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

AGIS SOFTWARE DEVELOPMENT, LLC Plaintiff, v. HTC CORPORATION, et al. Defendant.	§ § § § § § § § §	CASE NO. 2:17-cv-514-JRG (LEAD CASE) **JURY TRIAL DEMANDED**
AGIS SOFTWARE DEVELOPMENT, LLC Plaintiff, v. LG ELECTRONICS INC. Defendant.	§ § § § § § § § §	CASE NO. 2:17-CV-515-JRG (CONSOLIDATED CASE) **JURY TRIAL DEMANDED**

REPLY TO AGIS SOFTWARE DEVELOPMENT LLC'S RESPONSE IN OPPOSITION TO LG ELECTRONICS INC.'S MOTION TO EXCLUDE THE OPINIONS OF MR. JOSEPH C. MCALEXANDER, III RELATING TO INFRINGEMENT

[redacted]

TABLE OF CONTENTS

[redacted]

TABLE OF AUTHORITIES

[redacted]

For the reasons set forth below, and as set forth in LG Electronics Inc.'s ("LG Korea") motion (D.I. 111), certain opinions of AGIS Software Development LLC's ("AGIS") expert, Mr. McAlexander, should be excluded under Federal Rule of Evidence 702.

I. MR. MCALEXANDER'S [redacted] OPINIONS SHOULD BE EXCLUDED AS CONCLUSORY AND UNSUPPORTED

AGIS asserts that LG Korea conflates Mr. McAlexander's proffered testimony [redacted] and thereby misconstrues his testimony altogether. (D.I. 149 at 10.) This is a red herring. The Supreme Court instructs that it is immaterial whether the test is labeled "insubstantial difference" or "function-way-result," so long as the analysis focuses on the equivalency of the individual claim elements. *Warner-Jenkinson Co., Inc. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 40 (1997) ("In our view, the particular linguistic framework used is less important than whether the test is probative of the essential inquiry: Does the accused product or process contain elements identical or equivalent to each claimed element of the patented invention?").

AGIS contends that Mr. McAlexander's [redacted]

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"fail to articulate how [the] accused process operates in substantially the same way," or "how the differences between the two processes are insubstantial." *See Akzo Nobel Coatings, Inc. v. Dow Chem. Co.*, 811 F.3d 1334, 1343 (Fed. Cir. 2016) (finding that the plaintiff "failed to provide evidence from which a reasonable jury could find that [the defendant's] valve, pipes, and heat exchangers operate in substantially the same way as the claimed" process). AGIS contends that *Akzo* is irrelevant because it did not mention FRE 702 or *Daubert* (D.I. 149 at 10), but, as described in LG Korea's motion, *Akzo* provides relevant Federal Circuit law for the adequacy of an infringement analysis under the doctrine of equivalents. *See Akzo*, 811 F.3d at 1342-43. That which cannot give rise to a genuine issue of fact, even with all

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