

**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

JURY TRIAL DEMANDED

ORDER

Before the Court is Defendant HTC Corporation's ("HTC") Opposed 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 to the Northern District of California (the "Motion to Supplement"). (Dkt. No. 71.) Having considered the Motion to Supplement, the Court is of the opinion that it should be and hereby is **GRANTED** to the extent and for the reasons set forth herein.


In its Motion to Supplement, HTC submits that on August 23, 2018 and August 29, 2018, Plaintiff AGIS Software Development LLC ("AGIS") served subpoenas *duces 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 2.) These subpoenas were served on Google in the Northern District of California. They sought testimony and documents about Google's confidential source code for Google Maps and Find My Device as well as other related technical documents. (*Id.* at 2-3.) HTC argues that these subpoenas "will advance the Court's consideration of the transfer venue motion by, *inter alia*, demonstrating that the relative ease of access to sources of proof and convenience for witnesses factors favor transfer, and confirming that AGIS's arguments downplaying the

relevance of Google's documents and witnesses was an argument of convenience during transfer briefing that AGIS has abandoned now that it actually must litigate the merits of its claims." (*Id.* at 4.)

In opposition, AGIS argues that HTC's Motion to Supplement should be denied because "AGIS's subpoena to Google contributes nothing to the quantum of proof before the Court on the merits of the underlying motion to transfer venue," and "HTC has not demonstrated that this would materially affect the outcome of the decision as to transfer venue." (Dkt. 74 at 4.) Moreover, AGIS argues that it has never stated "that it would not seek the discovery of Google with respect to any proprietary Google application material," despite HTC's arguments to the contrary. (*Id.* at 6.) AGIS submits that HTC has refused to produce relevant discovery to AGIS, and thus AGIS was forced to seek discovery from Google. (*Id.* at 2.)

On balance, the Court finds that the subpoena notices served on Google will assist the Court's consideration of HTC's pending Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2) or, in the Alternative, to Transfer to the Northern District of California. (Dkt. No. 29.) Accordingly, the Court hereby **GRANTS** HTC's Motion to Supplement and it is **ORDERED** that the Google Subpoenas attached as Exhibit A to the Motion to Supplement, (Dkt. No. 71-1), be forthwith **FILED** by the Clerk as part of the record for this case.

So ORDERED and SIGNED this 26th day of September, 2018.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE