

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

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

v.

HUAWEI DEVICE USA, INC.,

Defendant.

Case No. 2:17-cv-513-JRG
LEAD CASE

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 2:17-cv-516-JRG

**OPPOSED MOTION FOR LEAVE
TO FILE MOTION TO STRIKE EXPERT
DECLARATION SUBMITTED WITH DAUBERT BRIEFING**

Defendant Apple Inc. respectfully requests leave to file a motion to strike new opinions in Mr. Alan Ratliff's declaration that AGIS submitted with its opposition brief to Apple's *Daubert* motion more than two months after opening reports were due and more than two weeks after the deadline to file motions to strike expert testimony.

The docket control order contains the following deadlines:

October 29, 2018	Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof
November 19, 2018	Serve Disclosures for Rebuttal Expert Witnesses
December 7, 2018	Deadline to Complete Expert Discovery

December 14, 2018	*File Dispositive Motions
December 14, 2018	*File Motions to Strike Expert Testimony (including <i>Daubert</i> Motions) No motion to strike expert testimony (including a <i>Daubert</i> motion) may be filed after this date without leave of the Court.

Dkt. No. 220. Apple filed a *Daubert* motion to exclude opinions of Mr. Alan Ratliff relating to damages on December 14, 2018. Dkt. No. 231. In responding to that motion, AGIS submitted an expert declaration from Mr. Ratliff on December 31, 2018 as exhibit C to its opposition brief. Dkt. No. 250-4. The declaration contains new opinions from Mr. Ratliff that were not included in his opening report that was served two months earlier on October 29, 2018. One example that is included in Apple's motion to strike, filed concurrently herewith according to Local Rule CV-7(k), is that the Ratliff declaration includes an entire discussion about a patent portfolio (the "Navizon portfolio") that Apple uses as part of its damages analysis, which Mr. Ratliff failed to consider at the time he filed his report and which is not implicated by and has no relevance to Apple's *Daubert* motion.

Apple's motion to strike is the proper procedural device to address AGIS' improper expert declaration. *Joe Andrew Salazar v. HTC Corp.*, No. 2:16-CV-1096 (E.D. Tex. May 18, 2018) (granting a motion to strike the plaintiff's expert's declaration submitted in response to a summary judgment motion). And because the Ratliff declaration was submitted more than two weeks after the deadline to file motions to strike expert testimony, Apple respectfully requests leave to file a motion to strike the declaration of Mr. Alan Ratliff.

DATED: January 14, 2019

Respectfully submitted,

/s/ Melissa R. Smith

Melissa R. Smith

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Counsel for Apple Inc.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Counsel of record for AGIS were served with a true and correct copy of the foregoing document by electronic mail on January 14, 2019.

/s/ Melissa R. Smith _____

Melissa R. Smith

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Apple conferred with counsel for AGIS regarding the foregoing motion on January 8, 2019. Counsel for AGIS indicated that they are opposed to the relief sought in this motion.

/s/ Melissa R. Smith _____

Melissa R. Smith