

EXHIBIT B

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

AGIS SOFTWARE DEVELOPMENT, LLC

Plaintiff,

v.

HTC CORPORATION,

Defendant.

Case No. 2:17-CV-0514-JRG
(LEAD CASE)

JURY TRIAL DEMANDED

AGIS SOFTWARE DEVELOPMENT, LLC

Plaintiff,

v.

LG ELECTRONICS, INC.,

Defendants.

Case No. 2:17-CV-0515-JRG
(CONSOLIDATED CASE)

JURY TRIAL DEMANDED

**EXPERT REPORT OF SCOTT ANDREWS REGARDING INVALIDITY
OF U.S. PATENT NOS. 8,213,970, 9,408,055, 9,445,251, AND 9,467,838**

which is hereby incorporated by reference and pending U.S. Patent Application Serial No. 11/308,648 [later issued as the '724 patent]'). This same incomplete incorporation statement appears in each link of the chain of applications *until* the '838 patent. During prosecution, AGIS pointed to the '724 patent for written description support. This was permissible because the '724 patent was expressly incorporated into the '838 patent's application by virtue of a new incorporation statement that AGIS added to the end of its recitation of the priority chain. AGIS recognized this was new matter. *See* Prosecution History section above. However, this is not enough to save the priority chain back to the original filing date of the '724 patent.

71. The only change to the statement was to replace the application number with the later issued patent number of the '724 patent.

b. The '410 Application Does Not Incorporate The '724 Patent

72. I understand that material is incorporated by reference if the incorporating document identifies with *detailed particularity* what specific material it incorporates and clearly indicates where that material is found in the various documents identified to a person of ordinary skill in the art.

73. In my opinion, the '410 application (the immediate parent of the '838 patent) did not incorporate the '724 patent in its entirety by reference.

74. Unlike the '838 patent, which incorporates its entire priority chain ('838 patent 1:8-25), the '410 application contains just one incorporation statement. That statement purports to incorporate material only from the '728 patent, not the '724 patent:

The method and operation of communication devices used herein are described in U.S. Pat. No. 7,031,728 which is hereby incorporated by reference and U.S. Pat. No. 7,630,724. 410 application ¶ 5.

75. A POSITA would have understood that the above phrase, “which is hereby incorporated by reference,” refers only to the immediately preceding the ’728 patent. A clause beginning with “which” refers only to the item coming before it, and the verb “is” is singular, meaning that the “which” clause refers only to the one preceding patent.
76. In my opinion, AGIS cannot rely on the ’724 patent for support in the ’410 application.

c. The ’838 Patent Claims Lack Written Description Support in the ’410 Application

77. The ’838 patent claims are not supported by its immediate parent the ’410 application.⁵ *First*, the ’410 application lacks support for requesting and receiving second georeferenced map data from a server and displaying it with a second set of symbols as required by all claims. In fact, the ’410 application includes only one reference to a georeferenced map, which merely states that it is displayed. ’410. The Examiner did not address these issues during prosecution. The issued claims arose from an entirely new claim-set entered in an amendment that was followed almost immediately by a Notice of Allowance. ’838 FH 7-15, 50-79. The Examiner rejected pending claims for lack of support under § 112, but AGIS overcame the rejections by pointing to the ’724 patent—which was incorporated by reference into the ’838 patent’s application, but not its parent, the ’410 application. ’838 FH 307-309. application ¶ 40. There is no disclosure of where the georeferenced map originates, let alone requesting and receiving second georeferenced map data from a server. *Second*, the ’410 application fails to provide written description support for the full scope of the generically recited “network corresponding to a group” feature in all claims. In particular, although the claims generically recite this feature, and there is no disclosure of closed groups in the ’410 application.