarding FMD in addition to the Accused Products. Although Samsung alleges prejudice because FMD "was also developed by a different company (Google)," it does not allege that obtaining this discovery from Google would be unduly burdensome. In fact, Samsung cannot allege any such burden where it itself submits that infringement allegations against Google have been pending, and Google has already produced this discovery in the NDCA case as well as the ITC investigation. The same documents and information have already been collected and produced in the co-pending litigations. In addition, less than two weeks after AGIS filed its Second Amended Complaint and the day after AGIS filed the instant Motion, attorneys representing

Google in the co-pending NDCA litigation filed their Notices of Attorney Appearance in this case. See Dkts. 73-79.

While Defendants argue that claim construction has begun and while the parties have already exchanged claim terms and constructions, Samsung does not propose any claim terms it alleges require construction should the Court grant AGIS's request to amend its infringement contentions. With respect to Samsung's allegations that AGIS's efforts to insert the "group" limitation into dispute are prejudicial, AGIS has already filed a separate motion to construe this limitation prior to the entry of any claim construction briefing and is awaiting the Court's decision regarding that matter. Further, there are no "supplemental claim-construction proceedings" for this term where the parties have not exchanged *any* claim construction briefing or submitted their arguments to the Court with respect to this term. The "group" limitation can be properly addressed by this Court in the *Markman* hearing that is already scheduled with sufficient time for parties and the Court to meaningfully address any arguments.

Fourth, Defendants do not dispute that a continuance is not necessary where the current First Amended Docket Control Order provides sufficient time for AGIS to seek the relevant discovery. Defendants' arguments that "supplemental" claim construction is required are incorrect. As shown above, the parties have not entered any claim construction briefing with respect to *any* of the disputed terms.

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

Dated: July 20, 2023

Respectfully submitted,

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