

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

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

v.

HUAWEI DEVICE USA INC., *et al.*,

Defendants.

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Civil Action No. 2:17-CV-513-JRG
(LEAD CASE)

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

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Civil Action No. 2:17-CV-516-JRG
(CONSOLIDATED CASE)

**DEFENDANT APPLE INC.'S MOTION FOR SUMMARY JUDGMENT OF
NON-INFRINGEMENT OF U.S. PATENT NO. 8,213,970**

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<u>Exhibit Number</u>	<u>Description</u>
Ex. 1	U.S. Patent No. 8,213,970
Ex. 2	McAlexander Infringement Report Excerpts
Ex. 3	'970 File History Excerpt – 2010-09-20 Office Action
Ex. 4	'970 File History Excerpt – 2010-12-17 Reply to Office Action
Ex. 5	'970 File History Excerpt – 2011-03-11 Office Action
Ex. 6	'970 File History Excerpt – 2011-09-09 Reply to Office Action
Ex. 7	Find My iPhone Support Document
Ex. 8	McAlexander Deposition Excerpts
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Ex. 10	Declaration of Paul C. Clark

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[REDACTED]
[REDACTED]

I. INTRODUCTION

Apple moves for summary judgment of non-infringement of U.S. Patent No. 8,213,970 (the “’970 patent”). According to the ’970 patent’s Summary of the Invention, the patent provides “a method in which by sending a forced [] message to a recipient or a group of recipients, a sender can compel an automatic acknowledgment of receipt from each recipient’s PC or PDA/cell phone and *require a manual response from the recipient via the recipient’s cell phone before the message can be cleared.*” (Ex. 1 at 2:49-55.)¹ To that end, every asserted claim (claims 3, 5, and 8) requires displaying a “response list” on a recipient device that cannot be cleared unless and until the recipient selects a “response” from that list:

- Claim 1, from which asserted claims 3 and 5 depend, recites: “means for *requiring a manual response* from the response list *by the recipient in order to clear recipient’s response list from recipient’s cell phone display*”
- Claim 6, from which asserted claim 8 depends, recites: “providing a manual response list on the display of the recipient PDA/cell phone *that can only be cleared by the recipient providing a required response* from the list”

But there is no dispute that Apple’s accused feature—the “Lost Mode” feature of the Find My iPhone app—does not work that way. Rather, the parties’ experts agree that the alleged “response list” displayed on the recipient device can be cleared from the recipient device’s display *without* a “manual response” or “required response” being selected from the “response list.” Because selection of a “response” from the “response list” is not required to clear the “response list,” as mandated by the claims, summary judgment of non-infringement is warranted.

¹ Unless otherwise indicated, all emphasis has been added.

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