



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

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

v.

HUAWEI DEVICE USA INC., *et al.*,

Defendants.

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Civil Action No. 2:17-CV-513-JRG
(LEAD CASE)

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

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Civil Action No. 2:17-CV-516-JRG
(CONSOLIDATED CASE)

**APPLE INC.'S SUR-REPLY IN OPPOSITION TO DKT. NO. 235, AGIS SOFTWARE
DEVELOPMENT LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF NO
INVALIDITY**



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Ex. 1	US Pat. No. 9,445,251
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Ex. 3	US Pat. No. 9,467,838
Ex. 4	US Pat. No. 9,749,829
Ex. 5	US Pat. Pub. No. US20020115453 (Poulin)
Ex. 6	Clark Invalidity Report Excerpts
Ex. 7	Siegel Invalidity Report Excerpts
Ex. 8	Siegel Deposition Excerpts
Ex. 9	AGIS's Final Election of Asserted Claims
Ex. 10	McAlexander Infringement Report Excerpts
Ex. 11	Rice Deposition Excerpt

[REDACTED]

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I. INTRODUCTION

AGIS maintains its mission to avoid facing invalidity challenges at trial. Apple highlighted ample evidence that, at the very least, raises genuine factual disputes regarding both the Poulin prior art patent and the FBCB2 prior art system. AGIS once again tries to sidestep that evidence by either mischaracterizing the facts or wholly ignoring them. Neither tactic warrants summary judgment. AGIS's motion should be denied.

II. ARGUMENT

A. Genuine Factual Disputes Regarding Whether Poulin Invalidates AGIS's Asserted Claims Preclude Summary Judgment.

1. AGIS's Conclusory Attorney Arguments Regarding Poulin Do Not Warrant Summary Judgment On Anticipation.

AGIS's Reply does not demonstrate the absence of a genuine factual dispute regarding anticipation in view of Poulin for three reasons. *First*, AGIS falsely claims that Apple applied a special definition of the "user-selectable symbols" limitation that is the basis for AGIS's motion. *Second*, AGIS provides only unsupported attorney argument in an attempt to dismiss the evidence and expert opinions that preclude summary judgment. *Third*, AGIS completely ignores its own expert's opinions and its dependent claims, both of which undermine AGIS's motion.

AGIS now frames its arguments as Poulin failing to meet "Apple's [d]efinition of '[u]ser-selectable [s]ymbols'" (Dkt. No. 284 ("Reply") at 2), but AGIS never explains what Apple's supposed "definition" is or how it supports AGIS's motion. That is because Apple did not impose a "definition" of user-selectable symbols. Instead, Apple explained how the record—disclosures in Poulin and Dr. Paul Clark's expert report applying those disclosures to AGIS's claims—defeat AGIS's motion. (Dkt. No. 265 ("Opposition") at 9-11.) Apple did so not based on any special "definition" of "user-selectable symbols," but instead with specific citations to the evidence and opinions that preclude summary judgment. (*Id.*)

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