

**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
Plaintiff,	§	(LEAD CASE)
	§	
v.	§	<b><u>JURY TRIAL DEMANDED</u></b>
	§	
HUAWEI DEVICE USA INC. ET AL.,	§	
	§	
Defendants.	§	

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APPLE, INC.,	§	Case No. 2:17-CV-0516-JRG
	§	(CONSOLIDATED CASE)
Defendant.	§	
	§	<b><u>JURY TRIAL DEMANDED</u></b>

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S RESPONSE IN  
OPPOSITION TO APPLE INC.'S OPPOSED MOTION  
FOR LEAVE TO FILE MOTION TO STRIKE  
DECLARATION OF JOSEPH MCALEXANDER SUBMITTED WITH  
SUMMARY JUDGMENT BRIEFING (DKT. 310)**

Plaintiff AGIS Software Development LLC (“AGIS”) hereby submits its Response in Opposition to Apple Inc.’s (“Apple”) Opposed Motion for Leave to File Motion to Strike Expert Declaration of Joseph McAlexander Submitted with Summary Judgment Briefing (Dkt. 310).

Apple’s motion for leave to file this motion to strike Mr. McAlexander’s declaration should be denied because the declaration properly addresses points made and inaccuracies of Apple’s motion for summary judgment and because any additional information contained in that declaration is harmless and causes no prejudice to Apple. Mr. McAlexander’s declaration is not an untimely expert report; it does not contain any new materials, test methodologies, opinions or changed conclusions. Moreover, Apple has already had an opportunity to respond to that declaration in its reply papers in support of its motion for summary judgment, and will have an opportunity to question Mr. McAlexander at trial. Regardless of how the McAlexander declaration is ultimately characterized, Apple has suffered no prejudice and cannot articulate any beyond mere conclusory assertions of prejudice.

Even if Mr. McAlexander’s declaration is found to contain statements that are considered to be rebuttal to the opinions of Apple’s infringement expert, Paul Clark, because Mr. McAlexander reaches no new conclusions and provides no new substantive opinions, such statements are harmless to Apple and Apple has suffered no prejudice.

Accordingly, AGIS respectfully requests that the Court deny Apple’s motion for leave to file a motion to strike the declaration of Mr. Joseph McAlexander.

Dated: February 1, 2019

**BROWN RUDNICK LLP**

*/s/ Alfred R. Fabricant*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on February 1, 2019, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

*/s/ Alfred R. Fabricant*

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