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.	§ § § § § § § § § §	Case No. 2:17-CV-0513-JRG (LEAD CASE) **JURY TRIAL DEMANDED**
APPLE, INC., Defendant.	§ § § § §	Case No. 2:17-CV-0516-JRG (CONSOLIDATED CASE) **JURY TRIAL DEMANDED**

PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S REPLY IN SUPPORT OF ITS OPPOSED MOTION TO STRIKE PORTIONS OF THE EXPERT REPORT OF NEIL SIEGEL RELATING TO THE UNDISCLOSED INVALIDITY THEORY BASED ON "DYNAMICALLY ELECTING SERVERS" (DKT. 233)

I. ARGUMENT

A. Apple's Invalidity Contentions Were Limited to a Central Server Theory From Which The New Dynamically Electing Server Theory Was Not Apparent

Dr. Siegel's new theory of invalidity is essentially that "hundreds" of vehicle-mounted FBCB2 devices "could become servers," as opposed to the centralized "Command Center Servers" and satellites disclosed in Apple's invalidity contentions. *Compare* Ex. H at 196:3-8 *with* Ex. I at 4. For the proposition that this theory was present in Apple's invalidity contentions, Apple relies on disclosures that do not mention "dynamically electing servers" in which it did not contend that FBCB2 user devices constitute servers. *See* Dkt. 257 at 6-7. In the alternative, Apple argues that the dynamically electing server theory was "describe[d] using different words," but Apple cites to disclosures which neither used the word "server," nor plausibly described FBCB2 user devices as servers. *See* Dkt. 257 at 7. These disclosures are far more plausibly directed to a centralized server theory, acknowledged as distinct from the dynamically electing server theory by Dr. Siegel. *See* Ex. J (Siegel Transcript) at 102:2-103:7; 202:8-16; Dkt. 233 at 5. Because Apple's invalidity contentions did not put AGIS on notice of Dr. Siegel's new dynamically electing server theory, AGIS respectfully requests that the Court strike the new theories.

1. Apple's assertion that it "explained" dynamically electing servers is based on parts of its invalidity contentions not pertaining to any server limitation

Invalidity contentions serve to put the party alleging infringement on notice of the alleged infringer's arguments as to "[w]hether each item of prior art anticipates each asserted claim or renders it obvious." P.R. 3-3. AGIS does not "flail for procedural protection," as Apple suggests [Dkt. 257 at 2]; rather, AGIS seeks enforcement of P.R. 3-3 in accord with its purpose to "further the goal of full, timely, discovery and provide all parties with adequate notice and information

with which to litigate their cases." C*ummins–Allison Corp. v. SBM Co.*, No. 9:07–cv–196, 2009 WL 763926, at *1 (E.D.Tex. March 19, 2009). To satisfy the P.R. 3-3(4) requirement of "a chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found," defendants must "provide notice of how each claim element is met." *Id.* at 4 (holding that "failure to provide the specific reference that allegedly reads on a claim limitation . . .does not place plaintiff on notice"); *see also Realtime Data, LLC v. Packeteer, Inc.*, Civil No. 6:08–cv–144–LED–JDL, 2009 WL 4782062, at *2 (E.D. Tex., December 8, 2009).

Apple bases its argument on disclosures that are insufficient to put AGIS on notice of its allegedly disclosed theory under this standard, because the proffered disclosures do not address any claim limitation that recites a "server."[1] Moreover, this failure to put AGIS on notice with regard to the '838 Patent is representative of Apple's invalidity contentions for each of the patents-in-suit. *See e.g.* Ex. I at 4. Further, Apple's charts never contended that FBCB2 user devices constituted servers at all, let alone "dynamically electing servers"; the only quotes that it purports to show otherwise actually suggest the opposite.[2] Thus, because AGIS was not on notice of any application of the quoted '559 Patent or 1999 Siegel Presentation disclosures to a "server" limitation, and further not on notice of any theory in which FBCB2 user devices became servers, these items do not support Dr. Siegel's new dynamically electing server theory.

[1] Apple alleges that a set of block quotes to the Siegel '559 Patent and a 1999 presentation by Dr. Siegel specifically explain dynamically electing servers. See Dkt. 257 at 6-7. But Apple points to no language that would put AGIS on notice that these quotes relate to any server limitation, or that suggests they relate to a server limitation at all. *See* Dkt. 257-3 at 4-22. Rather, throughout the patents-in-suit, Apple only recited these quotations where claim limitations concerned "joining a group" or "joining a network." *See e.g.* Dkt. 257-3 at 4.

