[redacted]

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 REPLY IN SUPPORT OF ITS MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS (DKT. 172)

[redacted]

In its opposition, AGIS fails to reconcile its two inconsistent infringement theories. Indeed, rather than reconcile the theories, AGIS conflates claim limitations from the '100 Patent, which require anonymizing participant information, such as phone numbers, with claim limitations from the '728 Patent,[1] which, in contrast, require "providing and storing" each participant's cellular telephone number. And try as it might, AGIS's new doctrine of equivalents theory does not erase the inconsistency—it highlights the inconsistency by overtly importing an "identifier" limitation from the '100 Patent into the '728 Patent. Respectfully, the Court should reject AGIS's attempt to sidestep the plain language of the claims.

Without citing to ***anything*** other than attorney argument, AGIS argues that the "cellular phone telephone number" disclosed in the '728 Patent is merely an "identifier[] that [is] used to call or message another user" and not the actual cellular telephone number associated with each participant. AGIS Br. at 4. This, according to AGIS, is different from the "phone number" found in the '100 Patent. *Id.* According to AGIS, while Uber anonymizes cellular phone numbers, [redacted] *Id.* And thus, based on this contrived discrepancy, AGIS argues that it (1) accused "Uber's anonymous calling system, the purpose of which is not to share the identifying telephone numbers of each device," and (2) [redacted] *Id.* at 6. Regardless of what AGIS argues in its brief, the patents and AGIS's infringement contentions tell a different story.

Claim Language. Despite relying on the plain meaning of the "phone number" limitation

[1] In the Court's Claim Construction Order, the Court found the term "using the IP address previously" indefinite and thus, claim 9 of the '724 Patent is indefinite. Dkt. No. 213 at 28. This reply does not address AGIS's inconsistent theories regarding the phone number and IP address limitations of claim 9 of the '724 Patent because AGIS can no longer proceed on that claim.

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for the '100 Patent, for the '728 Patent, AGIS attempts to justify its inconsistent theories by importing a special meaning (that was never raised during claim construction) for "phone number." Even worse, AGIS's special meaning is completely divorced from the claim language because the '728 Patent requires that the "cellular phone number" relate "to a different symbol of each of the participants in the communication network." And this limitation in the '728 Patent is critical because it is that symbol, as discussed below, that is touched to "automatically initiate[] a cellular phone call." AGIS's argument that [redacted] simply highlights that it cannot, at the same time, assert claims that require providing and storing a cellular telephone number with claims that require the mobile device "not have access to a phone number associated" with other participants.

Infringement Contentions. AGIS points to [redacted] as the allegedly infringing feature that meets the limitations-at-issue for the '728 and '100 Patents. But AGIS's infringement contentions apply [redacted] inconsistently. For example, for limitation 1[B] of the '100 Patent, AGIS asserts that [redacted] Dkt. No. 197-4 (Ex. D to Third Amended Infringement Contentions) at D-14. In other words, [redacted] As such, for limitation 1[K] of the '100 Patent, AGIS asserts that [redacted] *Id.* at D-47, D-49.

But for limitation 7[B] of the '728 Patent, AGIS cites that very same line of code [redacted]

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Dkt. No. 197-3 (Ex. C to Third Amended Infringement Contentions) at C-26-C-27. [redacted] These inconsistencies permeate throughout AGIS's contentions.

Claim Construction Order. AGIS's inconsistent theories are highlighted by the Court's claim construction of other limitations in the '728 Patent. The Court construed—and AGIS agreed at the *Markman* hearing—that the subsequent "providing initiating cellular phone calling software" limitation in claim 7 of the '728 Patent was software "that is activated by touching a symbol on the touch display that automatically initiates a cellular phone call using ***the stored cellular phone number*** to the participant represented by the symbol." Dkt. No. 213 at 37 (emphasis added). AGIS did not seek a construction of the term "cellular phone number" during the claim construction process and should not now be permitted to inject a new construction—a cellular phone number is simply an "identifier"—to erase its plainly inconsistent infringement theories. Uber's apps either operate by providing and storing the cell phone numbers or they do not—but they cannot do both and still meet the claim limitations of the '728 and '100 Patents.

Respectfully, Uber's motion should be granted, and the Court should (1) order AGIS to identify which infringement theory it will pursue as to the '728 and '100 Patents, and (2) strike the portions of AGIS's contentions that are inconsistent with that theory.[2]

[2] That Uber agreed to AGIS's amended infringement contentions is completely irrelevant to this motion. That joint motion is express that nothing about the parties' agreement "should be construed as a waiver of challenges to the substantive merit of the other party's contentions, including with respect to Uber's Motion to Strike Plaintiff's First Amended Disclosure of Asserted Claims and Infringement Contentions (Dkt. 172)." Dkt. No. 195 at 2. Uber's agreement to the joint motion was not a concession that the present motion was somehow moot, nor was it a concession that it understood AGIS's theories.

[redacted]

Respectfully submitted,

Dated: November 11, 2021

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