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

<p>AGIS SOFTWARE DEVELOPMENT, LLC, Plaintiff, v. HUAWEI DEVICE USA INC., HUAWEI DEVICE CO., LTD. AND HUAWEI DEVICE (DONGGUAN) CO., LTD., Defendants.</p>	<p>C.A. NO. 2:17-CV-0513-JRG LEAD CASE JURY TRIAL DEMANDED</p>
<p>AGIS SOFTWARE DEVELOPMENT, LLC, Plaintiff, v. HTC CORPORATION, Defendant.</p>	<p>C.A. NO. 2:17-cv-514-JRG (CONSOLIDATED CASE) JURY TRIAL DEMANDED</p>
<p>AGIS SOFTWARE DEVELOPMENT, LLC, Plaintiff, v. ZTE CORPORATION, ZTE (USA), INC., AND ZTE (TX), INC., Defendants.</p>	<p>C.A. NO. 2:17-cv-517-JRG (CONSOLIDATED CASE) JURY TRIAL DEMANDED</p>

**DEFENDANTS HTC CORPORATION, ZTE (USA), INC., AND ZTE (TX), INC.'S
INVALIDITY CONTENTIONS PURSUANT TO PATENT LOCAL RULE 3-3**

discovery or further investigation, and to assert contentions of invalidity under pre-AIA 35 U.S.C. §§ 102(c), (d), or (f), as well as AIA 35 U.S.C. §§ 102 and 103, to the extent that such discovery or investigation yield information forming the basis for such contentions of invalidity. This includes, for instance, the issuance of subpoenas to third parties believed to have knowledge, documentation, and/or corroborating evidence concerning some of the prior art listed below and/or additional prior art. These third parties may include, without limitation, any relevant authors, inventors, developers, designers, or assignees.

In addition to the prior art identified below and the accompanying invalidity claim charts, Defendants also incorporate by reference any additional invalidity contentions, identified prior art, or invalidity claim charts or arguments already disclosed or that will be disclosed at any later date in the present, parallel, or related proceedings involving the Patents-in-Suit, including, without limitation, any prior art or challenge identified by any party, including those in AGIS's co-pending current or future litigations, such as in case numbers, *e.g.*, 17-cv-513, 17-cv-515, and 17-cv-516, currently pending before this Court, and the prior art and challenges in the prosecution of pending U.S. App. Nos. 15/469,469; 15/722,660; and 15/809,102, and any continuation, continuation-in-part, and divisional applications filed claiming priority to any patent or application related to the Patents-in-Suit, or any application or patent the Patents-in-Suit claim priority to.

II. PATENT LOCAL RULE 3-3 INVALIDITY CONTENTIONS

A. The Asserted Claims Of The Patents-In-Suit Are Not Entitled to AGIS's Alleged Priority Dates

In its infringement contentions, AGIS contends that each of the asserted claims of the Patents-in-Suit are entitled to a priority date of “at least as early as September 21, 2004,” and that “AGIS reserves the right to establish an earlier date of invention based upon actions related to

AGIS cannot claim priority to any earlier applications in the patent family because the teachings of most of the earlier applications in the patent family—including at least U.S. Application Nos. 13/751,453 (now U.S. Patent No. 8,538,393), 12/761,533 (now U.S. Patent No. 8,364,129), 11/615,472 (now U.S. Patent No. 8,126,441), and 11/308,648 (now U.S. Patent No. 7,630,724) — were not incorporated by reference into U.S. Application No. 14,027,410, now U.S. Patent No. 8,880,042 (the immediate parent of the '978 application (leading to the '838 patent)). The chain of applications (including continuation applications and continuations-in-part) upon which AGIS purportedly relies to establish an earlier priority date therefore lacks continuity of disclosure, a defect that cannot be cured. 35 U.S.C. § 120; *Zenon Environmental, Inc. v. U.S. Filter Corp.*, 506 F.3d 1370 (Fed. Cir. 2007). Defendants reserve the right to assert additional theories of invalidity based on the determination of the proper priority date or any future claim of priority AGIS makes, including a contention that earlier applications in the patent family constitute invalidating prior art to the asserted claims of the Patents-in-Suit, including but not limited to U.S. Pat. Nos. 7,031,728; 7,630,724; 7,672,681; 7,689,232; 7,764,954; 7,805,146; 7,853,273; 8,538,393; 8,364,129; 8,213,970; and 8,126,441.

Third, as set forth below, the application on which AGIS appears to rely to establish a priority date of September 21, 2004 (U.S. Application No. 10/711,490, filed on Sep. 21, 2004, now U.S. Patent No. 7,031,728) does not contain sufficient disclosure of at least one limitation of every asserted claim in each patent-in-suit and, accordingly, none of the asserted claims is entitled to the benefit of the September 21, 2004, filing date for that additional reason.

1. '970 patent

None of the asserted claims of the '970 patent are entitled to a priority date of (or earlier than) September 21, 2004, as AGIS alleges, because at least the claim limitations listed below are not sufficiently disclosed in U.S. Application No. 10/711,490 (now U.S. Patent No.

remotely controlling the particular second device to perform an action, wherein the particular second device is configured to perform the action based on receiving the second message.”

Claim 47:

- “wherein the information associated with the facility comprises a uniform resource locator (URL) of a web site associated with the facility.”

Claim 48:

- “further comprising performing, by the first device: identifying user interaction with the interactive display selecting the symbol corresponding to the facility and user interaction with the display specifying an action, and based thereon, loading a web page associated with the facility.”

Claim 51:

- “wherein the first server is the second server.”

B. Patent Local Rule 3-3(a)-(c) Initial Disclosures

Pursuant to P.R. 3-3(a), and as detailed below and in the attached Exhibits, Defendants contend that the asserted claims of the Patents-in-Suit are invalid as anticipated and/or obvious under (pre-AIA and/or AIA) 35 U.S.C. §§ 102 and 103 over at least the following prior art.

Exhibit (Chart)	Reference	Inventor or Author	Date of Issue or Publication or Public Use / Availability	Filing Date
A-1	U.S. Patent Application Publication No. US 2003/0217109	Ordille et al.	Nov. 20, 2003	June 26, 2002
A-2	U.S. Patent Application Publication No. US 2008/0219416	Roujinsky	Sept. 11, 2008	Feb. 15, 2008
A-3	U.S. Patent No. 7,609,669	Sweeney	Oct. 27, 2009	Feb. 14, 2005
A-4	U.S. Patent No. 7,386,589	Tanumihardja et al.	June 10, 2008	June 27, 2001

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