[redacted]

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

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

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

REPLY IN SUPPORT OF APPLE INC.'S *DAUBERT* MOTION TO EXCLUDE THE OPINIONS OF MR. ALAN RATLIFF RELATING TO DAMAGES (DKT. 231)

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[redacted]

I. INTRODUCTION

AGIS's damages model makes an apples-to-oranges comparison between the "Accused Apps"—which Apple distributes on its devices for free—and a third-party app that requires an upfront fee to download. *See* Dkt. 231 [*Daubert* Motion ("Mot.")] at 1-2. AGIS argues that Apple indirectly derives value from the Accused Apps because it uses them to "entic[e]" consumers to buy Apple's products and that it monetizes the Accused Apps through "increased device sales," "advertising," and "other ways." Dkt. 250 [AGIS Opposition ("Opp.")] at 1, 3. But AGIS does not identify any evidence showing that Apple made a ***single*** additional sale, received a ***single*** additional dollar in "advertising" revenue, or received a ***single*** additional dollar in any "other way[]" that is attributable to the Accused Apps—let alone the allegedly infringing features.

Instead, AGIS's damages expert, Mr. Ratliff, devised a damages model based on the upfront cost of the "Family Tracker" app without showing that it is a reliable substitute for the alleged "ecosystem" value of the Accused Apps. Mr. Ratliff then assigned an arbitrary [redacted] between the allegedly patented and unpatented features based ***solely*** on AGIS's technical expert's qualitative, conclusory statements. Mr. Ratliff next inflated his damages figure by attributing a [redacted] to Apple device purchasers ***who may never use*** the Accused Apps. Finally, Mr. Ratliff attempted to justify his result by comparing it to Apple's overall operating profits—in direct violation of the entire market value rule. To be clear, Apple does not contend that the Accused Apps have no value. But Mr. Ratliff's opinions are unsupported, unreliable, and legally improper, and should therefore be excluded under Fed. R. Evid. 702.

II. ARGUMENT

A. Mr. Ratliff's "Technical Apportionment" Is Arbitrary and Unsupported.

Mr. Ratliff's two-paragraph technical apportionment opinion—based ***solely*** on the opinion

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