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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

HEADWATER RESEARCH LLC,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Case No. 3:26-CV-01460-AMO

**HEADWATER RESEARCH LLC'S
OPPOSITION TO GOOGLE'S MOTION
FOR LEAVE TO FILE AMENDED
ANSWER AND COUNTERCLAIMS**

Hearing Date: July 11, 2026

Time: 2:00 p.m.

Place: Courtroom 10

Judge: Hon. Araceli Martínez-Olguín

Case No. 3:26-cv-01460-AMO

HEADWATER'S OPPOSITION TO GOOGLE'S MOTION TO AMEND ANSWER AND COUNTERCLAIMS

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I. INTRODUCTION

Google improperly seeks to evade an adverse Order on personal jurisdiction from Judge Noël Wise and avoid transfer to the Eastern District of Texas. Google should not be rewarded for circumventing Judge Wise’s authority with an opportunity to attach to this case new declaratory judgment claims on new Headwater patents. Instead, this Court should exercise its discretion and deny Google leave to add its permissive counterclaims. Google sought leave only after Judge Wise’s adverse Order, demonstrating **undue delay** and **bad faith**. Allowing Google’s counterclaims here would cause **unfair prejudice** to Headwater, and the proposed amendment is **futile** in any event because those claims still lack personal jurisdiction. All these factors support denial of Google’s Motion for Leave (Dkt. 101-2, “Mot.”). Further, the Declaratory Judgement Act gives the Court unique and considerable discretion in deciding whether to hear Google’s DJ claims at all. Under the same factors and considerations, the Court should **decline to hear** Google’s DJ counterclaims. This is an additional and independent reason for denying Google’s Motion.

In Case No. 5:25-cv-07453-NW (N.D. Cal.) (“DJ Action”), Judge Wise already indicated that Google’s declaratory judgment claims could not be asserted in this District because they lack personal jurisdiction. *See* Ex. 3 (J. Wise Order). Google wrongly asserts that personal jurisdiction is now proper for those same claims merely because Google seeks to add them to a different case involving different patents before a different Judge, following a transfer to this District over Headwater’s objections and only for Google’s convenience. And while Google tries to excuse its conduct as allegedly promoting “efficiency,” this does not withstand scrutiny and should be rejected as improper gamesmanship.

The facts and timeline here show that Google executed its plan specifically to evade the authority of another Judge in this District, in a transparent effort to avoid transfer to the only court where its declaratory judgment claims would have personal jurisdiction. There is no precedent permitting such tactics. Google’s motion should be denied.

II. BACKGROUND

The sequence of events here demonstrates that Google seeks to add its counterclaims here specifically to avoid Judge Wise transferring them to EDTX:

- On May 16, 2025, Headwater filed suit in the Western District of Texas, alleging infringement of U.S. Patent Nos. 9,615,192 (“’192 patent”) and 10,321,320 (“’320 patent”). Dkt. 1.
- On September 3, 2025, Google filed its complaint in the DJ Action, seeking “a declaratory judgment of noninfringement of U.S. Patent Nos. 9,232,403 (‘the ’403 patent’) and 9,491,564 (‘the ’564 patent’).” Ex. 1 (DJ Compl.) ¶ 1.
- On November 17, 2025, Headwater moved to dismiss, or in the alternative transfer, Google’s complaint in the DJ Action for lack of personal jurisdiction over Headwater. Ex. 2 (Headwater Mot.).
- On February 18, 2026, Judge Gilliland granted Google’s motion to transfer the present action from WDTX to this District for convenience under 28 U.S.C. § 1404(a). Dkt. 83.
- On March 20, 2026, Judge Wise issued an Order in the DJ Action stating “The Court is inclined to grant [Headwater’s] motion” and noting Headwater’s request to transfer to the Eastern District of Texas, ordered supplemental briefing by March 27 on “whether the Court should transfer or dismiss.” Ex. 3 (J. Wise Order).
- On the night of March 26, 2026 (hours before Judge Wise could transfer the DJ Action following the supplemental briefing), Google dismissed the DJ Action and simultaneously filed this motion for leave to add the same DJ claims of non-infringement for the ’403 and ’564 patents. Ex. 4 (DJ Action Dismissal); Dkt. 101-5 at PDF pages 18, 36-40.

Notably, Google did not seek leave here to add its new counterclaims until *after* Judge Wise indicated that the DJ Action would soon be transferred to EDTX or dismissed, even though it could have done so in the month between the transfer of this action and Judge Wise’s March 20 Order. Nor did Google seek leave to amend its complaint in the DJ Action to add the supposed “new facts” that it says support personal jurisdiction here. Instead of litigating these issues or saying one word to Headwater, Google ran from Judge Wise and an impending transfer to EDTX.

III. THE COURT SHOULD DENY LEAVE TO AMEND

Google’s motion should be denied because the relevant factors weigh against leave to amend. “[L]eave to amend should not be ‘granted automatically.’” *Ralon v. Kaiser Found. Health Plan, Inc.*, No. 23-cv-03344-JCS, 2024 WL 4933330, at *1 (N.D. Cal. Dec. 2, 2024) (denying leave to amend and quoting *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990)). “Rather, courts in the Ninth Circuit consider five factors in determining whether to grant leave to amend: 1) bad faith, 2) undue delay, 3) prejudice to the opposing party, 4) futility, and 5) any previous opportunities to amend.” *Id.* (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

Here, factors 1-4 weigh against leave to amend, and factor 5 is neutral. Google should not be rewarded for evading an adverse ruling from another Judge in this District after delaying and forgoing earlier opportunities to seek leave here. Amendment would also unfairly prejudice Headwater by forcing it to defend against jurisdiction-less declaratory judgment claims, while potentially delaying adjudication of Headwater's claims against Google on different patents. And Google's proposed amendment is futile in any event because this District still lacks jurisdiction over Google's DJ claims on the '403/'564 patents against Headwater, just as Judge Wise recognized. The amendment is also futile because the Court should exercise its substantial discretion under the Declaratory Judgement Act and decline to hear Google's DJ claims.

