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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

19 LYFT, INC.,  
 20 *Plaintiff,*  
 21 v.  
 22 AGIS SOFTWARE DEVELOPMENT LLC,  
 23 *Defendants.*

Case No. 5:21-cv-04653-BLF

**NOTICE OF MOTION AND MOTION TO  
 TRANSFER TO THE UNITED STATES  
 DISTRICT COURT FOR THE EASTERN  
 DISTRICT OF TEXAS PURSUANT TO 28  
 U.S.C. § 1404 (a)**

**Hon. Beth Labson Freeman**

Date: January 27, 2022  
 Time: 9:00 a.m.  
 Location: Courtroom 3

*[Declaration of Vincent J. Rubino, III and  
 exhibits; and Proposed Order filed  
 concurrently herewith]*

**NOTICE OF MOTION AND MOTION TO TRANSFER**

PLEASE TAKE NOTICE that, on January 27, 2022 at 9:00 a.m., or as soon thereafter as the matter may be heard before The Honorable Beth Labson Freeman in the United States District Court for the Northern District of California in the Robert F. Peckham Federal Building & United States Courthouse, Courtroom 3, 5<sup>th</sup> Floor, 280 South 1<sup>st</sup> Street, San Jose, California 95113. Defendant AGIS Software Development LLC (“AGIS Software” or “Defendant”) will and hereby does move the Court to transfer venue to the United States District Court for the Eastern District of Texas pursuant to 28 U.S.C. §1404(a).

This motion is made on the grounds that the Eastern District of Texas could exercise personal jurisdiction over AGIS Software and venue would be proper there pursuant to 28 U.S.C. §§ 1391 and 1400(b). AGIS Software is a limited liability company organized and existing under the laws of the State of Texas, with its principal place of business in Marshall, Texas. AGIS Software is not registered to conduct business in California; does not have a registered agent for service of process in California; does not have offices, employees, equipment, bank accounts, or other assets in California; is not subject to and has never paid taxes in California; does not manufacture or sell products in California; does not solicit or engage in business in California; has not signed contracts in California; does not recruit employees in California; and does not own, lease, or rent any property in California. Additionally, no lawsuit has ever been filed by AGIS Software in California for any reason. The Eastern District of Texas has subject matter jurisdiction over Lyft’s declaratory judgment claims relating to patent infringement under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

The balance of the private factors favors transfer. First, Plaintiff’s choice of forum should be accorded no weight as the first-to-file rule favors transfer. Second, litigation in California is inconvenient for AGIS Software, which is a limited liability company established and existing under the laws of Texas, with its principal place of business in Texas, and transferring this case to the Eastern District of Texas would substantially improve the convenience for AGIS Software and its witnesses. Third, the relative ease of access to sources of proof weighs in favor of transfer, where AGIS Software maintains its documentary evidence in its Marshall, Texas office. Fourth, the

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1 Eastern District of Texas is already familiar with the subject matter and issues and could consolidate  
2 the case with other related cases.

3 The public interest factors also strongly favor transferring this case to the Eastern District of  
4 Texas. A transfer will save judicial resources as Chief Judge Rodney Gilstrap is already familiar  
5 with the technical issues, and transfer would also protect against inconsistent rulings. Chief Judge  
6 Gilstrap has already expended a substantial amount of time and effort becoming familiar with issues  
7 relating to the Patents-in-Suit, as seven cases pending before Chief Judge Gilstrap involve one or  
8 more of the Patents-In-Suit. Similarly, four other cases filed in 2017—involving one of the Patents-  
9 in-Suit—proceeded before Chief Judge Gilstrap from filing through just before the pre-trial  
10 conferences. There is also no dispute that Texas has a substantial local interest in adjudicating this  
11 dispute against AGIS Software, one of its residents. Lastly, the administrative difficulties flowing  
12 from court congestion favors the Eastern District of Texas, where time from filing to trial in the  
13 Eastern District of Texas is less than this District.

14 This motion is based upon this notice of motion, the accompanying declaration and exhibits,  
15 the pleadings and papers filed herein, as well as any other and further matters, papers, and arguments  
16 as may be presented before the Court prior to or at the time of the hearing.

17  
18 DATED: October 5, 2021

Respectfully submitted,

**RUSS AUGUST & KABAT**

By: /s/ Benjamin T. Wang

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*Attorneys for Defendant*  
AGIS Software Development LLC

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1 **I. INTRODUCTION**

2 Defendant AGIS Software Development LLC (“AGIS Software”) moves to transfer this  
3 action under 28 U.S.C. § 1404(a) to the Eastern District of Texas (“E.D. Tex.”). Lyft, Inc. (“Lyft”)  
4 filed this action involving the same patents, issues and parties, nearly five months after AGIS  
5 Software filed its action against *Lyft* in the E.D. Tex. *See* Dkt. 32 at 15-18. Thus, rather than await  
6 a decision regarding whether venue was proper in the first-filed case or whether the first-filed case  
7 should be transferred for convenience, Lyft elected to file a duplicative lawsuit. The parties in the  
8 E.D. Tex case have already begun claim construction, exchanged proposals of terms for  
9 construction, served expert declarations in support of claim construction, and served discovery. *See*  
10 *e.g.*, *AGIS Software Dev. LLC v. T-Mobile USA, Inc.*, Case No. 2:21-cv-72 (E.D. Tex.) (the “*T-*  
11 *Mobile Texas case*”), Dkts. 91-94, Dkts. 102-103, and Dkt. 124. Furthermore, Chief Judge Gilstrap  
12 has already expended a substantial amount of time and effort becoming familiar with issues relating  
13 to the Patents-in-Suit, as seven cases pending before Chief Judge Gilstrap involve one or more of  
14 the Patents-In-Suit. Similarly, four other cases filed in 2017—involving one of the Patents-in-Suit—  
15 proceeded before Chief Judge Gilstrap from filing through just before the pre-trial conferences.  
16 Therefore, transferring this case to E.D. Tex. will conserve judicial resources and avoid parallel  
17 litigation.

18 Transfer will also significantly improve the convenience of parties and witnesses, as AGIS  
19 Software’s key third-party witnesses are located in or near the E.D. Tex. Further, AGIS Software’s  
20 key party witnesses live significantly closer to the E.D. Tex. than to the N.D. Cal. Permitting these  
21 parallel actions to proceed in forums approximately two thousand miles apart presents significant  
22 challenges and would not outweigh the convenience of adjudicating the actions in a single court.  
23 Broadly, the judicial resources, court congestion, and local interest public factors, and the  
24 convenience, access to proof, and feasibility of consolidation private factors strongly favor  
25 transferring this case to the E.D. Tex.

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