

# Exhibit 3

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October 5, 2021

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VIA E-MAIL (VRUBINO@FABRICANTLLP.COM)

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Re: AGIS Software Development LLC v. T-Mobile USA, Inc., et al.  
Case No. 2:21-cv-00072-JRG (E.D. Tex.) (Lead Case)  
AGIS Software Development LLC v. Lyft, Inc.,  
Case No. 2:21-cv-00024-JRG (E.D. Tex.) (Member Case)

Dear Vincent:

I write regarding Plaintiff AGIS Software Development LLC's ("AGIS" or "You") responses to Defendant Lyft, Inc.'s ("Lyft") First Set of Interrogatories (Nos. 1-12) ("Lyft's First Set of Interrogatories") and in response to your September 22, 2021 letter regarding Lyft's responses to AGIS's First Set of Interrogatories.

### **I. AGIS's Deficient Responses to Lyft's First Set of Interrogatories**

As an initial matter, Lyft disagrees with the basis for AGIS's objection that the defined terms in paragraph 4 of the Definitions section of Lyft's First Set of Interrogatories (i.e., "'AGIS,' 'Plaintiff,' 'You,' 'Your'") should be limited to include only AGIS Software Development LLC. AGIS contends that extending the defined terms to cover AGIS affiliates such as Advanced Ground Information Systems, Inc. ("AGIS, Inc.") and AGIS Holdings, Inc. is "overly burdensome, not proportional to the needs of the case and not relevant to any party's claims or defenses because they *include persons and entities outside of AGIS and who are not under the control of AGIS*" (emphasis added). AGIS's Objections and Responses to Lyft's First Set of Interrogatories at 3. This objection, however, is inconsistent with other positions or actions that AGIS has taken during the course of this litigation. For example, in Plaintiff's Disclosure of Asserted Claims and Infringement Contentions, AGIS represents that AGIS's "own" products practice claims of the Asserted Patents. *See* Plaintiff's Disclosure of Asserted Claims and Infringement Contentions at § I(F). As another example, AGIS produced nearly 200 pages of AGIS, Inc.'s documents, some of which have been designated as confidential under the Court's Protective Order (Dkt. 96). *See, e.g.,* AGISSOFTWARE\_0007815; AGISSOFTWARE\_0007754; AGISSOFTWARE\_0000027. As yet another example, AGIS recently gave Defendants notice that it was "making available *its* source code" (emphasis added), which Defendants understand to be AGIS, Inc.'s code for the

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allegedly practicing LifeRing product. E. Iturralde's 8/13/21 Email. These examples cut against AGIS's representation that other AGIS-affiliates "include person and entities outside of AGIS [] who are not under the control of AGIS." It would be improper for AGIS to use its corporate structure to selectively produce information from AGIS, Inc. that AGIS would like to rely on in this case while refusing to provide relevant information to Lyft from AGIS, Inc. If AGIS refuses to fully comply with Lyft's discovery requests with respect to AGIS, Inc., Lyft will move to preclude AGIS from relying at trial on any information from AGIS, Inc.—including information about AGIS, Inc.'s products, its history, or testimony from its employees.

In addition to AGIS's responses being deficient for the reason described above, AGIS's Objections and Responses to Lyft's First Set of Interrogatories are insufficient due to AGIS's excessive and meritless objections and for reasons set forth below.

**Interrogatory No. 1**

The request propounded by Lyft's Interrogatory No. 1 is straightforward—"Identify all Persons who would financially benefit from a recovery by AGIS in this lawsuit." Instead of answering this question, AGIS provides (as the only substantive portion of its response) a summary of its allegations against Lyft:

"Lyft has infringed, contributed to the infringement, and/or induced the infringement of the Asserted Patents by making, using, selling, offering for sale, distributing, exporting to/from the United States, and/or importing into the United States the Accused Products which are covered by the Asserted Claims of the Asserted Patents. AGIS hereby incorporates by reference, as if fully set forth herein, AGIS's Complaint and AGIS's Infringement Contentions, any amendments to AGIS's Infringement Contentions, and any expert reports served in this case regarding damages and infringement to be served in accordance with the Court's Third Amended Docket Control Order. AGIS has not licensed or otherwise authorized Lyft to make, use, sell, offer for sale, distribute, export, and/or import into the United States the Accused Products. Lyft has had knowledge and notice of the Asserted Patents at least since the filing of the Complaint in this action. Lyft's infringement has been and continues to be willful. AGIS has suffered damages as a result of Lyft's direct and/or indirect infringement of the Asserted Patents in an amount to be proved at trial. In addition to these damages, which will be determined at trial, AGIS is entitled to recover an award of treble damages, reasonable attorneys' fees, and costs in bringing this action."

AGIS's Objections and Responses to Lyft's First Set of Interrogatories, at 7–8. Nothing in AGIS's above-reproduced answer is responsive to the propounded request. Specifically, AGIS's response fails to identify any "Person" having the potential to financially benefit from a recovery by AGIS in this lawsuit.