A. Factors 1 and 2 Weigh Against Leave to Amend Because the Timeline of Events Shows Google Acted in Bad Faith and Only Sought Leave to Amend After Judge Wise Issued the March 20 Order

Google asserts that its proposed amendments are not made in bad faith and that Google did not unduly delay in filing its motion. Mot. at 11-13, 14. The facts show otherwise, and Google's purported justifications are contradictory and fail to excuse its conduct.

1. Google did not seek to amend until after an adverse order, demonstrating undue delay and bad faith.

As Google admits, "Judge Wise indicated that the Court was inclined to find that it lacked personal jurisdiction over the DJ Action," in which Google asserted the very same declaratory judgment claims it now seeks leave to add here. Mot. at 1:13-15; *see* Ex. 3 (J. Wise Order); Ex. 2 (Headwater Mot.); Ex. 1 (DJ Compl.) ¶ 1. Judge Wise's March 20 Order additionally noted Headwater's request to transfer to EDTX and ordered supplemental briefing on the specific question of whether the Court should transfer or dismiss the DJ Action. Ex. 3 (J. Wise Order). As Headwater's supplemental brief explained, transfer is the presumptive remedy in such situations, and Google's conduct in seeking to evade Judge Wise's adverse ruling only further showed that transfer was in the interest of justice. Ex. 5 (Headwater Supp. Br.). Apparently recognizing that transfer was the correct remedy, Google tellingly never answered Judge Wise's question in its supplemental brief. Ex. 6 (Google Supp. Br.). Instead, Google launched a surreptitious plan to avoid transfer to EDTX at all costs.

1 Only hours before Judge Wise’s briefing deadline—after which the DJ Action could
2 immediately be transferred—Google dismissed the DJ Action and, in a late-night flurry of filings
3 across both cases, filed the instant motion for leave to amend. Tellingly, Google did not seek leave
4 to amend here before receiving the adverse Order from Judge Wise on March 20, even though it
5 could have done so during the month between this case being transferred in and Judge Wise issuing
6 the Order. Nor did Google say one word to Headwater about its planned filings in both cases,
7 which were several days in the making and intended to gain a tactical advantage.

8 This is not the conduct of a party who is acting diligently and in good faith to promote
9 efficiency, as Google now asserts. The motion states “Google is seeking to conserve both the
10 parties’ and the Court’s resources by (1) consolidating Headwater’s and Google’s overlapping
11 claims into a single proceeding and (2) mooted Headwater’s personal jurisdiction objections
12 through proper procedural channels to avoid unnecessary additional motion practice.” Mot. at 11.
13 But if those were truly Google’s motivations, then it had no reason to wait until *after* Judge Wise
14 issued her adverse Order to seek leave to amend (nor to hide those motivations from Headwater).
15 Seeking leave in the month before that Order would have saved Judge Wise from having to
16 consider the parties’ substantial briefing on Headwater’s personal jurisdiction motion, and it would
17 have consolidated claims before one Judge instead of two. But Google did not do so and has no
18 credible explanation for its undue delay. Instead, Google tries to characterize its motion for leave
19 as something Google couldn’t have accomplished in “merely three weeks.” Mot. at 14. Yet
20 somehow Google managed to execute a dismissal of the DJ Action and its motion for leave here
21 very quickly after Judge Wise’s adverse Order on March 20, and tellingly did so hours before the
22 DJ Action may have been transferred to Texas.

23 Indeed, the motion to dismiss was also scheduled for hearing before Judge Wise on March
24 25, 2026, and had been for months. Google clearly intended to move forward with the hearing and
25 hoped for a favorable result, as evidenced by Google not informing anyone (the Court or
26 Headwater) about any forthcoming voluntary dismissal until after Judge Wise vacated the hearing
27 and indicated the Court was inclined to grant Headwater’s motion. If Google had plans to dismiss
28 before March 20, it certainly would have informed well before then given the upcoming hearing.

1 The record overwhelmingly shows that Google planned or decided to dismiss only after receiving
 2 Judge Wise’s adverse Order and realizing that transfer to EDTX was likely, if not imminent. Such
 3 a tactical decision is tantamount to bad faith, especially for purposes of leave to amend. Indeed,
 4 courts recognize that denial of a motion to amend is warranted when it is brought for the tactical
 5 purpose of avoiding an adverse ruling on another motion. *E.g., Aciri v. Int’l Ass’n of Machinists &*
 6 *Aerospace Workers*, 781 F.2d 1393, 1398-99 (9th Cir. 1986) (“The district court found that
 7 plaintiffs’ motion to amend was brought to avoid the possibility of an adverse summary judgment
 8 ruling, and that allowing amendment would prejudice the Union because of the necessity for
 9 further discovery. We conclude that the district court did not abuse its discretion in denying leave
 10 to amend in this case.”). Google’s conduct here warrants denial of the motion for leave.

11 In trying to excuse its actions, Google states that it “believes that [Judge Wise] would have
 12 ultimately found personal jurisdiction after reviewing the new facts submitted in Google’s
 13 supplemental briefing.” Mot. at 11-12. This rationale is contradicted by Google’s conduct in
 14 dismissing the DJ Action only a few minutes later. If Google believed in the merits, it could and
 15 should have presented that to Judge Wise or sought to leave to amend its complaint to add the
 16 supposed “new facts.” Google’s attempts to blame Headwater are particularly unsupported and
 17 misleading. Again, they were never raised with Judge Wise (and Headwater believes that is
 18 because there was no good faith basis to do so). At bottom, Google’s characterizations are
 19 unsupported, entitled to no weight, and should be disregarded.

