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11988 El Camino Real
Suite 350
San Diego, CA 92130-2594

T +1.858.720.5700
F +1.858.720.5799
PerkinsCoie.com

November 13, 2018

Matthew C. Bernstein
MBernstein@perkinscoie.com
D. +1.858.720.5721
F. +1.858.720.5821

VIA EMAIL: VRUBINO@BROWNRUDNICK.COM

Vincent J. Rubino, III
Brown Rudnick LLP
7 Times Square
New York, NY 10036

**Re: AGIS Software Development, LLC v. HTC Corp.
Case No. 2:17-cv-0514 (E.D. Tex.) (Lead Case)**

Dear Mr. Rubino:

HTC Corp. requests that AGIS stipulate that HTC Corp. does not directly infringe the '970 patent, and that HTC Corp. does not induce infringement prior to AGIS's filing of the complaint (June 21, 2017). Under no good faith interpretation of the law and application of the facts can AGIS maintain these infringement claims.

HTC Corp. cannot be a direct infringer because its smartphones do not have the accused Google-made applications, Find My Device and Device Manager. See 35 U.S.C. §271(a) (stating that direct infringement requires a party to make, use, offer to sell, or sell any patented invention). HTC Corp. does not install Find My Device.¹ A user, in the United States, would need to locate, download, and then install Find My Device (and its predecessor Device Manager App) from the Google Play store in order to use it on any of the accused devices.² Further, prior to these Android applications, the accused functionality was only available via browser on a website.³

¹ See S. Teng Dep. Tr. at 62:1-63:3; 65:20-24; 92:6-93:3; see also HTC-AGIS-MW000002 (showing Find My Device as optional); see also HTC-AGIS-020143-20161, HTC-AGIS-020162-20169, HTC-AGIS-020189-20200, HTC-AGIS-020213-20224, HTC-AGIS-020276-20309, HTC-AGIS-020310-20343, HTC-AGIS-020344-20377, HTC-AGIS-020455-20521, HTC-AGIS-020538-20545, HTC-AGIS-020546-20564, HTC-AGIS-020565-20572, HTC-AGIS-020573-20625, HTC-AGIS-020689-20174, HTC-AGIS-020782-20804, HTC-AGIS-020805-20819, HTC-AGIS-020820-20834, HTC-AGIS-020851-20872, HTC-AGIS-020940-20956, HTC-AGIS-021099-21106, HTC-AGIS-021130-21136, HTC-AGIS-021257-21279, HTC-AGIS-021365-21384, HTC-AGIS-021385-21395, HTC-AGIS-021404-21424, HTC-AGIS-021425-21449, HTC-AGIS-021532-21808, HTC-AGIS-021874-22039, HTC-AGIS-022049-22067, HTC-AGIS-022170-22181, HTC-AGIS-022182-22192, HTC-AGIS-022193-22225, HTC-AGIS-022295-22316, HTC-AGIS-022377-22403, HTC-AGIS-022562-22571, HTC-AGIS-022572-22581, HTC-AGIS-022582-22598, HTC-AGIS-022599-22629, HTC-AGIS-022704-22712, HTC-AGIS-022713-22730, HTC-AGIS-022731-22772, HTC-AGIS-060143-HTC-AGIS-060284 (all showing that Find My Device/Device Manager is not installed); see also HTC Corp.'s Response to AGIS's Rog. No. 2 served on Oct. 9, 2018.

² https://play.google.com/store/apps/details?id=com.google.android.apps.adm&hl=en_US

³ The following YouTube videos provide a good demonstration on how Device Manager worked on Android devices prior to Find My Device's introduction: https://www.youtube.com/watch?v=r8XNli_ccfQ and <https://www.youtube.com/watch?v=yB3UASn Czsg>. As can be seen, the computer web browser is the element that would be implicated by the '970 patent's claims, not the phone.

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Being a website, AGIS cannot legitimately argue that HTC Corp. made it available on any of the accused devices. Any user who wanted to use Device Manager would need to navigate to a Google-owned website. If AGIS had conducted a proper Rule 11 analysis, all of this would have been readily apparent.⁴ AGIS's maintenance of this claim is not being done in good faith.

Turning to the inducement issue, AGIS is prohibited under the law from recovering for HTC Corp.'s alleged inducement because discovery has unequivocally shown HTC Corp. was unaware of any of the asserted patents before AGIS filed suit. Thus, AGIS lacks the bare minimum to assert pre-suit induced infringement: knowledge of the '970 patent. *See Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 765-766 (2011). AGIS never sent HTC Corp. pre-suit notice of the '970 patent⁵ and AGIS did not even allege pre-suit notice in its complaint. *See* D.I. 1 at ¶19 (stating that HTC Corp. induces as of the date of the '970 patent's filing). HTC Corp. first learned of the '970 patent shortly after AGIS filed its complaint.⁶ In addition, beyond knowledge, inducement requires the specific intent to encourage infringement.⁷ Absent pre-suit notice, AGIS cannot conceivably argue that specific intent exists. AGIS's continued pursuit of pre-suit infringement and damages for the '970 patent is being done in bad faith for the purpose of driving up HTC Corp.'s defense costs.

In summary, AGIS cannot legitimately maintain the above allegations of direct infringement and pre-suit inducement against HTC Corp. If AGIS refuses to stipulate to no direct infringement and no pre-suit induced infringement, HTC Corp. intends to raise this issue with Judge Gilstrap, and we will be seeking our attorneys' fees.

⁴ Tellingly, AGIS needed to download and install Find My Device from the Google Play Store for its allegedly representative product (Desire 550) that it charted in its infringement contentions. The Desire 550, like all other HTC Corporation-made phones, does not have Find My Device.

⁵ Armstrong Dep. Tr. at 232:16-235:15; Beyer Dep. Tr. at 478:8-480:24; Margaret Beyer Dep. Tr. at 66:12-67:9; Blackwell Dep. Tr. at 409:21-414:11; Clark Dep. Tr. at 62:18-64:10; Rice Dep. Tr. at 316:20-320:12; Wisneski at 300:17-202:15.

⁶ Yu Dep. Tr. at 27:14-20; *see also* HTC Corp.'s Response to AGIS's Rog. No. 9 served on April 9, 2018.

⁷ *Beneficial Innovations, Inc. v. Advance Publications, Inc.*, No. 2:11-CV-229-JRG-RSP, 2014 WL 12603492, at *3 (E.D. Tex. Jan. 6, 2014) (citing *Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1328 (Fed. Cir. 2009)); *Symantec Corp. v. Computer Assocs. Int'l, Inc.*, 522 F.3d 1279, 1292 (Fed. Cir. 2008) ("the specific intent necessary to induce infringement requires more than just intent to cause the acts that produce direct infringement ... the inducer must have an affirmative intent to cause direct infringement.").

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Please provide a response to this letter by November 16, 2018. We are also available to discuss these issues before then.

Regards,

A handwritten signature in black ink, appearing to read 'M. Bernstein', with a long horizontal stroke extending to the right.

Matthew C. Bernstein