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

LYFT, INC.,

Plaintiff,

v.

AGIS SOFTWARE DEVELOPMENT LLC,

Defendant.

Case No. 21-cv-04653-BLF

**ORDER DENYING MOTION TO
TRANSFER TO THE UNITED STATES
DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
PURSUANT TO 28 U.S.C. 1404(A)**

[Re: ECF No. 34]

United States District Court
Northern District of California

Before the Court is AGIS Software Development LLC’s (“AGIS Software”) Motion to Transfer to the United States District Court for the Eastern District of Texas Pursuant to 28 U.S.C. § 1404(a) in this declaratory judgment action brought by Lyft, Inc. (“Lyft”) regarding various AGIS Software patents. Lyft seeks declaratory judgment of non-infringement as to five AGIS Software patents: U.S. Patent Nos. 7,031,728 (“728 Patent”); 7,630,724 (“724 Patent”); 8,213,970 (“970 Patent”); 10,299,100 (“100 Patent”); and 10,341,838 (“838 Patent”) (collectively, the “Asserted Patents” or “Patents-in-Suit”). The Patents-in-Suit generally pertain to mobile applications. AGIS Software previously sued Lyft for infringement of these patents in the Eastern District of Texas, but the suit was dismissed for improper venue. Now AGIS Software seeks to transfer this case to the Eastern District of Texas, citing convenience of witnesses, the familiarity of the Eastern District of Texas court with these patents, AGIS Software’s incorporation and headquarters in the Eastern District of Texas, among other factors. Lyft opposes, citing, *inter alia*, its headquarters in the Northern District of California, its own choice to sue in this forum, and the Eastern District of Texas’s dismissal of AGIS Software’s Texas case.

Based on the below reasoning, the Court DENIES AGIS Software’s motion. The Court

1 jurisdiction over AGIS Software. In a separate ruling, the Complaint was dismissed with leave to
 2 amend to allow Lyft the further opportunity to plead facts sufficient to demonstrate specific
 3 jurisdiction. *See* Order, ECF No. 61. Absent such pleading, this case will be dismissed.

4 **I. BACKGROUND**

5 Lyft is a Delaware limited liability corporation with its principal place of business in
 6 California that provides rideshare services through its software applications. *See* Complaint,
 7 ECF No. 1 ¶¶ 1, 4; *id.*, Ex. A ¶ 11. AGIS Software is a Texas limited liability company with its
 8 principal place of business in Texas. *See* Complaint, ECF No. 1 ¶ 2. Lyft alleges that AGIS
 9 Software is an “agent and alter ego” of Advanced Ground Information Systems, Inc. (“AGIS, Inc.”),
 10 a Florida corporation with its principal place of business in Florida. *See id.* Lyft further alleges that
 11 the sole member of AGIS Software is AGIS Holdings, Inc. (“AGIS Holdings”), a Florida
 12 corporation with its principal place of business at the same Florida location as AGIS, Inc. *See id.*

13 On January 29, 2021, AGIS Software filed a patent infringement action against Lyft in the
 14 Eastern District of Texas regarding the Asserted Patents based on “the Lyft and Lyft Driver
 15 applications and the related services and/or servers for the applications.” *See id.* ¶ 4. The case was
 16 consolidated with AGIS Software’s cases against T-Mobile US, Inc., T-Mobile USA, Inc.
 17 (collectively, “T-Mobile”), Uber Technologies, Inc. (“Uber”), and WhatsApp, Inc. (“WhatsApp”)
 18 before Judge Gilstrap under the caption *AGIS Software Dev. LLC v. T-Mobile USA, Inc.*, No.
 19 2:21-cv-00072-JRG-RSP (E.D. Tex.) (“T-Mobile Texas Case”). On January 19, 2022, Judge
 20 Gilstrap dismissed Lyft from the case for improper venue. *See* T-Mobile Texas Case, ECF No. 334.
 21 AGIS Software’s claims against T-Mobile and WhatsApp in the Eastern District of Texas have been
 22 dismissed. *See id.*, ECF Nos. 169, 220. Further, AGIS Software’s case against Uber has been stayed
 23 pending dismissal following settlement. *See id.*, ECF No. 355.

