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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LYFT, INC.

Plaintiff,

v.

AGIS SOFTWARE DEVELOPMENT LLC,

Defendant.

Case No. 5:21-cv-04653-BLF (SVK)

**PLAINTIFF LYFT, INC.'S RESPONSE TO
AGIS SOFTWARE DEVELOPMENT
LLC'S MOTION FOR LEAVE TO AMEND
INFRINGEMENT CONTENTIONS
PURSUANT TO PATENT LOCAL RULE
3-6**

Date: June 2, 2022
Time: 10:00 a.m.
Judge: Hon. Beth Labson Freeman
Trial Date: October 16, 2023
Courtroom: 3, Fifth Floor

1 **I. INTRODUCTION**

2 Plaintiff AGIS Software Development LLC (“AGIS”) seeks to amend its deficient
3 infringement contentions but cannot make a “timely showing of good cause,” as required by the Patent
4 Local Rules, because it seeks to add publicly accessible information that it could have added in its
5 original contentions, and it seeks to cure a deficiency that it was on notice of since at least July 2021.

6 By way of background, in May 2021, AGIS served Infringement Contentions in the Eastern
7 District of Texas (“EDTX Action”), accusing only Defendant Lyft, Inc.’s (“Lyft”) iOS applications.
8 Shortly afterwards, in July 2021, Lyft notified AGIS that its infringement contentions only properly
9 accused the iOS applications and repeatedly cautioned AGIS over the next several months that its
10 boilerplate language and sparse references to Android failed to properly accuse Lyft’s Android
11 applications. AGIS did nothing in response. In November 2021, Lyft filed a motion in the EDTX
12 Action to strike AGIS’s infringement allegations against any product other than Lyft’s iOS
13 applications, but before the motion could be decided, the EDTX Action was dismissed for improper
14 venue.

15 Despite this well-documented history and being well aware that its infringement contentions
16 failed to accuse any products other than Lyft’s iOS applications, in February 2022, AGIS served
17 infringement contentions in this case that largely tracked its infringement contentions from the EDTX
18 Action, again only accusing Lyft’s iOS applications. AGIS has been on notice that its infringement
19 theories were only directed at Lyft’s iOS applications since at least May 2021, and it has not identified
20 any reason why it could not have accused Lyft’s Android applications in February 2022 by its deadline
21 to serve infringement contentions if it intended to do so. AGIS now belatedly attempts to remedy this
22 problem—nearly eight months after Lyft first identified it to AGIS—by adding new allegations against
23 Lyft’s Android applications via 86 screenshots that it obtained through public sources and added
24 throughout AGIS’s first amended infringement contentions. AGIS provides no explanation, much less
25 good cause, for these untimely additions. Because AGIS has not provided a timely showing of good
26 cause, as required under the Patent Local Rule to amend its infringement contentions, Lyft respectfully
27 requests the Court deny AGIS’s motion for leave to amend its infringement contentions.

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1 **II. BACKGROUND**

2 On May 19, 2021, AGIS served its infringement contentions in the EDTX Action, involving
3 the same patents at issue in this case, in which the contentions largely mirror the infringement
4 contentions served in this case in February 2022. Ex. A (comparing the EDTX and NDCA
5 infringement contentions). In its May 2021 contentions, AGIS accused and provided element-by-
6 element charts for Lyft’s iOS applications, as required under the EDTX Patent Rules, but included
7 only boilerplate references to Android, Blackberry, and Windows Mobile at the top of its claim charts
8 and occasional reference to Lyft’s Android applications in the claim charts. See Dkt. 78-13 at A-1
9 (May 2021 contentions) (“[T]he Accused Products comprise the Lyft application installed on all
10 Android, iOS, Blackberry, and Windows Mobile based mobile devices . . . and any variants thereof.”).
11 AGIS’s boilerplate language was patently deficient: Lyft does not even offer applications for
12 Blackberry or Windows Mobile devices. Not surprisingly, AGIS’s infringement claim charts in both
13 the EDTX Action and this case lack element-by-element allegations against Android, Blackberry, or
14 Windows Mobile applications, as required by the Patent Local Rules, and only provide element-by-
15 element infringement allegations against Lyft’s iOS applications.

16 Throughout the EDTX Action, Lyft repeatedly notified AGIS that its contentions were
17 deficient as to any non-iOS Lyft product, including Android. For example, on July 21, 2021, counsel
18 for Lyft sent a letter to counsel for AGIS stating that “[t]he infringement charts appear to only
19 specifically identify where elements of each asserted claim is found within the accused Lyft iOS App
20 without evidence or explanation for how the allegations against the iOS app could apply to any other
21 application, service, or server.” See Ex. B at 1 (July 21, 2021 Taylor email). Similarly, on August 6,
22 2021, Lyft informed AGIS that the contentions “only properly accuse Lyft’s iOS apps of
23 infringement.” Ex. C at 1 (Aug. 6, 2021 Salpietra letter); see also *id.* (“Indeed, AGIS’s contentions
24 fail to identify *any* evidence concerning allegedly infringing Android, Blackberry, or Windows Mobile
25 apps.”).

