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. LYFT, INC.	§ § § § § § §	CASE NO. 2:21-cv-00024-JRG (Member Case)
AGIS SOFTWARE DEVELOPMENT LLC v. UBER TECHNOLOGIES, INC., d/b/a UBER	§ § § § § § §	CASE NO. 2:21-cv-00026-JRG (Member Case)

DEFENDANT LYFT, INC.'S OPPOSED MOTION TO COMPEL DOCUMENT PRODUCTION, WRITTEN DISCOVERY, AND DEPOSITIONS

Lyft respectfully requests this Court to compel AGIS to provide the following discovery:

(1) production of damages expert reports from litigations involving the same patents;

(2) an additional deposition day with named inventor Malcolm K. Beyer, Jr. who is the named inventor on all five asserted patents, 30(b)(6) designee for over ninety topics for Plaintiff and over eighty topics for third-party AGIS, Inc.;

(3) complete responses to Lyft's Interrogatory Nos. 1, 2, 8, 11, 15, 18, and 21

STATEMENT OF LAW

Federal Rule of Civil Procedure 26(b) allows discovery of any matter "relevant subject matter involved in the pending action" if it would be admissible as evidence or "appears reasonably calculated to lead to the discovery of admissible evidence." "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)).

ANALYSIS

I. AGIS's Failure to Produce Relevant Materials from Past Litigations

The parties do not dispute that damages expert reports from other cases involving the

same patents are relevant. For example, in response to Lyft's Interrogatory No. 21 concerning valuations of the asserted patents (discussed further below), Plaintiff specifically identifies its forthcoming damages expert report as relevant to valuation. The sole dispute is whether the burden to produce such materials with confidential material redacted outweighs their probative value and whether Plaintiff's delay and representations during the course of this litigations have materially prejudiced Lyft such that an extension to the schedule is needed to attempt to collect these materials from third parties.

On June 25, 2021, Lyft specifically requested production of documents from prior litigations involving the asserted patents, following the Court's Discovery Order requiring the parties to produce all relevant documents without awaiting a discovery request. On October 12, three weeks before close of discovery, Plaintiff agreed to produce some materials from previous cases, but continued to withhold damages expert reports it claimed contained third-party confidential information. To address Plaintiff's concerns, Lyft obtained agreements from previous defendants for Plaintiff to produce third-party confidential material under the Protective Order entered in this case, but after securing these agreements, on the day before close of discovery, Plaintiff informed Lyft that it no longer possessed or controlled the requested expert reports. Plaintiff also confirmed that would not produce redacted versions of the damages expert reports from the Google, Waze, and Samsung lawsuits.

In light of the undisputed relevance of the damages expert reports within Plaintiff's control, Lyft moves the Court to compel production of redacted damages expert reports concerning any of the asserted patents within in Plaintiff's possession or control and in light of Plaintiff first disclosing in the final days of discovery that it no longer had damages expert reports from certain cases, an extension of discovery for the limited purposes of attempting to

obtain these materials from third parties.

This and other courts have confirmed both the relevance of past litigation materials and the reasonableness of redacting confidential information rather than refusing production. *See, e.g., Huawei Techs. Co. v. Huang*, 2018 WL 3862061, at *5 (E.D. Tex. Aug. 14, 2018) (ordering production of documents in a "reasonably redacted format" to address concerns of confidential information); *Ford Motor Co. v. Versata Software, Inc.*, 316 F. Supp. 3d 925, 943 (N.D. Tex. 2017) (rejecting argument that redacting expert reports was unduly burdensome).

II. AGIS's Failure to Provide Sufficient Deposition Time with Named Inventor and Designee on Over 170 30(b)(6) topics

Mr. Beyer is the named inventor on all five of the asserted patents in this case, and was designated by Plaintiff to cover nearly all of Lyft's 30(b)(6) topics—over ninety topics for Plaintiff and over eighty topics for affiliated company AGIS, Inc. The topics on which Mr. Beyer was designated covered an enormous breadth of subject matter, including the development of AGIS's products, sales and marketing of AGIS's products, validity of the asserted patents, priority dates of the asserted patents, corporate structure of Plaintiff and its affiliates, conception and reduction to practice of the alleged inventions, secondary considerations of non-obviousness, licenses of the asserted patents, document preservation and retention, pre-suit investigation of Lyft's products, allegations against Lyft in Plaintiff's complaint, and financial operations of both Plaintiff and AGIS, Inc. Plaintiff allowed only ten hours of deposition time with Mr. Beyer for defendants Lyft, Uber, and T-Mobile **combined**—giving each defendant just 3.3 hours to cover his 30(b)(1) deposition and over 170 30(b)(6) topics. Defendants agreed to proceed with an initial ten hours, while objecting to the time restriction and agreeing to meet and confer with Plaintiff for additional time.

Unsurprisingly, Mr. Beyer was unprepared to address many of the over 170 topics that he

was designated to cover—stating, for example, that he did not know when AGIS, Inc. was profitable and that he did not know details about AGIS's product demonstrations or when products were launched. Mr. Beyer talked slowly and regularly fell into telling literal war stories rather than answering the questions asked. As a result, defendant Uber had not finished questioning Mr. Beyer at the end of the initial ten hours and Plaintiff's counsel refused to allow further questions. To date, Lyft has not asked Mr. Beyer a single deposition question despite him being designated on nearly all of the 30(b)(6) topics served by Lyft, including some topics served solely by Lyft. Plaintiff only offer of an additional three hours of deposition time with Mr. Beyer on a limited number of topics to be shared by all three defendants is insufficient.

In light of Plaintiff's refusal to offer a reasonable amount of additional deposition time with Mr. Beyer—the named inventor on all asserted patents and the designee on over 170 topics covering nearly every aspect of the case—Lyft respectfully moves the Court for one additional day to depose Mr. Beyer in his individual capacity, on the over ninety 30(b)(6) topics for Plaintiff, and on the over 80 30(b)(6) topics for AGIS, Inc. Although some of the testimony elicited by co-defendant Uber will be applicable to Lyft, there are still substantial subject areas where time did not permit questioning to occur, including, for example, the factual basis of Plaintiff's allegations against Lyft, the priority dates of the patents, the advantages of the asserted patents over prior art or non-infringing alternatives, marketing and advertising of AGIS's products, secondary considerations of non-obviousness, document retention and preservation, and AGIS's relationship with Christopher Rice, a co-inventor who has not yet been deposed.

This and other courts have found similar requests reasonable. *See, e.g., Genband US LLC v. Metaswitch Networks Corp.*, 2:14-cv-00033-JRG-RSP (E.D. Tex. May 21, 2015) (granting motion to compel additional deposition time for witness designated in multiple capacities); *Kress*

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