

**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 PRE-SUIT INDIRECT INFRINGEMENT**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. STATEMENT OF ISSUES TO BE DECIDED BY THE COURT	1
III. STATEMENT OF UNDISPUTED MATERIAL FACTS	1
IV. LEGAL STANDARD.....	4
V. ARGUMENT	4
A. Summary Judgment of No Pre-Suit Indirect Infringement Is Warranted Because There Is No Genuine Dispute that HTC Corp. Lacked Knowledge of the Asserted Patents Before the Filing of the Complaint	4
VI. CONCLUSION.....	6

TABLE OF AUTHORITIES

CASES

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986).....4

Candela Corp. v. Palomar Med. Techs., Inc.,
No. 9:06-CV-277, 2008 WL 11442020 (E.D. Tex. Sept. 5, 2008).....5

Celotex Corp. v. Catrett,
477 U.S. 317 (1986).....4

Commil USA, LLC v. Cisco Sys., Inc.,
135 S. Ct. 1920 (2015).....4

Genband US LLC v. Metaswitch Networks Corp.,
No. 2:14-CV-33-JRG-RSP, 2016 WL 7645424 (E.D. Tex. Jan. 6, 2016).....5

Global-Tech Appliances, Inc. v. SEB S.A.,
563 U.S. 754 (2011).....4

Largan Precision Co., Ltd. v. Genius Elec. Optical Co., Ltd.,
646 F. App'x 946 (Fed. Cir. 2016)5

LBS Innovations, LLC v. BP Am. Inc.,
No. 2:12-CV-00407-JRG, 2014 WL 61050 (E.D. Tex. Jan. 7, 2014)5

Little v. Liquid Air Corp.,
37 F.3d 1069 (5th Cir. 1994)4

Opticurrent, LLC v. Power Integrations, Inc.,
No. 2:16-CV-325-JRG, 2016 WL 9275395 (E.D. Tex. Oct. 19, 2016).....5

T-Rex Prop. AB v. Regal Entm't Grp.,
No. 6:16-CV-927-RWS-KNM, 2017 WL 4229372 (E.D. Tex. Aug. 31, 2017)5

Tierra Intelectual Borinquen, Inc. v. Asus Comput. Int'l, Inc.,
No. 2:13-CV-44-JRG, 2014 WL 1233040 (E.D. Tex. Mar. 24, 2014).....5

OTHER AUTHORITIES

Fed. R. Civ. P. 30(b)(6).....3

Fed. R. Civ. P. 56(a)4

I. INTRODUCTION

AGIS alleges that HTC Corp. indirectly infringes U.S. Pat. Nos. 8,213,970; 9,408,055; 9,445,251; and 9,467,838 (“asserted patents”). But it is axiomatic that a defendant cannot commit indirect infringement without having knowledge of the asserted patents. Despite interrogatories, depositions, and correspondence between counsel on the subject, AGIS has failed to identify any evidence demonstrating that HTC Corp. had knowledge of the asserted patents prior to the filing of the Complaint. On the other hand, HTC Corp. has presented testimonial evidence that it did not have pre-suit knowledge of the asserted patents. Because there is no genuine dispute that HTC Corp. lacked such knowledge, HTC Corp. could not, as a matter of law, indirectly infringe the asserted patents prior to the filing of the Complaint.

For that reason, HTC Corp. respectfully requests that the Court grant summary judgment of no pre-suit indirect infringement of the asserted patents.

II. STATEMENT OF ISSUES TO BE DECIDED BY THE COURT

- Whether HTC Corp. can be liable for pre-suit indirect infringement as a matter of law when it had no pre-suit knowledge of the asserted patents.

III. STATEMENT OF UNDISPUTED MATERIAL FACTS

AGIS alleges that HTC Corp. induces infringement of the asserted patents and contributorily infringes the asserted patents. (Complaint (Dkt. No. 1), ¶¶ 4, 19, 28, 41, 54; *id.* at Prayer for Relief, § a; Ex. 1, McAlexander Infringement Report, ¶ 134.) AGIS seeks pre-suit damages for HTC Corp.’s alleged indirect infringement. (Complaint at ¶¶ 22, 35, 48, 61; *id.* at Prayer for Relief, § d; Ex. 2, Ratliff Damages Report, ¶ 33.)

In the Complaint, AGIS’s only allegation as to HTC Corp.’s knowledge of the patents and knowledge of the alleged infringement is that HTC Corp. had knowledge “at least as of the date of this Complaint.” (Complaint at ¶¶ 19, 28, 41, 54.)

On November 7, 2018, HTC served the following Interrogatory No. 17 on AGIS:

Identify all communications made by any representative or individual associated with any AGIS Company to any representative or individual associated with HTC Corporation or HTC America, Inc. that pre-date June 21, 2017.

(Ex. 3, HTC Corp.'s Second Set of Interrogatories, p. 11.) Despite the fact that AGIS served its response to Interrogatory No. 17 on the last day of fact discovery, AGIS's response, in relevant part, was the following:

Discovery in this case is still ongoing and AGIS continues to investigate this matter.

(Ex. 4, AGIS's Responses to HTC Corp.'s Second Set of Interrogatories, pp. 4–5.)

On November 7, 2018, HTC served Interrogatory No. 18 on AGIS, which stated in part:

Describe, in full, the date on which AGIS contends that HTC Corporation received notice of each of the '055, '251, '838, and '970 patents[.]

(Ex. 3 at p. 11.) AGIS's response, in relevant part, was the following:

HTC received notice of the Patents-in-Suit, at least of [sic] the date of the Complaint.

(Ex. 4, AGIS's Responses to HTC Corp.'s Second Set of Interrogatories, pp. 5–6.)

On November 7, 2018, HTC served the following Request for Admission No. 1 on AGIS:

Admit that no representative from AGIS sent notice to HTC Corporation identifying any of the Patents-in-Suit prior to AGIS's filing of its complaint alleging infringement against HTC Corporation (filed on June 21, 2017).

(Ex. 5, HTC Corp.'s First Set of Requests for Admission, p. 9.) AGIS responded, in relevant part:

Admitted.

(Ex. 6, AGIS's Responses to HTC Corp.'s First Set of Requests for Admission, pp. 3–4.) HTC Corp. served other requests for admission as to any party providing pre-suit notice to HTC about

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