20 For example, Google’s assertion that Headwater “blocked” Google from supplementing
 21 the record in the DJ Action is a farce. The supposed “new facts” consist of two license agreements
 22 that Google has been aware of for 5+ months and certain deposition testimony about those same
 23 agreements that was given in litigation against Google. It is absurd to suggest any of that is “new”
 24 to Google or something Headwater concealed. Indeed, Google’s own briefing submitted to Judge
 25 Wise *four months ago* referred to such license documents. Ex. 7 (DJ Action Opp.) at 24. The
 26 reason Headwater did not produce copies of them in the DJ Action is that they contain third-party
 27 confidential information and cannot be shared unless approved by the licensee in response to a
 28 court order or discovery request—and Google literally never even asked for them, despite knowing

1 about Headwater’s licenses for months. Headwater can hardly be blamed for Google’s failure to
2 request materials known to Google.¹

3 2. Google’s case law does not excuse its actions.

4 Google also points to case law as purportedly excusing its conduct, but this is misguided
5 given that the record shows that Google dismissed to avoid an imminent adverse ruling, after seven
6 months of litigation, and after wasting substantial Court and party resources. The question before
7 this Court is whether these tactics should be rewarded by allowing Google amendment here. The
8 question is *not* whether Google can come up with creative, after-the-fact justifications based on
9 inapposite caselaw. In any event, Google’s cited cases are readily distinguishable and fail to excuse
10 its conduct here. Specifically, Google cites *AbCellera*, *Competitive Techs.*, and *Grupke* (see, e.g.,
11 Mot. at 12-13), but there are multiple key distinctions between those cases and this one.

12 *First, none of Google’s three cases involved declaratory judgment claims*, particularly
13 on an issue like non-infringement. This is important because DJ claims of non-infringement are
14 governed by special rules, both as a fundamentally *discretionary* remedy (under the Declaratory
15 Judgment Act) and given how personal jurisdiction can be exercised over a patentee on claims of
16 non-infringement. *Avocent Huntsville Corp. v. Aten Int’l Co.*, 552 F.3d 1324, 1332 n.2 (Fed. Cir.
17 2008) (personal jurisdiction is “important and independent” limit and requires *enforcement* of the
18 *patent* in a forum to support specific personal jurisdiction in that forum).

19 If this Court denies Google leave to amend (as it should), Google does not lose anything
20 meaningful. All Google seeks is a declaration that it does not infringe certain Headwater patents.
21 But if Google cannot seek that declaration here, all it means is that if Headwater ever wants to seek
22 damages from Google for infringing the ’564 and ’403 patents, it would need to file suit against
23 Google, at which point Google could seek the same declaratory judgment of non-infringement.
24 That would be no meaningful loss to Google.

25
26
27 ¹ In other litigation between Headwater and Google (where Google is represented by other
28 counsel), Google requested production of the deposition testimony and certain license documents,
and Headwater promptly—even before its objections/responses were due—sought third-party
authorization and produced the requested documents. Headwater never “blocked” anything.

1 In *AbCellera*, by contrast, defendant Berkeley sought leave to add affirmative
 2 counterclaims seeking damages and injunctive relief for the alleged unfair competition. *AbCellera*
 3 *Biologics v. Berkeley Lights, Inc.*, No. 5:20-cv-08624-LHK, 2021 WL 2719264, at *1 (N.D. Cal.
 4 July 1, 2021). Similarly, in *Competitive Techs.*, the challenged counterclaims (6-13) included
 5 affirmative claims of trade secret misappropriation, fraud, unfair competition, and others—not
 6 claims for declaratory relief. *Competitive Techs. v. Fujitsu Ltd.*, 286 F. Supp. 2d 1118, 1125-26,
 7 1141 (N.D. Cal. 2003). And in *Grupke*, the counterclaim sought affirmative relief for unfair
 8 competition and tortious interference, not a declaratory judgment. *Grupke v. Linda Lori*
 9 *Sportswear, Inc.*, 174 F.R.D. 15, 17 (E.D.N.Y. Mar. 17, 1997). Denying leave to add such
 10 affirmative claims would have been a clear loss to the counterclaimants in *AbCellera*, *Competitive*
 11 *Techs.*, and *Grupke*, given the nature of their claims. But Google only seeks declaratory relief and
 12 loses nothing of consequence if leave is denied here.

13 ***Second, none of Google’s three cases involved an adverse decision like the one here.***
 14 As described above, Judge Wise issued an adverse Order on March 20 indicating the Court was
 15 “inclined to grant” Headwater’s motion challenging personal jurisdiction, and Google was facing
 16 potential transfer of the DJ Action to EDTX as soon as supplemental briefing on remedy concluded
 17 on March 27. *See* Ex. 3 (J. Wise Order). Google did not stay to fight Judge Wise’s Order but
 18 instead surrendered by dismissing the case. Ex. 4 (DJ Action Dismissal). Google identifies nothing
 19 in the *Competitive Techs.* and *Grupke* cases suggesting there was any adverse ruling that
 20 precipitated the motion for leave. *See* Mot. at 13. And although *AbCellera* involved an earlier
 21 dismissal without prejudice order, the order *granted* Berkeley’s request for jurisdictional discovery
 22 to support refiling of its unfair competition claims. *See* Ex. 8 (Order in *Berkeley*) at 14. Thus, the
 23 order in *AbCellera* contemplated and effectively allowed Berkeley to file an amended complaint
 24 on its unfair competition claims in the same forum with the benefit of more discovery. Further,
 25 there is no indication that a second motion to dismiss was pending or that transfer was at issue.

26 Those are not the facts here. Indeed, Google even requested that jurisdictional discovery
 27 be granted if Judge Wise found personal jurisdiction lacking (*see, e.g.*, Ex. 7 (DJ Action Opp.) at
 28 i), yet there is nothing in Judge Wise’s Order indicating that the Court was inclined to grant

jurisdictional discovery (*see* Ex. 3 (J. Wise Order)). And as a further key distinction, Judge Wise’s adverse Order indicated that the DJ Action could soon be transferred, whereas the order in *AbCellera/Berkeley* said nothing about transfer being a possibility. In short, *AbCellera* involved an earlier and potentially mooted and non-pending dismissal order. This case, as indicated by the requested supplemental briefing, involved a potentially imminent transfer to EDTX.

