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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.	§	

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

DEFENDANT APPLE INC.'S MOTION TO STRIKE PORTIONS OF THE OPENING
EXPERT REPORT OF MR. JOSEPH MCALEXANDER THAT RELY ON UNTIMELY
DISCLOSED INFRINGEMENT THEORIES

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TABLE OF EXHIBITS

Exhibit Number	Description
Ex. 1	McAlexander Report Attachment A ('970 patent)
Ex. 2	McAlexander Report Attachment B ('055 patent)
Ex. 3	McAlexander Report Attachment D ('838 patent)
Ex. 4	November 2018 Contentions Ex. A ('970 patent)
Ex. 5	November 2018 Contentions Ex. B ('055 patent)
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Ex. 7	2018-05-18 Plaintiff's Rule 4-2 Disclosures
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I.   INTRODUCTION

On October 29, 2018, AGIS served a technical expert report ("the McAlexander report") that introduced three new theories of infringement that AGIS never before disclosed to Apple. In an apparent effort to justify introducing those new theories through its expert report, on November 12, 2018—two weeks *after* serving the report—AGIS served "amended infringement contentions" attaching claim charts nearly identical to those submitted with the McAlexander report. But those November 2018 amendments cannot remedy AGIS's failure to previously disclose its new infringement theories.   Critically, AGIS's November 2018 infringement contentions were improper under Patent Rule 3-6(a) because they were untethered to any claim construction by the Court that was "unexpected or unforeseeable" during claim construction briefing, and furthermore, untimely. Because AGIS failed to timely disclose in its infringement contentions the three new infringement theories introduced in the McAlexander report, Apple respectfully requests that opinions in that report relating to the three new theories be stricken.

II.   FACTUAL BACKGROUND

AGIS first served its Patent Rule ("P.R.") 3-1 Infringement Contentions on September 18, 2017. AGIS then served amendments to those contentions in February, April, and September 2018. AGIS failed to disclose any of the infringement theories described in Table 1, below, in any of those four sets of infringement contentions.

The Court issued its claim construction order on October 10, 2018. (Dkt. No. 205.) Fact discovery closed on October 26, 2018. (Dkt. No. 220 at 3.)

AGIS served the McAlexander report on October 29, 2018. That report introduced at least three new infringement theories that were not included in any of AGIS's previously served infringement contentions, as described below in Table 1.

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