███

██

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

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

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

DEFENDANT APPLE INC.'S SUR-REPLY IN OPPOSITION TO DKT. NO. 234,
PLAINTIFF'S MOTION TO STRIKE THE EXPERT REPORT OF NEIL SIEGEL FOR
FAILURE TO DISCLOSE OBVIOUSNESS COMBINATIONS
BASED ON THE SIEGEL PATENTS

███

███████████████████████████████

TABLE OF CONTENTS

██
███████████████████████████████

TABLE OF AUTHORITIES

Pages

██

█████████████████████████████████

TABLE OF EXHIBITS

Exhibit Number	Description
Ex. 1	Apple's Initial Invalidity Contentions (served December 1, 2017)
Ex. 2	Apple's Amended Invalidity Contentions (served April 16, 2018)
Ex. 3	Apple's Amended Invalidity Contentions Ex. B-14 ('055 Patent)
Ex. 4	Apple's Amended Invalidity Contentions Ex. C-14 ('251 Patent)
Ex. 5	Apple's Amended Invalidity Contentions Ex. D-14 ('838 Patent)
Ex. 6	Apple's Amended Invalidity Contentions Ex. E-14 ('829 Patent)
Ex. 7	Apple's Final Election of Prior Art References (served August 29, 2018)
Ex. 8	Siegel Invalidity Report Excerpts
Ex. 9	Siegel Deposition Excerpts
Ex. 10	Apple's Initial Invalidity Contentions Ex. B-14 ('055 Patent)
Ex. 11	Apple's Initial Invalidity Contentions Ex. C-14 ('251 Patent)
Ex. 12	Apple's Initial Invalidity Contentions Ex. D-14 ('838 Patent)
Ex. 13	Apple's Initial Invalidity Contentions Ex. E-14 ('829 Patent)
Ex. 14	Model Order Focusing Patent Claims and Prior Art (Judge Davis)
Ex. 15	*Cardsoft, Inc. v. Verifone Holdings, Inc.*, No. 2:08-cv-98-RSP (E.D. Tex. Jun. 3, 2012), Dkt. No. 371
Ex. 16	Apple's Initial Election of Prior Art References (served April 30, 2018)
Ex. 17	Additional Siegel Invalidity Report Excerpts
Ex. 18	AGIS Production Document AGISTX_00052222
Ex. 19	AGIS Production Document AGISTX_00052273
Ex. 20	AGIS Production Document AGISTX_00053052
Ex. 21	Apple's Second Amended Initial Disclosures
Ex. 22	McAlexander Invalidity Report Excerpts

███

████████████████████████████████████

I.   INTRODUCTION

Apple has never asserted that the Siegel patents[1] invalidate AGIS's patents as part of an obviousness combination with other references. Instead, Apple has consistently asserted that *the FBCB2 system*, which was used by the U.S. military in the late 1990s and early 2000s, invalidates four AGIS patents,[2] and that the Siegel patents describe the operation and features *of that system*. Dr. Neil Siegel, the designer of the FBCB2 system, articulates the same theory of invalidity in his expert report. AGIS's reply ignores those facts—just as it did in its motion—and repackages the same erroneous arguments to request that Dr. Siegel's report be stricken *in its entirety*.

AGIS's real goal appears to be preventing the jury from learning about the FBCB2 system. But no basis exists for that request. In its invalidity contentions served more than six months before the close of fact discovery, Apple disclosed the FBCB2 system and the contention that the Siegel patents describe the features of that system. AGIS's motion should be denied.

II.   ARGUMENT

A.   Apple Did Not "Surrender" The Siegel Patents.

Apple and Dr. Siegel have consistently maintained that the Siegel patents describe the features and functionalities of the FBCB2 system. During discovery, Apple provided *a single claim chart for the FBCB2 system* against each of AGIS's '838, '251, '055, and '829 patents in its invalidity contentions. (Exs. 2-6.) Apple cited the Siegel patents as describing the FBCB2 system's features throughout those charts. (*See*, *e.g.*, Ex. 2 at 1-2 ("the FBCB2 system is described at least in the following documents") (listing, among others, the Siegel patents); *see also* Exs. 3-6.) Apple later provided an initial prior art election that included the FBCB2 system and explained

---

[1] U.S. Patent Nos. 6,212,559; 5,672,840; 6,904,280; and 7,278,023.
[2] U.S. Patent Nos. 9,467,838 (the "'838 patent"); 9,445,251 (the "'251 patent"); 9,408,055 (the "'055 patent"); and 9,749,829 (the "'829 patent").

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.