

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

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

v.

HTC CORPORATION,

Defendant.

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

**JURY TRIAL DEMANDED**



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**AGIS SOFTWARE DEVELOPMENT LLC'S RESPONSE IN  
OPPOSITION TO HTC CORPORATION'S SEALED  
MOTION FOR SUMMARY JUDGMENT  
OF NO DIRECT INFRINGEMENT (DKT. 116)**

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Plaintiff AGIS Software Development LLC (“AGIS”) respectfully submits this Response in Opposition to HTC Corporation’s (“HTC Corp.” or “Defendant”) Sealed Motion for Summary Judgment of No Direct Infringement (Dkt. 116).

## **I. INTRODUCTION**

A genuine issue of material fact exists as to whether HTC Corp. directly infringed both the asserted systems and method claims of the patents-in-suit. Even setting aside HTC Corp.’s past stipulation that it imports and sells the accused devices in the United States, AGIS has presented evidence showing that HTC Corp.’s sales, offers for sale, and imports of products transferred to HTC America all take place in the United States. Further, HTC Corp.’s undisputed representations to customers constitute an infringing offer to sell. There also remains a genuine dispute as to whether HTC America employees, carrying out the steps alleged to infringe the asserted method claims while “representing” HTC Corp in sales discussions infringe on HTC Corp.’s behalf.

Finally, HTC America is a mere business conduit through which HTC Corp. sells the accused products in the United States, without any independent corporate existence. A jury could reasonably find that HTC America is HTC Corp.’s agent in re-selling, offering for sale, importing, and using the accused products, such that HTC America’s acts of infringement are imputed to HTC Corp. Thus, HTC Corp. further infringes both the systems and method claims on this ground.

## **II. STATEMENT OF ISSUES TO BE DECIDED**

1. Whether HTC Corp. directly infringes the method claims of the asserted patents, when HTC Corp. does not make, use, sell, or offer to sell the accused devices within the United States and does not import the accused devices into the United States.

**Response:** Whether genuine issues of material fact exist as to whether HTC Corp. uses the accused devices in the United States; Whether genuine issues of material fact exist as to whether HTC Corp. testing procedures for the accused devices include running software in an infringing manner; Whether a reasonable jury can conclude that HTC America is an agent of HTC Corp. such that its admitted use of the accused devices in the United States is imputed to HTC Corp.

2. Whether HTC Corp. directly infringes the system and device claims of the asserted patents, when HTC Corp. does not make, use, sell, or offer to sell the accused devices within the United States and does not import the accused devices into the United States.

**Response:** Whether genuine issues of material fact exist as to whether HTC Corp. has sold accused devices in the United States; Whether genuine issues of material fact exist as to whether HTC America takes title to the accused devices prior to their entry into the United States; Whether a reasonable jury can conclude that HTC America is an agent of HTC Corp. such that its admitted importation and sale of the accused devices in the United States is imputed to HTC Corp.

### **III. UNDISPUTED FACTS**

#### **A. Response to Recitation of Undisputed Facts**

It is undisputed that AGIS asserts the '970, '838, 251, and '055 patents in this case. It is undisputed that AGIS alleges HTC Corp. directly infringes the asserted systems and apparatus claims by importing, selling, and offering the accused devices for sale, in the United States. It is undisputed that AGIS alleges HTC Corp. directly infringes the asserted method claims by using the accused devices in the United States.

It is undisputed that HTC America is HTC Corp.'s subsidiary in the United States. AGIS disputes HTC Corp.'s statement that HTC America "handles" the marketing and customer

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