EXHIBIT 2

GIBSON DUNN

September 20, 2021

VIA ELECTRONIC MAIL

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Re: *AGIS Software Development LLC v. Uber Technologies Inc. d/b/a Uber*, No. 2:21-cv-00072 (E.D. Tex.)

Dear Counsel:

Pursuant to Section 9 of the Discovery Order (Dkt. 79), we write regarding AGIS's First Amended Disclosure of Asserted Claims and Infringement Contentions ("Amended Infringement Contentions").   Despite having now had considerable access to Uber's source code, AGIS has failed to cure the numerous deficiencies Uber first raised in its letter dated June 2, 2021.   Furthermore, through the Amended Infringement Contentions, which were served pursuant to paragraph 3(a)(i) of the Discovery Order (Dkt. 79), AGIS continues to assert unsupported, inconsistent and untenable theories of infringement.   This letter is focused on AGIS's infringement theories with respect to providing and anonymizing users' contact information, including phone numbers, email addresses, and IP addresses as well as AGIS's failure to provide any support for its allegations that Uber Fleet infringes any of the asserted patents.

AGIS's infringement contentions for certain claim elements flatly contradict contentions asserted for other claim elements.   For example, claim 7 of U.S. Patent No. 7,031,728 (the "'728 Patent") and claim 9 of U.S. Patent No. 7,630,724 (the "'724 Patent") require that the phone number of the other users in the network be provided to and/or stored on the user's device.   *See, e.g.*, Cl. 7, '728 Patent ("providing and storing in each of the participant cellular phones one or more cellular phone telephone numbers, each cellular phone number of which relates to a different symbol of each of the participants in the communication network"); Cl. 9, '724 Patent ("accessing a database in each cell phone that includes cellular telephone numbers of each of the participating users having similarly equipped cellular phones, said database including the generation of one or more symbols associated with a particular participating user").   On the other hand, claim 1 of U.S. Patent No. 10,299,100 (the "'100 Patent") requires that the mobile device does *not* have access to the phone number of another participant in the network.   *See, e.g.*, Cl. 1, '100 Patent ("wherein the mobile device does not have access to a phone number associated with a computing device corresponding to the first

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vehicle, an Internet Protocol (IP) address associated with the computing device corresponding to the first vehicle, and an e-mail address associated with the computing device corresponding to the first vehicle"); *see also* Cl. 16, '724 Patent.

Likewise, claim 9 of the '724 patent requires that the network participants exchange IP addresses. Cl. 9, '724 Patent ("exchanging IP addresses using SMS or other digital message format between and among each of the network participant users so that communications between participants is established via IP or transmission of a network participant's IP address to a server which then transmits data to other network participants using the IP address previously"). But, in contrast, claim 1 of the '100 Patent requires that the network participants do *not* have access to each other's IP addresses.

Despite the differences in the aforementioned claim limitations, in its Amended Infringement Contentions, AGIS points to the same voice calling (or messaging) feature of the rider and driver apps to assert that the apps (1) provide and store user phone numbers and IP addresses and (2) do not provide and store user information. For example, for the claim limitations that *require* the phone numbers, AGIS asserts:

For '728 patent, claim 7:

- Riders and drivers have "the Uber app" installed on their mobile phones. Amended Infringement Contentions at C-3.

- "The Uber Accused Products practice providing and storing in each of the participant cellular phones one or more cellular telephone phone numbers, each cellular phone number of which relates to a different symbol of each of the participants in the communication network." Amended Infringement Contentions at C-21.

- "Uber collects the phone number of each driver and passenger when they join the Uber network. Uber stores and provides the phone numbers in the Uber apps . . . ." Amended Infringement Contentions at C-22.

For '724 patent, claim 9:

- "Each of the driver's and the passenger's mobile phones [are] installed with the Uber app and Uber driver app . . . ." Amended Infringement Contentions at B-3.

- "The Uber Accused Products perform a computer implemented method . . . of: accessing a database in each cell phone that includes cellular telephone numbers of each of the participating users . . . ." Amended Infringement Contentions at B-21.