This is a critical distinction between the facts here and in Google’s cited cases. Google dismissed the DJ Action and filed the instant motion to add the same dismissed claims here only *after* Judge Wise issued an adverse Order on those claims. Google could have taken the same course of action before the Order issued—and presumably would have if it were actually motivated by “efficiency” concerns leading up to the long-scheduled May 25 hearing. Instead, on May 20, Google recognized that transfer was likely and could happen as soon as May 27. And Google’s flurry of filings after 10 pm on March 26 reflect a bad-faith desire to undermine Judge Wise’s authority and avoid transfer of claims it should have filed in a different forum.

Google’s purported rationale of “efficiency” is also nonsense given that the DJ Action was pending for seven months, the motion to dismiss was fully briefed, and the Court was nearing a decision. This is yet another distinction with *AbCellera*. There, the defendant Berkeley maintained its separate unfair competition action and proposed the amendment to plaintiffs in advance and explained it would promote efficiency. The parties conferred, and only after plaintiffs declined did Berkeley file an opposed motion. Here, in sharp contrast, Google never mentioned “efficiency” or gave Headwater any notice at all. The first time Headwater learned of Google’s plans (simultaneous dismissal and amendment) was through ECF notifications.

In fact, if Google were truly interested in efficiency, it would have filed its declaratory judgment claims in EDTX, where Headwater has operated for the past decade and where all of Headwater’s prior trials and substantive litigation have occurred. This includes, for example, EDTX Case No. 2:23-cv-00103-JRG-RSP, which Google actively participated in through the jury trial. Having presided over that trial and multiple others (all of which Google actively participated in), EDTX clearly would be the most efficient forum to handle Google’s declaratory judgment claims—and a forum that, unlike this one, would have personal jurisdiction over such claims.

1 Google and its counsel in the DJ Action know this and thus understood that transfer to
 2 EDTX was likely and potentially imminent. Indeed, Google’s lead counsel represented Samsung
 3 and Google’s witness in deposition and direct examination at trial in EDTX Case No. 2:23-cv-
 4 00103-JRG-RSP. He also argued the *Markman* hearing and cross-examined Headwater’s technical
 5 expert at trial. Given this history and known connections to EDTX, Google’s tactics here were not
 6 about efficiency. They were about evading Judge Wise’s adverse Order and avoiding transfer to
 7 Texas.

8 ***Third, in all of Google’s three cases, the party opposing the counterclaims actively***
 9 ***litigated the transferred case before the decision on whether to allow the counterclaims.*** Here,
 10 Headwater has only done the following since transfer: (1) opposed Google’s motion to consolidate
 11 (*see* Dkt. 86), (2) filed a required corporate disclosure statement, (3) filed a response to Google’s
 12 administrative motion to seal certain material submitted with the instant motion, and (4) opposed
 13 the instant motion—with numerous statements reiterating that the proposed counterclaims lack
 14 personal jurisdiction. None of this can or should be held against Headwater, and Headwater
 15 notably has not filed any motion of its own with this Court. In contrast, the “active litigation
 16 conduct” following transfer in *AbCellera* included “fil[ing] a motion to dismiss and strike” and
 17 requesting “adjudication of discovery disputes.” *AbCellera*, 2021 WL 2719264, at *5. In
 18 *Competitive Techs.*, the court found waiver of any personal jurisdiction challenge because, among
 19 other things, the plaintiff “appeared before th[e] Court on numerous occasions without ever
 20 asserting a lack of personal jurisdiction” until a year after transfer—even failing to challenge
 21 personal jurisdiction in its motion to dismiss the counterclaims at issue. *Competitive Techs.*, 286 F.
 22 Supp. 2d at 1142. And in *Grupke*, the plaintiffs even “amended their complaint [after transfer] to
 23 add new defendants.” *Grupke*, 174 F.R.D. at 19. While Google suggests that anything short of
 24 Headwater immediately dismissing this case upon transfer qualifies as a waiver of any personal
 25 jurisdiction challenge for any new claims sought to be added to the case, that is not the law. *See,*
 26 *e.g., Flex Mktg. Grp., LLC v. Lapin*, 638 F. Supp. 3d 385 (S.D.N.Y. 2022) (distinguishing *Grupke*
 27 and noting the need to analyze the “quantum of litigation activity” by the party challenging
 28 personal jurisdiction to determine whether waiver applies).

1 *Fourth, Google’s counterclaims here are permissive, not compulsory.* Google
 2 acknowledges that its proposed counterclaims here are permissive (indeed, they relate to entirely
 3 different patents) and admits that *Competitive Techs.* and *Grupke* were limited to compulsory
 4 counterclaims. *See* Mot. at 13. This is an important distinction because, as the *Grupke* court noted,
 5 “if plaintiffs could successfully assert lack of personal jurisdiction as a defense to the counterclaim,
 6 defendants, while still required to defend in the original action, would have to forfeit their claims
 7 arising from the same transaction,” resulting in “inequity.” *Grupke*, 174 F.R.D. at 18. There is no
 8 such concern here because Google’s counterclaims are entirely permissive and are based on
 9 different patents from those asserted here. Again, as discussed above, Google would lose nothing
 10 of consequence if it were denied leave to add its permissive claims for declaratory judgment.

11 And while *AbCellera* involved permissive counterclaims, the Court’s conclusion on this
 12 issue is inapplicable or erroneous. As discussed, DJ claims of non-infringement are governed by
 13 particular authority limiting the exercise of personal jurisdiction over the patentee (as discussed in
 14 *Headwater’s* motion to dismiss). Courts should be cautious in extending law on other claims to the
 15 specific context of DJ claims of non-infringement.

