

**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
Plaintiff,	§	(LEAD CASE)
	§	
v.	§	<u>JURY TRIAL DEMANDED</u>
	§	
HUAWEI DEVICE USA INC. ET AL.,	§	
	§	
Defendants.	§	
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APPLE, INC.,	§	Case No. 2:17-CV-0516-JRG
	§	(CONSOLIDATED CASE)
Defendant.	§	
	§	<u>JURY TRIAL DEMANDED</u>

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S REPLY
TO APPLE INC.'S RESPONSE IN OPPOSITION TO
AGIS'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF
NO INVALIDITY OVER THE FBCB2 SYSTEM (DKT. 236)**

Plaintiff AGIS Software Development LLC (“AGIS”), by and through its undersigned counsel, hereby submits this reply in support of its Motion for Partial Summary Judgment of No Invalidity Over the FBCB2 System (Dkt. 236) (the “Motion”).

I. INTRODUCTION

AGIS moves for partial summary judgment of no invalidity over the FBCB2 system. Apple responds that, even if AGIS’s motions to strike the expert report of Dr. Neil Siegel are granted, “Dr. Siegel’s report . . . contain[s] ample support for his opinion that FBCB2 anticipates or renders obvious every asserted claim of 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”) (collectively, the “Location Patents”).

II. RESPONSE TO APPLE’S STATEMENT OF UNDISPUTED FACTS

With regard to Apple’s Statement of Undisputed Material Facts (Dkt. 266 at 1-2), AGIS disputes that Apple’s statements contains any facts material to this Motion.

III. ARGUMENT

Apple argues that AGIS’s motion for partial summary judgment of no invalidity in view of the FBCB2 system is contingent upon the Court’s decision to grant AGIS’s two motions to strike portions of Dr. Siegel’s expert report and as AGIS’s motions to strike should be denied, “on that basis alone, this motion should be denied.” Dkt. 266 at 4. The portions of the Siegel Report that AGIS moves to strike are essential to Apple’s assertion of invalidity of the Location Patents. AGIS will not rehash its arguments for the Motions to Strike the Siegel Report. However, without these arguments, Dr. Siegel’s Report fails to establish that the FBCB2 system anticipates or renders obvious the asserted claims.

A. Without the “Dynamically Elected Servers” Theory, Apple Cannot Provide Evidence the FBCB2 System Discloses the Server-Based Limitations of the Location Patents

Apple argues that with respect to Apple’s undisclosed theory of “dynamically elected servers,” even if the Court strikes those portions of Dr. Siegel’s report, the remainder of the report contains ample evidence to support invalidity of the relevant server-based claim limitations.

The motion to strike pertains to the new invalidity theory based on “dynamically electing servers,” and Dr. Siegel defines the FBCB2 system servers as “dynamically electing servers.” Dkt. 266-1, Expert Report of Neil Siegel at ¶¶ 71, 100, 104, 164, 168, 183, 219, 235, 243, 265, 273, 418, and 470). Apple argues that *how* the FBCB2 system uses the servers should be permitted, even if the motion to strike be granted. Dkt. 266 at 6. Apple cannot, on the one hand, argue that the servers are “dynamically electing servers” and, on the other, divorce its definition of the server from its functionality. *See* Dkt. 266 at 6. Further, Apple ignores Dr. Siegel’s opinion on how the FBCB2 system meets the limitation of “second server” which is met by the “dynamically electing” server. *See e.g.*, Dkt. 266-1 at ¶ 104 (“FBCB2 could send a request for a map via a second server. . . . Because users moved around and access to a particular server could be blocked . . . , there was not a single static server designation in FBCB2 . . . Instead, FBCB2 devices were programmed to collaborate and *dynamically* select one of their number to act as a server.”). Therefore, the “dynamically electing servers” theory is pervasive throughout Dr. Siegel’s report and Apple’s argument that there are server limitations that are invalidated by FBCB2 because they simply describe the various types and uses of servers is without merit.

Lastly, Apple argues in a footnote that AGIS “only purports to be surprised by Dr. Siegel’s description of how the FBCB2 system “dynamically elected” servers because Apple had disclosed the FBCB2 system’s use of a server. Apple does not argue how the FBCB2

system's disclosure of servers discloses its new theory of "dynamically elected" servers. As a result, AGIS is entitled to partial summary judgment that the Patents-in-Suit are not invalid over the FBCB2 system.

B. Without the Obviousness Combination Relying on the Siegel Patents, Apple Cannot Provide Evidence that the FBCB2 System Discloses or Renders Obvious Each and Every Limitation of the Asserted Claims

Apple argues that Apple's undisclosed combination based on the Siegel patents should not permit a finding of summary judgment, even if the Court strikes every reference of the Siegel patents in Dr. Siegel's report, because Dr. Siegel's report still contains "ample factual support." Dkt. 266 at 7. AGIS will not rebrief the same arguments it has made in its Motion to Strike (Dkt. 234) and its Reply brief (Dkt. 282). However, AGIS notes that Apple did not elect the Siegel patents as prior art references, despite Dr. Siegel's testimony that the Siegel patents themselves are the source for allegedly teaching the claim limitations. Dkt. 234; Dkt. 282. Further, given Apple's concession that it does not rely on this undisclosed combination, it cannot be permitted to rely on the Siegel patents now to meet the claim limitations as stated in Dr. Siegel's report.

Without the Siegel patents, Apple cannot establish that FBCB2 meets each and every limitations of the claims. Dr. Siegel's report is dependent on the Siegel patents, as is evidenced by the extensive portions of the report that cite exclusively to the patents for evidentiary support to meet the claim limitations. *See e.g.*, Dkt. 266-1 at ¶¶ 75, 83, 97, 119, 154, 11, 186, 191, 194, 216, 222, 227, 230, 237, 244, 250, 267, 274, 280, 303, 324, 350, 376, 404, 415, 431, 437, 467, 485. Further, extensive portions of Dr. Siegel's report contain conclusory statements relating to how the FBCB2 system meets the claim limitations without any evidentiary support because he has "personal knowledge of every feature" he describes. Dkt. 266-1 at ¶ 89; *see e.g., id.* at ¶¶ 118, 122-125, 160. For the remaining elements of those features, Dr. Siegel relies on his "personal knowledge" and cites to the Siegel patents. Dr. Siegel also relies on the combination

of the Siegel patents with the FBCB2 system to establish obviousness. As a result, Apple cannot establish that the FBCB2 system anticipates or renders obvious every limitation of every asserted claim of each of the Locations Patents without reliance on the obviousness combination based on the Siegel patents. As a result, AGIS is entitled to partial summary judgment of no invalidity of the Location Patents over the FBCB2 system.

IV. CONCLUSION

For the foregoing reasons, AGIS respectfully requests that the Court grant its Motion for Partial Summary Judgment of No Invalidity Over the FBCB2 System.

Dated: January 14, 2019

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