

EXHIBIT 16

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

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

v.

HUAWEI DEVICE USA INC., HUAWEI
DEVICE CO., LTD. AND HUAWEI DEVICE
(DONGGUAN) CO., LTD.,
HTC CORPORATION,
LG ELECTRONICS, INC.,
APPLE INC.,
ZTE CORPORATION, ZTE (USA), INC.,
AND ZTE (TX), INC.,

Defendants.

Civil Action No. 2:17-CV-513-JRG (Lead
Case)

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**DEFENDANT APPLE'S SECOND AMENDED INITIAL AND ADDITIONAL
DISCLOSURES PURSUANT TO PARAGRAPHS 1 AND 3 OF THE COURT'S
DISCOVERY ORDER**

Pursuant to Paragraphs 1 and 3 of the Discovery Order (D.I. 118, hereinafter "Discovery Order"), Defendant Apple Inc. ("Apple") hereby makes the following initial and additional disclosures to Plaintiff AGIS Software Development LLC ("AGIS").

These disclosures are based upon information reasonably and presently available to Apple, without the benefit of formal discovery, any significant production of documents, or any meaningful disclosures from AGIS. Accordingly, Apple reserves the right, consistent with its obligations under Federal Rule of Civil Procedure 26(e) and Paragraph 8 of the Discovery Order, to modify, amend, retract, and/or supplement the disclosures made herein as additional evidence and information becomes available. Apple further reserves the right to call any witness or present

any document or tangible thing at trial that is identified through further investigation or discovery or that AGIS identifies in its initial disclosures.

I. Initial Disclosures Pursuant to Paragraph 1 of the Discovery Order

a) Correct Names of the Parties to the Lawsuit

Based upon information currently available, Apple believes that the correct names of the parties to the lawsuit are as follows:

Plaintiff: AGIS Software Development LLC

Defendant: Apple Inc.

b) Name, Address, and Telephone Number of Any Potential Parties

Based upon information currently available, additional potential parties to this lawsuit may include Advanced Ground Information Systems, Inc. and AGIS Holdings, Inc.

c) Legal Theories and Factual Bases

Apple incorporates by reference the defenses in Apple's Answer to Plaintiff's First Amended Complaint for Patent Infringement, filed on October 2, 2017 (D.I. 36). Apple provides the following brief description of its legal theories and factual bases for its legal claims and defenses based upon information currently available to Apple. Apple expects to discover additional information during the course of discovery that may be relevant to its legal theories, claims, and defenses. Apple reserves the right to supplement, amend, and correct the following disclosures based on the evidence obtained through discovery.

1. Non-Infringement of the Patents-in-Suit

Apple does not infringe and has not infringed, directly, indirectly, contributorily or by inducement, any valid and enforceable claim of United States Patent Nos. 8,213,970 (the "970 patent"), 9,408,055 (the "055 patent"), 9,445,251 (the "251 patent"), 9,467,838 (the "838

patent”), or 9,749,829 (the “’829 Patent”) (collectively, the “Patents-in-Suit”), and Apple has not otherwise committed any acts in violation of 35 U.S.C. § 271.

As a general matter, Apple contends that that it does not infringe the asserted claims of the Patents-in-Suit because (even assuming the asserted claims of the Patents-in-Suit are valid and enforceable), Apple does not manufacture, use, sell, or offer to sell in the United States, or import into the United States, any product that includes each and every element of any asserted claim of the Patents-in-Suit, or an equivalent, to the extent that Plaintiff is entitled to any equivalent. Apple contends that not all elements of the properly construed claims of the Patents-in-Suit are present in the accused products, literally or under the doctrine of equivalents, and Apple does not currently perform, and has not performed, all of the steps of the properly construed claims of the Patents-in-Suit, literally or by the doctrine of equivalents. Apple also does not contribute to or induce, and has not contributed to or induced, another’s infringement. Furthermore, Apple’s products have substantial non-infringing uses. Apple has no intent, and has never intended, to induce any alleged infringement by any third party. Moreover, because Apple cannot be liable for infringement of any claims, Apple cannot be liable for willfully infringing the Patents-in-Suit.

Additionally, Apple will serve its expert reports regarding non-infringement at the time and in the manner provided in the Local Patent Rules and the Court’s Docket Control Order.

2. Patent Invalidity

The asserted claims of the Patents-in-Suit are invalid and/or unenforceable for failure to comply with one or more requirements of 35 U.S.C. §§ 101, 102, 103, and 112. Apple incorporates by reference Apple’s Amended Invalidity Contentions, served on April 16, 2018. Apple will provide expert reports regarding invalidity at the time and in the manner provided in the Local Patent Rules and the Court’s Docket Control Order.

3. Prosecution History Estoppel and Disclaimer

The relief sought by AGIS is barred, in whole or in part, under the doctrines of prosecution history estoppel and prosecution disclaimer due to amendments and/or statements made during prosecution related to the Patents-in-Suit and/or in the specifications and claims of the Patents-in-Suit.

4. Prosecution Laches

The asserted claims of the Patents-in-Suit are unenforceable due to prosecution laches.

5. Equitable Doctrines

Some or all of AGIS's claims are barred by one or more of the equitable doctrines of waiver, acquiescence, laches, estoppel (including without limitation equitable estoppel and prosecution history estoppel), and/or unclean hands.

6. No Entitlement To Injunctive Relief

AGIS is not entitled to injunctive relief against Apple under the principles of equity or under 35 U.S.C. § 283. Apple has not infringed, and is not infringing, any asserted claim of the Patents-in-Suit, and all of the Patents-in-Suit are invalid. Further, any purported injury to AGIS is not immediate and not irreparable, and AGIS will have an adequate remedy at law. Additionally, the public interest and the balance of hardships disfavor an injunction under the circumstances here.

7. Limitation on Damages and Costs

AGIS's claims for damages are barred, in whole or in part, by 35 U.S.C. § 286 or 287. Moreover, Apple has not engaged in any conduct that would entitle AGIS to a finding that this is an exceptional case, or to an award of enhanced damages, costs, attorneys' fees, or expenses. To

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