16 The only authority offered in the *AbCellera* opinion for extending case law like *Grupke* or
 17 *Competitive Techs.* to permissive counterclaims (rather than just compulsory ones) is a section of
 18 Wright & Miller that does not address permissive counterclaims in the context of a transferred
 19 case. *See AbCellera*, 2021 WL 2719264, at *4 (citing 6 *Wright & Miller’s Federal Practice &*
 20 *Procedure: Civil* § 1424 & nn.1, 6–7 (3d ed. Apr. 2021 update) (“*Wright & Miller*”). But *Wright*
 21 *& Miller* qualifies the very sentence quoted in *AbCellera* with “[i]n general,” a phrase which the
 22 *AbCellera* opinion excludes. *Compare id.* (“To the contrary, a leading treatise asserts that ‘if
 23 defendant interposes a permissive counterclaim, plaintiff cannot object that the court lacks
 24 personal jurisdiction or that venue is improper for purposes of adjudicating the claim.’”), *with*
 25 *Wright & Miller* § 1424 (same quotation but with the prefatory phrase “In general”). Not only does
 26 this section of the treatise not discuss applying this doctrine in transferred cases, only three
 27 sentences after the portion quoted in *AbCellera*, the treatise quotes from a case stating that “[t]he
 28

1 setting up of a counterclaim against one already in a court *of his own choosing* is very different,
 2 in respect to venue, from hailing him into that court.” *Wright & Miller* § 1424.

3 This context is important here because Headwater clearly is not “in a court of [its] own
 4 choosing,” and this statement suggests that the treatise’s prior discussion about personal
 5 jurisdiction over permissive counterclaims was made in the context of a typical case, not one that
 6 has been transferred over the plaintiff’s objection. Any consent implicit in the plaintiff pursuing a
 7 transferred case should be limited to specific jurisdiction over the subject matter of the transferred
 8 case rather than general jurisdiction over anything (such as declaratory judgment claims over
 9 different patents from those asserted in the transferred case). Permissive counterclaims like those
 10 here simply do not present the same “inequity” concerns that compulsory counterclaims do, as the
 11 *Grupke* court recognized. *See Grupke*, 174 F.R.D. at 18.

12 Simply put, Google has no case law finding that, by maintaining its original infringement
 13 claims after the case is transferred, a patent owner is inherently subject to personal jurisdiction for
 14 any declaratory judgment claims of non-infringement based on different patents. To the contrary,
 15 extensive authority on patent cases in this context, such as the *MG Freesites* case indicates that
 16 what matters are enforcement activities tied to the patents asserted by the patent owner in the
 17 litigation. And in that case, even though the patentee had previously asserted the same patent in a
 18 prior case in this District, that still wasn’t enough to support personal jurisdiction here. Instead,
 19 the court discounted this in part because this District was the only forum where venue was proper,
 20 such that patent owner’s filing there was not volitional. Such reasoning from *MG Freesites*,
 21 including about fair play and substantial justice, applies even more forcefully to a transferred case,
 22 in which the patent owner had even less of a choice in where the case ended up (as is the case
 23 here). *See, e.g., MG Freesites Ltd. v. DISH Techs. L.L.C.*, 712 F. Supp. 3d 1318, 1331 (N.D. Cal.
 24 2024) (“The lack of a choice of forum further militates against a finding of specific jurisdiction
 25 This is because an overarching principle in the minimum contacts test is whether conferring
 26 jurisdiction would offend traditional notions of fair play and substantial justice. Where the
 27 activities directed at the state are not a volitional choice of forum, finding minimum contacts based
 28 on such activity would seem inconsistent with basic principles of fairness.” (collecting cases)

(internal quotation marks omitted)). Again, Google should not be rewarded with being allowed to attach its jurisdiction-less declaratory judgment claims to the present action merely because this case was transferred over Headwater's objections.

Thus, *Foman* factors 1 and 2 (bad faith and undue delay) weigh against leave to amend.

B. Factor 3 Weighs Against Leave to Amend Because the Proposed Amendment Would Unfairly Prejudice Headwater, Including by Delaying Headwater's Claims Here and Forcing Headwater to Defend Against Counterclaims Lacking Personal Jurisdiction

Granting Google leave to assert its new proposed counterclaims would unfairly prejudice Headwater in multiple ways.

For example, Headwater already proved that the exact same counterclaims Google seeks to add here lack personal jurisdiction. As described above, Judge Wise recognized this deficiency and was prepared to transfer or dismiss Google's claims altogether. Rather than fight that decision on the merits with Judge Wise, Google gave up and turned to a different Judge in hopes of a different result. It would, of course, be prejudicial to Headwater if it were forced to defend itself against claims in a forum lacking personal jurisdiction over the dispute. Personal jurisdiction is required for a reason, and no case cited by Google indicates that forcing a litigant to defend itself against claims lacking personal jurisdiction would not be unfairly prejudicial.

By comparison, if Google had not run away from Judge Wise, the DJ Action presumably would have been transferred to the Eastern District of Texas (where Headwater has operated for the past decade and where all past Headwater trials have been), or else dismissed altogether. In that case, Headwater would have either been able to litigate the merits in its home forum with proper jurisdiction and a court that is highly experienced with its patent disputes, or else been cleared of Google's challenge to the '564 and '403 patents entirely. Google deprived Headwater of those two outcomes by improperly evading Judge Wise's adverse Order. The stark difference between what would have happened if Google did not evade Judge Wise and what would happen if Google's jurisdiction-less counterclaims are allowed to proceed shows that granting leave would unfairly prejudice Headwater.

1 As another example, granting Google’s motion for leave would unfairly delay adjudication
 2 of Headwater’s existing claims in this case. While Google argues this case is in its infancy (*see*
 3 *Mot. at 10-11*), that is not the case. In this action, Headwater served its infringement contentions
 4 more than six months ago, and Google served its invalidity contentions more than four months
 5 ago. The parties also took multiple depositions and exchanged significant written discovery during
 6 the venue discovery process. And the parties already completed claim construction briefing two
 7 months ago. That is significant progress in this action, which was filed in May 2025 (nearly a year
 8 ago) and was assigned an April 2027 trial date (less than a year from now).

