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

AGIS SOFTWARE DEVELOPMENT LLC,	§	
	§	
Plaintiff,	§	
	§	**Civil Action No. 2:17-CV-513-JRG**
v.	§	**(LEAD CASE)**
	§	
HUAWEI DEVICE USA INC., *et al.*,	§	
	§	
Defendants.	§	

	§	
AGIS SOFTWARE DEVELOPMENT LLC,	§	
	§	
Plaintiff,	§	**Civil Action No. 2:17-CV-516-JRG**
	§	**(CONSOLIDATED CASE)**
v.	§	
	§	
APPLE INC.,	§	
	§	
Defendant.	§	

**DEFENDANT APPLE INC.'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY
JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. 8,213,970**

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TABLE OF EXHIBITS[1]

Exhibit Number	Description
Ex. 1	U.S. Patent No. 8,213,970
Ex. 2	McAlexander Infringement Report Excerpts
Ex. 3	'970 File History Excerpt – 2010-09-20 Office Action
Ex. 4	'970 File History Excerpt – 2010-12-17 Reply to Office Action
Ex. 5	'970 File History Excerpt – 2011-03-11 Office Action
Ex. 6	'970 File History Excerpt – 2011-09-09 Reply to Office Action
Ex. 7	Find My iPhone Support Document
Ex. 8	McAlexander Deposition Excerpts
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Ex. 10	Declaration of Paul C. Clark
Ex. 11	AGIS Infringement Contentions (2018-09-21) Excerpts
Ex. 12	Additional McAlexander Deposition Excerpts
Ex. 13	Additional McAlexander Infringement Report Excerpts
Ex. 14	Apple-AGIS Attorney Correspondence

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[1] Exhibits 1-10 were filed with Apple's opening brief (Dkt. No. 228). Exhibits 11-14 are filed herewith.

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I. **THE COURT SHOULD GRANT SUMMARY JUDGMENT OF NON-INFRINGEMENT.**

The asserted '970 patent claims require that a "response list" displayed on a device must be cleared through selection of a "response" from that "response list." AGIS does not dispute that the accused "response list"—the display of several options on an Apple device placed into Lost Mode—can be cleared by other means, ***without*** selecting a "response" from the "response list." That undisputed fact warrants summary judgment of non-infringement. AGIS's arguments (which focus on different functionality and hinge on new, untimely expert opinions) should be rejected as improper and, in any event, without substantive merit.

A. **All Claims Require That The "Response List" Cannot Be Cleared Unless A "Response" Is Selected From That "Response List."**

Claim 6 of the '970 patent recites "providing a manual response list on the display of the recipient PDA/cell phone that can only be cleared by the recipient providing a required response from the list." Neither party proposed that the term needed construction. AGIS does not dispute that the plain meaning requires that there be only one way to clear the "response list"—selection of a "response" from that "response list." (*See* Dkt. No. 262 ("Opp.") at 9-10.)

The corresponding limitation of claim 1 was construed under 35 U.S.C. § 112(6) as having the function "***requiring a manual response*** from the response list ***by the recipient in order to clear recipient's response list from recipient's cell phone display***."[2] (Dkt. No. 205 at 22.) AGIS does not dispute that the plain meaning of this ***function*** requires that there be only one way to clear the "response list"—selection of a response from that list. (*See* Opp. at 9-10.) Rather, AGIS argues that the corresponding ***structure***, 8:37-57 of the '970 patent and equivalents thereof, does not have such a clearing requirement. *Id.* But the case that AGIS relies upon confirms that "[l]iteral

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[2] All emphasis has been added unless otherwise stated.

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