

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

<p>AGIS SOFTWARE DEVELOPMENT LLC, v. T-MOBILE USA, INC., and T-MOBILE US, INC.,</p>	<p>Case No. 2:21-CV-00072-JRG-RSP (Lead Case)</p>
<p>AGIS SOFTWARE DEVELOPMENT LLC, v. LYFT, INC.</p>	<p>Case No. 2:21-CV-00024-JRG-RSP (Member Case)</p>
<p>AGIS SOFTWARE DEVELOPMENT LLC, Plaintiff, v. UBER TECHNOLOGIES, INC. d/b/a UBER.</p>	<p>Case No. 2:21-CV-00026-JRG-RSP (Member Case)</p>
<p>AGIS SOFTWARE DEVELOPMENT LLC, v. WHATSAPP, INC.,</p>	<p>Case No. 2:21-CV-00029-JRG-RSP (Member Case)</p>

DEFENDANT WHATSAPP'S MOTION TO DISMISS FOR IMPROPER VENUE

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Defendant WhatsApp LLC¹ (“WhatsApp” or “Defendant”) respectfully moves the Court to dismiss this action for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3).²

I. INTRODUCTION

Venue in this District is improper for this action. WhatsApp neither resides in this judicial district, nor maintains a regular and established place of business in this District, as required by 28 U.S.C. § 1400(b). WhatsApp is not incorporated in Texas. Neither WhatsApp nor its parent company Facebook, Inc. (“Facebook”) own, lease, or rent any property, facilities, or equipment in this District. There are no WhatsApp or Facebook employees who work at any facility located in this District, and no WhatsApp or Facebook servers within this District. Neither WhatsApp nor Facebook conducts any business from a regular and established place in this District.

In its complaint, Plaintiff alleges venue through a data center owned by Facebook. But this data center is located in Tarrant County, Texas, which is part of the Northern District of Texas and not part of this judicial district. Plaintiff further alleges that Facebook pays taxes to Denton County. But the identified taxes go to the Northwest Independent School District, and Facebook’s payment of taxes to the school district is based on the data center’s location in Tarrant County (again, in the Northern District of Texas and not this judicial district). That the Northwest Independent School District designates Denton County to collect its property taxes is irrelevant to the location of WhatsApp for the purposes of analyzing venue in this action.

Accordingly, venue in this District is improper for this action and the case should be dismissed.

¹ WhatsApp, Inc. is incorrectly named in the complaint.

² WhatsApp is concurrently filing a Complaint for Declaratory Judgment against AGIS Software Development LLC in the Northern District of California.

II. STATEMENT OF ISSUES TO BE DECIDED

Issue No. 1: Has AGIS Software Development LLC met its burden of establishing that venue is proper in this District under 28 U.S.C. § 1400(b) when WhatsApp is a Delaware corporation that does not reside, and has no regular and established place of business, in the Eastern District of Texas?

III. FACTUAL BACKGROUND

A. Plaintiff AGIS Software

Advanced Ground Information Systems, Inc. (“AGIS, Inc.”) was founded in 2004 to develop location-based communication software. *Advanced Ground Info. Sys., Inc. v. Life360, Inc.*, No. 9:14-cv-80651-DMM, Dkt. 32 at 2 (S.D. Fla. July 11, 2014) (“*Life360-Florida*”). Incorporated in the state of Florida, its principal place of business is in Jupiter, Florida, where it has been located for more than a decade. *Life360, Inc. v. Advanced Ground Information Systems, Inc.*, No. 5:15-cv-00151-BLF, Dkt. 19 at 2 (N.D. Cal. Mar. 18, 2015). Its Chief Executive Officer and the named inventor of the Patents-in-Suit, Malcolm Beyer, also resides in Florida. *Id.*; see also *ZTE (USA) Inc. v. AGIS Software Development, LLC*, No. 4:18-cv-06185-HSG, Dkt. 30 at 4 (N.D. Cal. Jan. 11, 2019) (“*ZTE-California*”).

In 2017, AGIS, Inc. underwent a corporate restructuring, forming AGIS Holdings, Inc. (“AGIS Holdings”) and plaintiff AGIS Software Development, LLC (“AGIS Software” or “Plaintiff”). *ZTE-California*, Dkt. 43-21, 43-7, ¶ 7. AGIS, Inc. and AGIS Software became subsidiaries of AGIS Holdings, and the Patents-in-Suit were assigned to AGIS Software. *Id.*

B. Defendant WhatsApp

Defendant WhatsApp is the developer of a free, secure, reliable messaging service that allows users to send text messages and voice messages, make voice and video calls, and share photos and other content. WhatsApp and its parent Facebook are incorporated in Delaware with

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