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

AGIS SOFTWARE DEVELOPMENT LLC,
 	
    Plaintiff,
 	
vs.
 	
HTC CORPORATION,
 	
    Defendant.
	CIVIL ACTION NO. 2:17-CV-514-JRG
	(LEAD)
	
	JURY TRIAL DEMANDED

**DEFENDANT HTC CORPORATION'S MOTION FOR SUMMARY JUDGMENT OF
NO DIRECT INFRINGEMENT AND NO INDIRECT INFRINGEMENT OF
U.S. PATENT NO. 8,213,970**

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

I.   INTRODUCTION

AGIS alleges that HTC Corp. directly and indirectly infringes U.S. Pat. No. 8,213,970 (the "'970 patent") based on the premise that Google's Find My Device application, when running on an HTC Corp. device, infringes the asserted claims of the '970 patent. Setting aside the merits of whether the Find My Device application actually includes the elements of the asserted claims, AGIS's infringement theory is deficient as a matter of law for two reasons.

First, as it relates to direct infringement, HTC Corp. does not install the Find My Device application on its smartphones. Thus, whenever HTC Corp. performs activities that might allegedly be making, using, selling, offering to sell, or importing those smartphones, the smartphones are not capable of infringement. They do not contain the Find My Device software that AGIS itself says is necessary to infringe the asserted claims of the '970 patent. For this reason, it is black letter law that HTC Corp. cannot directly infringe the '970 patent.

Second, while the '970 patent was issued in 2012, the Find My Device application was not released until August 2013. Thus, under AGIS's theory of infringement—based on the presence of Find My Device on HTC Corp.'s smartphones—it was a factual impossibility for HTC Corp., or anyone, to directly or indirectly infringe the asserted claims of the '970 patent prior to August 2013.

For the foregoing reasons, HTC Corp. respectfully requests that the Court grant summary judgment of no direct infringement of the '970 patent. HTC Corp. also respectfully requests that the Court grant summary judgment of no infringement (both direct and indirect) of the '970 patent for dates prior to August 2, 2013.

II.   STATEMENT OF ISSUES TO BE DECIDED BY THE COURT

- Whether HTC Corp. directly infringes the '970 patent, when the alleged infringement is based on operation of a software application that is not installed on the accused devices when sold by HTC Corp.

- Whether HTC Corp. directly or indirectly infringes the '970 patent prior to August 2, 2013, when the only alleged infringement requires a software application that was first announced on that date.

III.   STATEMENT OF UNDISPUTED MATERIAL FACTS

A.   AGIS's Direct Infringement Allegations

AGIS alleges that HTC Corp. and end users of HTC Corp.'s smartphones ("accused devices") infringe claims 1, 3, 5, and 8 of the '970 patent. (Ex. 1, AGIS's Final Election of Asserted Claims, p. 2.). AGIS bases these direct infringement allegations on the position that Google's Find My Device application, when installed on one of the accused devices, can be used in a way that infringes the asserted claims. (*See, e.g.,* Ex. 2, Exhibit A to AGIS's Dec. 19, 2018 Infringement Contentions, p. A-9.)

B.   Google's Find My Device Application

Find My Device is a software application developed by Google that runs on the Android operating system. Find My Device was initially announced on August 2, 2013, as a Google-operated website, and was called Android Device Manager. (Ex. 3, Official Android Blog, HTC-AGIS-064016, HTC-AGIS-064017; *see also* Ex. 4, Joseph McAlexander Dep. Tr., 181:19–182:6; Ex. 5, Ratliff Damages Report, ¶ 28.) Android Device Manager was later rebranded by

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