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

AGIS SOFTWARE DEVELOPMENT LLC,	§	
	§	Case No. 2:17-CV-0514-JRG
	§	(Lead Case)
Plaintiff,	§	
	§	
v.	§	<u>JURY TRIAL DEMANDED</u>
	§	
HTC CORPORATION., ET AL.,	§	
	§	
Defendants.	§	
	§	

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC’S OBJECTIONS
AND RESPONSES TO DEFENDANT HTC CORPORATION’S
SECOND SET OF INTERROGATORIES TO PLAINTIFF (NOS. 16-25)**

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff AGIS Software Development LLC (“AGIS” or “Plaintiff”) hereby responds to Defendant HTC Corporation’s (“HTC” or “Defendant”) Second Set of Interrogatories to Plaintiff (Nos. 16-25) in writing, under oath, and in accordance with the following definitions and instructions, within thirty (30) days of the date of service thereof, November 7, 2018. These Interrogatories are continuing in nature and require supplementation in accordance with the Federal Rules of Civil Procedure as follows:

These responses are made solely for the purposes of this action, and are made without waiving, or intending to waive, the right at any time to revise, correct, modify, supplement or clarify any response provided herein or the right to object on any proper grounds to the use of these responses, for any purpose in whole or in part, in any subsequent proceedings or any other action. The right to raise any applicable objections at any time is expressly reserved. A response to any Interrogatory herein should not be taken as an admission or acceptance of the existence of

**SPECIFIC OBJECTIONS AND RESPONSES TO DEFENDANT'S
SECOND SET OF INTERROGATORIES TO PLAINTIFF (NO. 14)**

INTERROGATORY NO. 16

AGIS declared that the applications for each of the '838, '055, and '251 patents were subject to the First-to-File provisions of the America Invents Act. *See* '838 patent prosecution, App. No. 14/529978, April 25, 2016 Applicant Amendment at 15-16 (AGIS stated that "it is understood that the present application will be examined under the post-AIA, first-to-file provisions of the patent laws"); '055 patent prosecution, App. No. 14/695233, October 30, 2015 Applicant Amendment at 13-14 (AGIS stated that "it is understood that the present application will be examined under the post-AIA, first-to-file provisions of the patent laws."); '251 patent prosecution, App. No. 14/633804, November 13, 2015 Applicant Amendment at 10 (AGIS stated that "it is understood that the present application will be examined under the post-AIA, first-to-file provisions of the patent laws. *See* MPEP 2159.02 (March 2014)."). AGIS's Supplemental Responses to HTC's 1st Set of Interrogatories, served on August 17, 2018, state that AGIS will rely upon an invention date prior to September 21, 2004 for the '838, '055, and '251 patents but patents subject to the First-to-File provisions of the America Invents Act cannot claim earlier invention dates. State AGIS's basis for claiming a pre-filing invention date for the '838, '055, and '251 patents in view of AGIS's representation to the USPTO that the '838, '055, and '251 patents are subject to the First-to-File provisions of the America Invents Act, which forbids claiming a pre-filing invention date.

RESPONSE TO INTERROGATORY NO. 16

AGIS hereby incorporates the General Objections as if fully set forth herein. AGIS further objects to this Interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case because the burden or expense of the proposed discovery outweighs its likely benefit. AGIS further objects to this Interrogatory as seeking information that is properly the subject of expert reports before the deadline for such disclosures. AGIS further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, and/or any other applicable privilege. AGIS further objects to this Interrogatory as vague, overbroad, ambiguous and confusing. AGIS objects to this Interrogatory to the extent it calls for a legal conclusion.

AGIS objects to this Interrogatory as overbroad, irrelevant, and unduly burdensome because it seeks information beyond the scope of HTC's P.R. 3-3 disclosures, *i.e.*, invalidity contentions, which were served on March 15, 2018.

AGIS objects to this Interrogatory as seeking information that is not relevant to any claims or defenses of any party to this action, and not proportional to the needs of the case.

Notwithstanding its general and specific objections, AGIS answers as follows:

AGIS contends that the asserted issued claims of the '251, '055, and '838 Patents are subject to pre-AIA law. For example, the U.S. Patent and Trademark Office examined the '251 patent's application under pre-AIA law (August 25, 2015 Office Action) and issued the '251 patent after issuing a July 7, 2016 Notice of Allowance which expressly identified the '251 patent's application as being subject to pre-AIA law [see AIA (First Inventor to File) Status: NO]. While each of the '251, '055, and '838 Patents has an actual filing date of after March 16, 2013, each of the issued claims of the '251, '055, and '838 Patents has an effective filing date, as evidenced on the face of each patent, of September 21, 2004. Accordingly, each of the issued claims of the '251, '055, and '838 Patents are subject to pre-AIA law.

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

AGIS reserves the right to supplement or amend its response to this interrogatory.

INTERROGATORY NO. 17

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.

RESPONSE TO INTERROGATORY NO. 17

AGIS hereby incorporates the General Objections as if fully set forth herein. AGIS further objects to this Interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case because the burden or expense of the proposed

discovery outweighs its likely benefit. AGIS further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, and/or any other applicable privilege. AGIS further objects to this Interrogatory on the ground it seeks information not within the custody, possession, or control of AGIS. AGIS objects to the term “any AGIS company” as vague, ambiguous, overbroad, and uncertain.

AGIS objects to this Interrogatory as overbroad, irrelevant, and unduly burdensome because it seeks information beyond the scope of this case, e.g., “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.”

Notwithstanding its general and specific objections, AGIS answers as follows:

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

AGIS reserves the right to supplement the response to this Interrogatory to identify additional documents pursuant to Fed. R. Civ. P. 33(d).

INTERROGATORY NO. 18

Describe, in full, the date on which AGIS contends that HTC Corporation received notice of each of the '055, '251, '838, and '970 patents, including: (a) the date of the notice; (b) the form that the notice was in (e.g., whether it was a hand-delivered letter, an e-mail, or was made verbally, etc.); (c) all documents reflecting the notice; (d) the person who received the notice; (e) the person who sent the notice; (f) the patent identified in the notice; and (g) how the notice put HTC Corporation on notice of an allegedly infringing act.

RESPONSE TO INTERROGATORY NO. 18

AGIS hereby incorporates the General Objections as if fully set forth herein.

AGIS further objects to this Interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case because the burden or expense of the proposed discovery outweighs its likely benefit.

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