FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER

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

AGIS SOFTWARE DEVELOPMENT LLC,
 	
     Plaintiff,
 	
  v.
 	
HTC CORPORATION,
 	
     Defendant.
	Case No. 2:17-cv-00514-JRG
	(Lead Case)
	
	JURY TRIAL DEMANDED

AGIS SOFTWARE DEVELOPMENT LLC,
 	
     Plaintiff,
 	
  v.
 	
LG ELECTRONICS INC.,
 	
     Defendant.
	Case No. 2:17-cv-00515-JRG
	(Member Case)
	
	JURY TRIAL DEMANDED

**<u>LG ELECTRONICS INC.'S REPLY BRIEF IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. 8,213,970
(DKT. 112)</u>**

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LG Electronics Inc. ("LG Korea") submits this reply brief in response to AGIS's

opposition to LG Korea's motion for summary judgment of non-infringement of U.S. Patent No.

8,213,970 ("'970 patent").

I.   INTRODUCTION

AGIS's opposition brief confirms that the '970 patent is not infringed by LG Korea.

Specifically, AGIS does not dispute the following material facts:

- The asserted claims of the '970 patent require action by a sender device (*i.e.*, client-side functionality).

- AGIS's infringement expert, Mr. McAlexander, cites to only client-side Google source code for the Find My Device Application ("FMD").

- LG Korea's corporate witness on device manufacturing confirmed that the Find My Device and Android Device Manager ("ADM") *Application* are not pre-installed during the manufacturing process for the accused LG devices.

Because the client-side code AGIS accuses of infringement is not on the phone when it is

sold, LG Korea cannot infringe the '970 patent. To create an alleged issue of fact, AGIS (1)

mischaracterizes documents its own expert elected not to rely upon in rendering his infringement

opinion; (2) attempts to deflect attention away from undisputed, dispositive facts by

misrepresenting testimony from LG Korea's expert; and (3) raises a new infringement theory

unsupported by AGIS's expert and not disclosed in its infringement contentions that also fails.

II.   THERE CAN BE NO DIRECT INFRINGEMENT ON ANY THEORY INVOLVING THE CLIENT-SIDE FIND MY DEVICE APPLICATION

Mr. McAlexander's analysis confirms that the claimed infringement depends upon the

FMD <u>client</u> application for all of the limitations that require functionality on the claimed sender

PDA/cell phone (*i.e.*, client-side functionality). (*See* D.I. 112-7, Ex. 4 at ¶ 132). For example,

for the "means for attaching a forced message alert software packet to a voice or text message

creating a forced message alert that is transmitted by said sender PDA/cell phone to the

recipient PDA/cell phone . . ." recited in claim 1, Mr. McAlexander's analysis, screenshots and

source code citations show that his theory is that the FMD *Application* infringes:

> Regarding the first portion of the required algorithm, ***the forced message alert***
> ***software application program (i.e., Find My Device) is installed on a plurality of***
> ***PCs and/or PDA/cell phones.***
> . . .
> ***The first step in utilizing the Find My Device functionality is to select the forced***
> ***message alert software application program on the sender PC or PDA/cell***
> ***phone, i.e., to launch the Find My Device App by selecting the icon.***

(D.I. 112-7, Ex. 4, Attachment A at A-a22-53 (emphasis added).) AGIS does not dispute that

Mr. McAlexander relies upon only *client-side* source code from the FMD Application. (*See* D.I.

112 at 5, ¶ 14; D.I. 193 at 3 (Response to No. 14).)

> Similarly, Mr. McAlexander contends that:

> The claimed step of accessing a forced message alert software application
> program is the initiation of the forced message application program by the
> Android operating system ***when the application has been selected by a user for***
> ***execution***.

(D.I. 112-7, Ex. 4, Attachment A at A-a86-88 (emphasis added).) The selected application is the

FMD *Application*, as shown on the screenshot that follows his contention. (*See id.* at A-a89.)

And, contrary to AGIS's unsupported representations in its opposition brief (*see* D.I. 193

at 3-4), there is no separate analysis for these claim limitations directed to Google Chrome or

Google Play Protect.[1] (*See, e.g.*, D.I. 112-7, Ex. 4, Attachment A at A-a22-53, A-a86-88.) There

is also no dispute that the FMD (and the prior ADM) *Applications* are the very client apps that

the LG Korea engineer confirmed are <u>not</u> pre-installed on the accused LG devices. (D.I. 112 at

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[1] AGIS suggests that it has a distinct infringement theory for ADM in addition to its expert's
analysis of the FMD Application. (D.I. 193 at 7, 9-11). This is incorrect. Both experts agree
that ADM was merely rebranded to FMD, and Mr. McAlexander confirms that his analysis with
respect to FMD is representative of ADM. (D.I. 112-6 at 83; D.I. 112-7 at 85-86, ¶¶ 171-72; D.I.
112-2, ¶ 1; Case No. 17-cv-513, D.I. 36-5, ¶ 1.)

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