

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)

FILED UNDER SEAL

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

§
§
§
§
§
§
§
§
§
§

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

**DEFENDANT APPLE INC.'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY
JUDGMENT OF INVALIDITY OF U.S. PATENT NOS. 9,467,838; 9,445,251; 9,408,055;
AND 9,749,829 UNDER 35 U.S.C. § 101**

TABLE OF CONTENTS

	<u>Pages</u>
I. THE ASSERTED CLAIMS ARE SUBJECT MATTER INELIGIBLE.....	1
A. The Asserted Claims Are Directed To An Abstract Idea.	1
B. The Asserted Claims Do Not Contain An Inventive Concept.	2
II. APPLE’S MOTION IS RIPE FOR RESOLUTION AS A MATTER OF LAW.	3
A. Apple’s Motion Provides Support For A Finding Of Subject Matter Ineligibility Of Every Asserted Claim Of The Location Patents.	4
B. AGIS’s Opposition Does Not Raise A <i>Genuine</i> Dispute Of <i>Material</i> Fact That Precludes Summary Judgment Of Subject Matter Ineligibility.	5

TABLE OF AUTHORITIES**Pages****Cases**

<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986).....	5
<i>Bilski v. Kappos</i> , 561 U.S. 593 (2010).....	6
<i>Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n</i> , 776 F.3d 1342 (Fed. Cir. 2014).....	1
<i>First National Bank of Arizona v. Cities Service Co.</i> 391 U.S. 253 (1968).....	5
<i>In re TLI Commc’ns LLC Patent Litig.</i> , 823 F.3d 607 (Fed. Cir. 2016).....	2
<i>Integrated Tech. Sys., Inc. v. First Internet Bank of Indiana</i> , No. 2:16-CV-00417-JRG-RSP, 2017 WL 631195 (E.D. Tex. Jan. 30, 2017).....	6
<i>Intellectual Ventures I LLC v. Erie Indemnity Co.</i> , 850 F.3d 1315 (Fed. Cir. 2017).....	3
<i>McGinley v. Franklin Sports, Inc.</i> , 262 F.3d 1339 (Fed. Cir. 2001).....	3
<i>Network Architecture Innovations LLC v. CC Network Inc.</i> , No. 2:16-CV-00914-JRG, 2017 WL 1398276 (E.D. Tex. Apr. 18, 2017)	4
<i>Two-Way Media Ltd. v. Comcast Cable Commcns, LLC</i> , 874 F.3d 1329 (Fed. Cir. 2017).....	1, 3

Statutes

35 U.S.C. § 101.....	1, 3, 6
----------------------	---------

Rules

Fed. R. Civ. P. 56(c)(1).....	5
-------------------------------	---

TABLE OF EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>
Ex. 1	List of Dependent Claims by Category
Ex. 2	Docket Sheet for <i>AGIS Software Development, LLC v. Apple Inc.</i> , Civil Action No. 2:17-CV-516-JRG (E.D. Tex.)
Ex. 3	U.S. Patent No. 9,467,838
Ex. 4	U.S. Patent No. 9,445,251
Ex. 5	U.S. Patent No. 9,408,055
Ex. 6	U.S. Patent No. 9,749,829
Ex. 7	AGIS Software Development, LLC's Final Election of Asserted Claims to Defendant Apple, Inc.
Ex. 8	Christopher Rice Deposition Transcript Excerpts
Ex. 9	Sandell Blackwell Deposition Transcript Excerpts
Ex. 10	Malcolm Beyer Deposition Transcript Excerpts
Ex. 11	Excerpt from George McKee Elsey, <i>An Unplanned Life</i> (Missouri 2005)
Ex. 12	Excerpt from William Manchester, <i>The Last Lion: Winston Spencer Churchill Alone, 1932-1940</i> (Bantum 1988)
Ex. 13	Joseph McAlexander Deposition Transcript Excerpts
Ex. 14	AGIS Software Development, LLC's Opening Claim Construction Brief (Dkt. No. 165) Excerpts
Ex. 15	Declaration of Jaime G. Carbonell in Support of Plaintiff's Opening Claim Construction Brief (Dkt. No. 165-1) Excerpts
Ex. 16	Claim Construction Memorandum and Order (Dkt. No. 205) Excerpts
Ex. 17	Plaintiff's First Amended Complaint for Patent Infringement (Dkt. No. 17)
Ex. 18	Joseph McAlexander Infringement Report Excerpts
Ex. 19	Scott Lopatin Deposition Transcript Excerpts
Ex. 20	Navin Suparna Deposition Transcript Excerpts
Ex. 21	Apple Production Document
Ex. 22	Roberto Garcia Deposition Transcript Excerpts
Ex. 23	Sandell Blackwell Deposition Transcript Excerpts from <i>Advanced Ground Information Systems, Inc. v. Life360</i> , Civil Action No. 9:14-CV-80651-DMM (S.D. Fla.)
Ex. 24	U.S. Patent No. 7,031,728
Ex. 25	AGIS Software Development, LLC's Opening Claim Construction Brief (Dkt. No. 165) – Additional Excerpts

The asserted claims of the Location Patents are subject matter-ineligible under 35 U.S.C. § 101. In its opposition, AGIS attempts to avoid summary judgment by creating fact disputes. But there is no *genuine* dispute as to any fact that is *material* to the § 101 analysis. The Court should enter summary judgment that the asserted claims are invalid under § 101.

I. THE ASSERTED CLAIMS ARE SUBJECT MATTER INELIGIBLE

A. The Asserted Claims Are Directed To An Abstract Idea.

Apple’s motion (Dkt. No. 229 (“motion”)) explains that AGIS’s claims are directed to an abstract idea because they focus on the functions of a Map Room—situational awareness, communications, and command-and-control—and recite only the routine use of computer hardware for implementing those functions on a computer. AGIS does not dispute that the claims recite situational awareness, communications, and command-and-control functionality. Instead, it argues that the claims are directed to a “specific implementation” of a digital map room and do not preempt every implementation of that idea because they require the use of servers and user-selectable symbols. (See Dkt. No. 261 (“Opp”) at 8-11.) But the *Alice* inquiry is not whether the claims preempt every implementation of an abstract idea; rather, it is whether the claims are directed to, or focus on, an abstract idea. See *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339-40 (Fed. Cir. 2017) (claims abstract even though not preemptive); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362-63 (Fed. Cir. 2015).

The recitation of computer components that perform only “well-understood, routine, conventional activities” cannot save claims from abstraction. *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347-8 (Fed. Cir. 2014). There is no genuine dispute that the use of user-selectable symbols as recited in the claims was routine and conventional at the time of the alleged invention, because the undisputed evidence shows that prior art systems displayed entities on maps with user-selectable symbols. (See Part I.B, *infra*.) Nor is

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.