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

AGIS SOFTWARE DEVELOPMENT, LLC,	§	
	§	
Plaintiff,	§	Case No. 2:17-cv-514-JRG
	§	(LEAD CASE)
v.	§	
	§	**JURY TRIAL DEMANDED**
HTC CORPORATION,	§	
	§	
Defendant.	§	
	§	
	§	
AGIS SOFTWARE DEVELOPMENT, LLC,	§	
	§	
Plaintiff,	§	Case No. 2:17-cv-517-JRG
	§	(CONSOLIDATED CASE)
v.	§	
	§	**JURY TRIAL DEMANDED**
ZTE CORPORATION, ZTE (USA), INC.,	§	
AND ZTE (TX), INC.,	§	
Defendants.	§	
	§	
	§	
	§	
	§	

DISCOVERY ORDER

After a review of the pleaded claims and defenses in this action, in furtherance of the

management of the Court's docket under Federal Rule of Civil Procedure 16, and after receiving

the input of the parties to this action, it is ORDERED AS FOLLOWS:[1]

1.   **Initial Disclosures.**   In lieu of the disclosures required by Federal Rule of Civil

Procedure 26(a)(1), each party shall disclose to every other party the following

information:

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[1] HTC Corp. states that it enters into this discovery order subject to its motion to dismiss
and without waiver of its objection to personal jurisdiction in this case.

(a)   the correct names of the parties to the lawsuit;

(b)   the name, address, and telephone number of any potential parties;

(c)   the legal theories and, in general, the factual bases of the disclosing party's claims or defenses (the disclosing party need not marshal all evidence that may be offered at trial);

(d)   the name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person's connection with the case, and a brief, fair summary of the substance of the information known by any such person;

(e)   any indemnity and insuring agreements under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment;

(f)   any settlement agreements relevant to the subject matter of this action; and

(g)   any statement of any party to the litigation.

2.   **Disclosure of Expert Testimony.** A party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703 or 705, and:

(a)   if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, provide the disclosures required by Federal Rule of Civil Procedure 26(a)(2)(B) and Local Rule CV-26; and

(b)   for all other such witnesses, provide the disclosure required by Federal Rule of Civil Procedure 26(a)(2)(C).

3.   **Additional Disclosures.** Without awaiting a discovery request,[2] each party will make the following disclosures to every other party:

(a)   provide the disclosures required by the Patent Rules for the Eastern District of Texas with the following modifications to P.R. 3-1 and P.R. 3-3:

    i.   If a party claiming patent infringement asserts that a claim element is a software limitation, the party need not comply with P.R. 3-1 for those claim elements until 30 days after source code for each Accused Instrumentality is produced by the opposing party. Thereafter, the party claiming patent infringement shall identify, on an element-by-element basis for each asserted claim, what source code of each Accused Instrumentality allegedly satisfies the software limitations of the asserted claim elements.

    ii.   If a party claiming patent infringement exercises the provisions of Paragraph 3(a)(i) of this Discovery Order, the party opposing a claim of patent infringement may serve, not later than 30 days after receipt of a Paragraph 3(a)(i) disclosure, supplemental "Invalidity Contentions" that amend only those claim elements identified as software limitations by the party claiming patent infringement.

(b)   produce or permit the inspection of all documents, electronically stored information, and tangible things in the possession, custody, or control of the party

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[2] The Court anticipates that this disclosure requirement will obviate the need for requests for production.

that are relevant to the pleaded claims or defenses involved in this action, except

to the extent these disclosures are affected by the time limits set forth in the Patent

Rules for the Eastern District of Texas; and

(c)   provide a complete computation of any category of damages claimed by any party

to the action, and produce or permit the inspection of documents or other

evidentiary material on which such computation is based, including materials

bearing on the nature and extent of injuries suffered, except that the disclosure of

the computation of damages may be deferred until the time for Expert Disclosures

if a party will rely on a damages expert.

4.   **Protective Orders.** The Court will enter the parties' Agreed Protective Order.

5.   **Discovery Limitations.** The discovery in this <u>case</u> is limited to the disclosures described

in Paragraphs 1-3 together with:

(a) <u>Definition of "Defendant"</u>: For purposes of this section, the "HTC Defendant"

refers to HTC Corporation and the "ZTE Defendants" refers to ZTE

Corporation,[3] ZTE (USA), Inc., and ZTE (TX), Inc.

(b) Interrogatories: <u>Plaintiff</u> may serve 25 interrogatories on HTC and 25

interrogatories on the ZTE Defendants. HTC and the ZTE Defendants,

collectively, may serve 13 interrogatories on Plaintiff, and separately each

may serve an additional 12 interrogatories on Plaintiff.

(c) <u>Requests for Admission</u>: <u>Plaintiff</u> may serve 25 requests for admission on

HTC and 25 requests for admission on the ZTE Defendants. HTC and the

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[3] Defendant ZTE Corporation has not yet been served or appeared in this matter; thus, but all discovery limits will apply, if Defendant ZTE Corporation is served. Further, ZTE (USA), Inc. and ZTE (TX), Inc. state that they enter into this discovery order subject to their motion to dismiss, or in the alternative transfer, and without waiver of its objection to venue in this case.

ZTE Defendants, collectively, may serve 13 requests for admission on Plaintiff, and separately each may serve an additional 12 requests for admission on Plaintiff.   Requests for admissions for authentication of documents and things and/or whether a document qualifies as a printed publication under 35 U.S.C. § 102 shall be unlimited. Should the receiving party object to any requests for admissions directed solely towards the authentication of documents and things as unnecessary, unreasonable, and/or directed at issues other than authentication, the receiving party must make such objections in writing within ten (10) days of receiving such requests, after which the parties are required to meet and confer in good faith to determine whether the requests are necessary, reasonable, and/or properly directed towards authentication only.

(d) <u>Fact Depositions</u>: Plaintiff may take up to 35 total hours of deposition testimony (inclusive of both 30(b)(1) and 30(b)(6) depositions) of HTC and may take up to 35 total hours of deposition testimony (inclusive of both 30(b)(1) and 30(b)(6) depositions) of the ZTE Defendants.   The HTC Defendant and the ZTE Defendants may collectively take up to 20 hours of deposition testimony of Plaintiff (inclusive of both 30(b)(1) and 30(b)(6) depositions), and separately each may take an additional 15 hours of deposition testimony of Plaintiff (inclusive of both 30(b)(1) and 30(b)(6) depositions).   Deposition of experts and third parties do not count against these limits (see ¶¶ 5(f) and (g) below). Any deposition of Malcolm Beyer in his individual capacity shall count against the 35-hour limit for all Defendants.

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