

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

AGIS SOFTWARE DEVELOPMENT, LLC

Plaintiff,

v.

HUAWEI DEVICE USA INC., HUAWEI
DEVICE CO., LTD. AND HUAWEI DEVICE
(DONGGUAN) CO., LTD.

Defendants.

CIVIL ACTION NO. 2:17-cv-513-JRG

JURY TRIAL DEMANDED

**DECLARATION OF JAMES BLACKBURN IN SUPPORT OF DEFENDANTS’
MOTION TO TRANSFER VENUE**

I, James Blackburn, state and declare as follows:

1. I am a member of Arnold & Porter Kaye Scholer, LLP (“APKS”), counsel of record for Defendants Huawei Device USA Inc. (“Huawei USA”), Huawei Device Co., Ltd. (“Huawei Device”), and Huawei Device (Dongguan) Co., Ltd. (“Huawei Dongguan”) (collectively, the “Huawei Defendants”). I am a member of the Bar of the State of California and have been admitted to practice in the United States District Court for the Eastern District of Texas. I provide this declaration in support of Defendants’ motion to transfer the above-captioned action to the United States District Court for the Northern District of California (“N.D. Cal.”). I have personal knowledge of the matters stated in this declaration and would testify competently and truthfully to them if called upon to do so.

2. Attached hereto as Exhibit 1 is a true and correct copy of the “Patent Assignment Abstract of Title” for United States (“U.S.”) Patent No. 8,213,970 (the “’970 Patent”) entitled “Method of Utilizing Forced Alerts for Interactive Remote Communications,” retrieved from

<http://portal.uspto.gov/pair/PublicPair>, which is a publicly available website of the United States Patent and Trademark Office (the “USPTO”), on June 28, 2017. The Abstract of Title for the ’970 Patent shows each of the recorded assignments for the ’970 Patent, including an assignment by assignor AGIS Holdings, Inc. to Plaintiff AGIS Software Development LLC (“AGIS”) on June 20, 2017.

3. Attached hereto as Exhibit 2 is a true and correct copy of the “Patent Assignment Abstract of Title” for U.S. Patent No. 9,408,055 (the “’055 Patent”) entitled “Method to Provide Ad Hoc and Password Protected Digital and Voice Networks,” retrieved from <http://portal.uspto.gov/pair/PublicPair> on June 28, 2017. The Abstract of Title for the ’055 Patent shows each of the recorded assignments for the ’055 Patent, including an assignment by assignor AGIS Holdings, Inc. to AGIS on June 20, 2017.

4. Attached hereto as Exhibit 3 is a true and correct copy of the “Patent Assignment Abstract of Title” for U.S. Patent No. 9,445,251 (the “’251 Patent”) entitled “Method to Provide Ad Hoc and Password Protected Digital and Voice Networks,” retrieved from <http://portal.uspto.gov/pair/PublicPair> on June 28, 2017. The Abstract of Title for the ’251 Patent shows each of the recorded assignments for the ’251 Patent, including an assignment by assignor AGIS Holdings, Inc. to AGIS on June 20, 2017.

5. Attached hereto as Exhibit 4 is a true and correct copy of the “Patent Assignment Abstract of Title” for U.S. Patent No. 9,467,838 (the “’838 Patent”) entitled “Method to Provide Ad Hoc and Password Protected Digital and Voice Networks,” retrieved from <http://portal.uspto.gov/pair/PublicPair> on June 28, 2017. The Abstract of Title for the ’838 Patent shows each of the recorded assignments for the ’838 Patent, including an assignment by assignor AGIS Holdings, Inc. to AGIS on June 20, 2017.

6. Attached hereto as Exhibit 5 is a true and correct copy of the Certificate of Formation for AGIS, retrieved from the Office of the Secretary of State of Texas, which shows that AGIS was formed as a Texas limited liability company on June 1, 2017. The Certificate of Formation identified AGIS Holdings Inc. as the only member of AGIS and lists the address of AGIS Holdings Inc. as 192 Lighthouse Drive, Jupiter, Florida 33469.

7. Attached hereto as Exhibit 6 is a true and correct copy of a Certificate of Correction filed for AGIS, retrieved from the Office of the Secretary of State of Texas, which corrects the address previously provided for AGIS Holdings Inc. The corrected address identified in Exhibit 6 for AGIS Holdings Inc. is 92 Lighthouse Drive, Jupiter, Florida 33469.

8. Attached hereto as Exhibit 7 is a true and correct copy of a printout from the Texas Secretary of State's SOSDirect Database setting forth AGIS's corporate filing history with the Texas Secretary of State. The Texas Secretary of State's records for AGIS identify its business address as 211 E. 7th Street, Suite 620, Austin, Texas 78701. This same address is listed for AGIS's registered agent, Corporation Service Company, in Exhibit 5.