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- "The Uber apps meet this limitation because they access cellular telephone numbers of the riders/drivers of the Uber platform/network. On information and belief, the telephone numbers are stored on one or more databases either locally or remotely on a Uber server(s) for access by the Uber apps." Amended Infringement Contentions at B-21.

- "In the rider app, the device receives pickup and trip information including driver contact and picture data and stores the data in data structures." Amended Infringement Contentions at B-22.

- "In the driver app, the device receives pickup and trip information including rider contact and picture data and stores the data in data structures." Amended Infringement Contentions at B-23.

- "The Uber Accused Products infringe directly and/or indirectly by . . . exchanging IP addresses using SMS or other digital message format between and among each of the network participant users . . .." Amended Infringement Contentions at B-30.

At the same time, AGIS's contentions allege that the "Uber Accused Products" do not obtain and store phone numbers and contact information.

For '724 patent, claim 16:

- "On information and belief, communications between riders/drivers do not require knowledge of the drivers/riders' identity or phone number." Amended Infringement Contentions at B-57.

For '100 patent, claim 1:

- "Uber provides the Uber app for passengers and Uber Driver app for drivers." Amended Infringement Contentions at D-3.

- "The Uber Accused Products infringe directly and/or indirectly . . . wherein the mobile device does not have access to a phone number associated with a computing device corresponding to the first vehicle, an Internet Protocol (IP) address associated with the computing device corresponding to the first vehicle . . . ." Amended Infringement Contentions at D-44.

- "The Uber app for the rider does not have access to the driver's phone number associated with the driver's account. The Uber app for the rider also does not have access to the driver's email address or driver's IP address associated with the driver's

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device through the Uber app. For example, the passenger does not have any information of the driver (such as email address, IP address, and contact number) and this information is not available through the Uber app for the rider." Amended Infringement Contentions at D-44.

- "The rider app does not have access to a driver's IP address or email address." Amended Infringement Contentions at D-46.

These allegations are clearly inconsistent. The "Uber Accused Products" cannot, at the same time, store and exchange and not store and exchange rider/driver phone numbers, IP addresses and other contact information. Having reviewed Uber's source code for multiple days, AGIS must choose among these inconsistent theories of infringement. AGIS's continued assertion of these inconsistent positions forces Uber to unnecessarily expend time and resources on claims AGIS knows it will not and cannot assert. AGIS must immediately identify which theory it will pursue and the claims it is dropping.

Separately, and despite having had access to Uber's source code for Uber Fleet, AGIS has failed to chart Uber Fleet as required by P.R. 3-1(c). This defect was initially raised in our June 2, 2021 letter. As we explained in that letter, a plaintiff can only use a single chart for multiple products "if separate charts would be identical for each product." *UltimatePointer, LLC v. Nintendo Co.*, No. 6:11-CV-496, 2013 WL 12140173, at *3 (E.D. Tex. May 28, 2013). If a plaintiff chooses to "designate and chart only an exemplar accused infringing product, Plaintiff must provide an explanation of the technical and functional identity of the products represented," and "compare each exemplar product to each asserted patent on a claim by claim, element by element basis." *Id.*; *see also Traxcell Techs., LLC v. Huawei Techs. USA Inc.*, No. 2:17-CV-00042-RWS-RSP, 2017 WL 6559256, at *5 (E.D. Tex. Dec. 21, 2017) ("Traxcell's contentions do not chart each accused product or otherwise identify how each accused product is technically or functionally equivalent to a charted product, as required by the rules. There is no way for the defendants to channel discovery or prepare for claim construction without such an indication."). AGIS continues to ignore its obligations under the local patent rules to separately chart each of the accused products even though it has now had considerable access to the source code and served amended contentions. Because AGIS has failed to explain how/why Uber Fleet allegedly infringes in its Amended Infringement Contentions, Uber considers that product no longer in the case. Uber will seek a protective order from the Court should AGIS continue to demand discovery of Uber Fleet.

AGIS's failure to provide adequate contentions has prejudiced Uber, particularly given the upcoming close of expert and fact discovery and exchange of expert reports. Please confirm that AGIS will promptly remedy these deficiencies and seek leave of the Court to supplement

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