

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  
v. § (LEAD CASE)  
§  
HUAWEI DEVICE USA INC., *et al.*, §  
§  
*Defendants.* §

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AGIS SOFTWARE DEVELOPMENT LLC, §  
§  
*Plaintiff,* §  
§ Civil Action No. 2:17-CV-516-JRG  
v. § (CONSOLIDATED CASE)  
§  
APPLE INC., §  
§  
*Defendant.* §

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**DEFENDANT APPLE INC.'S MOTION FOR SUMMARY JUDGMENT THAT U.S.  
PATENT NO. 7,630,724 IS NOT INCORPORATED INTO U.S. PATENT APPLICATION  
NO. 14/027,410**

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**TABLE OF EXHIBITS**

<b><u>Exhibit Number</u></b>	<b><u>Description</u></b>
Ex. 1	U.S. Patent No. 9,408,055
Ex. 2	U.S. Patent No. 9,445,251
Ex. 3	U.S. Patent No. 9,467,838
Ex. 4	U.S. Patent No. 9,749,829
Ex. 5	U.S. Patent Application No. 14-027,410
Ex. 6	U.S. Patent No. 7,301,728
Ex. 7	U.S. Patent No. 7,630,724
Ex. 8	The New Oxford American Dictionary (excerpt) (2001)
Ex. 9	Case IPR2018-00817 Institution Decision
Ex. 10	Case IPR2018-00819 Institution Decision
Ex. 11	Case IPR2018-00818 Institution Decision

## I. INTRODUCTION

The parties dispute the proper priority dates of four patents-in-suit. That dispute includes, among other issues, whether AGIS's U.S. Application No. 14/027,410 (Ex. 5, the "'410 application") incorporated by reference AGIS's earlier U.S. Patent No. 7,630,724 (Ex. 7, the "'724 patent"). The plain language and syntax of the only incorporation statement in the '410 application does *not* incorporate the '724 patent. The Court should thus grant summary judgment to simplify and streamline the potential priority-related issues for trial.

## II. STATEMENT OF UNDISPUTED MATERIAL FACTS

AGIS asserts infringement of U.S. Patent Nos. 9,408,055 (Ex. 1, the "'055 patent"); 9,445,251 (Ex. 2, the "'251 patent"); 9,467,838 (Ex. 3, the "'838 patent"); and 9,749,829 (Ex. 4, the "'829 patent"). (Dkt. No. 32.) Each of the '055, '251, '838, and '829 patents purports to claim priority to the '410 application. Each of the '055, '251, '838, and '829 patents also purports to claim priority to U.S. Patent No. 7,031,728 (Ex. 6, the "'728 patent") and the '724 patent.

The '410 application contains only one incorporation statement: "The method and operation of communication devices used herein are described in U.S. Pat. No. 7,031,728 which is hereby incorporated by reference and U.S. Pat. No. 7,630,724." (Ex. 5 ¶ 5.) In three separate *inter partes* review proceedings, the Patent Office has held that the '410 application did not incorporate by reference the '724 patent. (Ex. 9 ('251 patent IPR decision) at 18-20; Ex. 10 ('838 patent IPR decision) at 15-17; Ex. 11 ('055 patent IPR decision) at 15-17.)

## III. LEGAL STANDARD

### A. Summary Judgment

A movant is entitled to summary judgment if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A dispute of fact is "genuine" only if evidence

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