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Plaintiff AGIS Software Development LLC (“AGIS”), by and through its undersigned counsel, submits this response in opposition to HTC Corporation’s (“HTC”) Motion to Supplement the Record in support of its pending Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2) or, in the Alternative, to Transfer Venue to the Northern District of California (514 Dkt. 29).

### **I. BACKGROUND**

HTC’s motion to supplement the record on its motion to transfer venue should be denied because HTC is seeking to capitalize on its own failure to provide adequate discovery to AGIS about the features and functionalities of the accused infringing applications. AGIS has attempted for months to obtain the information it needs from HTC itself, only to be stonewalled by HTC, which has failed and refused to provide the relevant discovery and denies that it has such information. Relevant portions of HTC’s Objections and Responses to AGIS’s First Set of Interrogatories 1-10 are annexed as Exhibit A. AGIS has effectively been forced to seek that information via deposition and document subpoenas served on non-party Google LLC (“Google”). HTC now seizes upon that, disingenuously arguing that this somehow “undermines the credibility of its previous efforts to discount the relevance of Google’s witnesses, source code and other information to this action” and that this supports the transfer of this action to the Northern District of California pursuant to 28 U.S.C. § 1404(a). (514 Dkt. 71 at 3). To be clear, AGIS has not, on its own, acknowledged that Google possesses the relevant information or that Google witnesses are knowledgeable of the relevant facts. AGIS simply has had no choice but to serve Google with a document and deposition subpoena in the hope of obtaining what HTC has refused to provide.

HTC should not now be permitted to take advantage of its own failure to produce as a guise to strengthen its case for a transfer of venue to what HTC perceives will be a more favorable forum.

The thrust of HTC's motion is that AGIS's subpoena, addressed to Google's Mountain View, California headquarters, is proof positive that this action should be transferred to the Northern District of California. This is simply not the case. There is no evidence before this Court as to what responsive documents and witness testimony Google possesses, merely the cursory declarations from two Google employees submitted by Huawei in support of its motion months ago. *See* 513 Dkt. 36-4; Dkt. 36-5. Most telling is the fact that in response to AGIS's subpoenas, Google objected and refused to produce the relevant information *on the grounds that the information is or may be in HTC's possession*. *See* Google LLC's Objections and Responses to Plaintiff AGIS Software Development, LLC's Deposition and Document Subpoenas (hereinafter, "Google's Objections and Responses"), a copy of which is annexed as Exhibit B.<sup>1</sup> AGIS is thus caught in the middle, between HTC and Google, neither of whom is willing to produce information about the accused applications. HTC has not identified any documents or witnesses in the proposed transferee district that are central to the outcome of this case, that so dramatically tip the balance of the public and private interest factors as to justify transfer of venue at this time.<sup>2</sup>

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<sup>1</sup> Specifically, Google objected to the subpoena "to the extent that it requests documents or information that can be requested with much less burden from one or more parties to the litigation. In particular, Google objects to producing documents duplicative of those the named-defendants have [sic] already produced or may produce in their respective litigations." *See* Google's Objections and Responses at ¶ 7.

<sup>2</sup> The only evidence HTC points to in support of its contention that Google has relevant information and that it is located in the Northern District of California are the declarations of Google employees Messrs. Andrew Oplinger and William Luh submitted with Huawei Device (Dongguan) Co., Ltd.'s ("Huawei") Motion to Transfer Venue. (513 Dkt. 36-4; Dkt 35-5). This Court has already considered *the same declarations* in connection with Huawei's Motion to Transfer Venue and found, "[n]otably, Huawei does not identify with any particularity any

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