24 AGIS Software’s patent infringement actions filed in 2021 were the third in a series of patent
 25 infringement litigation campaigns it has brought in the Eastern District of Texas. *See AGIS Software*
 26 *Dev. LLC v. Apple, Inc.*, No. 2:17-cv-516 (E.D. Tex.); *AGIS Software Dev. LLC v. HTC Corp.*,
 27 No. 2:17-cv-514 (E.D. Tex.); *AGIS Software Dev. LLC v. Huawei Device USA Inc., et al.*,

1 (E.D. Tex.); and *AGIS Software Dev. LLC v. LG Elecs., Inc.*, No. 2:17-cv-515 (E.D. Tex.)
 2 (collectively, “AGIS I Cases”); *see also AGIS Software Dev. LLC v. Google LLC*, No. 2:19-cv-361
 3 (E.D. Tex.); *AGIS Software Dev. LLC v. Samsung Elecs. Co., Ltd. et al.*, No. 2:19-cv-362
 4 (E.D. Tex.); and *AGIS Software Dev. LLC v. Waze Mobile Limited*, No. 2:19-cv-359 (E.D. Tex.)
 5 (collectively, “AGIS II Cases”). AGIS Software asserted the ’970 Patent in some of its prior Eastern
 6 District of Texas lawsuits. The AGIS II Cases, which AGIS Software filed in 2019 and one of
 7 which (No. 2:19-cv-361) involves the ’970 Patent, are still pending in the Eastern District of Texas.

8 On June 16, 2021, while AGIS Software’s Eastern District of Texas action against Lyft was
 9 still pending, Lyft filed the present action for declaratory judgment of noninfringement of the same
 10 patents asserted against it in the Texas case. *See* Complaint, ECF No. 1. On September 27, 2021,
 11 AGIS Software moved to dismiss this action under Rule 12(b)(2) for lack of personal jurisdiction,
 12 which the Court granted with leave to amend. *See* ECF Nos. 32, 61. On October 5, 2021, AGIS
 13 Software moved to transfer this action to the Eastern District of Texas. *See* Motion, ECF No. 34.

14 AGIS Software argues that this case should be transferred to the Eastern District of Texas
 15 because (1) this action could have been brought there; (2) judicial economy favors transfer because
 16 Judge Gilstrap is familiar with the Asserted Patents; (3) the Eastern District of Texas is more
 17 convenient for the parties, party witnesses, and third-party witnesses; (4) sources of proof are located
 18 in both the Northern District of California and the Eastern District of Texas and can easily be
 19 transferred electronically; (5) Northern District of California courts are more congested than Eastern
 20 District of Texas courts; and (6) Texas has a substantial local interest in adjudicating a case involving
 21 a Texas corporation like AGIS Software. *See* Motion, ECF No. 34; Reply, ECF No. 50. In response,
 22 Lyft argues that transfer is unwarranted since (1) the interest of justice weighs against transferring
 23 to the Eastern District of Texas since Judge Gilstrap already dismissed the patent infringement
 24 action in that district; (2) Lyft’s choice of forum takes precedence; (3) the convenience of the parties,
 25 party witnesses, and third-party witnesses weighs against transfer; (4) the bulk of relevant evidence
 26 is in the Northern District of California where the Accused Products were developed; and (5) the
 27 Northern District of California has a substantial interest in a controversy involving a resident
 28 company like Lyft. *See* Opposition, ECF No. 40.

II. LEGAL STANDARD

1 A district court may transfer a case in the interest of justice for the convenience of the parties
 2 and of the witnesses. 28 U.S.C. § 1404(a). In a case not involving a forum-selection clause, a
 3 district court considering a § 1404(a) motion “must evaluate both the convenience of the parties and
 4 various public-interest considerations.” *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of*
 5 *Texas*, 571 U.S. 49, 62 (2013). The parties’ convenience and other private interests entail
 6 consideration of a number of factors including the plaintiff’s choice of forum, the parties’ contacts
 7 with the forum, the contacts relating to the plaintiff’s claims in the chosen forum, the “relative ease
 8 of access to sources of proof; availability of compulsory process for attendance of unwilling, and
 9 the cost of obtaining attendance of willing, witnesses; . . . and all other practical problems that make
 10 trial of a case easy, expeditious and inexpensive.” *Id.* at 62 n.6 (quoting *Piper Aircraft Co. v. Reyno*,
 11 454 U.S. 235, 241 n.6 (1981)); *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498–99 (9th Cir.
 12 2000). “Public-interest factors may include ‘the administrative difficulties flowing from court
 13 congestion; the local interest in having localized controversies decided at home; [and] the interest
 14 in having the trial of a diversity case in a forum that is at home with the law.’” *Atl. Marine*, 571 U.S.
 15 at 62 n.6 (quoting *Piper Aircraft*, 454 U.S. at 241 n.6) (alteration in original).

