

# EXHIBIT A

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**From:** Rubino, Vincent J. <VRubino@brownrudnick.com>  
**Sent:** Tuesday, February 6, 2018 6:22 PM  
**To:** Lavenue, Lionel; AGIS-Lit  
**Cc:** Schulz, Bradford; sbaxter@mckoolsmith.com; Jennifer Truelove (jtruelove@McKoolSmith.com)  
**Subject:** RE: AGIS Software Development, LLC v. HTC Corporation, Case No. 2:17-cv-00514-JRG (Lead Case) AGIS Software Development, LLC v. ZTE Corporation, et al., Case No. 2:17-cv-00517-JRG (Consolidated Case)  
**Attachments:** Exhibit B - 2018-02-06 Corrected Brief (Redline).pdf; Exhibit C - 2018-02-06 Corrected Declaration to ZTE.PDF; Exhibit D - Corrected Exhibit 11.pdf; 2018-02-06 - [Proposed] Order Grtg AGIS Mtn to File Corrected Sur-Reply to ZTE Mtn to Dismiss\_Transf.DOCX; 2018-02-06 - AGIS Mtn to File Corrected Sur-Reply to ZTE Mtn to Dismiss\_Transfer (Dkt. 38).DOCX; 2018-02-06 - Declaration of V. Rubino ISO Motion for Leave to Correct Sur-Reply ZTE.docx.pdf; Exhibit A - 2018-02-06 Corrected Brief (clean).pdf

Lionel,

Attached is our draft motion and exhibits. We would like to get this on file tonight.

Best,  
Vincent



**Vincent Rubino**

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**From:** Lavenue, Lionel [mailto:lionel.lavenue@finnegan.com]  
**Sent:** Monday, February 05, 2018 7:58 PM  
**To:** Rubino, Vincent J.; AGIS-Lit  
**Cc:** Schulz, Bradford; sbaxter@mckoolsmith.com; Jennifer Truelove (jtruelove@McKoolSmith.com)  
**Subject:** RE: AGIS Software Development, LLC v. HTC Corporation, Case No. 2:17-cv-00514-JRG (Lead Case) AGIS Software Development, LLC v. ZTE Corporation, et al., Case No. 2:17-cv-00517-JRG (Consolidated Case)

**External E-mail. Use caution accessing links or attachments.**

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Vincent –

I just landed (was in the air). I see the attachments, but have you sent us the proposed motion to which you seek non-opposition?

We are likely not to oppose, and we'll separately notify the Court that AGIS refused to correct a material error in its sur-reply brief.

Thanks,

Lionel

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**From:** Rubino, Vincent J. [<mailto:VRubino@brownrudnick.com>]

**Sent:** Monday, February 5, 2018 6:14 PM

**To:** Lavenue, Lionel <[lionel.lavenue@finnegan.com](mailto:lionel.lavenue@finnegan.com)>; AGIS-Lit <[agislit@brownrudnick.com](mailto:agislit@brownrudnick.com)>

**Cc:** Schulz, Bradford <[Bradford.Schulz@finnegan.com](mailto:Bradford.Schulz@finnegan.com)>; [sbaxter@mckoolsmith.com](mailto:sbaxter@mckoolsmith.com); Jennifer Truelove ([jtruelove@McKoolSmith.com](mailto:jtruelove@McKoolSmith.com)) <[jtruelove@McKoolSmith.com](mailto:jtruelove@McKoolSmith.com)>

**Subject:** RE: AGIS Software Development, LLC v. HTC Corporation, Case No. 2:17-cv-00514-JRG (Lead Case) AGIS Software Development, LLC v. ZTE Corporation, et al., Case No. 2:17-cv-00517-JRG (Consolidated Case)

Lionel,

We have been on the line for 15 minutes. As it appears that this time is no longer good for you, please let us know as soon as possible whether ZTE will oppose AGIS's motion to correct. If ZTE will oppose, please let us know your earliest availability to confer. We are generally available later tonight EST or tomorrow afternoon EST.

Regards,  
Vincent



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**From:** Rubino, Vincent J.

**Sent:** Monday, February 05, 2018 4:40 PM

**To:** 'Lavenue, Lionel'; AGIS-Lit

**Cc:** Schulz, Bradford; [sbaxter@mckoolsmith.com](mailto:sbaxter@mckoolsmith.com); Jennifer Truelove ([jtruelove@McKoolSmith.com](mailto:jtruelove@McKoolSmith.com))

**Subject:** RE: AGIS Software Development, LLC v. HTC Corporation, Case No. 2:17-cv-00514-JRG (Lead Case) AGIS Software Development, LLC v. ZTE Corporation, et al., Case No. 2:17-cv-00517-JRG (Consolidated Case)

Lionel,

Attached are AGIS's proposed corrected sur-reply, declaration, and Exhibit 11, which reflect a correction of the clerical error in AGIS's briefing regarding the attachment of the incorrect document as Exhibit 11.

Again, the clerical error (corrected in the attached) is completely unrelated to the issue of whether ZTE contested in its briefing that ZTA commits the alleged acts of infringement in this district. ZTE has no good faith basis to withhold consent to correct the clerical error. We do not agree that there is any need for AGIS to revise its briefing with respect to the 1400(b) issue, and we do not agree that ZTE has any basis to request additional briefing on the issue.

