

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

AGIS SOFTWARE DEVELOPMENT LLC, §
v. § CASE NO. 2:21-cv-00072-JRG
T-MOBILE USA, INC., AND T-MOBILE § (Lead Case)
US, INC. §

AGIS SOFTWARE DEVELOPMENT LLC, §
v. § CASE NO. 2:21-cv-00024-JRG
LYFT, INC. § (Member Case)

AGIS SOFTWARE DEVELOPMENT LLC, §
v. § CASE NO. 2:21-cv-00026-JRG
UBER TECHNOLOGIES, INC., § (Member Case)
d/b/a UBER, §

AGIS SOFTWARE DEVELOPMENT LLC, §
v. § CASE NO. 2:21-cv-00029-JRG
WHATSAPP, INC. § (Member Case)

**DEFENDANT UBER TECHNOLOGIES, INC.'S OPPOSED MOTION TO
COMPEL AND RENEWED MOTION TO STAY**

I. INTRODUCTION AND BACKGROUND

Defendant Uber Technologies, Inc. (“Uber”) respectfully requests that the Court order Plaintiff AGIS Software Development LLC (“AGIS”) to produce all information upon which it will rely to establish that it *alone* has standing to assert U.S. Patent Nos. 7,630,724 (“724 Patent”), 10,299,100 (“100 Patent”), and 10,341,838 (“838 Patent”) (“Contested Patents”) within one week from the date of the Court’s order.

Standing is a threshold issue. As such, in a Motion to Stay filed April 23, 2021, Uber notified the Court that it believed that one of the two co-inventors, Christopher Rice, had assigned his rights to the Contested Patents to Microsoft Corporation, and, therefore, AGIS lacks standing to assert the patents. *See* Dkt. 25. Uber asked the Court to stay the case and order discovery and briefing focused on this threshold issue. The Court denied Uber’s motion on June 15, 2021, noting that “[d]iscovery has been open for nearly a month,” and “Uber has not filed a motion to dismiss due to lack of standing.” Dkt. 85 at 4. The Court also stated that it “will consider expedited briefing on a motion to dismiss filed by Uber due to lack of standing.” *Id.*

AGIS has ignored its obligation to produce discovery that addresses this issue and has thwarted Uber’s attempts to obtain discovery on this threshold issue so that Uber can expeditiously bring a motion to dismiss. Indeed, AGIS has known about this issue since Uber raised it by letter on April 2, 2021, three weeks before its Motion to Stay. Dkt. 25-7. Without addressing the substance of the letter, AGIS responded by calling Uber’s claims “frivolous,” and disputing that the Microsoft Employment Agreement cited in Uber’s letter was the same agreement executed by Mr. Rice (*see* Dkt. 25-8), an argument it repeated in its opposition to Uber’s prior motion (*see* Dkt. 42 at 1). On the first day of discovery, Uber served Microsoft with a subpoena, seeking, among other things, Mr. Rice’s employment agreement with Microsoft. Additionally, on the first day of discovery, Uber served AGIS with an interrogatory (Interrogatory No. 10) seeking all facts

[REDACTED]

supporting AGIS's assertion that it is a sole owner of the Contested Patents.

Microsoft timely responded to the subpoena on July 16, 2021 and produced Mr. Rice's employment agreement as well as its moonlighting policy and other documents. *See* Exs. 1 (July 19, 2021 M. Reiter Letter to A. Fabricant), 2 (Rice Employment Agreement). As Uber had predicted in its Motion to Stay, and contrary to AGIS's protests to the contrary, Mr. Rice's employment agreement produced by Microsoft is identical in all relevant respects to the one attached to Uber's Motion to Stay. *Compare* Dkt. 25-4, *with* Ex. 2. In that employment agreement with Microsoft, [REDACTED]

[REDACTED]

[REDACTED]

In contrast to third-party Microsoft, AGIS has refused to provide timely and complete discovery on this threshold standing issue. AGIS provided virtually no substantive response to Uber's Interrogatory No. 10, stating only that [REDACTED]

[REDACTED]

[REDACTED] Despite AGIS's obligation to produce all information that bear on a claim or defense, and despite having (1) identified Mr. Rice as a current consultant of AGIS, Inc. who may only be contacted through AGIS's counsel and (2) representing to the Court that Mr. Rice would voluntarily appear for trial (Dkt. 82-2 ¶ 18), as of July 16, AGIS had produced no documents from Mr. Rice, or otherwise, that address Mr. Rice's employment with Microsoft, his assignment to Microsoft, Microsoft's ownership interest, or any other documents that AGIS will rely on to rebut Uber's claim that Microsoft is a co-owner of the Contested Patents.

