



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

AGIS SOFTWARE DEVELOPMENT LLC,

*Plaintiff,*

v.

HUAWEI DEVICE USA INC., *et al.*,

*Defendants.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Action No. 2:17-CV-513-JRG  
(LEAD CASE)

---

AGIS SOFTWARE DEVELOPMENT LLC,

*Plaintiff,*

v.

APPLE INC.,

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Action No. 2:17-CV-516-JRG  
(CONSOLIDATED CASE)

---

**APPLE INC.'S OPPOSITION TO DKT. NO. 236, AGIS SOFTWARE DEVELOPMENT  
LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF NO INVALIDITY  
OVER THE FBCB2 SYSTEM**

**TABLE OF CONTENTS**

	<b><u>Pages</u></b>
I. INTRODUCTION .....	1
II. RESPONSE TO AGIS’S STATEMENT OF UNDISPUTED MATERIAL FACTS .....	1
A. Apple’s Statement Of Undisputed Material Facts .....	1
B. Response To AGIS’s Statement Of Undisputed Material Facts .....	2
III. RESPONSE TO AGIS’S STATEMENT OF ISSUE TO BE DECIDED .....	3
IV. LEGAL STANDARD.....	3
V. ARGUMENT .....	4
A. AGIS Is Not Entitled To Summary Judgment Even If Its Motion To Strike The “Dynamically Elected Servers” Theory (Dkt. No. 233) Is Granted. ....	4
B. AGIS Is Not Entitled To Summary Judgment Even If Its Motion To Strike Allegedly New Invalidity Theories (Dkt. No. 234) Is Granted. ....	6
C. No Support Exists For AGIS’s Request That The Court Preclude Apple From Raising Evidence Or Testimony Associated With The FBCB2 System At Trial. ....	8
VI. CONCLUSION.....	8



**TABLE OF AUTHORITIES**

**Pages**

**Cases**

*Anderson v. Liberty Lobby, Inc.*,  
477 U.S. 242 (1986)..... 3

*Atlas Powder Co. v. Ireco, Inc.*,  
190 F.3d 1342 (Fed. Cir. 1999)..... 3

*McGinley v. Franklin Sports, Inc.*,  
262 F.3d 1339 (Fed. Cir. 2001)..... 4

**Rules**

Fed. R. Civ. P. 56(c) ..... 3

**TABLE OF EXHIBITS**

<b><u>Exhibit Number</u></b>	<b><u>Description</u></b>
Ex. 1	Excerpts of Expert Report of Neil Siegel
Ex. 2	Excerpts of Apple's Amended Initial and Additional Disclosures (served April 16, 2018)
Ex. 3	Excerpts of AGIS Notice of Subpoena to Neil Siegel
Ex. 4	Neil Siegel's Response to Subpoena of AGIS Software Development, LLC
Ex. 5	Excerpts of Invalidity Expert Report of Dr. Paul Clark

[REDACTED]

[REDACTED]

## I. INTRODUCTION

AGIS’s Motion for Partial Summary Judgment of No Invalidity Over the FBCB2 System (Dkt. No. 236) depends on the Court granting AGIS’s motions to strike portions of the expert report of Dr. Neil Siegel (Dkt. Nos. 233, 234). Both of AGIS’s motions to strike should be denied, for reasons Apple explains fully in its responses to each motion (*see* Dkt. Nos. 257, 258), and, for that reason, this motion should be denied as well.

Moreover, even if the Court does strike the portions of the Siegel Report of which AGIS complains, this motion should still be denied, because Dr. Siegel’s report would contain ample support for his opinion that FBCB2 anticipates or renders obvious every asserted claim of the four “Location Patents.”<sup>1</sup> AGIS’s motion wholly ignores that support. Indeed, AGIS’s motion fails to identify any specific claim limitation that would be left unsupported if either motion to strike were granted, or even recognize that the substantial evidence concerning the FBCB2 system (including other portions of Dr. Siegel’s report) raises genuine disputes of material fact as to the invalidity of each patent. Because that evidence is more than sufficient to demonstrate the invalidity of the asserted patents to a jury—and AGIS has not even attempted to argue otherwise—AGIS’s motion should be denied.

## II. RESPONSE TO AGIS’S STATEMENT OF UNDISPUTED MATERIAL FACTS

### A. Apple’s Statement Of Undisputed Material Facts

Dr. 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

---

<sup>1</sup> U.S. Patent Nos. 9,467,838 (the “838 patent”), 9,445,251 (the “251 patent”), 9,749,829 (the “829 patent”), and 9,408,055 (the “055 patent”).

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.