

EXHIBIT 5

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November 28, 2018

VIA EMAIL (MBernstein@perkinscoie.com)

Matthew C. Bernstein
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RE: AGIS Software Development, LLC v. HTC Corporation, Case No. 2:17-cv-00514 (E.D. Tex.)
(Lead Case)

Dear Matthew,

I write in response to HTC Corporation's ("HTC") letter dated November 13, 2018 regarding HTC's request to AGIS to stipulate to non-infringement of the '970 patent. As I communicated on the phone earlier this week, AGIS does not agree to stipulate to non-infringement of the '970 patent and maintains that it has a good faith basis to continue to assert the '970 patent against HTC.

First, AGIS notes that HTC's letter does not challenge that the accused applications, Find My Device and Android Device Manager, meet the limitations of the '970 patent.¹

Second, HTC appears to argue that it cannot be a direct infringer because, according to HTC, the HTC Accused Devices do not have the "accused Google-made applications, Find My Device and Device Manager." HTC's statement in its letter are inaccurate. The functionalities of Find My Device and Android Device Manager have been embedded within the Android operating system and/or Google's Google Mobile Services ("GMS") on HTC Accused Devices since at least 2013, most recently as part of the Google Play Protect suite which is mandatory on all Android devices. Android devices allow users to access the device finder functionality through native apps as well as through the Google Chrome browser and Google search bar, which are also provided with the Android operating system as part of GMS, which has been preinstalled on HTC devices, sold in the United States. **HTC has directly infringed the '970 Patent at least as a result of selling its Android Smartphones, which include the GMS suite, in the United States prior to the filing of the complaint. Additionally, HTC has directly infringed the '970 Patent at least by testing the accused applications. See, e.g., Teng Dep. Tr. at 84:18-23.**

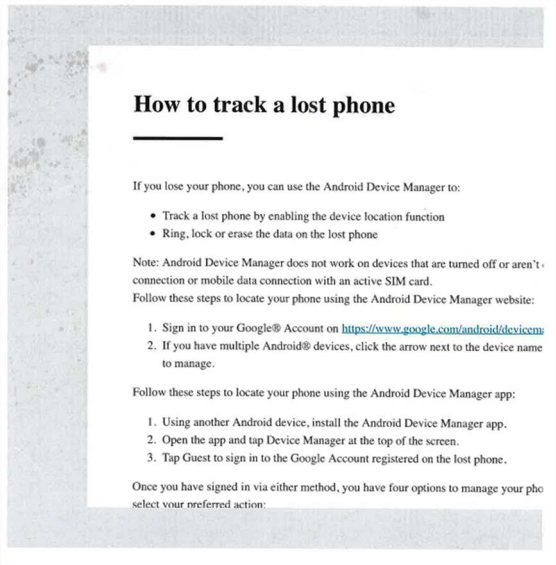
Third, HTC incorrectly states that AGIS is prohibited from recovering for inducement because HTC was unaware of the asserted patents before filing of the complaint. HTC incorrectly argues that without pre-suit notice, "AGIS cannot conceivably argue that specific intent exists." Pre-suit notice is not a requirement to find specific intent to induce infringement. Where Defendant has knowledge of the patent and specific intent *to cause the acts constituting infringement*, specific intent may be inferred from circumstantial evidence. *Ricoh Co. v. Quanta Comput. Inc.*, 550 F.3d 1325, 1342 (Fed. Cir. 2008). For example, on HTC's website, HTC directs customers to use Find My Device and Android Device

¹ Nothing herein shall be construed as a waiver by AGIS of its rights or remedies, and AGIS specifically reserves its right to supplement its response to HTC's Letter.

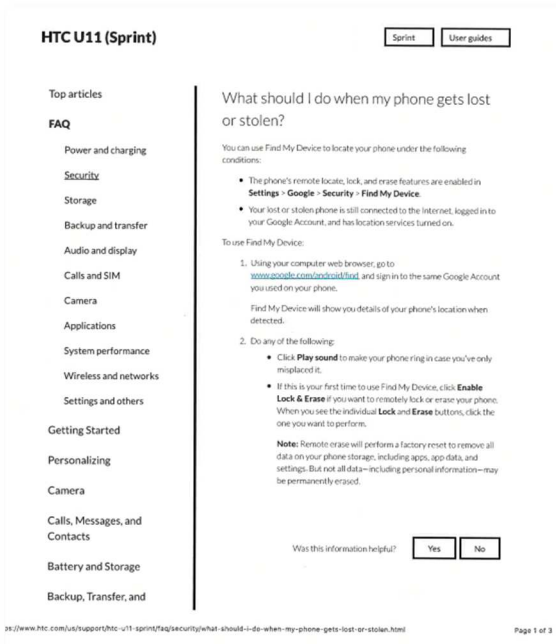


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Manager to locate lost devices (*See below*); *see also* Teng Dep. Exhibits 12-30.² Indeed, HTC has no basis to challenge post-complaint inducement, which is based on HTC’s continued encouragement of its customers’ direct infringement by use of the accused functionalities.



Teng Dep. Ex. 10



Teng Dep. Exhibit 11

² “Evidence of active steps taken to induce infringement, such as advertising an infringing use, can support a finding of an intention for the product to be used in an infringing manner.” *DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1305 (Fed. Cir. 2006).



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HTC 10 Unlocked Devices User guides

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What should I do when my phone gets lost or stolen?

You can use Find My Device to locate your phone under the following conditions:

- The phone's remote locate, lock, and erase features are enabled in **Settings > Google > Security > Find My Device**.
- Your lost or stolen phone is still connected to the Internet, logged in to your Google Account, and has location services turned on.

To use Find My Device:

1. Using your computer web browser, go to www.google.com/android/find and sign in to the same Google Account you used on your phone.

Find My Device will show you details of your phone's location when detected.

2. Do any of the following:
 - Click **Play sound** to make your phone ring in case you've only misplaced it.
 - If this is your first time to use Find My Device, click **Enable Lock & Erase** if you want to remotely lock or erase your phone. When you see the individual **Lock** and **Erase** buttons, click the one you want to perform.

Note: Remote erase will perform a factory reset to remove all data on your phone storage, including apps, app data, and settings. But not all data—including personal information—may be permanently erased.

Was this information helpful?

<http://www.htc.com/us/support/htc-10/faq/security/what-should-i-do-when-my-phone-gets-lost-or-stolen.html>
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Teng Dep. Exhibit 12

Moreover, HTC continues to directly infringe the '970 Patent and to actively induce infringement of the '970 patent, at least by causing devices and/or users of the devices to update to newer versions of Android OS and the Accused Applications. *See* Dep. Tr. of Teng 20:22-21:23; 26:3-9; 28:4-24; 29:18-30:15; 30:25-32:6; HTC U11 User Guide 63-65; <https://www.htc.com/us/support/updates.aspx>. Indeed, this post-filing inducement (including upgrades to older devices) applies to the same products that AGIS has alleged infringe due to HTC's pre-suit sales.

We are available to confer regarding these issues on December 3, 2018.

Sincerely,

BROWN RUDNICK LLP

Vincent J. Rubino III
cc: Counsel of Record