

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

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

vs.

HTC CORPORATION,

Defendant.

**CASE NO. 2:17-CV-514-JRG
(LEAD CASE)**

JURY TRIAL DEMANDED

**DEFENDANT HTC CORPORATION'S MOTION FOR SUMMARY JUDGMENT OF
NO DIRECT INFRINGEMENT**

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I. INTRODUCTION

AGIS alleges that HTC Corp. directly infringes U.S. Pat. Nos. 8,213,970; 9,408,055; 9,445,251; and 9,467,838 (the “asserted patents”), based on software that allegedly runs on smartphones that HTC Corp. manufactures. But AGIS’s allegations of direct infringement are fatally flawed for a simple reason: AGIS sued the wrong entity. HTC Corp. is a Taiwanese entity that does not make, use, sell, offer to sell, or import its smartphones in the United States. Rather, a third-party, HTC America, Inc., performs the sales and importation in the United States of HTC Corp.-manufactured smartphones. This distinction between HTC Corp. and HTC America results in a situation where the defendant in this case, HTC Corp., does not actually perform any acts within the United States upon which direct infringement could be premised. Thus, regardless of any elements of the asserted claims or features of the products, HTC Corp. does not directly infringe as a matter of law, simply because of where HTC Corp. conducts its business activities.

While this may appear to be a sweeping outcome, the Court should not view this as an outcome that is unfair to AGIS. This outcome is nothing more than the direct result of a strategic decision that AGIS made when it filed this lawsuit. Based on AGIS’s conduct in this and the related lawsuits, it is obvious that AGIS sued HTC Corp., a foreign entity, and not HTC America, a Washington entity, because this District would not have been a proper venue for HTC America after *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514

(2017).¹ Thus far, AGIS's gambit has succeeded on the venue part of the plan. (*See* Memorandum Opinion and Order Denying Motion to Transfer Venue (Dkt. No. 77).) But now having secured its desired forum, AGIS must pay the price of its decision to sue the wrong entity as a defendant for any viable claim of direct infringement.

As explained further herein, HTC Corp. does not conduct any of the direct infringement-implicating activities recited in 35 U.S.C. § 271(a) within the United States. As such, HTC Corp. respectfully moves the Court to grant summary judgment of no direct infringement of any of the asserted claims.

II. STATEMENT OF ISSUES TO BE DECIDED BY THE COURT

- Whether HTC Corp. directly infringes the method claims of the asserted patents, when HTC Corp. does not make, use, sell, or offer to sell the accused devices within the United States and does not import the accused devices into the United States.
- Whether HTC Corp. directly infringes the system and device claims of the asserted patents, when HTC Corp. does not make, use, sell, or offer to sell the accused devices within the United States and does not import the accused devices into the United States.

¹ HTC Corp. calls attention to the fact that AGIS sued four Android device manufacturers in this District on June 21, 2017: HTC Corp. (2:17-CV-00514); LG (2:17-CV-00515); Huawei (2:17-CV-00513); and ZTE (2:17-CV-00517). For those manufacturers that had a Texas-based United States entity—Huawei and ZTE—AGIS named the foreign entity and the United States entity as defendants. For those manufacturers that did not have Texas-based United States entities—HTC Corp. and LG—AGIS did not name the United States entities as defendants. HTC Corp. further calls attention to the evidence demonstrating a venue-motivated purpose for the establishment of AGIS as an entity. (*See* Motion to Transfer Venue (Dkt. No. 29), pp. 2–4; Motion to Reconsider Denial of Motion to Transfer Venue (Dkt. No. 97), pp. 4–5.)

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