9. Attached hereto as Exhibit 8 is a true and correct copy of a printout from the Texas Office of the Comptroller that lists 211 E. 7th Street, Suite 620, Austin, Texas 78701 as AGIS's mailing address. That same document also identifies 211 E. 7th Street, Suite 620, Austin, Texas 78701 as the address for AGIS's registered agent, Corporation Service Company.

10. Attached hereto as Exhibit 9 is a true and correct copy of the Electronic Articles of Incorporation filed with the Florida Secretary of State for AGIS's managing member, AGIS Holdings Inc. The Articles identify AGIS Holdings Inc.'s address as 92 Lighthouse Drive, Jupiter, Florida, 33469. The Articles identify four initial officers and directors of AGIS Holdings Inc. 92 Lighthouse Drive is identified as the address for three of the officers and

directors: Malcolm K. Beyer, Jr., Sandel S. Blackwell, and Margaret R. Beyer. The fourth identified officer and director is Ronald H. Wisneski, with a listed address of 810 Saturn Street, Jupiter, Florida 33477.

11. AGIS's First Amended Complaint alleges that AGIS's principal place of business is 100 W. Houston Street, Marshall, Texas. (D.I. 20). Attached hereto as Exhibit 10 is a true and correct copy of a printout from the U.S. Business segment of the Trans Union TLOxp Database identifying the businesses and corporations located at 100 West Houston Street, Marshall, Texas, as of September 6, 2017. 18 different entities are identified as being located at that address, but AGIS is not one of them.

12. AGIS has no known employees in Texas, and it conducts no business in Texas. I have been unable to locate any evidence of AGIS's business activities or any reference to AGIS (other than its address and references to its litigation activities) as of November 14, 2017.

13. AGIS's First Amended Complaint alleges that AGIS licenses the Patents-in-Suit to Advanced Ground Information Systems, Inc. ("AGIS, Inc."). (D.I. 20 ¶ 14). Attached hereto as Exhibit 11 is a true and correct copy of the Electronic Restated Articles of Incorporation filed with the Florida Secretary of State for AGIS, Inc. The Restated Articles identify Malcolm K. Beyer, Jr. as the only initial director. 92 Lighthouse Drive, Jupiter, FL 33469 is identified as the address of AGIS, Inc. and for Beyer, Jr.

14. Christopher Rice is a named co-inventor on the '251 and '838 Patents and, on information and belief, resides in Redmond, Washington. Attached hereto as Exhibit 12 is a true and correct copy of the '251 Patent. Attached hereto as Exhibit 13 is a true and correct copy of the '838 Patent. Exhibits 12 and 13 list Christopher R. Rice as residing in Redmond, Washington, which is closer to N.D. Cal. than to E.D. Tex.

15. Daniel J. Burns was the prosecuting attorney for at least three of the four Patents-In-Suit (*i.e.*, the '055 Patent, the '838 Patent, and the '251 Patent). Attached hereto as Exhibits 38-40 are true and correct copies of the Power of Attorney filed, as part of the prosecution histories, in the applications for the '055 Patent, the '838 Patent, and the '251 Patent, respectively. Exhibits 38-40 each list Daniel J. Burns as authorized to act on behalf of the assignee, Advanced Ground Information Systems, Inc. Attached hereto as Exhibit 14 is a true and correct copy of the practitioner information for Daniel J. Burns from the USPTO's Office of Enrollment and Discipline. Exhibit 14 shows that Daniel J. Burns resides in Santa Clara, CA, which is within N.D. Cal.

16. Prior art reference U.S. Patent No. 8,798,593 was invented by Richard D. Haney, who, on information and belief, resides in Northern California. Attached hereto as Exhibit 15 is a true and correct copy of U.S. Patent No. 8,798,593, which shows that Richard D. Haney resides in Union City, CA, which is within N.D. Cal. Attached hereto as Exhibit 16 is a true and correct copy of Richard Haney's LinkedIn profile, which shows that he is located in the San Francisco Bay Area.

17. Attached hereto as Exhibit 17 is a true and correct copy of prior art reference U.S. Patent No. 7,091,852. On information and belief, at least the following inventors of prior art reference U.S. Patent No. 7,091,852 reside in N.D. Cal.: Charles Mason; Raymond Burkley; John Cronin; Gordon Taras; Jack Boniface; and Steven Taylor. Attached hereto as Exhibits 18, 19, and 20 are true and correct copies of the LinkedIn profiles for Charlie Mason, Raymond Burkley, and Gordon Taras, respectively, which show that they are located in the San Francisco Bay Area.

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