

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

AGIS SOFTWARE DEVELOPMENT, LLC,

Plaintiff,

vs.

HTC CORPORATION,

Defendant.

**CIVIL ACTION NO. 2:17-cv-514-JRG
(LEAD)**

JURY TRIAL DEMANDED

**DEFENDANT HTC CORPORATION'S REPLY IN SUPPORT OF ITS MOTION TO
DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(2) OR, IN THE ALTERNATIVE,
TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(A) TO THE NORTHERN
DISTRICT OF CALIFORNIA**

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AGIS's Complaint and Opposition fail to set forth the legal and factual justification that would allow this Court to exercise personal jurisdiction over HTC Corporation. AGIS relies on the existence of smartphones in Texas, but the exercise of personal jurisdiction requires more. It requires either: (a) purposeful conduct directed towards Texas, or (b) foreseeability or awareness that a product would wind up in Texas. Personal jurisdiction is improper here under either test.

Moreover, the NDCAL is clearly the most convenient forum for third-party Google, AGIS's third-party prosecuting attorney, third party HTC America, and HTC Corp. Despite AGIS's attempt to downplay Google's relevance, the record makes clear that Google, its applications, and its witnesses are critical and central to AGIS's infringement case. AGIS, on the other hand, has identified only one party witness that would find trial in the EDTEX more convenient. But this individual is unlikely to have relevant information. All factors in the venue analysis weigh heavily in favor of transferring this case to the NDCAL.

I. Personal jurisdiction over HTC Corp. is improper

AGIS does not dispute that specific or general personal jurisdiction is improper. Instead, AGIS relies on the stream of commerce theory and argues that HTC Corp.'s smartphones end up in Texas through a "distribution network." D.I. 40 at 11-17. AGIS argues that smartphones exist in Texas, but does not articulate or allege¹ that HTC Corp. had: (a) purposeful conduct relating to or (b) had foreseeability or awareness of, smartphone sales in Texas as required under either the J. O'Connor or J. Brennan *Asahi* tests.² The fact that some HTC Corp. smartphones may end up in Texas, or that HTC Corp. knowingly sells to the United States, is insufficient for a specific

¹ AGIS states that HTC Corp. admitted that it has awareness of sales in Texas. *See* D.I. 40 at 13 and 15 (citing D.I. 29 at 12 and 13). There are no such admissions, however.

² *Asahi Metal Indus. Co. v. Super. Ct. of Cal., Solano Cty.*, 480 U.S. 102, 112, 117 (1987).

forum to exercise personal jurisdiction under the stream of commerce test.³

AGIS's cited authority is unavailing because each cited fact pattern had the critical O'Connor/Brennan *Asahi* components (purposeful conduct/foreseeability or awareness) that AGIS lacks in this case. In *IDQ Operating, Inc. v. Aerospace Commc'ns Holdings Co.*, the defendant sold directly to Walmart with the knowledge that its products would be sold in Texas. 2016 WL 5349488, *4 (E.D. Tex. 2016). *MHL Tek, LLC v. Nissan Motor Co.* involved an established all-BMW distribution chain, where BMWMC sold to BMW AG, who then sold to BMWNA, who then distributed to Texas. 2008 WL 910012, *1 (E.D. Tex. 2008). It was clear that BMWMC knew that its cars were being sold in Texas through its own distribution chain. In *Beverly Hills Fan Co. v. Royal Sovereign Corp.*, defendant shipped products through its established distribution channel to Virginia, showing both a purposeful act and clear knowledge. 21 F.3d 1558, 1565 (1994). Here, in contrast, HTC America imports from HTC Corp., and HTC America provides phones to third-parties. What those third parties do is outside of HTC Corp.'s guidance or control.

All that AGIS has argued in this case is that HTC Corp. sells to HTC America and that HTC America sells to resellers. This is not enough for a court to exercise personal jurisdiction.

II. The NDCAL is clearly the more convenient forum

A. The NDCAL is more convenient for third parties

AGIS does not contest that the NDCAL is more convenient for third-party witnesses from Google and HTC America, or Mr. Burns (the prosecuting attorney of '055, '838, and '251 patents). Instead, AGIS downplays their importance. But the facts of AGIS's case-in-chief belie its venue-inspired arguments. Google and HTC America are central to AGIS's infringement and

³ The fact that the Delaware court may have felt it had sufficient evidence to establish purposeful conduct, foreseeability, or awareness of sales in Delaware is not relevant to conduct in Texas.

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