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

AGIS SOFTWARE DEVELOPMENT LLC,	§ § §	
Plaintiff,	§ §	Civil Action No. 2:17-CV-513-JRG (Lead Case)
v.	§ §	
	§	**JURY TRIAL DEMANDED**
HUAWEI DEVICE USA INC., HUAWEI	§	
DEVICE CO., LTD. AND HUAWEI	§	Civil Action No. 2:17-CV-514-JRG
DEVICE (DONGGUAN) CO., LTD.,	§	Civil Action No. 2:17-CV-515-JRG
HTC CORPORATION,	§	Civil Action No. 2:17-CV-516-JRG
LG ELECTRONICS, INC.,	§	Civil Action No. 2:17-CV-517-JRG
APPLE INC.,	§	
ZTE CORPORATION, ZTE (USA),		
INC., AND ZTE (TX), INC.,		
Defendants.		

JOINT MOTION FOR ENTRY OF OPPOSED PROTECTIVE ORDER

Pursuant to the Court's Consolidation Order filed on March 5, 2018 (Dkt. No. 90), Plaintiff,

AGIS Software Development LLC, and Defendants, Huawei Device USA Inc., Huawei Device

Co., Ltd., Huawei Device (Dongguan) Co., Ltd., HTC Corporation, LG Electronics, Inc., Apple

Inc., ZTE (USA), Inc., and ZTE (TX), Inc., hereafter referred to as "the Parties," submit competing

forms of the proposed Protective Order attached hereto as Exhibit A. The Parties were able to

reach agreement on all issues in the Protective Order except for Paragraph 40. The Parties'

positions are outlined below.

I.   PLAINTIFF'S POSITION

AGIS Software Development LLC ("AGIS Software") is the sole Plaintiff in this action.

AGIS Software is a separate and distinct corporate entity from AGIS Holdings, Inc. and

Advanced Ground Information Systems, Inc. When Plaintiff negotiated the previous Protective

Orders with the Huawei, HTC, LG, and ZTE defendants (Case Nos. 2:17-cv-00513, Dkt. 69 and 2:17-cv-00514, Dkt. 44), the involved parties agreed that the Protective Orders were binding only on the "Parties." The term "Parties" did not include any AGIS entities other than the Plaintiff, AGIS Software. Moreover, the term "Parties" did include named Defendant and parent company ZTE Corporation. *See* 2:17-cv-00514, Dkt. 44.

The consolidated Defendants now seek to remove named Defendant ZTE Corporation from the proposed joint Protective Order and to omit the sister and parent corporate entities of the other Defendants. Yet, Defendants also now demand that non-parties AGIS Holdings, Inc. and Advanced Ground Information Systems, Inc. be bound by the joint Protective Order through a new provision carried over from the Apple Protective Order. *See* Proposed Protective Order at ¶ 40.   Defendants cannot have it both ways.

Regarding the previous Apple Protective Order, AGIS and Apple had reached a bilateral agreement to include the non-party AGIS entities. Notably, Apple Inc. does not have any overseas parent or sister entities. However, the same is not true for other Defendants and AGIS never made similar agreement with the other Defendants. AGIS Holdings, Inc. and Advanced Ground Information Systems, Inc. are third parties that have not agreed to be bound by the proposed Protective Order for the consolidated case. There is no compelling reason that AGIS Holdings, Inc. and Advanced Ground Information Systems, Inc. must be bound by the Protective Order at this early stage, especially considering the other AGIS entities may be bound by the Protective Order through the provision in the Protective Order created specifically for third parties. *See* Proposed Protective Order at ¶ 31. For these reasons, Plaintiff respectfully requests that the court enter Plaintiff's proposed language for paragraph 40 of the proposed Protective

Order, which does not include third parties AGIS Holdings, Inc. and Advanced Ground Information Systems, Inc.

