EXHIBIT 16

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

AGIS SOFTWARE DEVELOPMENT, LLC	§	
	§	
v.	§	CASE NO. 2:17-CV-513-JRG
	§	
HUAWEI DEVICE USA INC., et al.	§	

CLAIM CONSTRUCTION
MEMORANDUM AND ORDER

Before the Court is the Opening Claim Construction Brief (Dkt. No. 165) filed by Plaintiff AGIS Software Development, LLC ("Plaintiff" or "AGIS"). Also before the Court are Defendants Huawei Device USA Inc., Huawei Device Co., Ltd., Huawei Device (Dongguan) Co., Ltd. ("Huawei"), HTC Corporation ("HTC"), LG Electronics Inc. ("LG"), Apple Inc. ("Apple"), and ZTE (USA) Inc., and ZTE (TX), Inc.'s ("ZTE's") (collectively, "Defendants'") Responsive Claim Construction Brief (Dkt. No. 175) and Plaintiff's reply (Dkt. No. 186).[1,2]

[1] On August 22, 2018, the Court consolidated the following cases, *Agis Software Development LLC v. LG Electronics, Inc.*, 2:17-cv-515 (the "LG case") and *Agis Software Development LLC v. ZTE Corporation et al.*, 2:17-cv-517 (the "ZTE case"), under a new lead case, *Agis Software Development LLC v. HTC Corporation*, 2:17-cv-514 (the "HTC case"). (2:17-cv-514, Dkt. No. 57.) The Court set a Markman Hearing for the HTC case on December 17, 2018. (*Id.*) In addition, on September 28, 2018, the Court unconsolidated and transferred the ZTE case to the Northern District of California. (2:17-cv-514, Dkt. No. 78); (2:17-cv-513, Dkt. No. 203); (2:17-cv-517, Dkt. No. 85.)

[2] All citations to docket entries refer to entries in Case No. 2:17-cv-513.

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are not necessarily invalid for a lack of antecedent basis"). Defendants have argued that the claim is unclear as to the meaning of "voice alert," but the meaning is reasonably clear in light of the recital of "attaching a *voice* or text *message* to a forced message *alert*."

Further, "the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Phillips*, 415 F.3d at 1313. The specification provides context by disclosing that "[i]f the alert is a voice message, the message keeps repeating at a defined rate until the user operator selects from the required response list" and "[t]his voice message cannot be stopped from repeating until one of the entries on the response list is selected." '970 Patent at 7:24–27 & 8:50–51. The opinion of Plaintiff's expert is also persuasive in this regard. (*See* Dkt. No. 165-1, July 25, 2018 Carbonell Decl., at ¶¶ 103–05.)[11] This intrinsic and extrinsic evidence reinforces that the disputed term would be readily understandable to a person of ordinary skill in the art.

The Court therefore hereby construes **"the repeating voice alert"** to mean **"voice message that is repeating and that was attached to the forced message alert."**

L. "group"

Plaintiff's Proposed Construction	**Defendants' Proposed Construction**
Plain Meaning	"more than two participants associated together without having to pre-enter data into a web or identify other users by name, E-mail addresses or phone numbers"

[11] Plaintiff has also cited expert declarations submitted in support of petitions for *Inter Partes* Review filed by Defendants, but this evidence does not affect the Court's analysis of this disputed term. (*See* Dkt. No. 165, at Exs. I & J.)

(Dkt. No. 162, App'x 1, at 114; Dkt. No. 175, at 22; Dkt. No. 186, at 13; Dkt. No. 194, App'x A, at 45.) The parties submit that this term appears in Claims 1, 54, 55, and 84 of the '838 Patent, Claims 1 and 24 of the '251 Patent, and Claims 1, 34, 35, and 68 of the '829 Patent. (Dkt. No. 162, App'x 1, at 114.)

(1) The Parties' Positions

Plaintiff argues that Defendants' proposal of "more than two" is inconsistent with disclosure in the specification regarding "two or more." (Dkt. No. 165, at 25 (citing '838 Patent at 1:30–34).) Plaintiff also argues that Defendants' proposal of a negative limitation of "without having to pre-enter data into a web or identify other users by name, E-mail addresses or phone numbers" lacks support. (*See id.*, at 25–26.)

Defendants respond that "the specification repeatedly and consistently distinguishes communications involving a 'group' of participants from communications involving only two participants." (Dkt. No. 175, at 22.) Defendants also argue that "the specification repeatedly and consistently states that participants joining a group to coordinate their activities and share information can do so without having to pre-enter data or identify others by name, email, or phone number." (*Id.*, at 24.) Further, Defendants argue that "during prosecution of a related patent, the applicant distinguished prior art because—unlike the alleged invention—the prior art network required users to pre-enter phone numbers or email addresses before joining the network." (*Id.*, at 25.)

Plaintiff replies, as to the number of users in a "group," that "Defendants point to several places in the specification, but these citations do not amount to clear and unambiguous disavowal of groups of two." (Dkt. No. 186, at 13–14.) As to the remainder of Defendants' proposal, Plaintiff replies that "Defendants ignore the specification of the incorporated-by-reference '728 Patent

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