


**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  |
| Plaintiff,                     | § | (LEAD CASE)  |
|                                | § |  |
| v.                             | § | <b><u>JURY TRIAL DEMANDED</u></b>  |
|                                | § |  |
| HTC CORPORATION,               | § |  |
|                                | § |  |
| Defendant.                     | § |  |

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|----------------------|---|-----------------------------------|
| LG ELECTRONICS INC., | § | Case No. 2:17-CV-0515-JRG         |
|                      | § | (CONSOLIDATED CASE)               |
| Defendant.           | § |                                   |
|                      | § | <b><u>JURY TRIAL DEMANDED</u></b> |

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**AGIS SOFTWARE DEVELOPMENT LLC'S OPPOSED MOTION  
TO STRIKE THE JANUARY 11, 2019 EXPERT REPORT OF EDWARD R. TITTEL**

## **I. INTRODUCTION**

Plaintiff AGIS Software Development LLC (“AGIS”) submits this Motion to Strike the January 11, 2019 Expert Report of Edward R. Tittel (“Tittel Report”) relating to untimely discovery and witnesses. The Tittel Report includes testimony based on discussions with previously-undisclosed witnesses, [REDACTED], who were not identified as witnesses during the discovery period. These witnesses appeared for the first time over a month after the close of fact discovery. Mr. Tittel also bases his testimony on non-produced source code printouts in violation of the Court’s discovery order which requires LG to have produced all relevant information related to its defenses and all documents received from third parties such as Google. Dkt. 118 at 3-4 and 9. LG did not identify any Google source code printouts in its discovery response to AGIS’s Interrogatory Request No. 8 seeking detailed non-infringement contentions. LG could have and should have notified AGIS about any source code printouts produced by Google and any other discovery from Google. Because LG failed to abide by the Court’s discovery order—and failed to move for leave to produce untimely discovery and identify late witnesses—AGIS respectfully moves the Court to strike the portions including and related to the untimely discovery.

## **II. FACTUAL BACKGROUND**

On August 29, 2018, AGIS served deposition and document subpoenas on Google requesting, among other things, source code for (1) Google Maps’ features including location sharing, dropping a pin, sending a message or link with locations or pins to another user, and push notification features (2) Find My Device (and its predecessor Android Device Manager) application; (3) the use of Google Identifiers such as Google and Gmail accounts in Find My Device; and (4) the lock mode functionality of Find My Device and Android Device Manager. Ex. A at 9-10. Proper notice was provided to LG of the subpoenas to Google. Id. at 1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The protective order in this case

is restrictive; it limits reviewers' requests for printouts by number of total pages, number of consecutive pages, number of copies, and even the number of lines to be included for each page.

Dkt. 119 at 14-16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On December 14, 2018, AGIS served the Opening Expert Report of Mr. Joseph McAlexander regarding infringement of the patents-in-suit by LG ("McAlexander Report"). On

January 11, 2019, LG served its rebuttal expert report, the Tittel Report. Ex. E. Nearly a month after the McAlexander Report, and virtually concurrently with the Tittel Report, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] LG did not

notify AGIS about any communication with Google. LG did not notify AGIS about any discovery or productions from Google to LG. [REDACTED]

[REDACTED]  
[REDACTED]

AGIS served Interrogatory Request No. 8 on January 8, 2018 which specifically requested LG's detailed non-infringement contentions, and [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Additionally, Mr. Tittel relies on facts discovered from two witnesses, [REDACTED] [REDACTED] who were not disclosed by LG during the discovery period and remained unidentified until service of the Tittel Report on January 11, 2019, over a month after the December 7, 2018 close of discovery. LG could have and should have identified these witnesses in any one of its supplemental initial disclosures on January 17, 2018, August 31, 2018, November 14, 2018, and December 7, 2018 (the last day of discovery). Exs. K, L, M, N. Rather than identify the witnesses during discovery, as required by the rules, the Tittel Report surreptitiously advances testimony based on discussions with [REDACTED] [REDACTED]

LG did not move for leave to produce untimely disclosures or discovery. LG's non-compliance with the rules and failure to produce the untimely source code during discovery prevented AGIS from amending its infringement contentions with the code and from providing its expert, Mr. McAlexander, with the code for analysis and inclusion in his report. [REDACTED]

[REDACTED]—two applications which form the bases of AGIS's infringement theories and were accused in the complaint and asserted in AGIS's November 28, 2017 infringement contentions—is highly prejudicial to AGIS at this late stage. The testimony relating to the untimely code and witnesses should be excluded from the Tittel Report, and LG should be precluded from relying on the same.

### III. LEGAL STANDARD

The Court's discovery order requires that "[a] party receiving documents from a third party will provide copies of those documents to each other party within 5 business days of receiving those documents," and that each party produce all documents, electronically stored information, and tangible things in the possession, custody, or control of the party that are

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