


**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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**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S RESPONSE  
IN OPPOSITION TO SEALED MOTION OF LG ELECTRONICS INC.  
TO EXCLUDE THE OPINIONS OF MR. JOSEPH C. MCALEXANDER, III  
RELATING TO INFRINGEMENT (DKT. 111)**

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Plaintiff AGIS Software Development LLC (“AGIS”) hereby submits its Response in Opposition to the Sealed Motion of LG Electronics Inc. (“LGEKR”) to Exclude the Opinions of Mr. Joseph C. McAlexander, III Relating to Infringement (Dkt. 111).

## I. INTRODUCTION

Mr. Joseph McAlexander’s expert opinions that LGEKR infringes U.S. Patent No. 8,213,970 (“the ‘970 Patent”) under the doctrine of equivalents, and that LGEKR sells or imports Accused Devices in the United States, are each based on sufficient facts identified in his report. His testimony is both relevant and reliable.

Mr. McAlexander’s testimony regarding the doctrine of equivalents is grounded in sufficient factual bases. LGEKR omits relevant evidence provided within the main body of Mr. McAlexander’s report pertaining to the insubstantial difference test and the function-way-result test, and misapplied both tests by conflating them into a single impossible standard. Dkt. 111 at 4. LGEKR further ignored Mr. McAlexander’s ‘970 infringement claim chart, despite the fact that it was explicitly referenced as providing supporting evidence for each of doctrine of equivalents positions in question. *See* Ex. A at ¶¶ 140, 142, 147.

Mr. McAlexander’s testimony that LGEKR imported and sold Accused Products in the United States is also grounded in sufficient factual bases. LGEKR’s arguments rest on the false premise that Mr. McAlexander was unqualified to read a shipping label, and on the incorrect assertion that he misread it. Dkt. 111 at 6-7. Neither argument bears on the reliability and relevance of Mr. McAlexander’s testimony. Further, LGEKR does not acknowledge other relevant evidence identified in Mr. McAlexander’s report, including [REDACTED]

[REDACTED]

[REDACTED] Mr. McAlexander should be able to opine on a certain document’s

relevance to direct infringement, and LGEKR presents no authority to support any findings to the contrary. In fact, this dispute is premature and properly suited for resolution at the exhibit stage.

Thus, Mr. McAlexander's testimony must be admitted pursuant to FRE 702, and under the *Daubert* standard.

## II. BACKGROUND

Mr. McAlexander was proffered as an expert to "to determine whether or not any basis in fact exists for the assertion by AGIS that products sold and/or offered for sale in the United States [by LGEKR] incorporate structures, or practice methods, which are the same as or are equivalent to the corresponding elements or steps claimed in [the patents-in-suit]." Ex. A at ¶1.

A [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] LGEKR raised no dispute as to Mr. McAlexander's qualifications prior to the instant motion, despite having official notice of his involvement and qualifications as of May 11, 2018. Ex. D at 1.

Mr. McAlexander's report on infringement included a main body that introduced and provided the basis for his opinions, and seven claim charts showing infringement on an element-by-element basis. *Id.* at ¶3. In forming the testimony set forth in his report, Mr. McAlexander reviewed "Interrogatories and Responses to Interrogatories, Complaints, Answers, Web site information, device specifications, brochures, correspondence, marketing information, source code, operating instructions, and deposition testimony," *in addition* to specific documents enumerated in Attachment E to his report. Ex. A at ¶ 14.

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