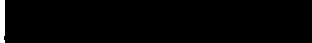


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

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>

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S REPLY RE
OPPOSED MOTION TO STRIKE PORTIONS OF THE JANUARY 11, 2019
EXPERT REPORT OF EDWARD R. TITTEL (DKT. 110)**

Plaintiff AGIS Software Development LLC (“AGIS”), by and through its undersigned counsel, hereby submits this Reply in support of its Opposed Motion to Strike Portions of the January 11, 2019 Expert Report of Edward R. Tittel (“Tittel Report”) (Dkt. 110).

I. LG FAILED TO PRODUCE SOURCE CODE DOCUMENTS IN ITS POSSESSION SINCE NOVEMBER 2018

With respect to the non-produced source code printouts, LG appears to argue that it did not violate the Court’s Discovery Order because it did not receive the physical documents corresponding to the source code printouts in question. Dkt. 150 at Footnote 3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

LG attempts to sandbag AGIS by including late-produced Google source code files in its expert report. LG does not dispute that it failed to seek leave to produce late discovery. LG does

not dispute that the non-produced source code printouts were relied on by Dr. Tittel in his report and were not produced to AGIS until the day after this Motion was filed.

LG provides no justification for withholding relevant source code printouts in its possession since mid-November until service of its rebuttal expert report—about a month after the close of fact discovery and receipt of AGIS’s opening expert report. LG cannot dispute that AGIS would have no way of obtaining the files without seeking additional review of Google’s source code review machine. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The fact that AGIS returned to review new source code produced by Google, the real party in interest in this case, after the close of fact discovery and after the service of AGIS’s opening expert report serves only to highlight the apparent gamesmanship.

II. IT IS UNDISPUTED THAT [REDACTED]

LG does not dispute that it failed to disclose [REDACTED]

Accordingly, the exclusion of their contributions to the Tittel Report should be automatic and mandatory under Rule 37(c)(1). LG provides no explanation for its failure to identify either witness. The prejudice to AGIS is substantial. [REDACTED]

[REDACTED]

[REDACTED]

With pre-trial conferences less than two weeks away and a trial almost a month away, there is no real possibility of a continuance at this late stage of the case.

Exclusion of the testimony will not cause significant hardship to LG as it would merely dispose of a summary judgment motion and LG should be able to rely on other evidence.

III. CONCLUSION

For the foregoing reasons, AGIS respectfully requests that the Court grant AGIS's motion to strike portions of the January 11, 2019 Tittel Report based on the [REDACTED]

[REDACTED]

Dated: February ___, 2019

BROWN RUDNICK LLP

/s/ Alfred R. Fabricant

Alfred R. Fabricant
NY Bar No. 2219392
Email: afabricant@brownrudnick.com
Lawrence C. Drucker
NY Bar No. 2303089
Email: ldrucker@brownrudnick.com
Peter Lambrianakos
NY Bar No. 2894392
Email: plambrianakos@brownrudnick.com
Vincent J. Rubino, III
NY Bar No. 4557435
Email: vrubino@brownrudnick.com
Alessandra C. Messing
NY Bar No. 5040019
Email: amessing@brownrudnick.com
Shahar Harel
NY Bar No. 4573192
Email: sharel@brownrudnick.com
John A. Rubino
NY Bar No. 5020797
Email: jrubino@brownrudnick.com
Enrique W. Iturralde
NY Bar No. 5526280
Email: eiturralde@brownrudnick.com
Timothy J. Rousseau
NY Bar No. 4698742
Email: troussseau@brownrudnick.com
Daniel J. Shea, Jr.
NY Bar No. 5430558

Email: dshea@brownrudnick.com
Justine Minseon Park
NY Bar No. 5604483
Email: apark@brownrudnick.com
BROWN RUDNICK LLP
7 Times Square
New York, NY 10036
Telephone: 212-209-4800
Facsimile: 212-209-4801

Samuel F. Baxter
Texas State Bar No. 01938000
Email: sbaxter@mckoolsmith.com
Jennifer L. Truelove
Texas State Bar No. 24012906
Email: jtruelove@mckoolsmith.com
McKOOL SMITH, P.C.
104 East Houston Street, Suite 300
Marshall, Texas 75670
Telephone: 903-923-9000
Facsimile: 903-923-9099

**ATTORNEYS FOR PLAINTIFF, AGIS
SOFTWARE DEVELOPMENT LLC**

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