9 By contrast, no progress has been made on the merits of Google’s counterclaims, and
 10 Google fails to account for the time it will take to re-adjudicate the personal jurisdiction dispute
 11 already addressed by Judge Wise. The DJ Action was filed four months after this case, but because
 12 Google brought the DJ Action in a forum lacking personal jurisdiction, all activity in the DJ Action
 13 was limited to adjudicating the personal jurisdiction dispute. When that dispute was about to
 14 conclude (in Headwater’s favor), Google hit the reset button and sought leave to add here the same
 15 claims that the parties and Judge Wise already spent more than four months addressing in the DJ
 16 Action. Now, while the parties and this Court could otherwise be making substantive progress on
 17 the existing claims in this case, we are instead forced to re-litigate the same personal jurisdiction
 18 dispute as before. Google’s injection of this personal jurisdiction dispute disrupts the case schedule
 19 here, unfairly prejudicing Headwater (who already litigated this dispute) and supporting denial of
 20 leave to amend. *See, e.g., Asetek Danmark A/S v. Coolit Sys. Inc.*, No. 19-cv-00410-EMC, Dkt.
 21 332 (N.D. Cal. Oct. 21, 2021) (denying leave under Rule 15 to amend counterclaims to add new
 22 defendant Asetek China because existing defendant “Asetek Danmark will be prejudiced due [to]
 23 an anticipated personal jurisdiction dispute which will take time to resolve before discovery can
 24 be propounded, and this will upset the case management schedule”).

25 Moreover, any action Headwater takes now to make progress on litigating the patents that
 26 have been in this case for nearly a year will be used by Google to bolster its personal jurisdiction
 27 argument. To be clear, Headwater does not agree that litigating its existing claims against Google
 28 constitutes a waiver of its personal jurisdiction arguments, but it is apparent from Google’s briefing

1 and its conversations with Headwater that Google will argue that it is. Headwater asked Google to
 2 stipulate that it would not make such arguments, and Google refused. According to Google at least,
 3 Headwater is forced to give up its existing claims against Google on the '192 and '320 patents or
 4 re-litigate the issue of personal jurisdiction as to the '403 and '564 patents. In Google's view,
 5 Headwater cannot do both, which only illustrates the unfair prejudice to Headwater of these
 6 circumstances Google created. This purported Hobson's choice inflicts a tactical disadvantage
 7 upon Headwater and is yet another reason amendment should be denied.

8 As another example, adding two more patents to this case prejudices Headwater's case
 9 management and trial strategy. Headwater chose to assert two patents in this case and should not
 10 be forced to double its size just because Google is evading the authority of another Judge. Doubling
 11 the number of patents asserted here would impact not only what issues Headwater can raise before
 12 trial (e.g., due to briefing and page limits), but also it would impact Headwater's trial presentation,
 13 since presenting asserted claims of four patents in the limited time available for trial is much
 14 different from presenting asserted claims of only two patents. Headwater should not be forced to
 15 overhaul its existing case just so Google can avoid Judge Wise's adverse Order.

16 And as another example, adding two more patents here would prejudice Headwater by
 17 potentially impacting any decisions on motions to stay pending Patent Office proceedings.
 18 Defendants in patent cases (including Google) commonly move to stay the litigation pending *inter*
 19 *partes* review ("IPR") and/or *ex parte* reexamination ("EPR") proceedings before the Patent
 20 Office. In multi-patent cases, defendants (again including Google) also commonly seek such stays
 21 even if fewer than all patents are subject to IPR/EPR proceedings and request that the stay only be
 22 lifted upon the conclusion of all Patent Office proceedings involving any asserted patent (and
 23 potentially only after all appeals are exhausted). If such a stay is granted, the result can be that the
 24 litigation only moves as quickly as the slowest patent. Adding two more patents to this case could
 25 substantially increase the likelihood that litigation of the existing '192 and '320 patents is stayed
 26 for years beyond the conclusion of any IPR/EPR involving those patents, because an IPR/EPR on
 27 the '564 or '403 patent could still be ongoing. Of course, Headwater does not concede that such a
 28 stay would be appropriate, but Google and many others commonly argue for such stays. Google

has not confirmed it would not seek to slow down litigation of the existing '192 and '320 patents based on any IPR/EPR involving the '564 or '403 patent. Headwater would welcome an assurance in Google's reply brief that Google would not argue for such a stay but expects Google will decline to provide such an assurance. Without it, the potential for unfairly delaying this litigation for years based on proceedings involving patents Headwater did not assert here (or anywhere) against Google is yet another example of substantial prejudice to Headwater.

Thus, *Foman* factor 3 (unfair prejudice to non-moving party) weighs against amendment.

C. Factor 4 Weighs Against Leave to Amend Because the Proposed Counterclaims Still Lack Personal Jurisdiction and Are Thus Futile

As Judge Wise already recognized, Google's claims for declaratory judgment of noninfringement lack personal jurisdiction. *See* Ex. 3 (J. Wise Order); Ex. 2 (Headwater Mot.). That Google has now repackaged them as proposed counterclaims here does not change those facts. This alone warrants denial of Google's motion for leave on grounds of futility. *See, e.g., Ralon*, 2024 WL 4933330, at *2 ("It is well-established that 'futility of amendment alone can justify the denial of a motion' [to amend]." (quoting *Ahlmeier v. Nevada Sys. of Higher Educ.*, 555 F.3d 1051, 1055 (9th Cir. 2009))); *In re Cloudera*, 121 F.4th 1180, 1189-90 (9th Cir. 2024) ("denying leave is not an abuse of discretion if it is clear that granting leave to amend would have been futile") (internal quotation marks omitted).