[2] Apple suggests that the '599 Patent explains FBCB2 user devices acting as "hosts," "servers," and "routers," but the complete sentence containing the terms Apple quoted in its opposition states that, "***Other*** computers function as servers, and distribute requested data to network users with host computers." Dkt. 257 at 6; 257-6 at 1:21-30. Similarly, Apple draws the term "dynamic 'server' structure" from a table in Dr. Siegel's 1999 presentation which more completely states that "Units moving away from/out-of-LoS-of their nominal "data supplier" . . . Need ***a*** dynamic "server" for key data." Dkt. 257-3 at 19. The singular use of "a" suggests the presentation contemplated a single centralized "server," *i.e.* a satellite that could not be blocked by losing line-of-sight, a conclusion supported by the disclosure of a satellite link which "breaks-the-line of sight barrier" in the charted cell for the same claim element. Dkt. 257-3 at 6. Moreover, in describing such a server, the chart refers to "***needed*** battlefield dynamics" and "implied technical ***requirements***," suggesting that such a server did not exist. *Id.* at 19.

2. Apple's relevant invalidity contentions disclosed only centralized server systems from which the dynamically electing server theory is not apparent

The words "dynamically electing server" do not appear in Apple's invalidity contentions, nor are the properties of a dynamically electing server described. Apple's charts do not describe hundreds of vehicles in a group acting as independent servers, nor do they describe how radio "transceivers bolted to the tops of vehicles" transform into servers. Dkt. 257-3 at 23. Instead, Apple's charts describe satellites and "Command Center Servers," in a "'hub and spoke' configuration" with a number of FBCB2 user devices. *Id.* Dr. Siegel confirmed, and Apple's opposition does not dispute, that the "dynamically electing server's" implementation is radically different from a centralized server and, instead, involves multiple units acting as servers which change server status over time. *See* Ex. J at 102:2-103:7; 202:8-16; Dkt. 233 at 5. Apple's contentions described only the latter, and did not put AGIS on notice of the former.

Apple's Opposition argues that AGIS should have derived its new theory from a first block quote noting the capability of an FBCB2 "Applique" systems to "gather and distribute critical combat information to soldiers," through use of the "Tactical Internet," and a second block quote contrasting satellite implemented "FBCB2-BFT" with "terrestrial based" "FBCB2-EPLRS." Dkt. 257-3 at 24-25 and 28-29. Apple provided no supporting argument of any kind to explain the relevance of each block quote, for example, that it contended these systems constituted servers, or that such servers were "dynamically electing." *Id*. Instead, Apple *now* alleges that describing a device which can "gather" and "distribute" information, and describing FBCB2-EPLRS in the absence of a satellite were each sufficient to put AGIS on notice that Apple considered every FBCB2 device capable to transforming into a server that met the claimed limitations. Dkt. 257 at 7. But the quotes Apple cited do nothing of the sort – moreover, if it had been Apple's intention for its charts to put AGIS on notice of the dynamically electing server

theory, it could have simply described its theory rather than copy-pasting block quotes without further explanation. Without such explanation, AGIS had no reason to take notice that Apple's contentions meant anything other than what was identified by its charted quotes.

Furthermore, Apple's allegedly explanatory block quotes were not provided in a vacuum; Apple's invalidity charts included quotes describing a centralized "Command Center Server" installed at a headquarters and a "satellite hub" for virtually every claim element reciting a server, and for ***every*** claim element alleged to be anticipated by dynamically electing servers in the Siegel Report. *Compare* Dkt. 233-4 (Siegel Expert Report) at ¶¶100, 104, 164, 183, 219, 235, 243, 265, 273, 418, and 470 *with e.g.* Dkt. 233-2. For one claim element with "server" limitations identified in the Siegel report, Apple's invalidity contentions ***only*** disclosed the above-referenced "Command Center Server" and "satellite hub" quote. *See e.g.* Ex. C at 4-5; Dkt. 233-4 at ¶¶83. This block quote represented the only reference to a "server" in Apple's charts for the claims identified in the Siegel Report. Apple does not dispute that this disclosure does not support its dynamically electing server theory. *See* Dkt. 257 at 10. Apple's apparent willingness to use the word "server" with respect to the central server theory suggests that if it intended to put AGIS on notice of its "dynamically electing server" theory, it would have at the very least made use of the word "server" in the charted claim elements that it now alleges anticipated by that theory to anticipate. Apple's failure to do so further suggests that Dr. Siegel's "dynamically electing servers" represent a new theory, not present in Apple's invalidity contentions.

DOCKET ALARM

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.