

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

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

v.

HUAWEI DEVICE USA, INC.,

Defendant.

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

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 2:17-cv-516-JRG

**OPPOSED MOTION FOR LEAVE TO FILE MOTION TO STRIKE EXPERT  
DECLARATION OF JOSEPH MCALEXANDER  
SUBMITTED WITH SUMMARY JUDGMENT BRIEFING**

Defendant Apple Inc. respectfully requests leave to file a motion to strike new opinions in Joseph McAlexander's declaration that AGIS submitted with its opposition brief to Apple's Motion for Summary Judgment of Non-Infringement of U.S. Patent No. 8,213,970 more than two months after opening reports were due and more than two weeks after the deadline to file motions to strike expert testimony. Dkt. No. 262.

The docket control order contains the following deadlines:

October 29, 2018	Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof
November 19, 2018	Serve Disclosures for Rebuttal Expert Witnesses

December 7, 2018	Deadline to Complete Expert Discovery
December 14, 2018	*File Dispositive Motions
December 14, 2018	*File Motions to Strike Expert Testimony (including <i>Daubert</i> Motions)  No motion to strike expert testimony (including a <i>Daubert</i> motion) may be filed after this date without leave of the Court.

Apple filed and a motion for summary judgment of noninfringement of the '970 patent on December 14, 2018. Dkt. No. 228. In responding to that motion, AGIS submitted an expert declaration from Joseph McAlexander on January 4, 2018, as exhibit 4 to its opposition brief. Dkt. No. 262-5. The declaration contains new opinions from Mr. McAlexander that were not included in his opening report that was served two months earlier on October 29, 2018.

Apple's motion to strike is the proper procedural device to address AGIS' improper expert declaration. *Joe Andrew Salazar v. HTC Corp.*, No. 2:16-CV-1096 (E.D. Tex. May 18, 2018) (granting a motion to strike the plaintiff's expert's declaration submitted in response to a summary judgment motion). And because the McAlexander declaration was submitted more than two weeks after the deadline to file motions to strike expert testimony, Apple respectfully requests leave to file a motion to strike the declaration of Mr. Joseph McAlexander.

DATED: January 18, 2019

Respectfully submitted,

/s/ Melissa R. Smith  
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*Counsel for Apple*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Counsel of record for AGIS were served with a true and correct copy of the foregoing document by electronic mail on January 18, 2019.

*/s/ Melissa R. Smith*  
\_\_\_\_\_  
Melissa R. Smith

**CERTIFICATE OF CONFERENCE**

I hereby certify that counsel for Apple conferred with counsel for AGIS regarding the foregoing motion on January 18, 2019. Counsel for AGIS indicated that they are opposed to the relief sought in this motion.

*/s/ Melissa R. Smith*  
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Melissa R. Smith