

# EXHIBIT 13

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

AGIS SOFTWARE DEVELOPMENT, LLC

Plaintiff,

v.

HUAWEI DEVICE USA INC., HUAWEI  
DEVICE CO., LTD. AND HUAWEI DEVICE  
(DONGGUAN) CO., LTD.

Defendants.

LEAD CASE NO. 2:17-cv-513-JRG

**JURY TRIAL DEMANDED**

AGIS SOFTWARE DEVELOPMENT, LLC

Plaintiff,

v.

LG ELECTRONICS, INC.

Defendant.

MEMBER CASE NO. 2:17-cv-515-JRG

**JURY TRIAL DEMANDED**

**DEFENDANTS HUAWEI DEVICE USA INC., HUAWEI DEVICE CO., LTD., HUAWEI  
DEVICE (DONGGUAN) CO., LTD., AND LG ELECTRONICS, INC.'S INVALIDITY  
CONTENTIONS PURSUANT TO PATENT LOCAL RULE 3-3**

*date* to which each asserted claim allegedly is entitled” – not a start date, end date, or date range. Accordingly, AGIS can only assert – and is understood to only have asserted – a priority of date of September 21, 2004 for the patents-in-suit. That being said, none of the asserted claims are entitled to a priority date of September 21, 2004.

First, according to the AGIS’s own representations to the U.S. Patent and Trademark Office during prosecution, three of the four patents-in-suit, *i.e.*, the ’055, ’251, and ’838 patents, contain or claim priority to at least one patent application – U.S. Application No. 14/579,978 (the “’978 application”), the application for the ’838 patent – that includes or at one time included at least one claim having an effective filing date after March 16, 2013. (*See* ’978 application Reply to Office Action dated April 25, 2016 at 15-16 (“Applicant respectfully notes that the Corrected Application Data Sheet filed on October 30, 2015, indicates that the ‘application . . . contains, or contained at any time, a claim to a claimed invention that has an effective filing date on or after March 16, 2013.’”).) Thus, under AGIS’s representations, each of the ’055, ’251, and ’838 patents is governed by post-AIA 35 U.S.C. §§ 102 and 103, and therefore AGIS cannot establish a priority date earlier than the effective filing date based on alleged earlier conception or reduction to practice for any of those patents. *See* Leahy-Smith America Invents Act of 2011, Pub. L. No. 11229, § 3(n)(1), 125 Stat. 284, 293 (Sept. 16, 2011).

Second, the ’055, ’251, and ’838 patents are not entitled to a priority date any earlier than October 31, 2014, the effective filing date of the ’978 application that led to the ’838 patent. 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, including a contention that earlier applications in the patent family constitute invalidating prior art to the asserted claims of the patents-in-suit.

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. 7,031,728). Nor do any of the intervening parent applications (e.g., U.S. Application No. 11/612,830 and U.S. Application No. 11/308,648, now U.S. Patent No. 7,630,724) through which the '970 claims priority as a continuation-in-part sufficiently disclose at least one such limitation in each of the claims listed below. To the extent that AGIS is permitted to modify, and in fact modifies in any manner, the alleged date to which the '970 patent is entitled to priority,

- “wherein the message including the identifier corresponding to the group is a first message, and wherein the method further comprises performing by the first device: sending, to a particular second device via the first server, a second message related to 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.

<b>Exhibit (Chart)</b>	<b>Reference</b>	<b>Inventor or Author</b>	<b>Date of Issue or Publication or Public Use / Availability</b>	<b>Filing Date</b>
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.	Tanumihardja et al.	June 10, 2008	June 27, 2001

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