

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

AGIS SOFTWARE DEVELOPMENT LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
HTC CORPORATION,	§	Civil Action No. 2:17-CV-514-JRG
LG ELECTRONICS, INC.,	§	(Lead Case)
ZTE CORPORATION, ZTE (USA), INC.,	§	
AND ZTE (TX), INC.	§	Civil Action No. 2:17-CV-515-JRG
	§	Civil Action No. 2:17-CV-517-JRG
Defendants.	§	

**ORDER GRANTING DEFENDANT LG ELECTRONICS, INC.'S  
OPPOSED MOTION FOR LEAVE TO FILE MOTION TO SUPPLEMENT THE  
RECORD IN SUPPORT OF ITS MOTION TO TRANSFER VENUE TO THE  
NORTHERN DISTRICT OF CALIFORNIA**

Before the Court is Defendant LG Electronics, Inc.'s ("LG Korea") Opposed Motion for Leave to File Motion to Supplement the Record in Support of Its Motion to Transfer Venue to the Northern District of California (the "Motion"). (2:17-cv-514, Dkt. No. 65.) Having considered the Motion, the Court is of the opinion that it should be and hereby is **GRANTED** for the reasons set forth herein.

On June 21, 2017, Plaintiff AGIS Software Development LLC ("AGIS") filed suit against LG Korea. (2:17-cv-515, Dkt. No. 1.) On October 25, 2017, the Court consolidated the instant action with a related action filed by AGIS against Huawei Device USA, Inc., Huawei Device Co., Ltd., and Huawei Device (Dongguan) Co., Ltd. (the "*Huawei* case") (2:17-cv-513, Dkt. No. 20.) On November 27, 2017, LG Korea filed a Motion to Dismiss for Lack of Personal Jurisdiction or, in the Alternative, to Transfer Venue to the Northern District of California (the "Motion to Dismiss or Transfer"). (2:17-cv-513, Dkt. No. 46.) The Court held

an evidentiary hearing on the Motion to Dismiss or Transfer on August 8, 2018. (2:17-cv-513, Dkt. No. 176.) On August 22, 2018, the Court unconsolidated the instant action from the *Huawei* case and reconsolidated this case, *AGIS Software Development LLC v. LG Electronics, Inc.*, 2:17-cv-515 and *AGIS Software Development LLC v. ZTE Corporation*, 2:17-cv-517 under a new lead case, *AGIS Software Development LLC v. HTC Corporation*, 2:17-cv-514. (2:17-cv-515, Dkt. No. 25.)

On September 4, 2018, LG Korea moved for leave to file a motion to supplement the record in support of its pending Motion to Dismiss or Transfer. (2:17-cv-514, Dkt. No. 65.) LG Korea states that in support of its Motion to Dismiss or Transfer it “submitted evidence that the core of the accused applications in this case is provided by third-party Google LLC (“Google”), and the relevant witnesses and information about those functionalities are located in and around Northern California.” (*Id.* at 4.) In opposition to that motion, AGIS “dismissed the relevance, location and convenience of non-party Google” because it claimed that its “infringement claims against [LG Korea] were premised on and provable through use of ‘publicly available’ Android operating system source code and other information.” (*Id.*) (internal citations omitted) LG Korea submits, however, that “on August 23, 2018 and August 29, 2018, [AGIS] served subpoenas *decus tecum* on Google in both of the consolidated cases against Android Defendants, *AGIS Software Development LLC v. Huawei Device USA Inc., et al.*, No. 2:17-cv-513 (E.D. Tex.) and *AGIS Software Development LLC v. HTC Corp.*, No. 2:17-cv-514 (E.D. Tex.)” (*Id.* at 5.) These subpoenas were served on Google in the Northern District of California. They seek testimony and documents about Google’s confidential source code for Google Maps and Find my Device as well as the “operation, design, development, functionality, features, testing, and manufacture for portions of Google Maps and Find My Device related to the accused features.” (*Id.*) LG Korea argues that this is “precisely the information AGIS previously represented wasn’t relevant to its infringement theories,” and therefore confirms that there are relevant sources of proof and witnesses located in the Northern District of California. (*Id.*)


AGIS argues that “[a]t the Evidentiary Hearing held on August 8, 2018, AGIS represented that it ‘may take discovery of Google with respect to any proprietary Google application material that’s not in . . . the public information,’ and so ‘the record already indicate[s] that AGIS may seek such information from Google.’” (Dkt. No. 67 at 1.) No further supplementation is required. (*Id.*) In addition, LG Korea listed witnesses from Google LLC on its initial disclosures and “AGIS is entitled to seek discovery” from such witnesses. (*Id.*)

In response, LG Korea points out that “AGIS’s full statement at the evidentiary hearing was that “we don’t think we need it at this point in time, but there may be, and we may take discovery of Google with respect to any proprietary Google application material that’s not in the [] public information.” (Dkt. No. 68 at 1.) As such, LG Korea argues that “AGIS fully intended to create the impression that, [As of August 8] for transfer, it did not need discovery from third-party Google (in California).” (*Id.*) AGIS’s subpoenas on Google, however, “confirm[] that AGIS was being misleading” and that Google’s documents and witnesses located in the Northern District of California are relevant to this case. (*Id.* at 2.)

This Court has broad discretion to allow a party to supplement the record when resolving a challenge to proper venue. *See, e.g., Auto-Dimensions LLC v. Dessault Sys. SolidWorks Corp.*, No. 6:12-cv-1022, 2013 WL 12213014 (E.D. Tex. Oct. 9, 2013) (granting motion for leave to supplement record on motion to transfer venue); *Innovative Global Sys. LLC v. OnStar, LLC*, No. 6:10-CV-574, 2012 WL 12930885 (E.D. Tex. Feb. 14, 2012) (same). Having considered the Parties’ briefing, the Court finds that the subpoena notices served on Google may assist the Court’s consideration of LG Korea’s Motion to Dismiss or Transfer. (Dkt. No. 66 at 5.) The Court therefore **GRANTS** LG Korea’s Motion and it is **ORDERED** that LG Korea shall have leave to file a motion to supplement the record in support of its motion to transfer venue to the Northern District of California. Per Local Rule CV-7(k), LG Korea’s Motion to Supplement the Record in Support of Its Motion to Transfer Venue to the Northern District of California is deemed to have been filed on September 4, 2018 (the “Underlying Motion”). (Dkt. No. 66.) Leave having been granted herein, it is **FURTHER ORDERED** that

responsive briefing from AGIS to the merits of the motion to supplement be filed within three days of the issuance of this order.

**So ORDERED and SIGNED this 19th day of September, 2018.**

  
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RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE