

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

|                                |   |                                   |
|--------------------------------|---|-----------------------------------|
| AGIS SOFTWARE DEVELOPMENT LLC, | § |                                   |
|                                | § | Case No. 2:17-CV-0513-JRG         |
| Plaintiff,                     | § | (LEAD CASE)                       |
|                                | § |                                   |
| v.                             | § | <b><u>JURY TRIAL DEMANDED</u></b> |
|                                | § |                                   |
| HUAWEI DEVICE USA INC. ET AL., | § |                                   |
|                                | § |                                   |
| Defendants.                    | § |                                   |
|                                | § |                                   |
| <hr/>                          |   |                                   |
| APPLE, INC.,                   | § | Case No. 2:17-CV-0516-JRG         |
|                                | § | (CONSOLIDATED CASE)               |
| Defendant.                     | § |                                   |
|                                | § | <b><u>JURY TRIAL DEMANDED</u></b> |

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S OPPOSED MOTION TO  
STRIKE THE EXPERT REPORT OF NEIL SIEGEL FOR FAILURE TO DISCLOSE  
OBVIOUSNESS COMBINATIONS BASED ON THE SIEGEL PATENTS**

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## **I. INTRODUCTION**

Plaintiff AGIS Software Development LLC (“AGIS”) submits this Motion to Strike the October 29, 2018 Expert Report of Neil Siegel (“Siegel Report”) based on Defendant Apple Inc.’s (“Apple”) failure to timely disclose obviousness combinations based on the Force XXI Battle Command Brigade and Below (“FBCB2”) system in view of U.S. Patent Nos. 6,212,559 (“the ’559 patent”); 5,672,840 (“the ’840 patent”); 6,904,280 (“the ’280 patent”); and 7,278,023 (“the ’023 patent”) (collectively, the “Siegel Patents”). Apple never identified the Siegel Patents as anticipatory or obviousness-type prior art references in its amended invalidity contentions, and failed to provide any citations or evidence in support of its new invalidity theories as required by P.R. 3-3. Apple did not elect any of the Siegel Patents in its final election of prior art references. The Siegel Report thus exceeds the scope of Apple’s amended invalidity contentions and its final election of prior art references. Because Apple failed to put AGIS on notice of these new invalidity theories in accordance with the Court’s patent rules and docket control order (Dkt. 85) in this case, AGIS respectfully moves the Court to strike the Siegel Report as improperly based on previously-undisclosed invalidity theories.

## **II. FACTUAL BACKGROUND**

Apple served invalidity contentions on December 1, 2017 and amended its invalidity contentions on April 16, 2018. Neither set of Apple’s invalidity contentions identified the Siegel Patents as anticipatory or obviousness-type prior art references. Apple provided no charts identifying citations and evidence to support the Siegel Patents as anticipatory and/or obviousness references.

Early in the case, the parties negotiated a date for the final election of claims and prior art. AGIS substantially narrowed its claims to a final election of 38 claims across 5 patents.

Apple also was required to make a final election of prior art, which it did on August 29, 2018.

Apple's final election of prior art references did not identify the Siegel Patents. Ex. A<sup>1</sup>, Apple's Final Election of Prior Art. Instead, Apple specifically identified a combination based on the FBCB2 system with U.S. Patent Application No. 2002/0115453 ("Poulin") or U.S. Patent No. 7,353,034 ("Haney"). Exhibit A, Apple's Final Election of Prior Art, at pp. 5-6.

On October 29, 2018, Apple served the Siegel Report which included obviousness arguments based on the FBCB2 system in combination with the Siegel Patents. Ex. B, Siegel Report at ¶¶ 17, 83, 97-98, 119, 154, 161-162, 186-187, 191, 194, 216, 222-223, 227, 230, 237-238, 244, 250, 267-268, 274, 280, 303, 324, 345, 350, 376, 404, 415-416, 431, 437, 467-468, and 485; see also Exhibit C, Transcript of November 14, 2018 Deposition of Neil Siegel, at 62:25-79:24. The Siegel Patents allegedly cover various projects during Dr. Siegel's employment at TRW and Northrop Grumman, including non-FBCB2 projects such as the "Sigma Star" and the Forward-Area Air Defense Command Control and Intelligence System ("FAAD C2I"). Ex. B, Siegel Report at ¶ 17. For example, Dr. Siegel states that the '840 patent covers "aligning a map display on a hand-held device to the cardinal points" adopted in and "the reporting filter incorporated in the FAAD C2I system based on an angular filter (e.g., reporting whenever the display was rotated more than a certain amount)." Ex. B, Siegel Report at ¶¶ 17 and 70. Dr. Siegel admits FAAD C2I is not the FBCB2 system. Ex. B, Siegel Report at ¶¶ 15 (describing FBCB2 and FAAD C2I separately), 50 (describing FAAD C2I as a component of another distinct project, Sigma Start), 58 (describing FAAD C2I as a separate system). The '840 patent was filed during the pendency of the Sigma Star's FAAD C2I component and after the alleged start of the FBCB2 program. Ex. B, Siegel Report at ¶ 51.

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<sup>1</sup> References to Exhibits A–C refer to the exhibits submitted with the Declaration of Alfred R. Fabricant in support of this motion and attached hereto.

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