On July 19, Uber wrote to AGIS and provided AGIS with the documents received from

[REDACTED]

Microsoft and requested that AGIS supplement its discovery within a week. After AGIS did not respond to Uber's letter, counsel for Uber emailed counsel for AGIS requesting a response; in response, AGIS stated on July 27 that it was "conducting discovery on the questions raised" in the July 19 letter and stated it would "endeavor to supplement or update [Uber] on the progress of [its] ongoing discovery efforts on or before August 13." Since that response, and pursuant to the Discovery Order in this case (Dkt. 79), Uber has made numerous requests for a meet and confer with lead and local counsel; in a clear attempt to delay resolution of this threshold issue, and in violation of this Court's Local Rules, AGIS has steadfastly refused each time. AGIS asserted that no dispute existed between the parties since it was "cooperating" and had made a small supplemental production of selected time sheets and expense forms from Mr. Rice and a consulting agreement Mr. Rice executed with AGIS. But that small production, which lacks any reference to Microsoft, does not diminish the very real dispute that does exist and requires a meet and confer as the Local Rules dictate. The parties' dispute is further demonstrated by AGIS's refusal to collect information from Mr. Rice and assertion that Uber must subpoena Mr. Rice, which Uber did on August 6, 2021.

Uber is in the dark. Discovery has now been open for over two and a half months, and AGIS has known of this threshold standing issue for over four months. Yet AGIS has still not provided any evidence to rebut Uber's assertions that Microsoft is a co-owner of the Contested Patents. AGIS refuses to meet and confer. And AGIS refuses to say when it will provide a date certain by when it will have completely produced any relevant information, preventing Uber from filing a motion to dismiss.

Uber respectfully requests that the Court order AGIS immediately supplement its discovery to produce all documents and identify all facts that AGIS intends to rely on to rebut that Microsoft

[REDACTED]

is a co-owner of the Contested Patents. Alternatively, AGIS must confirm that it has no additional evidence relevant to this issue in its possession. Because AGIS has purposefully delayed in its discovery obligations, and given the accelerated schedule by which this case is proceeding, Uber also renews its request for a stay pending resolution of this threshold issue.

II. LEGAL STANDARD

AGIS is required to “produce . . . all documents . . . that are relevant to the pleaded claims of defenses involved in this action.” Dkt. 79 ¶ 3(b). “The rules of discovery ‘are to be accorded a broad and liberal treatment to effect their purpose of adequately informing litigants in civil trials.’” *EVS Codec Techs., LLC v. OnePlus Tech. (Shenzhen) Co., Ltd.*, No. 2:19-CV-00057-JRG, 2020 WL 6365514, at *1 (E.D. Tex. Apr. 9, 2020) (quoting *Herbert v. Lando*, 441 U.S. 153, 176 (1979)). The Federal Rules of Civil Procedure provides that, “[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable,” and thus “the relevance for something to be discoverable is lower than that of the relevance required for something to be admissible.” *Id.* at *2 (quoting Fed. R. Civ. P. 26(b)(1)). “Once the moving party establishes that the materials requested are within the scope of permissible discovery, the burden shifts to the party resisting discovery to show why the discovery is irrelevant, overly broad, or unduly burdensome or oppressive, and thus should not be permitted.” *Id.* at *1 (quoting *SSL Servs., LLC v. Citrix Sys., Inc.*, No. 2:08-cv-158-TJW, 2010 WL 547478, at *2 (E.D. Tex. Feb. 10, 2010)). As early as April 2, 2021, when Uber wrote to AGIS regarding Microsoft’s co-ownership (Dkt. 25-7), and at least when Uber filed its Motion to Stay (Dkt. 25), AGIS was on notice that the information requested was within the scope of AGIS’s discovery obligations. AGIS has ignored those obligations.

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