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

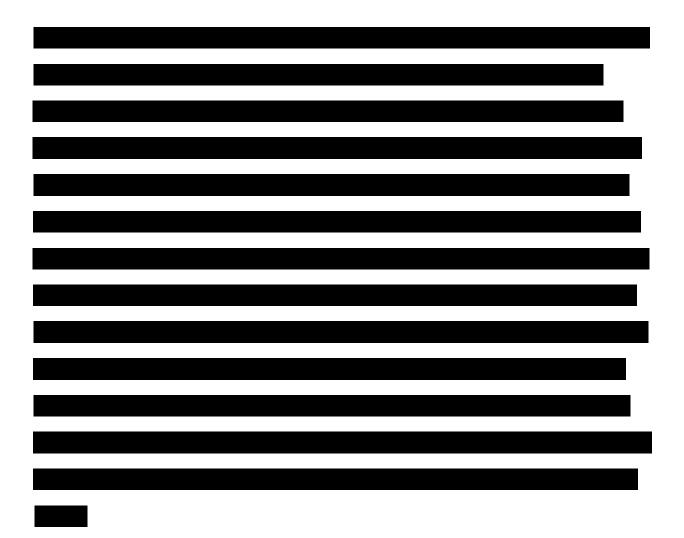|		
	§	
AGIS SOFTWARE DEVELOPMENT LLC,	§	Case No. 2:17-CV-0514-JRG
	§	(LEAD CASE)
Plaintiff,	§	
	§	**JURY TRIAL DEMANDED**
v.	§	
	§	
HTC CORPORATION,	§	███████████████
	§	
Defendant.	§	

**AGIS SOFTWARE DEVELOPMENT LLC'S SUR-REPLY IN OPPOSITION TO
HTC CORPORATION'S SEALED MOTION FOR SUMMARY JUDGMENT
OF NO PRE-SUIT INDIRECT INFRINGEMENT (DKT. 109)**

HTC's reply ignores AGIS' position and now purports to seek relief for post-filing acts of induced infringement—HTC did not seek this relief in its motion and summary judgment of no post-suit inducement would be improper. As AGIS explained in its Opposition, AGIS does not seek pre-suit indirect infringement in this case. *See* Dkt. 182 at 3. AGIS has represented, and intends to show at trial, that HTC has and continues to induce the direct infringement of HTC's customers—acts of direct infringement that have occurred after the filing of the complaint.

HTC provides servers that cause HTC's customers to install the accused functionality. HTC also provides support for its devices that direct its customers to download and install the accused functionality on compatible Android devices. Additionally, HTC causes its devices to update to the newest versions of the Android Operating System, Google Maps, and the Find My Device application which include these accused functionalities. *See* Dkt. 182 at 4; *see also* Ex. A, https://www.htc.com/us/support/htc-10/news/ (providing software updates and download instructions, available after the filing date of the complaint.

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HTC seems to argue that it should not be liable for infringement by any devices sold prior to the filing of the complaint, but HTC's position has no support in fact or law. HTC does not present any case law that would foreclose infringement where the acts of direct infringement occur post-complaint. HTC's arguments merely highlight that there exist several disputes of material fact that preclude a finding of summary judgment.

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 Pre-Suit Indirect Infringement.

Dated: February 28, 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: trousseau@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

Rebecca MacDowell Lecaroz
Massachusetts Bar No. 666860
Email: rlecaroz@brownrudnick.com
BROWN RUDNICK LLP

One Financial Center
Boston, MA 02111
Telephone: (617) 856-8200
Facsimile: (617) 856-8201

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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