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14 Attorneys for Defendant  
 15 *AGIS Software Development LLC*

16  
 17 **UNITED STATES DISTRICT COURT**  
 18 **NORTHERN DISTRICT OF CALIFORNIA**  
 19 **SAN JOSE DIVISION**

20 WHATSAPP LLC,

21 *Plaintiff,*

22 v.

23 AGIS SOFTWARE DEVELOPMENT LLC,

24 *Defendants.*

Case No. 5:21-cv-03076-BLF

**DEFENDANT AGIS SOFTWARE  
 DEVELOPMENT LLC'S NOTICE OF  
 PENDENCY OF OTHER ACTION OR  
 PROCEEDING PURSUANT TO LOCAL  
 RULE 3-13**

**Hon. Beth Labson Freeman**

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1 Pursuant to Local Rule 3-13, Defendant AGIS Software Development LLC (“AGIS”) hereby  
2 provides this Notice of Pendency of Other Action or Proceeding.

3 This case began when, on April 27, 2021, Plaintiff WhatsApp LLC (“WhatsApp”) filed a  
4 complaint in the U.S. District Court for the Northern District of California against AGIS, alleging  
5 infringement of U.S. Patent Nos. 7,031,728 (“’728 patent”), 7,630,724 (“’724 patent”), 9,408,055  
6 (“’055 patent”), 9,445,251 (“’251 patent”), 9,467,838 (“’7,838 patent”), and 9,749,829 (“’829  
7 patent”).

8 AGIS is the defendant in two other pending patent cases in this District, *Smith Micro*  
9 *Software, Inc. v. AGIS Software Development LLC*, Case No. 5:21-cv-3677-JD (“Smith Micro  
10 action”), which was initiated on May 17, 2021, and *Lyft, Inc. v. AGIS Software Development LLC*,  
11 Case No. 4:21-cv-04653-HSG (“Lyft action”), which was initiated on June 16, 2021.

12 Both the *WhatsApp* action and the *Smith Micro* action involve the exact same patents, and  
13 therefore will likely involve the same issues as to claim construction and validity of the patents.  
14 Two out of five<sup>1</sup> of the patents at issue in the Lyft action are also at issue in the *WhatsApp* and *Smith*  
15 *Micro* actions, and will involve the same issues as to claim construction and validity of these patents.  
16 Certain venue and jurisdictional issues are also the same or closely related.

17 The three *Lyft*, *WhatsApp*, and *Smith Micro* actions concern substantially the same parties in  
18 that AGIS Software is a defendant in each, substantially the same property (*i.e.*, the patents at issue  
19 in each action), and it appears likely that there will be unduly burdensome duplication of labor and  
20 expense or conflicting results if the cases are conducted before different judges. Therefore, transfer  
21 and coordination of the Smith Micro and Lyft cases into the first-filed case (this WhatsApp action)  
22 should be effected under Local Rule 3-13(b) because it would avoid conflicts, conserve resources  
23 and promote an efficient determination of the action.

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27 <sup>1</sup> The ’728 and ’724 Patents are commonly at issue in all three *Lyft*, *WhatsApp*, and *Smith Micro*  
28 actions. In addition, U.S. Patent Nos. 8,213,970 (“’970 patent”), 10,299,100 (“’100 patent”), and  
29 10,341,838 (“’1,838 patent”) are asserted in the *Lyft* action. The *WhatsApp* and *Smith Micro* actions

1 DATED: August 20, 2021

Respectfully submitted,

**RUSS AUGUST & KABAT**

By: /s/ Benjamin T. Wang

Benjamin T. Wang

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**CERTIFICATE OF SERVICE**

I certify that I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Northern District of California using the CM/ECF System on August 20, 2021.

I certify that all counsel of record who are deemed to have consented to electronic service are being served on August 20, 2021 with a copy of this document via the Court’s CM/ECF systems per Local Rule CV-5(a)(3). Any other counsel will be served by electronic mail, facsimile, overnight delivery and/or First Class Mail on this date.

DATED: August 20, 2021

/s/ Benjamin T. Wang  
Benjamin T. Wang

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