

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

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

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

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**APPLE INC.'S SUR-REPLY IN OPPOSITION TO DKT. NO. 236, AGIS SOFTWARE DEVELOPMENT LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF NO INVALIDITY OVER THE FBCB2 SYSTEM**

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<b><u>Exhibit Number</u></b>	<b><u>Description</u></b>
Ex. 1	Excerpts of Expert Report of Neil Siegel
Ex. 2	Excerpts of Apple's Amended Initial and Additional Disclosures (served April 16, 2018)
Ex. 3	Excerpts of AGIS Notice of Subpoena to Neil Siegel
Ex. 4	Neil Siegel's Response to Subpoena of AGIS Software Development, LLC
Ex. 5	Excerpts of Invalidity Expert Report of Dr. Paul Clark

## I. INTRODUCTION

As Apple explained in its Opposition, AGIS's motion for partial summary judgment depends on the Court granting AGIS's motions to strike portions of Dr. Neil Siegel's expert report (Dkt. Nos. 233, 234).<sup>1</sup> Because both those motions to strike should be denied, so too should this motion. Further, even if the Court grants AGIS's motions to strike, Dr. Siegel's report would contain sufficient support for his opinion that the FBCB2 system anticipates or renders obvious every asserted claim of the four "Location Patents."<sup>2</sup> AGIS's Reply does not provide any substantive explanation to the contrary, and there is no factual or legal basis for such an argument. AGIS's motion for partial summary judgment should be denied.

## II. ARGUMENT

### A. **AGIS Is Not Entitled To Summary Judgment Of No Invalidity Over FBCB2 Even If Its Motion To Strike Information About "The Process of Dynamically Electing Servers" (Dkt. No. 233) Is Granted.**

#### 1. **AGIS Does Not Dispute That Its Motion To Strike Portions of Dr. Siegel's Report Relating To The "Process for Dynamically Electing Servers" Does Not Affect The '055 Patent.**

In its Opposition to AGIS's motion for summary judgment, Apple explained that Dr. Siegel's report does not discuss dynamic server election as part of his opinions concerning the '055 patent. (Dkt. No. 266 at 3.) In its Reply, AGIS does not dispute that its motion to strike does not affect any claim of the '055 patent. Accordingly, AGIS's motion for summary judgment should be denied as to the '055 patent.

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<sup>1</sup> AGIS's motion for partial summary judgment is Dkt. No. 236; Apple's opposition thereto is Dkt. No. 266; and AGIS's reply is Dkt. No. 285.

<sup>2</sup> U.S. Patent Nos. 9,467,838 (the "'838 patent"), 9,445,251 (the "'251 patent"), 9,749,829 (the "'829 patent"), and 9,408,055 (the "'055 patent").

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