

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

AGIS SOFTWARE DEVELOPMENT LLC,	§	
	§	
<i>Plaintiff,</i>	§	
	§	Civil Action No. 2:17-CV-513-JRG
v.	§	(LEAD CASE)
	§	
HUAWEI DEVICE USA INC., <i>et al.</i> ,	§	
	§	
<i>Defendants.</i>	§	

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

APPLE INC.'S OPPOSITION TO DKT. NO. 233, PLAINTIFF'S MOTION TO STRIKE PORTIONS OF THE EXPERT REPORT OF NEIL SIEGEL RELATING TO THE INVALIDITY THEORY BASED ON "DYNAMICALLY ELECTING SERVERS"

TABLE OF CONTENTS

	<u>Pages</u>
I. INTRODUCTION	2
II. FACTUAL BACKGROUND.....	2
III. LEGAL STANDARD.....	4
IV. ARGUMENT	4
A. Dr. Siegel’s Description of Dynamic Server Election Is Not A New Theory.....	5
B. AGIS’s Allegations Of Confusion and Prejudice Are Unfounded.	9
1. AGIS’s Alleged Confusion Is Not Credible.	9
2. AGIS Suffered No Prejudice.	11
C. AGIS’s Requested Relief Is Extreme.	13
CONCLUSION.....	14

TABLE OF AUTHORITIES

Pages

Cases

Cioffi v. Google, Inc.,
No. 2:13-CV-00103-JRG-RSP, 2017 WL 90756 (E.D. Tex. Jan. 10, 2017)..... 12

Digital Reg of Texas, LLC v. Adobe Sys. Inc.,
No. 12-CV-01971-CW (KAW), 2014 WL 1653131 (N.D. Cal. Apr. 24, 2014) 4

Elbit Sys. Land & C4I Ltd. v. Hughes Network Sys., LLC
No. 2:15-CV-00037-RWS-RSP, 2017 WL 2651618 (E.D. Tex. June 20, 2017) 4

Elbit Sys. Land & C4I Ltd. v. Hughes Network Sys., LLC,
No. 2:15-CV-00037-RWS, 2017 WL 4693971 (E.D. Tex. July 31, 2017) 4

Eolas Techs. Inc. v. Amazon.com, Inc.,
No. 6:15-CV-01038, 2016 WL 7666160 (E.D. Tex. Dec. 5, 2016) 4

Fenner Investments, Ltd. v. Hewlett-Packard Co.,
No. CIV.A. 6:08-CV-273, 2010 WL 786606 (E.D. Tex. Feb. 26, 2010) 4

Genband US LLC v. Metaswitch Networks Corp.,
No. 2:14-CV-33-JRG-RSP, 2016 WL 122969 (E.D. Tex. Jan. 9, 2016)..... 11, 12

LML Patent Corp. v. JPMorgan Chase & Co.,
No. 2:08-CV-448, 2011 WL 5158285, 2011 WL 5158285 (E.D. Tex. Aug. 11,
2011) 9

Network-1 Techs., Inc. v. Alcatel-Lucent USA, Inc.,
No. 6:11-CV-492-RWS-KNM, 2017 WL 4533664 (E.D. Tex. Oct. 11, 2017) 12

Statutes

35 U.S.C. § 102..... 11

35 U.S.C. § 103..... 11

TABLE OF EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>
Ex. 1	Excerpts of Expert Report of Neil Siegel
Ex. 2	Excerpts of Apple's Amended Invalidity Contentions (served April 16, 2018)
Ex. 3	Excerpt of Apple's Amended Invalidity Chart for U.S. Patent No. 9,467,838 (served April 16, 2018)
Ex. 4	Excerpt of May 1997 Summary of FBCB2 Program Status
Ex. 5	Excerpt of September 1998 FBCB2 Summary Tactical Internet System Design Document (Draft)
Ex. 6	U.S. Pat. No. 6,212,559
Ex. 7	Siegel Presentation: The world's only existing Tactical InterNet (May 1999)
Ex. 8	U.S. Pat. No. 9,445,251
Ex. 9	Excerpt of James L. Conatser and Vincent E. Grizio, <i>MBA Professional Report: Force XXI Battle Command Brigade and Below-Blue Force Tracking (FBCB2-BFT)</i> (December 2005).
Ex. 10	Excerpt of Richard J. Dunn, III, <i>Blue Force Tracking: The Afghanistan and Iraq Experience and Its Implications for the U.S. Army</i> (Northrop Grumman Mission Systems (2003).
Ex. 11	Excerpt of AGIS's 2nd Supplemental Response to Apple's Third Set of Interrogatories (served October 26, 2018)
Ex. 12	Excerpt from E. D. Tex. General Order Adopting Model Order Focusing Patent Claims and Prior Art to Reduce Costs
Ex. 13	Excerpts of Expert Report of Joseph McAlexander
Ex. 14	FBCB2 Brochure (TRW, 2003)
Ex. 15	Excerpts of Deposition Transcript of Dr. Neil Siegel

Defendant Apple Inc. (“Apple”) hereby opposes Dkt. No. 233, titled “Plaintiff AGIS Software Development LLC’s Opposed Motion to Strike Portions of the Expert Report of Neil Siegel Relating to the Undisclosed Invalidity Theory Based on ‘Dynamically Electing Servers.’”

I. INTRODUCTION

AGIS’s motion to strike flails for procedural protection from one of its major substantive problems in this litigation: that the asserted patent claims are invalid. AGIS’s effort to strike portions of Dr. Siegel’s thorough, well-reasoned expert report is nothing more than a naked attempt to prevent Dr. Siegel from telling the jury about FBCB2, a computer system he developed and sold to the U.S. military that is credited with saving thousands of American lives in Iraq and Afghanistan. Indeed, AGIS’s motivation is apparent because, despite the fact that the alleged “new theory” outlined in its Motion only affects *three* of the patents-in-suit, AGIS filed, in view of this motion, a separate motion for summary judgment of no invalidity against *all four* of the patents about which Dr. Siegel opines.

But Apple’s lengthy and detailed invalidity contentions put AGIS on full and fair notice of Apple’s invalidity arguments—including the very theory that is the subject of AGIS’s motion. Specifically, Apple’s invalidity contentions disclosed a theory of invalidity based on “dynamic” server election—the fact that in the FBCB2 system, the network could use one computer as a server, then later be reconfigured to use a different computer as a server—as early as with the service of its amended invalidity contentions. (See *infra* Part IV.A.) For these, and other reasons articulated more fully below, the Court should deny AGIS’s Motion to Strike.

II. FACTUAL BACKGROUND

Dr. Neil G. Siegel is an engineer and professor at the University of Southern California. (Ex. 1 (Siegel Report) ¶¶ 7-9.) Prior to joining USC in 2015, he spent most of his career at defense contractor Northrop Grumman Corporation (formerly TRW Inc.), where he worked on a variety

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