# EXHIBIT 19

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

REBUTTAL EXPERT REPORT OF JOSEPH C. M<sup>©</sup>ALEXANDER III REGARDING VALIDITY OF U.S. PATENT NUMBERS: 8,213,970; 9,408,055; 9,445,251; 9,467,838; AND 9,749,829

AGIS SOFTWARE DEVELOPMENT LLC, vs. APPLE, INC.

Civil Action No. 2:17-CV-516-JRG

**November 19, 2018** 



Clark anticipates any of the asserted claims of the '970 Patent. And none of the references, either alone, or in combination, renders any of the asserted claims of the '970 Patent obvious. My analyses and conclusions are set forth in **Section 7**.

# 1.2 The Asserted Claims of the '055, '251, '838, and '829 Patents are Valid Over Each of the Respective References, Either Alone, or in Combination, Identified in Clark's and Siegel's Reports

17. The asserted claims of the '055, '251, '838, and '829 Patents are not invalid, as asserted by Clark or Siegel in their respective October 29, 2018 Reports, or upon other bases presented by APPLE.<sup>2</sup> None of the references proposed by Clark or Siegel anticipates any of the asserted claims of the '055, '251, '838, and '829 Patents. And none of the references, either alone, or in combination, renders any of the asserted claims of the '055, '251, '838, and '829 Patents. My analyses and conclusions are set forth in **Section 7**.

### 1.3 The '970 Patent is Entitled to the Priority Date of November 26, 2008

18. The asserted claims of the '970 Patent are each entitled to a priority date of its filing date, November 26, 2008. My analysis and conclusions are set forth in **Section 7**.

### 1.4 The '055 Patent is Entitled to the Priority Date of September 21, 2004

19. The asserted claims of the '055 Patent is entitled to a priority date of September 21, 2004, the filing date of the application that issued as the '728 Patent. Additionally, as I set forth in my opening report, certain asserted claims of the '055 patent were reduced to practice as of August 30, 2004. None of the arguments to the contrary, presented by Clark for the asserted claims of the '055 Patent, is persuasive.' My analysis and conclusions are set forth in Section 7.

<sup>&</sup>lt;sup>3</sup> See Clark Report at ¶¶ 94-111.



<sup>&</sup>lt;sup>2</sup> *Id*.

# 1.5 The '251, '838, and '829 Patents are Each Entitled to the Priority Date of April 17, 2006

20. The asserted claims of the '251, '838, and '829 Patents are each entitled to a priority date of April 17, 2006, the filing date of the application that issued as the '724 Patent. (Additionally, as I set forth in my opening report, certain asserted claims of the '838 patent were reduced to practice as of October 19, 2005. None of the arguments to the contrary, presented by Clark for the asserted claims of the '251, '838, and '829 Patents, is persuasive.) My analysis and conclusions are set forth in Section 7.

# 1.6 The References Proffered by Clark and Siegel are Cumulative to the Art of Record Before the U.S. Patent and Trademark Office

21. None of the references identified by Clark and Siegel (listed in **Section 5** below) are material to patentability of any of the asserted claims, because each reference is cumulative to the art already before the Examiner at the U.S. Patent and Trademark Office during the prosecution of the applications that issued as the '970, '055, '251, '838, and '829 Patents.

# 1.7 Findings Related to Infringement Remain Unchanged as Presented in My Expert Report on Infringement

22. Infringement positions, as stated in my previous expert report of October 29, 2018, remain unchanged. In my technical opinion, the APPLE products identified in that report infringe the asserted claims of the '970, '055, '251, '838, and '829 Patents.

### **2 OUALIFICATIONS**

23. My qualifications are identified in **Section 2** of my October 29, 2018 Expert Report and accompanying Appendices. I incorporate them herein by reference in their entirety.

<sup>&</sup>lt;sup>4</sup> *Id*.



and 4.61 (showing a January, 2013, commit date) provided on a laptop computer in New York, NY, 310 on AGIS discovery responses, and on the testimony of Sandel Blackwell, president of AGIS.

505. However, as Clark has admitted, he has no evidence of the commercial sale of the LifeRing product before the priority date of each of the respective '055, '251, '838, and '829 Patents, <sup>311</sup> because there was no sale or offer for sale prior to that time. Therefore, the LifeRing system source code, as it existed in version 2.12, does not qualify as invalidating prior art and attempts by Clark to use the LifeRing source code as potentially invalidating prior art are improper.

As I discussed elsewhere, <sup>312</sup> it is my opinion that the asserted claims of each of the '055, '251, '838, and '829 Patents are each due to a priority date that is at least as early as April 17, 2006. Testimony by AGIS witnesses and AGIS discovery responses cited when discussing the '055 Patent show a process of continuing improvements leading to an eventual reduction to practice at the time of the filing of the application leading to the '728 Patent (September 21, (2004). Further, testimony by AGIS witnesses and AGIS discovery responses cited when discussing the '251, '838, and '829 Patents merely show a process of continuing improvements leading to an eventual reduction to practice at the time of the filing of the application leading to the '724 Patent (April 17, 2006).

507. Accordingly, it is my opinion that the LifeRing system, as presented by Clark, is not qualified as a prior art reference for any of the claims of the '055, '251, '838, and '829 Patents.'

<sup>&</sup>lt;sup>312</sup> See discussions of priority dates in Sections 7.2.3, 7.3.3, 7.4.3, and 7.5.3 of this Expert Report.



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 $<sup>^{310}</sup>$  See, e.g., Id. at ¶ 920.  $^{311}$  Id. rt at ¶¶ 415-416 and (generally) ¶¶ 790-2068.

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