

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

AGIS SOFTWARE DEVELOPMENT, LLC

Plaintiff,

v.

HUAWEI DEVICE USA INC., HUAWEI  
DEVICE CO., LTD. AND HUAWEI DEVICE  
(DONGGUAN) CO., LTD.

Defendants.

LEAD CASE NO. 2:17-cv-513-JRG

**JURY TRIAL DEMANDED**

**DEFENDANTS' REPLY TO PLAINTIFF AGIS SOFTWARE DEVELOPMENT, LLC'S  
RESPONSE TO DEFENDANTS' MOTION TO TRANSFER VENUE  
TO THE NORTHERN DISTRICT OF CALIFORNIA**

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## I. INTRODUCTION

In opposing transfer, AGIS does not dispute the following facts demonstrating that the Northern District of California (NDCA) is the more convenient forum: (1) AGIS was formed in anticipation of litigation to manufacture venue in this District; (2) Huawei's relevant operations and evidence are all located in California or on the West Coast; (3) Google, whose software is the *only* identified basis for AGIS's claims, is located in NDCA and its evidence is located in that district; and (4) nearly all known party witnesses and documents for both AGIS and Huawei are located outside this District. Accordingly, the private factors clearly favor transfer.

Instead, AGIS argues that this Court should refuse transfer because this case "really" is about the physical devices sold by Huawei, not Google's software. AGIS's own infringement contentions – which only describe the operation of Google's software – contradict this claim. AGIS also argues that it has significant contacts with this District, but in so doing merely reveals that its business operations are based in Florida and any witnesses or documents in this District are either irrelevant to this case and/or moved to this District to manipulate venue.

AGIS's argument regarding judicial economy fares no better. AGIS claims that because it has filed multiple lawsuits in this District at the same time, it would be more convenient and efficient for all of the cases to remain here. AGIS's argument turns venue analysis on its head, and suggests that AGIS should be allowed to proceed in an improper and inconvenient forum simply because it has sued multiple defendants in the wrong place.<sup>1</sup> That is not the law.

## II. NDCA IS CLEARLY A MORE CONVENIENT FORUM

*Convenience of the Witnesses.* NDCA is a more convenient forum for all known and

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<sup>1</sup> AGIS's forum shopping is undoubtedly intentional as AGIS, Inc. unsuccessfully asserted related patents and was ordered to pay attorneys' fees in Florida. *Advanced Ground Information Sys., Inc. v. Life360, Inc.*, No. 14-cv-80651, 2015 WL 11401854 (S.D. Fla. Dec. 1, 2015).

likely third-party witnesses, particularly Google. AGIS does not contest that Huawei has identified key Google witnesses and documents within NDCA.<sup>2</sup> Instead, AGIS asserts that its infringement claims are based on Huawei's *hardware* and that information regarding the function of Google's software is publicly available.<sup>3</sup> (D.I. 56 at 1, 5-6.) Neither is true. AGIS mentions Google no less than 54 times in its Amended Complaint, and its claims require only a generic "device" with standard smartphone attributes, *e.g.*, "display." (D.I. 20.) Indeed, the *only* particularized functionality identified in its infringement contentions are two Google software applications – Find My Device and Location Sharing through Google maps and other applications. (Lee Decl., Ex. 1).<sup>4</sup> AGIS's initial disclosures expressly state that "the Huawei Accused Products infringe [the Patents-In-Suit] because they include, among other things, at least the *features implemented in* [the accused Google applications]" and that the devices are "programmed, at least through . . . Google Maps, and/or Find My Device, to facilitate the communication of location information." (*Id.*, Ex. 2 at 13-19 (emphasis added).) AGIS cannot base its *entire* case on Google's software and now claim that Google's witnesses are irrelevant.

Relevant party witnesses likewise are not located in this District, and are primarily located in or near NDCA. In its moving papers, Huawei demonstrated that its relevant business operations for the accused functionality are in California and that its two party witnesses – Yao

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<sup>2</sup> AGIS also speculates that Google's Austin office -- located outside this District -- has personnel with information relevant to its infringement claims. To the contrary, there are no relevant Google witnesses in Austin for the Google functionality identified in AGIS's infringement contentions. (Oplinger Reply Decl., ¶ 2; Luh Reply Decl., ¶ 2.)

<sup>3</sup> AGIS's assertions that mobile carriers (such as AT&T, Sprint and Verizon) "will provide information about the value of the accused [Google] software" (D.I. 56 at 6, 13) is self-serving speculation. Such carriers have no responsibility for the development and maintenance of those applications, and AGIS offers zero proof to suggest otherwise.

<sup>4</sup> AGIS's argument that its contentions "rely only on publically available open source code or public APIs" (D.I. 56 at 9) is a misleading and incorrect. The supporting Google declarations make clear that the accused applications are not open source but rather highly confidential and non-public. (Oplinger Reply Decl., ¶ 3; Luh Reply Decl., ¶ 3.)

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