

**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 WILLFUL INFRINGEMENT**

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## **I. INTRODUCTION**

AGIS alleges that HTC Corp. willfully infringes U.S. Pat. Nos. 8,213,970; 9,408,055; 9,445,251; and 9,467,838 (the “asserted patents”). But AGIS’s allegations have two crucial flaws. First, even though willful infringement requires knowledge of the patents, AGIS has failed to identify any evidence demonstrating that HTC Corp. had knowledge of the asserted patents prior to the filing of the Complaint. HTC Corp. therefore cannot be liable for pre-suit willful infringement. Second, AGIS has not alleged any facts or provided any evidence demonstrating any egregious conduct by HTC Corp. The total extent of AGIS’s egregiousness allegation is listing a series of synonyms for “egregious” in an interrogatory response without any supporting evidence. This is insufficient to create a triable issue of fact on willful infringement.

For these reasons, as set forth below, HTC Corp. respectfully requests that the Court grant summary judgement of no pre-suit willful infringement and summary judgment of no post-suit willful infringement.

## **II. STATEMENT OF ISSUES TO BE DECIDED BY THE COURT**

- Whether HTC Corp. can be found to have willfully infringed a patent prior to suit when it had no pre-suit knowledge of the asserted patents.
- Whether HTC Corp. can be found to willfully infringe a patent where there is no evidence of egregious conduct, just a plaintiff listing synonyms for “egregious” without any supporting evidence.

## **III. STATEMENT OF UNDISPUTED MATERIAL FACTS**

### **A. AGIS’s Enhanced Damages Allegations**

AGIS alleges that HTC Corp. willfully infringed the asserted patents. (Complaint (Dkt. No. 1), ¶¶ 24, 37, 50, 63; *id.* at Prayer for Relief, § b.) AGIS seeks treble damages under

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