

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

AGIS SOFTWARE DEVELOPMENT LLC §
v. § CIVIL ACTION NO. 2:21-cv-00072-JRG-RSP
T-MOBILE USA, INC. and T-MOBILE § LEAD CASE
US, INC. §

**ORDER FOCUSING PATENT CLAIMS AND PRIOR ART TO REDUCE COSTS
WITH RESPECT TO CERTAIN PATENTS**

In accordance with the Joint Motion (**Dkt. No. 112**), which the Court **GRANTS**, the Court **ORDERS** as follows:

1. This Order supplements all other discovery rules and orders. It streamlines the issues in this case to promote a “just, speedy, and inexpensive determination” of this action, as provided by Federal Rule of Civil Procedure 1.

Phased Limits on Asserted Claims and Prior Art References

2. By August 24, 2021, the patent claimant shall serve a Preliminary Election of Asserted Claims with respect to U.S. Patent No. 9,408,055, U.S. Patent No. 9,445,251, U.S. Patent No. 9,467,838, and U.S. Patent No. 9,749,829 (the “WhatsApp/T-Mobile Only Patents”), which shall assert no more than ten claims from each WhatsApp/T-Mobile Only Patent and not more than a total of 32 claims. Not later than September 7, 2021, the patent defendant shall serve a Preliminary Election of Asserted Prior Art, which shall assert no more than twelve prior art references against each WhatsApp/T-Mobile Only Patent and not more than a total of 40 references.¹

¹ For purposes of this Order, a prior art instrumentality (such as a device or process) and associated references that describe that instrumentality shall count as one reference, as shall the closely related work of a single prior artist.

3. Not later than October 1, 2021, the patent claimant shall serve a Final Election of Asserted Claims, which shall identify no more than five asserted claims per patent from among the ten previously identified claims and no more than a total of 16 claims. By October 29, 2021, the patent defendant shall serve a Final Election of Asserted Prior Art, which shall identify no more than six asserted prior art references per patent from among the twelve prior art references previously identified for that particular patent and no more than a total of 20 references. For the purposes of this Final Election of Asserted Prior Art, each obviousness combination counts as a separate prior art reference.

4. If the patent claimant asserts infringement of only one patent, all per-patent limits in this order are increased by 50%, rounding up.

Modification of this Order

5. Subject to Court approval, the parties may modify this Order by Agreement, but should endeavor to limit the asserted claims and prior art references to the greatest extent possible. Absent agreement, post-entry motions to modify this Order's numerical limits on asserted claims and prior art references must demonstrate good cause warranting the modification. Motions to modify other portions of this Order are committed to the sound discretion of the Court.²

SIGNED this 9th day of August, 2021.


ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

² This Order contemplates that the parties and the Court may further narrow the issues during pretrial proceedings in order to present a manageable case at trial.