Another Judge in this District has already thoroughly considered whether the same claims at issue here were supported by personal jurisdiction—and indicated they were not. This means that Google's proposed amendment to add these same assertions as counterclaims would be futile. *See, e.g., Alejandro Fernandez Tinto Pesquera, S.I v. Fernandez Perez*, No. 20-CV-02128-LHK, 2021 WL 254193, at *21 (N.D. Cal. Jan. 26, 2021) (denying leave to amend because "amendment would be futile" where personal jurisdiction defects could not be fixed by amendment). Google should not be permitted to circumvent Judge Wise's authority by simply presenting its same claims to a different Judge in the same District, in hopes of getting a different result. Instead, Judge Wise's determination that the declaratory judgment claims lack personal jurisdiction should still apply here. *See, e.g., Tiamson v. Equifax, Inc.*, No. 19-CV-08430-LHK, 2020 WL 3972582, at *6 (N.D.

Cal. July 14, 2020) (“in light of the nearly identical complaints and arguments made by the parties, the *Caces-Tiamson* court’s reasoning [coming from a different Judge in the same District addressing lack of personal jurisdiction] applies with equal force in the instant case”); *see also United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997) (“Under the ‘law of the case’ doctrine, a court is generally precluded from reconsidering an issue that has already been decided by the same court”) (internal quotation marks omitted).

Google’s declaratory judgment claims still lack personal jurisdiction for all the reasons that made Judge Wise inclined to grant Headwater’s motion on this issue in the DJ Action. *See* Ex. 2 (Headwater Mot.). For example, Headwater has (1) filed no lawsuits in California asserting the ’403 and ’564 patents, (2) attended no meetings in California to discuss licensing or enforcement of the ’403 and ’564 patents, (3) engaged in no correspondence with California residents about enforcing the ’403 and ’564 patents.² *See id.* at 6-7. Indeed, what Google points to as its basis for a case or controversy to support a declaratory judgment claim are cases that Headwater filed in the Eastern District of Texas—not here. *See, e.g.*, Dkt. 101-5 at PDF page 24 (“An actual case and controversy exists at least because ... Headwater has accused Google Pixel devices and FCM of infringing the ’403 and ’564 patents in the Eastern District of Texas.”). Headwater has only ever filed one patent infringement action in this District, but that case involved different patents from those at issue here. *See* Ex. 2 (Headwater Mot.) at 7-9. The Federal Circuit has “consistently” found that, to support personal jurisdiction, an enforcement activity must “relate to the enforcement or the defense of the validity of *the relevant patents*.” *Avocent*, 552 F.3d at

² Google wrongly alleges that these statements in Headwater’s motion in the DJ Action were “misrepresentations.” *See* Mot. at 12. Google’s supposed “new facts” here simply show that certain Headwater licensees are located in California, which again is not news to anybody. *See* Ex. 7 (DJ Action Opp.) at 24 (Google’s own briefing from four months ago referring to such licenses). Granting a license to a California company does not show that Headwater filed a lawsuit in California asserting the ’403 and ’564 patents, attended meetings in California to discuss licensing or enforcement of the ’403 and ’564 patents, or engaged in correspondence with California residents about enforcing the ’403 and ’564 patents. Headwater did not do those things, so there was nothing untruthful or misleading about those representations in Headwater’s briefing before Judge Wise. Google is simply misreading Headwater’s statements or misconstruing “enforcing” a patent to encompass licensing a portfolio containing the patent, even though Headwater’s briefing statements specifically used “enforcing” and “licensing” as different terms.

1 1336. Accordingly, the Federal Circuit has “(appropriately) rejected the existence of contacts
 2 concerning *other patents* as being pertinent to the minimum contacts analysis.” *Xilinx, Inc. v. Papst*
 3 *Licensing GmbH & Co. KG*, 848 F.3d 1346, 1353 (Fed. Cir. 2017).

4 Google’s alleged “new facts” are immaterial and do not make its proposed amendment any
 5 less futile. Indeed, Google’s 20+ pages of proposed counterclaims here (Dkt. 101-5 at PDF pages
 6 18-40) are substantively identical to the declaratory judgment claims that Judge Wise already
 7 considered (Ex. 1 (DJ Compl.)), except for the addition of paragraphs 30-32. *See* Dkt. 101-5 at
 8 PDF page 32. These are Google’s “new facts” that supposedly would have persuaded Judge Wise
 9 to find personal jurisdiction was proper (*see* Mot. at 11:28-12:2), yet Google tellingly never sought
 10 leave to amend its DJ Action complaint to add them and instead ran from Judge Wise instead of
 11 staying to convince her about these allegedly important “new facts.” In truth, they are neither new
 12 nor important to the personal jurisdiction analysis. The “new facts” consist of two license
 13 agreements that Google has been aware of for 5+ months and certain deposition testimony—given
 14 in other litigation against Google—about those same agreements. Indeed, Google’s own briefing
 15 submitted to Judge Wise ***four months ago*** referred to Headwater having licensed California
 16 companies. Ex. 7 (DJ Action Opp.) at 24. Thus, Judge Wise already considered Google’s argument
 17 about Headwater licensing California companies and evidently found it unpersuasive. And again,
 18 Google’s decision to dismiss the DJ Action rather than change Judge Wise’s mind with these
 19 supposedly explosive “new facts” speaks volumes about Google’s true confidence about them.

20 In arguing that its proposed counterclaims are not futile, Google again refers to *AbCellera*.
 21 But as discussed above with respect to bad faith and undue delay, the *AbCellera* case is legally
 22 and factually inapposite (e.g., did not involve declaratory judgment counterclaims, unlike here;
 23 adverse ruling on personal jurisdiction still allowed jurisdictional discovery to support re-filing,
 24 unlike here; plaintiff actively litigated between transfer and decision to allow counterclaims, unlike
 25 here). As also discussed above, although *AbCellera* involved permissive counterclaims (though
 26 still not declaratory judgment counterclaims), the opinion’s only cited authority on this point
 27 apparently did not consider the issue of permissive counterclaims in the context of a case that was
 28 transferred over the plaintiff’s opposition, which are the facts here. These are key distinctions that

believe Google's reliance on *AbCellera*. For at least the same reasons they lacked personal jurisdiction before Judge Wise, they are futile here.

