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
	§	(LEAD CASE)
Plaintiff,	§	
	§	**JURY TRIAL DEMANDED**
v.	§	
	§	
HTC CORPORATION,	§	██████████████
	§	
Defendant.	§	

**AGIS SOFTWARE DEVELOPMENT LLC'S RESPONSE IN
OPPOSITION TO HTC CORPORATION'S SEALED
MOTION FOR SUMMARY JUDGMENT
OF NO WILLFUL INFRINGEMENT (DKT. 113)**

Plaintiff AGIS Software Development LLC ("AGIS") respectfully submits this Response in Opposition to HTC Corporation's ("HTC" or "Defendant") Sealed Motion for Summary Judgment of No Willful Infringement (Dkt. 113).

I.   INTRODUCTION

AGIS does not intend to assert at trial willful infringement. Because there is no case or controversy regarding these issues, HTC's motion should be denied.

II.   STATEMENT OF ISSUES TO BE DECIDED

1.   Whether HTC Corp. can be found to have willfully infringed a patent prior to suit when it had no pre-suit knowledge of the asserted patents.

Response: Whether HTC is entitled to judgment as a matter of law that it has willfully infringed a patent prior to suit when it had no pre-suit knowledge of the asserted patents when AGIS does not intend to present willful infringement at trial.

2.   Whether HTC Corp. can be found to willfully infringe a patent where there is no evidence of egregious conduct, just a plaintiff listing synonyms for "egregious" without any supporting evidence.

Response: Whether HTC is entitled to judgment as a matter of law that it has not willfully infringed a patent where there is no evidence of egregious conduct, just a plaintiff listing synonyms for "egregious," just a plaintiff listing synonyms for "egregious" without any supporting evidence.

III.   RESPONSE TO RECITATION OF UNDISPUTED FACTS

1.   AGIS alleges that HTC willfully infringed the asserted patents.

Response: Disputed, however, AGIS does not intend to present a theory of pre-suit indirect infringement at trial.

2.   AGIS seeks treble damages under 35 U.S.C. § 284 for HTC's alleged willful infringement.

Response: Disputed, however, AGIS does not intend to present a theory of pre-suit indirect infringement at trial.

3.   On May 18, 2018, HTC served Interrogatory No. 15 on AGIS, for which AGIS responded the following: ████████████████████████████████████

██

Response: Undisputed.

4.   On August 17, 2018, AGIS provided supplemental responses to its interrogatory responses, but it did not supplement its responses to Interrogatory No. 15.

Response: Undisputed.

5.   On November 21, 2018, counsel for HTC sent a letter to counsel for AGIS requesting that AGIS supplement its interrogatory responses, including Interrogatory No. 15.

Response: Undisputed.

6.   AGIS supplemented its response to Interrogatory No. 15 as follows:

██

Response: Undisputed.

7.   AGIS has provided no further supplemental responses to this interrogatory.

Response: Undisputed.

IV. ARGUMENT

HTC seeks summary judgment on issues that are not in dispute. AGIS does not contend and will not allege at trial that HTC willfully infringes any claim of the Patents-in-Suit. HTC's motion for summary judgment seeks dispositive judgments on issues for which there is no present case or controversy, and HTC cites to no case law holding that such relief is appropriate. To the contrary, case law in this District indicates that courts should not grant summary judgment on issues that are not to be presented at trial. *See e.g.*, *VirtnetX Inc. v. Apple Inc.*, 925 F. Supp. 2d 816, 849 (E.D. Tex. 2013) (*rev'd*, 767 F.3d 1308 (Fed. Cir. 2014)) *on other grounds* ("The Court encourages and requires the parties to narrow their case for trial. Accordingly, the Court will not penalize such attempts to narrow issues by entering judgment on issues not presented at trial."). HTC's motion should, therefore, be denied as moot.

V. CONCLUSION

For the foregoing reasons, HTC has failed to show good cause for its motion and AGIS respectfully requests that the Court deny HTC's Motion for Summary Judgment of No Willful Infringement.

Dated: February 19, 2019

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