

**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.	§	<u>JURY TRIAL DEMANDED</u>
	§	
HTC CORPORATION,	§	
	§	
Defendant.	§	

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

**AGIS SOFTWARE DEVELOPMENT LLC’S OPPOSED
ADDITIONAL MOTION *IN LIMINE* NO. 16 FOR THE
AGIS SOFTWARE DEVELOPMENT LLC V. LG ELECTRONICS INC. TRIAL**

Plaintiff AGIS Software Development LLC (“AGIS” or “Plaintiff”) hereby submits its Opposed Motion *in Limine* to prevent Defendant LG Electronics Inc. (“LG” or “Defendant”) from introducing improper evidence and testimony at trial.

16. MOTION *IN LIMINE* TO PRECLUDE LG FROM INTRODUCING LATE-DISCLOSED EVIDENCE OR TESTIMONY REGARDING NON-PARTY APPLE

LG should not be permitted to call a witness at trial from non-party Apple. This unnamed witness was disclosed for the first time in an amendment to LG’s rebuttal disclosures the day after those disclosures were due. On February 13, 2019, pursuant to the Fourth Amended Docket Control Order (Dkt. 141), the parties served objections to each other’s initial pre-trial disclosures, as well as any rebuttal to those disclosures. One day after that deadline, LG amended those rebuttal disclosures to “identif[y] Apple, Inc., and reserve[] the right to identify a

witness from Apple, Inc. who is most knowledgeable on settlement terms with AGIS.” LG’s Amended Rebuttal Pre-Trial Disclosures at 2 (attached hereto as Exhibit A). This “amended” disclosure was not only late pursuant to the terms of the DCO, it was also not based on any *new* information: AGIS and Apple first filed a motion to stay in this Court on February 8, 2019. *AGIS Software Development, LLC v. Huawei USA Inc., et al.*, Case No. 2:17-cv-0513-JRG (E.D. Tex.) (lead case); *AGIS Software Development, LLC v. Apple, Inc.*, Case No. 2:17-cv-0516-JRG (E.D. Tex.) (member case) at Dkt. 342.

Moreover, LG’s attempt to call an Apple witness should be precluded because of the late stage of this litigation. Discovery and the exchange of expert disclosures have already concluded in this matter. Fact discovery closed on December 7, 2018, and LG’s damages expert report was served on January 11, 2019. LG’s damages expert has not opined with respect to any settlement with Apple. LG did not, at any point prior to its February 14, 2019 amendment to its rebuttal disclosures, indicate that it would be calling an Apple witness to testify. It did not include a witness from Apple in any of its Rule 26 disclosures or supplements thereto. This case is only two weeks away from its Final Pre-Trial Conference, and less than two months remain before trial. Trial is not the place for LG to be conducting discovery. To permit LG to introduce new information (for which it has not offered expert testimony) would be highly prejudicial to AGIS. *See, e.g., Texas Instruments, Inc. v. Hyundai Electrs. Indus., Co.*, 50 F. Supp. 2d 619, 628 (E.D. Tex. 1999) (refusing to vacate exclusion of defendant’s supplemental expert report that relied on last-minute disclosure of system and witnesses, where plaintiff had only a few weeks before trial to take depositions of late-disclosed witnesses); *see id.* at 625 n.13 (“Moreover, because of Hyundai’s late disclosure, Texas Instruments was, once again, forced to sacrifice trial preparation time in order to conduct discovery . . .”). This Court should preclude LG from

offering testimony from Apple, and LG's expert should be precluded from testifying with respect to any potential settlement with Apple.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion *in Limine* No. 16 should be granted.

Dated: February 18, 2019

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/s/ Alfred R. Fabricant

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CERTIFICATE OF CONFERENCE

This is to certify that counsel for Plaintiff AGIS Software Development LLC met and conferred with counsel for Defendant LG Electronics Inc. in compliance with LR CV-7(h) in regards to its Motions *in Limine*. While LG has not consented to the relief sought in this Motion, AGIS will meet and confer with LG again prior to Final Pre-Trial Conference to attempt to come to an agreement regarding this Motion.

/s/ Alfred R. Fabricant

Alfred R. Fabricant

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