

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

AGIS SOFTWARE DEVELOPMENT, LLC,

Plaintiff,

v.

HTC CORPORATION,

Defendant.

**CASE NO. 2:17-CV-0514-JRG
(LEAD CASE)**

JURY TRIAL DEMANDED

**DEFENDANT HTC CORPORATION'S REPLY IN SUPPORT OF ITS MOTION TO
RECONSIDER DENIAL OF MOTION TO TRANSFER VENUE PURSUANT TO 28
U.S.C. § 1404(A) TO THE NORTHERN DISTRICT OF CALIFORNIA (DKT. NO. 77)**

[REDACTED] (*Id.*) [REDACTED]
[REDACTED] (*See Id.* at 4–5 (collecting deposition citations showing that [REDACTED]
[REDACTED]
[REDACTED]).) AGIS’s office in this District supposedly contains its “books and records,” [REDACTED]
[REDACTED]. (*See Id.* at 5 (citing deposition transcript of Malcom Beyer at 518:2–525:18 and 550:22–551:23).) Thus, AGIS’s presence in this District amounts to an office that has no one in it, and that was specifically designed for no one to be there.

More troublesome, AGIS’s statement that it “employs individuals that reside in Texas” is outright false. We now know that [REDACTED]. (*See Mot. II* at 5 (collecting deposition citations showing that [REDACTED]).) Compounding its malfeasance, AGIS used this misstatement to distinguish precedent cited by HTC Corp. on the ground that the precedent involved a case “where the plaintiff had no employees in Texas.” (*Opp’n I* at 29.)

AGIS, after having been called out for this very misrepresentation in HTC Corp.’s opening paper (*see Mot. II* at 8), had the audacity to tell the Court that “HTC does not identify any inconsistencies in the facts presented by AGIS.” AGIS made a statement that was demonstrably false; it did so to distinguish precedent and convince this Court to find local interests in adjudicating this dispute. The Court did so, and found that the local interests factor weighed against transfer. (*See Order* at 20–21.) AGIS’s misrepresentation thus materially contributed to the outcome of the Order. This alone is sufficient reason for the Court to reconsider the Order and now reach the opposite outcome.

B. AGIS Presents Several Irrelevant Arguments and Facts in an Attempt to Distract from Its Conduct.

AGIS splatters the record with arguments and facts that are unresponsive to HTC Corp.'s Motion, and are otherwise irrelevant.

After claiming that facts exist that contradict HTC Corp.'s characterizations, AGIS leads with this: [REDACTED] (Opp'n II at 11 (citing deposition transcript of Mr. Armstrong).) Three other times AGIS highlights this supposedly contradictory evidence about [REDACTED] [REDACTED] (Opp'n II at 2, 7, 10.) But AGIS never explains what is contradictory about this evidence. HTC Corp. has never made any representations about [REDACTED] [REDACTED] (See Mot. II at 3, 10, 13.) While [REDACTED] came up during questioning by counsel for co-defendant LG based on papers filed in relation to venue transfer for LG (Ex. 1, Armstrong Dep. Tr. at 217:23–220:12), this has nothing to do with HTC Corp. This is a strawman argument that AGIS erected and then four times struck down.

Several portions of Margaret Beyer's deposition testimony that AGIS criticizes HTC Corp. for not citing, ironically, only further prove the lack of legitimate ties to this District. Mrs. Beyer admitted that [REDACTED]. (Ex. 2, Margaret Beyer Dep. Tr. at 37:14–15.) As to the "books and records" in this District, Mrs. Beyer could state only that [REDACTED]" (*Id.* at 37:17–18.) When pressed further, Mrs. Beyer clarified that the only documents she could identify are [REDACTED] [REDACTED] (*Id.* at 47:10–49:11.) Regarding the office, Mrs. Beyer explained that [REDACTED] [REDACTED] (*Id.* at 39:16–40:14.) Mrs. Beyer also described the

remote-operation of the office. (*Id.* at 37:19–25 (“ [REDACTED]
[REDACTED] ”).)

While Mrs. Beyer admittedly does provide a narrative that AGIS opened its office in this District [REDACTED] (Opp’n II at 11), that narrative is overwhelmingly contradicted by other, verifiable facts: For example: AGIS was created and was assigned the patents in the two weeks prior to this suit; despite plans of growth, [REDACTED]
[REDACTED]; and [REDACTED]
[REDACTED] (Mot. II at 5, 8.) In sum, Mrs. Beyer tells an unverifiable, self-serving narrative contradicted by verifiable facts.

None of the other supposed factual omissions by HTC Corp. related to Mrs. Beyer are relevant. As to her testimony about Mr. Sietsema (Opp’n II at 2), that testimony is wholly irrelevant to HTC Corp.’s Motion. HTC Corp.’s only representation with respect to Mr. Sietsema is that [REDACTED], per AGIS’s agreement (*see* Mot. II at 10), which Mrs. Beyer does not contradict. Regarding “the company’s long-standing ties to Texas and the District” (Opp’n II at 2), Mrs. Beyer gave no testimony as to ties between the plaintiff in this case, AGIS, and this District, other than its [REDACTED]

None of the supposed factual omissions by HTC Corp. related to Mr. Blackwell are relevant, or in some cases even existent. First, as to Mr. Blackwell’s testimony [REDACTED]
[REDACTED] (Opp’n II at 11 (citing Blackwell Dep. Tr. at 79:25–80:2)), Mr. Blackwell testified to no such thing. He testified as follows: “[REDACTED]
[REDACTED]” (*See* Ex. I to Opp’n II, Blackwell Dep. Tr. at 79:21–80:2.) Hence, Mr. Blackwell appears to have

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