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

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

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

DEFENDANT UBER TECHNOLOGIES, INC.'S
OPPOSED MOTION TO COMPEL PRIOR LITIGATION DOCUMENTS

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Defendant Uber Technologies, Inc. ("Uber") requests that the Court order Plaintiff AGIS Software Development LLC ("AGIS") to produce a limited set of relevant documents from prior litigations involving the Asserted Patents: infringement and invalidity contentions, technical and damages-related expert reports, and transcripts and exhibits from all expert depositions. These documents are all highly relevant to this case, in which AGIS asserts patents from the same family, including some of the very same patents, against Uber as it previously asserted against defendants such as Life360, Huawei, LG, Apple, HTC, ZTE, and Google. For example, the requested documents will show how AGIS interprets these patents, as well as to issues of infringement, invalidity, and damages. AGIS's sole objection to producing these documents—that they are subject to the Protective Orders filed in those cases—can be accommodated by an Order from this Court requiring production subject to the strict requirements of the Protective Order in this case, or by applying redactions where appropriate. Uber therefore respectfully requests that the Court order production of these documents.

I. BACKGROUND

On January 29, 2021, AGIS sued Uber for allegedly infringing five patents: U.S. Patent Nos. 7,031,728; 7,630,724; 8,213,970; 10,299,100; and 10,341,838. Two of five Asserted Patents (the '728 and '970 patents) have been previously litigated, and the remaining patents are part of the same family.

In May 2014, Advanced Ground Information Systems, Inc. (a sister company of current plaintiff AGIS) sued Life360, Inc. in the Southern District of Florida, alleging infringement of the '728 patent and three other related patents. *See Advanced Ground Information Systems, Inc. v. Life360, Inc.*, No. 9:14-cv-80651 (S.D. Fl.). The case proceeded to trial in March 2015, and the jury found that the asserted patents were not infringed. Following trial, the Court held that the plaintiff's infringement case was exceptionally weak and granted the defendant's motion for

attorneys' fees under 35 U.S.C. § 285.

In June 2017, AGIS (after acquiring the Asserted Patents from AGIS, Inc.) filed five related cases against Huawei, LG, Apple, HTC, and ZTE, alleging infringement of the '970 patent among several other related patents. *See AGIS Software Development LLC v. Huawei Device USA Inc. et al.*, No. 2:17-cv-00513 (E.D. Tex.). These cases all settled.

Beginning in November 2019, AGIS filed another set of three related cases against Google, Samsung, and Waze Mobile, alleging infringement of several related patents, including the '970 patent. *See AGIS Software Development LLC v. Google LLC et al.*, No. 2:19-cv-00361 (E.D. Tex.). On February 9, 2021, after summary judgment briefing, this Court granted the defendants' motion to stay pending *ex parte* reexamination of all asserted patents.

Uber has repeatedly requested relevant documents from these prior litigations:

- May 28, 2021 – At the outset of discovery, Uber wrote AGIS specifically requesting production of documents from these prior litigations, including pleadings, briefing, infringement and invalidity contentions, expert reports, and expert deposition transcripts and exhibits. AGIS did not respond.
- July 30, 2021 – Uber followed up on its request by letter. AGIS did not respond.
- September 16, 2021 – Soon after the September 14, 2021 deadline for substantial completion of document production, Uber wrote to AGIS noting that AGIS's production of prior litigation documents was deficient.
- September 21, 2021 – AGIS finally responded and represented to Uber for the first time that it did not have any materials from the prior litigations containing third-party confidential information[1] and stated that it intended to produce the prior litigation materials in its possession the following week.
- September 22, 2021 – Uber responded the next day noting AGIS's unjustified delay in producing these materials, noting that AGIS has in its possession relevant materials from the

[1] AGIS's destruction of relevant documents may be improper spoliation. *See Stephenson v. Caterpillar Inc.*, No. 216CV00071JRGRSP, 2018 WL 11351531, at *5 (E.D. Tex. Oct. 30, 2018) ("The duty to preserve generally applies when a party has notice that the evidence is relevant to the litigation or should have known that the evidence may be relevant to future litigation."). Mr. Malcom Beyer, AGIS's CEO, testified that AGIS suspected Uber of infringing by at least 2016, well before the Apple cases were filed. *See* Ex. A (10/22/2021 Tr.) at 168:15–17.

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