

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

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

**DISCOVERY ORDER**

After a review of the pleaded claims and defenses in this action, in furtherance of the management of the Court's docket under Federal Rule of Civil Procedure 16, and after receiving the input of the parties to this action, it is ORDERED AS FOLLOWS:<sup>1, 2</sup>

- 1. Initial Disclosures.** In lieu of the disclosures required by Federal Rule of Civil Procedure 26(a)(1), each party shall disclose to every other party the following information:
- (a) the correct names of the parties to the lawsuit;
  - (b) the name, address, and telephone number of any potential parties;

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<sup>1</sup> HTC Corp. states that it submits this discovery order for the Court's consideration and entry subject to its motion to dismiss and without waiver of its objection to personal jurisdiction in this case.

<sup>2</sup> Defendant ZTE Corporation has not yet been served or appeared in this matter; thus, all discovery limits will apply if Defendant ZTE Corporation is served. Further, ZTE (USA), Inc. and ZTE (TX), Inc. state that they submit this discovery order for the Court's consideration and entry subject to their motion to dismiss or in the alternative

- (c) the legal theories and, in general, the factual bases of the disclosing party's claims or defenses (the disclosing party need not marshal all evidence that may be offered at trial);
- (d) the name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person's connection with the case, and a brief, fair summary of the substance of the information known by any such person;
- (e) any indemnity and insuring agreements under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment;
- (f) any settlement agreements relevant to the subject matter of this action; and
- (g) any statement of any party to the litigation.

**2. Disclosure of Expert Testimony.** A party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703 or 705, and:

- (a) if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, provide the disclosures required by Federal Rule of Civil Procedure 26(a)(2)(B) and Local Rule CV-26; and
- (b) for all other such witnesses, provide the disclosure required by Federal Rule of Civil Procedure 26(a)(2)(C).

**3. Additional Disclosures.** Without awaiting a discovery request, each party will make the following disclosures to the opposing parties:

(a) provide the disclosures required by the Patent Rules for the Eastern District of Texas with the following modifications to P.R. 3-1 and P.R. 3-3:

i. If a party claiming patent infringement asserts that a claim element is a software limitation, the party need not comply with P.R. 3-1 for those claim elements until 30 days after source code for each Accused Instrumentality is produced by the opposing party. Thereafter, the party claiming patent infringement shall identify, on an element-by-element basis for each asserted claim, what source code of each Accused Instrumentality allegedly satisfies the software limitations of the asserted claim elements.

ii. If a party claiming patent infringement exercises the provisions of Paragraph 3(a)(i) of this Discovery Order, the party opposing a claim of patent infringement may serve, not later than 30 days after receipt of a Paragraph 3(a)(i) disclosure, supplemental “Invalidity Contentions” that amend only those claim elements identified as software limitations by the party claiming patent infringement.

(b) produce or permit the inspection of all documents, electronically stored information, and tangible things in the possession, custody, or control of the party that are relevant to the pleaded claims or defenses involved in this action, except

to the extent these disclosures are affected by the time limits set forth in the Patent Rules for the Eastern District of Texas; and

- (c) provide a complete computation of any category of damages claimed by any party to the action, and produce or permit the inspection of documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered, except that the disclosure of the computation of damages may be deferred until the time for Expert Disclosures if a party will rely on a damages expert.

**4. Protective Orders.** The Court will enter the parties' Agreed Protective Order.

**5. Discovery Limitations.** The discovery in this case is limited to the disclosures described in Paragraphs 1-3 together with:

- (a) For purposes of this section, (i) Huawei Device USA Inc., Huawei Device Co., Ltd., and Huawei Device (Dongguan) Co. Ltd. collectively count as one "Defendant"; and (ii) ZTE (USA), Inc., and ZTE (TX), Inc. collectively count as one "Defendant."
- (b) Each defendant may serve a maximum of 25 interrogatories on Plaintiff. Plaintiff may serve a maximum of 25 interrogatories on each Defendant.
- (c) Plaintiff may serve up to 40 requests for admission per party. Each Defendant may serve up to 40 requests for admission on Plaintiff. Notwithstanding the limitations in this paragraph, requests for admission directed to the authentication of documents and things and/or whether a document qualifies as a printed publication under 35 U.S.C. § 102 shall be unlimited.

- (d) Plaintiff may take up to 55 total hours of deposition testimony (inclusive of both 30(b)(1) and 30(b)(6) depositions) of each Defendant. Defendants may collectively take up to 55 total hours of deposition testimony of Plaintiff (inclusive of both 30(b)(1) and 30(b)(6) depositions), and separately each Defendant may take an additional 10 hours of deposition testimony of Plaintiff (inclusive of both 30(b)(1) and 30(b)(6) depositions). Depositions of experts and third parties do not count against these limits. Defendants shall coordinate depositions to reduce redundancy and inconvenience to the parties. The parties agree that witnesses will be deposed at a location convenient for the witness (ordinarily the place of residence or employment), except that the parties will meet and confer and work together in good faith on the location of depositions should any party wish to conduct a deposition at an alternative location.
- (e) For purposes of this section, depositions of individuals affiliated with Advanced Ground Information Systems, Inc. (“AGIS, Inc.”), such as AGIS, Inc.’s employees and consultants (including but not limited to those individuals identified in AGIS’s Initial Disclosures—Christopher Rice, Malcolm K. Beyrer II, Ronald Wisneski, Rebecca Clark, Eric Armstrong, and David Sietsema) shall count against the hours limit for depositions of Plaintiff in 5(d) above.
- (f) All individual depositions shall be limited to seven hours in accordance with the Federal Rules of Civil Procedure, except that Defendants may take up to 14 hours of deposition testimony of any named inventor.

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