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



DECLARATION OF ALFRED R. FABRICANT IN SUPPORT OF PLAINTIFF AGIS SOFTWARE DEVELOPMENT, LLC'S RESPONSE IN OPPOSITION TO APPLE INC.'S SEALED MOTION TO STRIKE PORTIONS OF THE OPENING EXPERT REPORT OF MR. JOSEPH MCALEXANDER THAT RELY ON UNTIMELY DISCLOSED INFRINGEMENT THEORIES (DKT. 232)

- I, Alfred R. Fabricant, hereby declare as follows:
- 1. I am a member of Brown Rudnick LLP, lead counsel of record for Plaintiff AGIS Software Development LLC ("AGIS"). I am admitted to practice before this Court. I submit this declaration in support of AGIS Software Development LLC's Response in Opposition to Apple Inc.'s Sealed Motion to Strike Portions of the Opening Expert Report of Mr. Joseph McAlexander that Rely on Untimely Disclosed Infringement Theories (Dkt. 232). I am familiar with the facts set forth herein.
- 2. The exhibits attached to this declaration may contain annotations and/or excerpts of the originals.



- 3. Attached hereto as Exhibit A is a true and correct copy of annotated excerpts of Exhibit A to AGIS's September 21, 2018 Amended Infringement Contentions Against Apple Accused Products Regarding the '970 Patent.
- 4. Attached hereto as Exhibit B is a true and correct copy of annotated excerpts of Exhibit B to AGIS's September 21, 2018 Amended Infringement Contentions Against Apple Accused Products Regarding the '055 Patent.
- 5. Attached hereto as Exhibit C is a true and correct copy of annotated excerpts of Exhibit D to AGIS's September 21, 2018 Amended Infringement Contentions Against Apple Accused Products Regarding the '838 Patent.
- 6. Attached hereto as Exhibit D is a true and correct copy of annotated excerpts of Exhibit A to AGIS's September 18, 2017 Amended Infringement Contentions Against Apple Accused Products Regarding the '970 Patent.
- 7. Attached hereto as Exhibit E is a true and correct copy of annotated excerpts of Exhibit B to AGIS's September 18, 2017 Amended Infringement Contentions Against Apple Accused Products Regarding the '055 Patent.
- 8. Attached hereto as Exhibit F is a true and correct copy of annotated excerpts of Exhibit D to AGIS's April 20, 2018 Amended Infringement Contentions Against Apple Accused Products Regarding the '838 Patent.
- 9. Attached hereto as Exhibit G is a true and correct copy of a December 1, 2017 correspondence from Kerri-Ann Limbeek (Counsel for Apple) to Vincent J. Rubino, III (Counsel for AGIS) regarding the availability of Apple's source code for inspection.



- 10. Attached hereto as Exhibit H is a true and correct copy of a December 28, 2017 correspondence from Kerri-Ann Limbeek (Counsel for Apple) to Vincent J. Rubino, III (Counsel for AGIS) regarding the production of Apple's source code documents.
- 11. Attached hereto as Exhibit I is a true and correct copy of a January 8, 2018 e-mail correspondence from Kerri-Ann Limbeek (Counsel for Apple) to Enrique W. Iturralde (Counsel for AGIS) regarding the availability of additional Apple source code for inspection on January 9, 2018.
- 12. Attached hereto as Exhibit J is a true and correct copy of a February 21, 2018 e-mail correspondence from Kerri-Ann Limbeek (Counsel for Apple) to Enrique W. Iturralde (Counsel for AGIS) regarding the availability of "additional source code relating to the Family Sharing feature" for inspection on February 22, 2018.
- 13. Attached hereto as Exhibit K is a true and correct copy of a July 13, 2018 e-mail correspondence from Kerri-Ann Limbeek (Counsel for Apple) to Enrique W. Iturralde (Counsel for AGIS) regarding the availability of additional Apple source code for inspection on July 16, 2018.
- 14. Attached hereto as Exhibit L is a true and correct copy of a January 12, 2018 correspondence from Kerri-Ann Limbeek (Counsel for Apple) to Vincent J. Rubino, III (Counsel for AGIS) regarding an additional production of Apple's source code documents.
- 15. Attached hereto as Exhibit M is a true and correct copy of a March 9, 2018 correspondence from Brian D. Matty (Counsel for Apple) to Vincent J. Rubino, III (Counsel for AGIS) regarding an additional production of Apple's source code documents.



- 16. Attached hereto as Exhibit N is a true and correct copy of an August 3, 2018 correspondence from Brian D. Matty (Counsel for Apple) to Enrique W. Iturralde (Counsel for AGIS) regarding an additional production of Apple's source code documents.
- 17. Attached hereto as Exhibit O is a true and correct copy of an August 22, 2018 correspondence from Kerri-Ann Limbeek (Counsel for Apple) to Enrique W. Iturralde (Counsel for AGIS) regarding an additional production of Apple's source code documents.
- 18. Attached hereto as Exhibit P is a true and correct copy of a chain of e-mail correspondence between Counsel for AGIS and Counsel for Apple during the period of November 12, 2018 to December 7, 2018.
- 19. Attached hereto as Exhibit Q is a true and correct copy of a November 8, 2017 correspondence from Vincent J. Rubino, III (Counsel for AGIS) to Brian D. Matty (Counsel for Apple) regarding Apple's production of documents and things.
- 20. Attached hereto as Exhibit R is a true and correct copy of a March 1, 2018 correspondence from Alessandra C. Messing (Counsel for AGIS) to Kerri-Ann Limbeek (Counsel for Apple) regarding alleged deficiencies in Apple's document production.
- 21. Attached hereto as Exhibit S is a true and correct copy of a March 10, 2018 correspondence from Kerri-Ann Limbeek (Counsel for Apple) to Alessandra C. Messing (Counsel for AGIS) regarding Apple's production of documents and source code.
- 22. Attached hereto as Exhibit T is a true and correct copy of an August 1, 2018 correspondence from Kerri-Ann Limbeek (Counsel for Apple) to Alessandra C. Messing (Counsel for AGIS) regarding Apple's designation of Rule 30(b)(6) witnesses to testify, in part, concerning the Family Sharing features.



23. Attached hereto as Exhibit U is a true and correct copy of annotated excerpts of Defendant Apple's Fifth Supplemental Objections and Responses to Plaintiff's First Set of Interrogatories to Apple Inc. (Nos. 1-10) containing answers, in part, concerning the Family Sharing features.

- 24. Attached hereto as Exhibit V is a true and correct copy of annotated excerpts of the Transcript of the August 29, 2018 Deposition of Rahul Zingde, Rule 30(b)(1) witness providing testimony, in part, concerning the Apple ID and Family Sharing features.
- 25. Attached hereto as Exhibit W is a true and correct copy of annotated excerpts of the public version of Apple's iCloud Terms and Conditions, retrieved on September 17, 2017 from Apple's public website at https://www.apple.com/ca/legal/internet-services/icloud/en/terms.html, and produced to Apple with production number AGISTX_00007018 and pursuant to P.R. 3-2.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on December 31, 2018.

/s/ Alfred R. Fabricant
Alfred R. Fabricant

