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November 21, 2018

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VIA EMAIL: VRUBINO@BROWNRUDNICK.COM

Vincent J. Rubino
Brown Rudnick LLP
Seven Times Square
New York, NY 10036

Re: Case No. 2:17-CV-514 - Deficiencies in AGIS's Responses to HTC's First Set of Interrogatories and Other Discovery Obligations

Dear Vincent:

I write regarding deficiencies in AGIS's responses to HTC's First Set of Interrogatories (1–15). Despite our previous correspondence and AGIS's supplemental responses, many of the responses remain deficient.

AGIS has been aware of these deficiencies for over four months. On July 3, 2018, we sent a letter to you identifying these deficiencies. On August 17, AGIS provided supplemental responses, but those remain deficient. With fact discovery soon to close, AGIS must immediately supplement its interrogatory responses. Please confirm by Nov. 27 that AGIS will supplement.

AGIS's responses are deficient at least for the following reasons:

- Interrogatory No. 1 requests a mapping of AGIS's embodying products to the asserted claims, on an element-by-element basis. Yet AGIS's response states only that the "LifeRing products embody one or more claims of the patents-in-suit." This does not identify the version of LifeRing, the implicated patents, or which claims and claim elements are practiced. AGIS has provided answers to similar interrogatories provided by Apple (*e.g.*, pages 14-16 of Exhibit 29 of M. Beyer Deposition) and cannot refuse to answer HTC.
- Interrogatory No. 3 requests information about past valuations of the patents-in-suit, or related patents. AGIS provided no response to this interrogatory.
- Interrogatory No. 4 requests information about the marking of AGIS's products. The response to this interrogatory directs attention to the website www.agisinc.com/about/patents. But the Internet Archive shows that this webpage did not exist prior to May 2017, while the patents in suit were issued many years prior. Thus,

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this response does not come close to answering even the basic question of whether any products were marked during the life of the patents, much less the more detailed information requested by this interrogatory (*e.g.*, products marked, periods of marking, manner of marking).

- Interrogatory No. 6 requests information about any claimed date of invention prior to the filing dates of the patents-in-suit. AGIS only responded by pointing to the application filings themselves. AGIS's response purports to reserve the right to supplement the response with evidence of an earlier invention date "in the event that HTC contends any claims are invalid under pre-AIA 35 U.S.C. §§ 102(a) or (e)." HTC did exactly that with its invalidity contentions, served March 15, 2018. But AGIS has yet to supplement the information in this interrogatory response. As with Interrogatory No. 1, AGIS provided an answer to Apple, and cannot refuse to answer HTC.
- Interrogatory No. 12 requests information about products sold or licensed by AGIS, including first dates of disclosure, first dates of sale, and sales information. AGIS provided no response to this interrogatory.
- Interrogatory Nos. 13 and 14 request identification of how HTC allegedly practices single elements of the claims under suit. AGIS provided no response to these interrogatories other than to direct attention to the infringement contentions. But these interrogatories are narrowly focused on single elements, which AGIS's infringement contentions do not sufficiently describe.
- Interrogatory No. 15 requests information about AGIS's contention that HTC willfully infringed the asserted patents. Even though AGIS already has all of HTC's emails produced in this case and has already deposed HTC's witnesses, AGIS has provided no response to this interrogatory. The response states that "AGIS directs HTC to documents within its own possession." But with fact discovery nearly closed, AGIS cannot possibly prove this theory at trial unless **AGIS** possesses evidence of HTC's alleged willfulness. If AGIS holds no such evidence, then AGIS needs to state as such. In the alternative, HTC would be willing to accept a stipulation from AGIS that AGIS will no longer pursue a willful infringement claim.

In addition, AGIS is under a continuing obligation to produce relevant, non-privileged information to HTC. AGIS is obligated to produce to HTC all materials that have been produced to defendants Apple Inc., Huawei Device Co. Ltd., Huawei Device USA Inc., Huawei Technologies USA, Inc., ZTE (TX), Inc., ZTE Corp., or ZTE (USA), Inc. in parallel cases 2:17-cv-513, 515–517. This includes supplementation of AGIS's interrogatory responses which, as noted above, it has not done. AGIS is further obligated to produce any third-party documents produced to AGIS in any of the above-listed parallel cases, such as but not limited to prior art

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documents and documents from Jim Fordyce, Mid Ocean Capital LLC, and Longford Capital. To the extent that any such documents have not been produced to HTC, they must be produced immediately.

Finally, in case no. 2:17-cv-513 it appears that AGIS has settled its dispute with Huawei (D.I. 222), that AGIS has been served with expert opinions from Apple (D.I. 220), and that AGIS has produced a report for damages on Apple (*id.*). Immediately produce the settlement agreement and the expert opinion with its supporting documents that was served on AGIS by Apple. We are amenable, for the damages report submitted by AGIS to Apple, for AGIS to redact Apple-confidential information.

Regards,

/s/ Kyle R. Canavera

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