

EXHIBIT D2

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

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

v.

HUAWEI DEVICE USA INC., HUAWEI
DEVICE CO., LTD. AND HUAWEI DEVICE
(DONGGUAN) CO., LTD.,
HTC CORPORATION,
LG ELECTRONICS INC.,
APPLE INC.,
ZTE CORPORATION, ZTE (USA), INC.,
AND ZTE (TX), INC.,

Defendants.

**Civil Action No. 2:17-CV-513-JRG
(Lead Case)**

Member Cases:

Civil Action No. 2:17-CV-514-JRG

Civil Action No. 2:17-CV-515-JRG

Civil Action No. 2:17-CV-516-JRG

Civil Action No. 2:17-CV-517-JRG

JURY TRIAL DEMANDED

DEFENDANTS' RESPONSIVE CLAIM CONSTRUCTION BRIEF

TABLE OF CONTENTS

INTRODUCTION1

LEGAL STANDARD.....1

ARGUMENT2

I. THE TEN “DEVICE” CLAIMS SHOULD BE CONSTRUED UNDER 35 U.S.C. § 112(F), AND THEY ARE INVALID AS INDEFINITE BECAUSE THE SPECIFICATION FAILS TO DISCLOSE ADEQUATE CORRESPONDING STRUCTURE FOR EACH CLAIMED FUNCTION.2

A. The Ten “Device” Claims Should Be Construed Under 35 U.S.C. § 112(f).....2

1. “Device” Is A Nonce Word, And The Remaining Claim Language Likewise Lacks Recitation Of Sufficient Structure.2

2. AGIS’s Arguments That The “Device” Claims Fall Outside The Scope Of § 112(f) Are Wrong.5

a. The Claims Do Not Recite An Algorithm.5

b. AGIS Cannot Rely Solely On The Conclusory Statements Of Its Expert To Fill In The Missing Structure.....7

B. The Ten “Device” Claims Of The Ad Hoc Network Patents Are Indefinite Because The Specification Fails To Recite Algorithmic Structure.8

1. The *Katz* Exception Does Not Apply To The “Device” Claims.....9

2. The Specification Fails To Disclose Sufficient Structure.....9

3. AGIS’s Arguments Fail.11

a. AGIS Ignores The Claim Language In An Effort To Improperly Apply The *Katz* Exception.....11

b. AGIS Fails To Even Argue How The *Katz* Exception Allegedly Applies To Half The Claimed Functions.14

II. THE ’970 PATENT MEANS-PLUS-FUNCTION CLAIMS15

A. “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, said forced message alert software packet containing a list of possible required responses” (’970 patent, claim 1).....15

1. Defendants’ Claimed Function Is Correct.16

2.	Under Either Side’s Proposed Function, The Specification Fails To Disclose Adequate Corresponding Structure.	17
B.	“[means for. . .] requiring the forced message alert software on said recipient PDA/cell phone to transmit an automatic acknowledgment to the sender PDA/cell phone as soon as said forced message alert is received by the recipient PDA/cell phone” (’970 patent, claim 1).....	18
C.	“means for requiring a required manual response from the response list by the recipient in order to clear recipient’s response list from recipient’s cell phone display” (’970 patent, claim 1).....	19
D.	“means for periodically resending said forced message alert to said recipient PDA/cell phones that have not automatically acknowledged the forced message alert” (’970 patent, claim 1)	20
III.	OTHER DISPUTED CLAIM TERMS.....	22
A.	“group” (’838 patent, claims 1, 54, 55, 84; ’251 patent, claims 1, 24; ’829 patent, claims 1, 34, 35, 68).....	22
1.	A “Group” As Used Here Includes “More Than Two Participants.”	22
2.	“Participants” Joining A “Group” Are “Associated Together Without Having To Pre-Enter Data Into A Web Or Identify Other Users By Name, E-Mail Addresses Or Phone Numbers.”	24
3.	AGIS’s Arguments Are Wrong.	26
a.	AGIS’s Construction Improperly Broadens “Group” To Encompass Only Two Participants.	26
b.	AGIS’s Construction Reads Out The Entire Purpose Of The Alleged Invention From The Claims.	27
c.	AGIS’s Attempt To Distinguish The Prosecution History Fails.....	28
B.	“receiving a message from a second device” (’251 patent, claims 1, 24)	29
1.	The Claims Recite A First Device That Receives A Message Directly From A Second Device Without The Use Of A Server.....	29
2.	The Applicant Disclaimed The Use Of A Server During Prosecution.....	30
3.	AGIS’s Arguments Fail.	32

..

Page

C. “an identifier corresponding to the group” (’838 patent, claims 1, 54, 55, 84).....33

D. “database of entities” (’838 patent, claim 23; ’251 patent, claim 14).....34

E. “Short Message Service (SMS) messages” (’055 patent, claims 1, 54)35

F. “the other symbol” (’055 patent, claims 2, 42).....37

G. “user selection of the sub-net” (’055 patent, claims 7 and 34)39

H. “forced message alert software application” (’970 patent, claims 1 and 6).....40

I. “manual response” (’970 patent, claims 1, 6)42

J. “the repeating voice alert” (’970 patent, claim 6).....43

CONCLUSION.....44

...

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.