Further still, even putting aside the personal jurisdiction issue, the Court should exercise its substantial discretion under the Declaratory Judgement Act and decline to hear Google's DJ claims. The same factors and considerations discussed throughout this brief support declining DJ jurisdiction here. For this additional and alternate reason (as discussed in Section IV below), Google's proposed amendment is futile and should be denied.

Thus, *Foman* factor 4 (futility of the amendment) weighs against leave to amend.

D. Factor 5 Should Be Considered Neutral

While Google has not previously sought to amend its answer to add counterclaims, this factor should be considered neutral given the posture of this case. Here, Google proposes adding permissive counterclaims seeking declaratory judgment of noninfringement as to two patents that are not part of this case and have not been previously asserted by Headwater against Google. That is already highly unorthodox, and again, Google is only seeking to do so to evade another Judge's determination that its claims lack personal jurisdiction. Google should not be rewarded on this factor merely because it is the first time in this case that it is evading an adverse ruling from another Judge in this District.

IV. THE COURT SHOULD DECLINE TO HEAR GOOGLE'S DJ CLAIMS

Given the Declaratory Judgment Act's use of the word "may," a district court has "*unique* and *substantial* discretion in deciding whether to declare the rights of litigants." *Communications Test Design, Inc. v. Contec, LLC*, 952 F.3d 1356, 1361-62 (Fed. Cir. 2020) (quoting *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995)). As long as the district court "acts in accordance with the purposes of the Declaratory Judgment Act and the principles of sound judicial administration, it has broad discretion to refuse to entertain a declaratory judgment action." *Id.*

Here, for the same reasons and considerations discussed throughout this brief, the Court should exercise its discretion to decline to hear Google's DJ claims of non-infringement on the '403 and '564 patents. Google's conduct in connection with the DJ Action and dismissal to avoid

1 an adverse ruling by Judge Wise fully supports the Court’s use of discretion here. This is an
2 additional and independent basis for denying Google’s proposed amendment.

3 For example, Headwater believes that Google’s conduct constitutes bad faith or is
4 tantamount to bad faith. But should the Court find the conduct to not rise to that level, there can
5 be no dispute that Google’s actions were improper, misleading, and wasteful. They reflect tactical
6 decisions that unnecessarily burdened Headwater and the Court and is not how litigation should
7 be conducted. Likewise, Headwater believes that Google’s amendment is futile. But a minimum,
8 and evidenced by Judge Wise’s order, whether this District has personal jurisdiction over Google’s
9 DJ claims of non-infringement against Headwater is questionable and will require another motion
10 to dismiss. The DJ Action was pending for seven months and we’re back at square one.

11 These examples and considerations easily support the Court’s discretion to decline to hear
12 Google’s DJ claims under the Declaratory Judgment Act—beyond and in the alternative to FRCP
13 15 or the lack of personal jurisdiction. *See R S Hughes Company, Inc v. PCP Group, Inc*, No C
14 09-4846 VRW, 2010 WL 11703642, at *7 (N.D. Cal. Mar. 2, 2010) (“As an alternative basis for
15 its ruling, the court concludes that even if personal jurisdiction over Pellon existed, it would
16 exercise its discretion and decline to decide the issues presented in this case.”).

17 *R S Hughes* is instructive and applicable here. In *R S Hughes*, Judge Walker noted that “the
18 fact that the parties are engaged in a parallel action is an important factor in determining whether
19 to allow a declaratory judgment suit to proceed.” *Id.* at *7. The DJ plaintiff engaged in procedural
20 maneuvering, such as delaying five months to file a motion in a state case and then filing a DJ
21 action “across the country and its backyard.” *Id.* This “signaled to the court that [the DJ plaintiff]
22 is concerned more with selecting a forum than it is with resolving in a timely manner the dispute
23 between it and [the defendant].” Judge Walker held that the DJ plaintiff’s use of the Declaratory
24 Judgement Act “as a tool of forum shopping directly conflicts with the purposes of the Act.” *Id.*
25 And for that reason the Court would DECLINE TO HEAR the case. *Id.* at *8.

26 The same reasoning and outcome apply here. If Google wanted to resolve in a timely
27 manner the alleged case or controversy on the ’403 and ’564 patents, it could and should have filed
28 its action in EDTEX where Headwater is subject to personal jurisdiction and the Court is highly

1 efficient and experienced with Headwater's patents and Google's products, through multiple trials.
2 Instead, Google chose to forum shop by filing "in its backyard" where personal jurisdiction over
3 Headwater is lacking, and it litigated the DJ Action for seven months. Then finally, when the Judge
4 Wise indicated that the case may be transferred to EDTEX (where it should have been filed),
5 Google dismissed and then re-brought the claims in another NDCA case. These machinations do
6 not—and cannot—serve the objectives for which the Declaratory Judge Act was created.

7 **V. CONCLUSION**

8 For the foregoing reasons, the Court should deny Google's motion for leave to amend its
9 answer and counterclaims. The facts show that Google's proposed amendment is motivated by bad
10 faith, is the product of undue delay, would unfairly prejudice Headwater, and would be futile
11 because its declaratory judgment claims lack personal jurisdiction, as Judge Wise recognized.
12 Further, for the same reasons discussed, the Court should exercise its substantial discretion under
13 the Declaratory Judgement Act and decline to hear Google's DJ claims.

14
15
16 Dated: April 9, 2026

Respectfully submitted,

17 /s/ Marc Fenster
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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that, on April 9, 2026 counsel of record who have appeared in this case are being served with a copy of the foregoing via ECF.

/s/ Marc Fenster

Marc Fenster

RUSS, AUGUST & KABAT