16 A transfer is not appropriate if it “merely shift[s] rather than eliminate[s] the inconvenience.”
 17 *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). The party
 18 seeking to transfer a case bears the burden of demonstrating that the balance of convenience and
 19 interests of justice factors “clearly favor transfer.” *Lax v. Toyota Motor Corp.*, 65 F.Supp.3d 772,
 20 781 (N.D. Cal. 2014).

III. DISCUSSION

21 The parties dispute whether two categories of factors favor transfer to the Eastern District of
 22 Texas: (1) private interest factors and (2) public interest factors. The Court considers each category
 23 of factors in turn.
 24

A. Private Interest Factors

25 The Court first considers the “private interest factors” disputed by the parties. *Atl. Marine*,
 26 571 U.S. at 62 n.6. The parties dispute whether (1) Lyft’s choice of forum; (2) convenience for the
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1 parties and party witnesses; (3) convenience for third-party witnesses; (4) the relative ease of access
2 to sources of proof favor transfer to the Eastern District of Texas; and (5) the cost of litigation. The
3 Court considers each factor in turn.

4 **i. Plaintiff's Choice of Forum**

5 The parties dispute whether Lyft's choice of the Northern District of California in filing this
6 declaratory judgment action weighs against transfer. A plaintiff's choice of forum is normally
7 entitled to "substantial weight." *See Fitbit, Inc. v. Koninklijke Philips N.V.*, 336 F.R.D. 574, 588
8 (N.D. Cal. Aug. 26, 2020) (citing *Williams v. Bowman*, 157 F.Supp.2d 1103 (N.D. Cal. 2001)); *Lou*
9 *v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987). In patent actions, courts generally discount a
10 plaintiff's choice of forum when "the central facts of the lawsuit occur[red] outside the plaintiff's
11 chosen forum." *See id.* (quoting *Sorensen v. Daimler Chrysler AG*, No. C 02-4752 MMC,
12 2003 WL 1888866, at *3 (N.D. Cal. Apr. 11, 2003)). A defendant must make a "strong showing of
13 inconvenience to warrant upsetting the plaintiff's choice of forum." *Decker Coal*, 805 F.2d at 843.

14 AGIS Software argues that Lyft's choice of forum should be accorded no weight because
15 Lyft filed this duplicative declaratory judgment case nearly five months after AGIS Software filed
16 its infringement suit in the Eastern District of Texas. *See* Motion, ECF No. 34 at 6-7. Lyft argues
17 that courts give deference to a plaintiff's choice of forum unless the operative facts did not occur
18 there and the forum has no interest in the parties or the subject matter. *See* Opposition, ECF No. 49
19 at 4-5. Lyft argues that no such exception applies here, given that Lyft is based in and developed
20 the Accused Products in the Northern District of California. *See id.*

21 The Court agrees with Lyft. AGIS Software's Texas suit against Lyft has been dismissed,
22 and AGIS Software fails to point to any authority that first-to-file considerations should outweigh
23 Lyft's choice of forum in such a circumstance. Lyft provides ample authority that a plaintiff's
24 choice of forum is generally afforded deference, particularly in this case where Lyft is at home in
25 the forum and the accused products were developed here. *See Rare Breed Distilling v. Heaven Hill*
26 *Distilleries*, No. C-09-04728 EDL, 2010 WL 335658, at *3 (N.D. Cal. Jan. 22, 2010) ("Plaintiff's
27 choice of forum weighs heavily against transfer. This is especially true when a plaintiff chooses to
28 sue in its home state."); *Fitbit*, 336 F.R.D. at 580; *Beifang Chemical Fertilizer Co. v. Bayer Crop*

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