AGIS's supplemental response, served on September 19, 2021, fails to remedy this deficiency. In particular, AGIS's supplemental response provides citations to documents spanning *over seven thousand pages*. It is entirely unclear which Persons identified within these documents

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is one who would financially benefit from a recovery by AGIS in this lawsuit. AGIS's response, therefore, improperly applies FED. R. CIV. P. 33(d), which states that a responding party may answer an interrogatory by specifying the records that must be reviewed *if* the burden of deriving or ascertaining the answer will be substantially the same for either party. The burden on the parties is not the same in this instance; AGIS knows the answer to this interrogatory and can provide the requested information with minimal effort. Notwithstanding the fact that AGIS failed to properly respond to this interrogatory under FED. R. CIV. P. 33(d), Lyft submits that a response invoking this section is both unnecessary and unreasonable. This interrogatory may be answered by simply providing an identification of Persons in a narrative response. Lyft expects AGIS will supplement its response to Interrogatory No. 1 to provide such narrative response.

**Interrogatory No. 2**

Interrogatory No. 2 seeks an identification and description of “any Communications with Third Parties You have had regarding any Asserted Patents or Related Patents.” AGIS objects to this interrogatory for various reasons, including because it allegedly (1) includes “multiple subparts,” (2) allegedly “seeks information subject to the (*sic*) any e-discovery and/or ESI orders,” and (3) is allegedly “unclear, vague, and ambiguous” due to its recitation of “any Communications . . . regarding any Asserted Patents or Related Patents.” *See* AGIS's Objections and Responses to Lyft's First Set of Interrogatories, at 9. First, regarding AGIS's “multiple subparts” objection, Lyft respectfully disagrees. An identification of a communication necessarily includes a description of that communication.<sup>1</sup> This interrogatory, therefore, properly propounds only a single request.

Second, regarding AGIS's objection regarding Court orders, Lyft submits that it is unaware of any rule or Court order that prohibits Lyft from seeking the identification and description of third parties to whom AGIS has communicated, electronic or otherwise, concerning the asserted patents. To the extent AGIS intends to maintain this objection, please identify the rule and/or Court order upon which You are relying.

Third, regarding AGIS's clarity objection, AGIS has failed to identify anything in particular that it contends is “unclear,” “vague,” or “ambiguous” about the “any Communications . . . regarding any Asserted Patents or Related Patents” phrase. The majority of the words used in this phrase are terms that Lyft has explicitly defined in the definitions section of Lyft's First Set of Interrogatories. *See* Lyft's First Set of Interrogatories, at 3–5. Accordingly, without more, this objection should not stand.

Lyft expects that AGIS's “reasonable investigation” will yield non-privileged information responsive to this interrogatory, and therefore Lyft anticipates AGIS's forthcoming supplementation of this response.

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<sup>1</sup> *See* Lyft's First Set of Interrogatories, at 6 (stating that “‘identify’ means to provide a description of the event, the date of the event, the location of the event, and any participants in the event.”)

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**Interrogatory No. 3**

Interrogatory No. 3 seeks an identification and description of “all facts that support or contradict Your contention that You are entitled to costs and attorneys’ fees under 35 U.S.C. § 285.” AGIS objects to this interrogatory for various reasons, including because it allegedly includes “multiple subparts.” See AGIS’s Objections and Responses to Lyft’s First Set of Interrogatories, at 11. Lyft respectfully disagrees. An identification of a fact necessarily includes a description of that fact.<sup>1</sup> Accordingly, this interrogatory properly propounds only a single request. To the extent AGIS intends to rely on any facts supporting its claim for costs and attorneys’ fees, they must be provided in response to this interrogatory.

**Interrogatory No. 4**

Interrogatory No. 4 seeks an identification and description of “all facts that support or contradict the earliest priority date You contend that each Asserted Claim is entitled to.” AGIS objects to this interrogatory for various reasons, including because it allegedly includes “multiple subparts.” See AGIS’s Objections and Responses to Lyft’s First Set of Interrogatories, at 12. Lyft respectfully disagrees. An identification of a fact necessarily includes a description of that fact.<sup>1</sup> Accordingly, this interrogatory properly propounds only a single request.

**Interrogatory No. 5**

Interrogatory No. 5 seeks an identification and description of “all facts that support or contradict Your contention that each Asserted Patent is valid.” AGIS objects to this interrogatory for various reasons, including because it allegedly includes “multiple subparts,” and because the phrases “facts supporting or contradicting subject matter eligibility or definiteness,” and “all facts that support or contradict any secondary considerations of non-obviousness” are allegedly unclear, vague, and/or ambiguous. See AGIS’s Objections and Responses to Lyft’s First Set of Interrogatories, at 14. Lyft respectfully disagrees. Regarding AGIS’s “multiple subparts” objection, an identification of a fact necessarily includes a description of that fact.<sup>1</sup> This interrogatory, therefore, properly propounds only a single request. Regarding AGIS’s clarity objections, AGIS fails to identify what about the complained-of phrases is unclear, vague, and/or ambiguous. Lyft submits that each of “subject matter eligibility,” “definiteness,” and “secondary considerations of non-obviousness” are terms of art that are readily understood by patent holders, as each relates to a patentability requirement.

Additionally, AGIS’s substantive response to Lyft’s Interrogatory No. 5 is deficient at least because it provides mere conclusions without factual underpinning for each statement:

“Each of the Patents-in-Suit is valid and non-obvious in view of the prior art. Both AGIS and Defendant, as well as others in the field including, but not limited to, defendants from prior litigations, have distributed and sold products meeting each of the limitations of the asserted claims of the Asserted Patents, and have been commercially successful in doing so. These products have also been commercially praised. In addition, before the conception of the inventions of the Asserted Patents,

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