II.   DEFENDANTS' POSITION

On October 26, 2017, this Court entered an agreed upon Protective Order in the *AGIS Software Development LLC v. Apple Inc.* case. (2:17-cv-00516-JRG, D.I. 51.) That Protective Order reflected the agreement of the parties that "[t]his Order shall be binding upon Apple Inc., AGIS Software LLC, *AGIS Holdings, Inc., and Advanced Ground Information Systems, Inc.,* their attorneys, and their successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and experts, and any persons or organizations over which they have direct control." (*Id.* ¶ 36.) In response to the Court's consolidation order, the parties negotiated a proposed amended Protective Order for the consolidated cases. After reaching an agreement regarding an amended Protective Order for the consolidated cases that included similar language in paragraph 40 binding AGIS Software Development LLC, AGIS Holdings, Inc. and Advanced Ground Information Systems, Inc. ("AGIS, Inc."), Plaintiff reneged on that agreement, stating that AGIS no longer agrees to allow AGIS Holdings and AGIS Inc. to be named in the amended Protective Order.

Although the Defendants have repeatedly requested Plaintiff's basis for that change in its position, Plaintiff has refused to provide any legitimate basis. In fact, Plaintiff has repeatedly represented that it *would* agree to the inclusion of AGIS Holdings, Inc. and AGIS, Inc. in the amended Protective Order, but has conditioned that agreement on the inclusion of unspecified non-party entities affiliated with HTC, Huawei, ZTE and LG that were not included in any of the

pre-consolidation protective orders in those cases. Plaintiff has explained that the only reason
for its removal of AGIS Holdings, Inc. and AGIS, Inc. from paragraph 40 of the proposed
Protective Order is that those unspecified non-party entities affiliated with HTC, Huawei, ZTE
and LG are not named in that paragraph. However, Plaintiff has not identified any specific non-
party entities it believes should be included or provided any basis for their inclusion, and HTC.
Huawei, ZTE[1] and LG do not agree to include their unidentified non-party affiliates as
signatories to the Protective Order.

Based on Plaintiff's own representations, AGIS, Inc.—the practicing AGIS entity—and
AGIS Holdings, Inc. will be involved in this case and should therefore be bound by the
governing Protective Order. AGIS, Inc. was the original assignee of the patents-in-suit and
assigned those patents to Plaintiff through AGIS Holdings, Inc. just one day before filing each of
the consolidated cases. Plaintiff has included former and present employees of AGIS, Inc. with
no affiliation to AGIS Software Development LLC in its initial disclosures to defendants and has
represented to this Court that AGIS, Inc. and its employees have information relevant to the case.
For example, in opposition to Apple's motion to transfer venue, Plaintiff argued that it would be
relying on AGIS, Inc.'s products practicing of the patents-in-suit and therefore that AGIS, Inc.
employees would have information relevant to this case.

Despite those representations, Plaintiff has used its corporate structure as a shield in
discovery. For example, AGIS represented in its PR 3-1 (f) disclosure to Apple that "AGIS does
not intend to rely on the assertion that its own apparatuses, products, devices, processes,
methods, acts, or other instrumentalities practice the claimed inventions." Additionally, after the
hearing regarding Apple's transfer motion, Plaintiff refused to provide a response to an

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[1] Defendant ZTE Corporation has not yet been served or appeared in this matter.

interrogatory requesting the identification of "each AGIS product that AGIS contends practices any asserted claim of any Patent-in-Suit," stating that "AGIS objects to this interrogatory as overbroad and seeking irrelevant information to the extent the phrase 'AGIS product[s]' purports to seek information regarding products developed by entities other than AGIS Software Development LLC." Similarly, Plaintiff now attempts to use its corporate structure to shield AGIS, Inc. and AGIS Holdings, Inc. from the provisions of the Protective Order. That attempt to exempt AGIS, Inc. and AGIS Holdings, Inc. from the Protective Order should be rejected.

Therefore, Defendants respectfully request that the Court enter Defendants' proposed language for paragraph 40 of the proposed Protective Order.

Dated: April 9, 2018   Respectfully submitted,

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