

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

AGIS SOFTWARE DEVELOPMENT LLC,	§	
	§	Case No. 2:21-cv-00072-JRG
Plaintiff,	§	(LEAD CASE)
	§	
v.	§	<b><u>JURY TRIAL DEMANDED</u></b>
	§	
T-MOBILE USA, INC. and T-MOBILE US,	§	
INC.,	§	
	§	
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UBER TECHNOLOGIES, INC., d/b/a	§	Case No. 2:21-cv-00026-JRG
UBER,	§	(MEMBER CASE)
	§	
	§	<b><u>JURY TRIAL DEMANDED</u></b>
	§	

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC’S OPPOSED MOTION FOR  
ENTRY OF SIXTH AMENDED DOCKET CONTROL ORDER**

Plaintiff AGIS Software Development LLC (“AGIS”) files this Opposed Motion for Entry Of Sixth Amended Docket Control Order (the “Motion”) and show the Court as follows.

On November 8, 2021, AGIS served the opening expert reports of Joseph C. McAlexander, III regarding infringement and James Bergman regarding damages to Defendant Uber Technologies, Inc. (“Uber”).

Uber waited until November 29, 2021 to request these experts’ availability for deposition. AGIS diligently and promptly obtained their availability. Two days after Uber first requested expert availability, AGIS confirmed Mr. Bergman’s availability for December 9, 2021 at 8:00 am Pacific Time.

The next day, on December 3, AGIS informed Uber that Mr. McAlexander had numerous conflicts and that he was unavailable to sit for a deposition until December 20, 2021 and December 22, 2021. Attached as Exhibit 1 is a declaration from Mr. McAlexander stating his

conflicts. At Uber's request, AGIS also provided Uber with a draft proposal for an amended docket control order. Consistent with this submission, AGIS's draft motion proposed extending the deadlines for dispositive motions until December 23, 2021 (giving Uber 3 days after the first deposition, presumably regarding infringement) and for responses to dispositive motions until January 10, 2022.

Uber refused to accept Mr. McAlexander's deposition availability and opposes this motion citing prejudice.

Uber offered two of its four experts, Dr. Neil Siegel and Dr. Aviel Rubin, for deposition on December 7, 2021 and December 8, 2021, respectively. AGIS promptly requested alternative dates for these witnesses due to prior-scheduled professional conflicts. AGIS proposed taking Dr. Rubin's deposition on December 6, 2021. Uber informed AGIS that Dr. Rubin was unavailable on December 6 and that it would offer Dr. Siegel and Dr. Rubin during the week of December 13, 2021.

In direct response to AGIS offering Mr. McAlexander on December 20, 2021, Uber withdrew any and all availability for Dr. Siegel and Dr. Rubin and stated that it would not provide their availability until the Court decided this motion. Uber is thus, without reason, withholding Dr. Siegel's and Dr. Rubin's availability during the week of December 13, 2021, despite its prior representation to AGIS to make them available.

AGIS requests a short extension of certain deadlines in the Fifth Amended Docket Control Order (Dkt. 170). Good cause exists due to prior commitments and scheduling conflicts of AGIS's technical expert, Mr. McAlexander, and requires additional time to complete expert discovery. AGIS also requests a short extension of deadlines for dispositive motion briefing to

account for the extension of expert discovery. Attached as Exhibit 1 to this motion is a declaration from Mr. McAlexander regarding his conflicts.

Uber opposes this motion and has indicated its intention to file a response on Tuesday, December 7, 2021.

Accordingly, AGIS respectfully requests that the Court grant the Motion to amend its Fifth Amended Docket Control Order as set forth below and in the attached proposed order.

Current Date	Proposed Date	Event
December 30, 2021	January 10, 2022	*Response to Dispositive Motions (including <i>Daubert</i> Motions). Responses to dispositive motions that were filed <u>prior</u> to the dispositive motion deadline, including <i>Daubert</i> Motions, shall be due in accordance with Local Rule CV7(e), not to exceed the deadline as set forth in this Docket Control Order. <sup>1</sup> Motions for Summary Judgment shall comply with Local Rule CV-56.
December 13, 2021	December 23, 2021	*File Motions to Strike Expert Testimony (including <i>Daubert</i> Motions)  No motion to strike expert testimony (including a <i>Daubert</i> motion) may be filed after this date without leave of the Court.
December 13, 2021	December 23, 2021	*File Dispositive Motions  No dispositive motion may be filed after this date without leave of the Court.  Motions shall comply with Local Rule CV-56 and Local Rule CV-7. <u>Motions to extend page limits will only be granted in exceptional circumstances. Exceptional circumstances require more than agreement among the parties.</u>

<sup>1</sup> The Parties are directed to Local Rule CV-7(d), which provides in part that “[a] party’s failure to oppose a motion in the manner prescribed herein creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition to the motion.” If the deadline under Local Rule CV-7(e) exceeds the deadline for Response to Dispositive Motions, the deadline for Response to Dispositive Motions controls.

December 8, 2021	December 22, 2021	Deadline to Complete Expert Discovery
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Dated: December 3, 2021

Respectfully submitted,

/s/ Vincent J. Rubino, III

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***ATTORNEYS FOR PLAINTIFF,  
AGIS SOFTWARE DEVELOPMENT LLC***

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that Plaintiff's counsel, Enrique Iturralde and Jennifer Truelove, have met and conferred with counsel for Defendants, Christine Ranney and Melissa Smith, and Defendants oppose the instant motion as prejudicing Defendants. Accordingly, the parties are at an impasse and there remains open issues for the Court to resolve.

/s/ Vincent J. Rubino, III  
Vincent J. Rubino, III

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