Please let us know whether ZTE opposes AGIS's correction. If ZTE opposes, we are available to confer at 6PM eastern tonight. We can use the following dial-in:

Dial-in: 877-211-3621

Passcode: 145074

Regards,  
Vincent



**Vincent Rubino**

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**From:** Lavenue, Lionel [<mailto:lionel.lavenue@finnegan.com>]

**Sent:** Friday, February 02, 2018 12:11 PM

**To:** Rubino, Vincent J.; AGIS-Lit

**Cc:** Schulz, Bradford; [sbaxter@mckoolsmith.com](mailto:sbaxter@mckoolsmith.com); Jennifer Truelove ([jtruelove@McKoolSmith.com](mailto:jtruelove@McKoolSmith.com))

**Subject:** RE: AGIS Software Development, LLC v. HTC Corporation, Case No. 2:17-cv-00514-JRG (Lead Case) AGIS Software Development, LLC v. ZTE Corporation, et al., Case No. 2:17-cv-00517-JRG (Consolidated Case)

Vincent,

You refer to "deficiencies in ... existing briefing," but the only deficiencies are in AGIS's sur-reply briefing.

The simple truth is that AGIS made two misrepresentations of fact in its sur-reply, which was filed on Friday, January 26, 2018, and on Monday, January 29, 2018, Defendants ZTA and ZTX promptly notified AGIS of the two errors. Now, AGIS wishes to correct only one error.

It is improper for AGIS correct one error (incorporating AGIS's erroneous attorney declaration), while allowing the other error (AGIS's misrepresentation of Defendants' 1400(b) argument). Defendants ZTA and ZTX are not withholding consent as leverage, but to contrary, Defendants ZTA and ZTX are attempting to ensure that proper corrections of misrepresentation of fact in the AGIS sur-reply are made.

- With respect to AGIS's first misrepresentation of fact, if AGIS still wishes to correct its

proposed corrections, so that we may take a position on the potential motion for correction. Defendants can only agree to AGIS's corrections, once we see the anticipated corrections.

- With respect to AGIS's second misrepresentation of fact, it is undisputed from your emails that AGIS misrepresented the "acts of infringement" issue in the sur-reply, and we note that a simple correction would moot the issue. The current sur-reply brief is clearly in error, in stating that "Defendants did not argue in its Motion to Dismiss that the 'acts of infringement' requirement of 1400(b) was not satisfied as to ZTA. Dkt. 38 at 15-20." For example, as we already indicated, Defendants clearly noted in the opening brief that, "**no Defendant** resides, **has committed alleged acts of infringement**, or has a regular and established place of business in this District." (Dkt. No. 38 at 1, emphasis added). For example, a correct sur-reply statement would be, "Defendants did not argue in its Motion to Dismiss argument section that the 'acts of infringement' requirement of 1400(b) was not satisfied as to ZTA. Dkt. 38 at 15-20." But, it is just a plan misrepresentation of fact for AGIS to state otherwise.
  - We further note that the sur-reply brief was the first time that AGIS asserted this misrepresentation of "fact." AGIS's opposition brief had only referenced the Amended Complaint, not the 1400(b) requirement. See Dkt. 46 at 15 ("ZTA does not dispute that it has engaged in infringing activities in this District as alleged in the Amended Complaint and, thus, concedes that ZTA engaged, and continues to engage, in the infringing activities alleged in the Amended Complaint. Dkt. 32 at 23-83."). And, in the reply brief, Defendants ZTA and ZTX responded to that argument regarding the Amended Complaint. See Dkt. 51 at 4 ("ZTA also denies any acts of infringement."); see also *id.* ("AGIS incorrectly alleges that 'ZTA does not dispute' infringement---even that it 'concedes that ZTA . . . engage[s] in the infringing activities. This conclusory rhetoric is baseless, at least as Defendants have yet to answer the Amended Complaint, given the pending motion to dismiss and/or to transfer"). In the opposition brief, AGIS did not assert that ZTA waived the "acts of infringement" requirement of 1400(b), until AGIS made that argument for the first time in its sur-reply brief. See Dkt. 52 at 2 ("Defendants did not argue in its Motion to Dismiss that the 'acts of infringement' requirement of 1400(b) was not satisfied as to ZTA. Dkt. 38 at 15-20.") The local EDTX rules do not permit the presentation of new facts in reply and sur-reply briefs. As such, not only is AGIS's allegation that ZTA did not argue the acts of infringement requirement of 1400(b) unambiguously in error, but it is further improper as a new allegation, only first alleged by AGIS in its sur-reply brief. See *Gillaspy v. Dallas Ind. School Dist.*, 278 Fed. Appx. 307, 315 (5th Cir. 2008) ("It is the practice of [the 5th Cir.] to refuse to consider arguments raised for the first time in reply [and sur-reply] briefs"). Therefore, if AGIS continues to refuse to correct their misrepresentation, then Defendants will request an opportunity to respond to any AGIS motion to correct. Your allegation that Defendants ZTA and ZTX are "withholding consent to correct the clerical error in the declaration as leverage" is plainly incorrect, as Defendants ZTA and ZTX is merely going to insist on addressing the errors by AGIS, in one manner or another. If we do resolve the issue in your motion for correction, then we will address the error in another manner. But, for now, we are attempting to work with you in good faith to address the clear error by AGIS.

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