

EXHIBIT 25

**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.

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

JURY TRIAL DEMANDED

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT, LLC'S
OPENING CLAIM CONSTRUCTION BRIEF**

certification by the parties to an IPR that “legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.”). Assuming that Apple, LG, and Huawei had a nonfrivolous basis to construe claims in the Patent Office based on their ordinary meaning, they should not be permitted to argue in this Court that those very claim terms are subject to § 112(6) and are indefinite. At the very least, Defendants’ and their experts’ *inter partes* review filings applying the ordinary, non-means-plus-function meaning of these claim terms is evidence that these claim terms are not indefinite. *See, Sonix Tech. Co. v. Publications Int’l, Ltd.*, 844 F.3d at 1380 (reversing a finding of indefiniteness and noting that “[a]ppellees’ other actions during litigation also reflect that they understood [the term]”). Accordingly, Defendants’ constructions should be rejected and none of the terms of the ’055, ’251, ’838, or ’829 Patents should be construed as governed by 35 U.S.C. § 112(6).

a. The Claims Are Not Governed by 35 U.S.C. § 112(6)

Defendants seek to invoke § 112(6) by dividing the claim into functional steps and attempting to treat each step as a discrete means-plus-function limitation.⁷ This is improper. *See, e.g., Gemalto S.A. v. HTC Corp.*, No. 6:10-CV-561 LED-JDL, 2012 WL 2505745, at *23 (E.D. Tex. June 28, 2012) (finding that, where a claim clearly lays out algorithmic steps sufficient to perform a function, the claims are not governed by 35 U.S.C. § 112(6)). Here, none of the claims expressly use the “means for” language and the claims are presumed not to be governed by 35 U.S.C. § 112(6). When read as a whole, each of these claims recites sufficient structure to set forth algorithmic steps to perform a function. Thus, the claims are not governed by § 112(6).

⁷ Because there is a great deal of overlap, AGIS addresses these claims generally in this Section. Additionally, AGIS has attached a listing of these claims as Appendix 1 because listing the full text in chart form would consume most of the available pages of AGIS’s brief.

With respect to the '838 Patent, independent Claim 54 recites a “first device programmed to perform operations comprising:” (1) “joining a communication network corresponding to a group . . .,” (2) “participating in the group . . .,” (3) “presenting . . .,” (4) “sending . . .,” (5) “receiving . . .,” (6) “presenting . . .,” and (7) “identifying user interaction with the interactive display . . .” One of ordinary skill in the art would have understood that these limitations set forth steps sufficient to constitute an algorithm within the claim and thus sufficient structure within the claim itself. (Carbonell Decl. at ¶¶ 65-70.)

With respect to the '251 Patent, independent Claim 24 recites a “first device programmed to perform operations comprising:” (1) “receiving a message from a second device . . .,” (2) “based on receiving the message from the second device, participating in the group . . .,” (3) “presenting . . .,” (4) “sending . . .,” (5) “receiving . . .,” (6) “presenting . . .,” and (7) “identifying user interaction with the interactive display . . .” One of ordinary skill in the art would have understood that these limitations set forth steps sufficient to constitute an algorithm within the claim and thus sufficient structure within the claim itself. *Id.* at ¶¶ 71-75.

With respect to the '055 Patent, independent Claim 28 recites a “first device programmed to perform operations comprising:” (1) “obtaining contact information of a plurality of second devices . . .,” (2) “facilitating initiation of Internet Protocol (IP) based communication between the first device and the respective second devices . . .,” (3) “receiving . . .,” (4) “transmitting . . .,” (5) “presenting . . .,” (6) “identifying user interaction with the interactive display . . .,” (7) “receiving . . .,” (8) “based on the user input, adding the user-specified symbol to the interactive display . . .,” and (9) “transmitting . . .” One of ordinary skill in the art would have understood that these limitations set forth steps sufficient to constitute an algorithm within the claim and thus sufficient structure within the claim itself. *Id.* at ¶¶ 76-81.

With respect to the '829 Patent, independent Claim 68 recites a “second device programmed to perform operations comprising:” (1) “receiving . . .,” (2) “sending . . .,” (3) “sending . . .,” (4) “after sending the first message, receiving . . .,” (5) “receiving . . .,” (6) “presenting . . .,” (7) “receiving . . .,” and (8) “identifying user interaction with the display . . .” One of ordinary skill in the art would have understood that these limitations set forth steps sufficient to constitute an algorithm within the claim and thus sufficient structure within the claim itself. *Id.* at ¶¶ 82-85.

With respect to dependent Claims 29 and 31 of the '251 Patent and dependent Claims 32, 33, 34, and 36 of the '055 Patent, each of these claims merely adds one or more steps to the algorithm of the corresponding independent claim. The claims recite (1) “identifying . . .” (Claim 29 of the '251 Patent), (2) “sending . . .” (Claim 31 of the '251 Patent), (3) “transmitting . . .” (Claim 32 of the '055 Patent), (4) “receiving . . .” (Claim 33 of the '055 Patent), (5) “receiving . . .” (Claim 33 of the '055 Patent), (6) “receiving . . .” (Claim 34 of the '055 Patent), (7) “establishing . . .” (Claim 34 of the '055 Patent), and (8) “identifying . . .” (Claim 36 of the '055 Patent). One of ordinary skill in the art would have understood that these steps together set forth sufficient structure in the form of an algorithm. *Id.* at ¶¶ 86-93.

b. Even if the Claims Were Construed as Governed by 35 U.S.C. § 112(6), the Specification Recites Sufficient Corresponding Structure.

Many of the allegedly unsupported functions fall into one of the following categories: (1) “receiving,”/ “obtaining,” (2) “presenting,” (3) “sending,” / “transmitting,” “facilitating . . . to send,” “joining . . . wherein joining . . . comprises transmitting,” and (4) “identifying . . . ser [input]/[interaction].” Should the Court determine that these claim limitations are governed by § 112(6), each of these alleged functions can be supported by a general purpose computer. *See, e.g., Mobile Telecommunications Techs., LLC v. ZTE (USA) INC.*, No. 2:13-CV-946-JRG-RSP,

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