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

AGIS SOFTWARE DEVELOPMENT LLC,	§	Case No. 2:17-CV-0513-JRG
	§	(LEAD CASE)
Plaintiff,	§	
	§	**JURY TRIAL DEMANDED**
v.	§	
	§	
HUAWEI DEVICE USA INC. ET AL.,	§	[redacted]
	§	
Defendants.	§	

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

PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S SUR-REPLY TO APPLE INC.'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT OF NO INFRINGEMENT AND NO DAMAGES FOR FOREIGN USES (DKT. 230)

Plaintiff AGIS Software Development LLC ("AGIS"), by and through its undersigned counsel, hereby submits this sur-reply in opposition of Apple Inc.'s Motion for Summary Judgment of No Infringement and No Damages for Foreign Uses (Dkt. 230) (the "Motion").

Regarding the method claims, Apple incorrectly alleges that certain steps are performed outside the United States. Dkt. 279. However, every step in the method claims at issue is performed inside the United States. Apple does not directly address AGIS's statements that the steps of the methods claims are performed by Apple servers in the United States. Instead, Apple focuses only on alleged functionality of user devices which are not claimed steps. Dkt. 279 at 3-4. Apple does not identify a single claimed step that is performed by these devices. Instead, Apple focuses on the "configured" claim terms. However, the "configured" claim language nonetheless relates to limitations on how the server performs a step, not on device-steps.

Apple also argues that because control/beneficial use of the system invoked is exercised/obtained outside the United States, the use of the system takes place outside the United States, and it therefore does not infringe. Dkt. 279 at 3-4. However, Apple's argument is without merit because the use of the system claims at issue takes place in the United States where the control is exercised and benefit is obtained. Apple relies solely on the deposition testimony of Mr. Ratliff[1] and Mr. McAlexander. Dkt. 230 at 8-9. [redacted] Apple's allegation that "AGIS's experts readily concede" or that "both parties'

[1] AGIS notes that Apple relies heavily on the deposition testimony of Mr. Ratliff, AGIS's damages expert, to establish that the use of the system does not infringe.

experts agree" control or benefit is exercised/obtained at the user's location is misleading. *See* Dkt. 230 at 5. Both experts responded to Apple's statements regarding the control of and benefit from use of the apps, not the system. Dkt. 230 at 8-9. Second, AGIS does not dispute that ***a*** benefit may accrue to the users of the apps. However, the benefit of the system is where the servers are located. Additionally, as Apple has stated, the determination of use of the claimed system is where "the system as a whole it put into service, i.e., the place where control of the system is exercised and beneficial use of the ***system*** is obtained." Dkt. 230 at 5. Control is exercised and beneficial use of the ***system*** is obtained where the servers are located—in the United States, not where the users are located.

Finally, Apple alleges that it may operate some servers outside the United States. Dkt. 230 at 6-7. However, Apple's assertions are inconsistent with the facts raised by AGIS that demonstrate that all of the accused Apple servers are located within the United States. [redacted] Dkt. 256-9. Apple's First Supplemental Reponses to AGIS Software Development LLC's First Set of Interrogatories, No. 9, dated August 8, 2018. Apple made no move to amend its response with additional information, nor did it dispute this fact in its reply to the motion. [redacted]

In moving for summary judgment, Apple bears the burden of showing that there is "no genuine dispute as to any material fact." Fed. R. Civ. P. 56(1); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Here, Apple has not shown there is no genuine dispute as to any material facts which precludes a finding of summary judgment.

For the foregoing reasons, AGIS respectfully requests that the Court deny Apple's Motion for Summary Judgment of No Infringement and No Damages for Foreign Uses.

Dated: January 18, 2019

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