26 On September 27, 2021, AGIS amended its infringement contentions in the EDTX Action, but
27 did not correct this issue; the amended contentions still only provided a complete infringement theory
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1 for Lyft's iOS applications. *See* Ex. D. Shortly thereafter, on October 5, 2021, Lyft again informed
2 AGIS that its amended contentions only accused Lyft's iOS applications. Ex. E at 9 (Oct. 5, 2021
3 Salpietra letter) ("AGIS has only properly accused Lyft's iOS products of infringement."). In
4 November 2021, AGIS served second amended infringement contentions that, like its earlier
5 contentions, continued to provide a complete infringement theory only for Lyft's iOS applications.
6 Ex. F.

7 On November 3, 2021, Lyft filed a motion to strike AGIS's first amended infringement
8 contentions as deficient to the extent AGIS sought to accuse infringement based on Lyft's Android
9 applications. Ex. G. Specifically, Lyft argued that AGIS's infringement allegations should be limited
10 to Lyft's iOS applications because AGIS repeatedly failed to properly accuse the Android applications.
11 *Id.* at 7-12. The Court did not rule on this issue because it dismissed the case for improper venue on
12 January 19, 2022, before the motion to strike could be decided. Ex. H.

13 In the present case, AGIS served infringement contentions on February 25, 2022. Dkt. 84,
14 Exs. A-F. These contentions largely tracked the contentions in the EDTX Action, and again provided
15 a complete infringement theory only against Lyft's iOS applications. Then, on March 18, 2022, nearly
16 a month past its deadline and eight months after it was initially put on notice of the lack of Android
17 contentions, AGIS provided new infringement contentions that seeks to add 86 screenshots of Lyft's
18 Android applications in an attempt to finally provide a complete infringement theory against the Lyft
19 Android applications. *Compare* Dkt. 84, Exs. G-L (March 2022 contentions), *with* Dkt. 84, Exs. A-F
20 (February 2022 contentions). AGIS did not articulate any reason for why these additions are being
21 made now and could not be made by its original deadline or in any of its earlier amended infringement
22 contentions.

23 In parallel, AGIS removed many screenshots pertaining to Lyft's iOS applications and stated
24 that it was no longer accusing Lyft's iOS applications, in apparent response to Lyft adding a breach
25 of contract claim to its amended complaint, even though AGIS has been aware of this issue since at
26 least November 2021. Despite AGIS's attempt to wholesale swap Lyft's iOS applications for Lyft's
27 Android applications, AGIS's motion for leave to amend should be denied as futile because the
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1 amended contentions still fail to adequately accuse the Lyft Android applications. AGIS has failed to
2 provide an element-by-element infringement chart for Lyft’s Android applications. At least one claim
3 element in each of the asserted patents includes only a screenshot of Lyft’s iOS applications without
4 any image of Lyft’s Android applications. *See* Dkt. 84-9 (Ex. H) at A-28 to A-31, A-37 to A-41; Dkt.
5 84-10 (Ex. I) at B-40 to B-43, B-60 to B-65; Dkt. 84-12 (Ex. K) at D-12 to D-14, D-93 to D-94; Dkt.
6 84-13 (Ex. L) at E-27 to E-29.

7 **III. LEGAL STANDARD**

8 Patent Local Rule 3-6 requires AGIS to provide a “timely showing of good cause” to amend
9 its infringement contentions. P.L.R. 3-6. The moving party must demonstrate both “(1) diligence in
10 discovering the basis for amendment; and (2) diligence in seeking amendment once the basis for
11 amendment has been discovered.” *Positive Techs., Inc. v. Sony Elecs., Inc.*, No. C 11-2226 SI, 2013
12 WL 322556, at *2 (N.D. Cal. Jan. 28, 2013). The moving party, AGIS, bears the burden of establishing
13 diligence. *O2 Micro Int’l Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 1366 (Fed. Cir. 2006).
14 Where the moving party is unable to show diligence, there is “no need to consider the question of
15 prejudice.” *Id.* at 1368.

16 **IV. ARGUMENT**

17 AGIS purports to amend its infringement contentions solely to clarify that “AGIS does not
18 accuse any Lyft iOS applications or any Apple products,” Mot. at 4—which Lyft does not oppose—
19 but AGIS conveniently omits that it also seeks to *add* a large number of screenshots showing Lyft’s
20 Android applications without any explanation of why it has good cause to do so. Contrary to the
21 suggestion in its motion, AGIS does not make minor additions in its March 2022 amended contentions:
22 it seeks to include more than double the number of Android screenshots in some of the claim charts
23 compared to its February 2022 contentions. *Compare, e.g.*, Dkt. 84-3 (Ex. B), *with* Dkt. 84-9 (Ex. H).
24 Indeed, if AGIS was correct that its initial contentions “repeatedly identif[ied] and rel[ied] on Lyft’s
25 Android applications” (Mot. at 4), adding 86 screenshots of Lyft’s Android applications would not be
26 needed.

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