


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

AGIS SOFTWARE DEVELOPMENT LLC,	§	
	§	Case No. 2:17-CV-0513-JRG
	§	(LEAD CASE)
Plaintiff,	§	
	§	<u>JURY TRIAL DEMANDED</u>
v.	§	
	§	
HUAWEI DEVICE USA INC. ET AL.,	§	
	§	
Defendants.	§	

APPLE, INC.,	§	Case No. 2:17-CV-0516-JRG
	§	(CONSOLIDATED CASE)
Defendant.	§	
	§	<u>JURY TRIAL DEMANDED</u>

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S RESPONSE IN
OPPOSITION TO APPLE INC.'S SEALED MOTION FOR SUMMARY JUDGMENT
OF NO INFRINGEMENT AND NO DAMAGES FOR FOREIGN USES (DKT. 230)**

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Plaintiff AGIS Software Development LLC (“AGIS”) hereby submits its Response in Opposition to Defendant Apple Inc.’s (“Apple”) Sealed Motion for Summary Judgment of No Infringement and No Damages for Foreign Uses (Dkt. 230). AGIS respectfully submits that each of Apple’s arguments lacks merit and Apple’s motion should be denied.

I. INTRODUCTION

AGIS properly asserts that it is entitled to damages based on foreign uses of Apple accused devices. Apple asserts that because the *devices* are located outside the U.S., there is no infringing use. However, Apple fails to acknowledge that its servers are located within the United States and, therefore, constitute infringing use. As a result, there is infringement of U.S. Patent No. 9,749,829 (the “’829 patent”).

II. RESPONSE TO STATEMENT OF ISSUES

Apple has failed to show that AGIS cannot meet its evidentiary burden to prove that AGIS is entitled to recover for foreign sales because Apple does not show that AGIS has failed to present evidence sufficient to demonstrate that the use of accused devices outside of the United States use the claimed systems and methods by Apple servers *within* the United States.

III. RESPONSE TO STATEMENT OF UNDISPUTED FACTS

AGIS disputes [REDACTED]

[REDACTED]

[REDACTED]¹ AGIS

disputes Apple’s statement that AGIS claims damages based on foreign uses because the Accused Apps operate, *in part*, using Apple servers located inside the United States when, in fact, [REDACTED]

[REDACTED] AGIS disputes Apple’s

¹ References to Exs. A-H refer to exhibits to the Declaration of Alfred R. Fabricant attached hereto.

statement that the Accused Apps operate on servers located outside the United States. Apple cites to the [REDACTED]

[REDACTED]

AGIS does not dispute that the presently-asserted claims against Apple include claims 2, 8, 10, 14, 30, 34, 42, 50, and 68 which collectively depend from four independent claims.

[REDACTED]

AGIS disputes that the method of claim 1 requires a second device to “perform steps relating to accepting requests” and “performing actions based on receiving messages” where the claim 1 states that “the second device is *configured*” to perform, but does not require that any other device perform any claimed steps not initiated by the server. Ex. E, U.S. Patent No. 9,749,829 at 15:15-16, 15:29-30.

AGIS disputes that each claim allegedly directed to a second device (claims 35 and 68) require a mobile device operated by a user. *See* Ex. D, [REDACTED]

[REDACTED]

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