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.	§ § § § § § § § § §	Case No. 2:17-CV-0513-JRG (LEAD CASE) **JURY TRIAL DEMANDED** [redacted]
APPLE, INC., Defendant.	§ § § § §	Case No. 2:17-CV-0516-JRG (CONSOLIDATED CASE) **JURY TRIAL DEMANDED**

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 (DKT. 235)

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 (Dkt. 235).

I. RESPONSE TO APPLE'S STATEMENT OF ADDITIONAL RELEVANT FACTS

Apple has failed to present a Statement of Undisputed Material Facts as required by Local Rule CV-56(a) because the statements contain disputed facts, are argumentative, and lack citations to proper summary judgment evidence under Local Rule CV-56(d). AGIS presents the following responses to the allegations in the Statement of Undisputed Material Facts.

[redacted]

AGIS disputes that Poulin discloses "user-selectable symbols" because Poulin discloses "users interacting with each other through web-based map displays and sending communications over such map displays." [redacted]

AGIS disputes Apple's statement of Dr. Neil Siegel's experience and qualifications as "material undisputed facts" relevant to this analysis. Further, AGIS disputes Apple's disclosure of entire paragraphs of Dr. Siegel's opinions from his report and his deposition testimony as material undisputed facts as explanations of how the FBCB2 system meets each and every limitation of the asserted claims. Dr. Siegel's report merely contains his ***opinions*** of how the FBCB2 system allegedly meets those limitations.

II. ARGUMENT

Apple has failed to establish that AGIS's motion for partial summary judgment does not provide a basis for which AGIS has requested the Court to grant relief.

A. POULIN DOES NOT MEET EACH AND EVERY LIMITATION OF THE ASSERTED CLAIMS

1. Apple's Definition of "User-Selectable Symbols" Does Not Establish That Poulin Discloses This Limitation

Apple asserts that Poulin meets the limitation of "user-selectable symbols" because Poulin discloses "that users may exchange such communications by interacting with those map displays, discussing communications 'with other subscribers in their group ***via text messages over the web-based display*** or their wireless device." Dkt. 265 at 10. [redacted] However, Dr. Clark's opinion is not supported by his citations to Poulin which simply states that subscribers may "obtain the location and status of other subscribers using secure web-based map display" and "subscribers may exchange communications with other subscribers in their group via text messages provided over the web-based map display." Dkt. 265-5 at ¶ 7. Nothing from Poulin, and particularly no portion of Poulin as cited by Apple or Dr. Clark, indicates that the web-based display is interactive or that the symbols are "user-selectable." As AGIS argued in its briefing for this motion, Poulin on its face describes symbols positioned on the map that are user-selectable as is required. Dkt. 235 at 5. As a result, Apple fails to establish that there exists a genuine issue of material fact.

2. Apple Does Not Disclose Evidence Sufficient to Establish "User-Selectable Symbols" Were Obvious

Apple argues that AGIS does not address the obviousness argument and obviousness combinations proffered by Dr. Clark and Apple. However, AGIS has correctly asserted that Apple's obviousness argument with regard to Poulin, including its opinion that it would have

been obvious to a POSITA in view of Poulin, and obvious in light of Poulin in combination with Altman, are silent with regard to "user-selectable." [redacted] Therefore, Apple fails to assert any obviousness combination dependent on Poulin to establish "user-selectable symbols" were obvious, and there exists no genuine issue of material fact.

B. THE FBCB2 SYSTEM DOES NOT MEET EACH AND EVERY LIMITATION OF THE ASSERTED CLAIMS

Apple argues that AGIS cannot establish that the FBCB2 devices lack access to the IP addresses of other FBCB2 devices, as is required by the asserted claims. However, Apple has failed to establish that the FBCB2 devices lack access to the IP addresses of the recipient devices. Apple attempts to distinguish between the FBCB2 devices and the servers as alleged in Dr. Siegel's report; Dr. Siegel himself has proffered a previously-undisclosed theory of "dynamically electing servers." Under Dr. Siegel's theory, servers could be "dynamically" selected from the FBCB2 devices. *See* Dkt. 235-4 at ¶¶ 71, 100, 104, 164, 168, 183, 219, 235, 243, 265, 273, 418, 470. Dr. Siegel attempts to rely on his "dynamically electing servers' to establish that the FBCB2 devices disclose the server limitations and simultaneously establish that the devices do not require access to the IP addresses of other devices. Dr. Siegel cannot distinguish the FBCB2 servers from the FBCB2 devices, while proffering that the FBCB2 system permits the devices to become servers. *See e.g.*, Dkt. 235-4 at ¶ 104 ("[T]here was not a single, static server designation in FBCB2 as there typically is in an office or consumer computer network. Instead, FBCB2 devices were programmed to collaborate and *dynamically* select one

of their number to act as the server. . . . Thus, a given FBCB2 device might use one or more servers during the course of a given operation."). Apple introduces ambiguity into its argument by stating, "even if an FBCB2 device acting as a server had access to the IP addresses of the devices it was serving, it does not follow that the FBCB2 device would have access to the IP addresses that are part of its group" because the FBCB2 system permits devices outside of its "group" to become a server. Dkt. 265 at 17. If a device outside of a group has access to the IP addresses of other devices, a device within a group would have the same or similar functionality, unless Dr. Siegel is now asserting that each and every FBCB2 device has different functionality simply because they are within or outside of a group. Additionally, Dr. Siegel has proffered that the FBCB2 permits multiple devices in its system to act as servers. Dkt. 265-7 at ¶ 104. It does not follow that the system's ability to have devices outside of the group to serve as a server does not preclude a device serving as a server to have access to the IP addresses of all devices within its group. Further, Apple does not address AGIS's assertion that there is no evidence within Dr. Siegel's report or testimony stating that access to IP addresses is precluded.

Apple attempts to distinguish *Cheese Systems* by stating that "*Cheese Systems* does not stand for the proposition that the phrasing of a description of prior art justifies granting summary judgment of no invalidity. . . [and] [t]o the contrary, the panel in *Cheese Systems* affirmed the lower court's decision to grant summary judgment of no invalidity." Dkt. 265 at 14. While Apple is correct that the Court affirmed the lower court's finding of summary judgment of no invalidity, Apple misreads the holding of the case. In *Cheese Systems*, the Court affirmed the lower court's finding of no invalidity because the allegedly invalidating prior art references "say nothing about reorienting the panels." *Cheese Sys., Inc. v. Tetra Pak Cheese & Powder Sys., Inc.*, 725 F.3d 1341, 1351 (Fed. Cir. 2013). While the appellant argued that a person of ordinary

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