**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,	§ §	
v.	§ §	**JURY TRIAL DEMANDED**
HUAWEI DEVICE USA INC. ET AL.,	§ § §	███████████████
Defendants.	§ §	

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

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S RESPONSE
IN OPPOSITION TO APPLE INC.'S MOTION FOR SUMMARY JUDGMENT
THAT U.S. PATENT NO. 7,630,724 IS NOT INCORPORATED INTO
U.S. PATENT APPLICATION NO. 14/027,410 (DKT. 226)**

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Plaintiff AGIS Software Development LLC ("AGIS") hereby submits its Response in Opposition to Defendant Apple Inc.'s ("Apple") Motion for Summary Judgment that U.S. Patent No. 7,630,724 Is Not Incorporated Into U.S. Patent Application No. 14/027,410 (Dkt. 226). AGIS respectfully submits that each of Apple's arguments lacks merit and Apple's motion should be denied.

I.   INTRODUCTION

U.S. Patent Application No. 14/027,410 (the "'410 application") properly incorporates by reference U.S. Patent No. 7,630,724 (the "'724 patent"). Apple alleges that the '410 application does not incorporate the '724 patent because (1) the grammar and syntax of the incorporation statement shows only U.S. Patent No. 7,031,728 (the "'728 patent") was incorporated by reference; (2) there is ambiguity in the incorporation statement which defeats a finding of incorporation; and (3) AGIS's expert's opinion is unnecessary to determine whether there is incorporation. Apple's arguments are without merit because the '410 application specifically references the '724 patent using the necessary language for incorporation by reference, there is no ambiguity in the incorporation statement, and AGIS's expert, Joseph McAlexander's expert opinion was provided in response to Apple's expert, Paul Clark's opinion. In addition, Mr. McAlexander's opinion provides the reasonable person of ordinary skill in the art standard under which incorporation by reference is assessed. Therefore, the Court should deny Apple's summary judgment motion.

II.   RESPONSE TO STATEMENT OF ISSUES

Apple has failed to show that the '410 application does not incorporate the '724 patent by reference because Apple does not show that the incorporation statement in the '410 application does not expressly and unambiguously incorporate the '724 patent.

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