

**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
	§	(LEAD CASE)
Plaintiff,	§	
	§	<u>JURY TRIAL DEMANDED</u>
v.	§	
	§	
T-MOBILE USA, INC. and T-MOBILE US,	§	
INC.,	§	
	§	
Defendants.	§	
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AGIS SOFTWARE DEVELOPMENT LLC,	§	Case No. 2:21-cv-00024-JRG
	§	(MEMBER CASE)
Plaintiff,	§	
	§	<u>JURY TRIAL DEMANDED</u>
v.	§	
	§	
LYFT, INC.,	§	
	§	
Defendant.	§	
	§	

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S RESPONSE
IN OPPOSITION TO DEFENDANT LYFT, INC.'S
OPPOSED MOTION FOR EXTENSION OF TIME TO
FILE BILL OF COSTS AND MOTION FOR FEES (DKT. 356)**

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Plaintiff AGIS Software Development LLC (“AGIS” or “Plaintiff”), by and through its undersigned counsel, hereby submits this response in opposition to Defendant Lyft, Inc.’s (“Defendant” or “Lyft”) Opposed Motion for Extension of Time to File Bill of Costs and Motion for Fees (Dkt. 356) (the “Motion”).

I. INTRODUCTION

Lyft’s Motion should be denied because Lyft cannot show sufficient cause. Lyft has no factual or legal basis to request the relief of costs and attorney fees.¹ Lyft was not identified as the “prevailing party” in this action and the Court has dismissed the case “without prejudice.” Lyft waived any right it had to obtain the predicate finding of a “prevailing party” or to object to the dismissal “without prejudice” when Lyft failed to move for reconsideration of any findings of the Report and Recommendation. Thus, Lyft is unable to demonstrate that it is the “prevailing party,” as required by Fed. R. Civ. P. 54(d) and 35 U.S.C § 285. Additionally, Lyft cannot obtain costs under L.R. CV-54 because there is no “final judgment or by judgment that a presiding judge directs be entered as final under Fed. R. Civ. P. 54(b).” The Court should deny the Motion for want of good cause.

II. BACKGROUND

On November 10, 2021, the Court issued a Report and Recommendation to dismiss AGIS’s action against Lyft under 28 U.S.C. § 1406(a) “without prejudice.” Dkt. 212 at 14. The Report and Recommendation did not identify a “prevailing party.”

Plaintiff filed a timely motion for reconsideration. Dkt. 258. Defendant did not file a motion for reconsideration on any grounds.

¹ AGIS has informed Lyft that its request is frivolous and vexatious, and AGIS reserves all rights to seek costs and attorney fees related to responding to any motions related to Lyft’s requests for costs and attorney fees.

On January 19, 2022, the Court overruled the objections raised in AGIS's motion for reconsideration, adopted the Report and Recommendation, and directed the clerk to close the action against Lyft. Dkt. 334.

III. LEGAL STANDARDS

Fed. R. Civ. P. 54(d) provides that, “[u]nless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the **prevailing party.**”

L.R. CV-54 provides that “[a] party awarded costs by **final judgment or by judgment that a presiding judge directs be entered as final under Fed. R. Civ. P. 54(b)** must apply to the clerk for taxation of such costs by filing a bill of costs. Unless otherwise provided by statute or by an order of the presiding judge, the bill of costs must be filed with the clerk and served on any party entitled to such service no later than fourteen days after the clerk enters the judgment on the docket.”

35 U.S.C § 285 provides that “[t]he court in exceptional cases may award reasonable attorney fees to the **prevailing party.**”

IV. ARGUMENT

The Court should deny Lyft's Motion because Lyft has no factual or legal basis to request costs and fees in this action.

As a threshold matter in requesting costs and attorney fees under Fed. R. Civ. P. 54(d) and 35 U.S.C § 285, the Court must have identified the requesting party as the “prevailing party.” The Court has not identified Lyft as the “prevailing party” (Dkts. 212, 334), and Lyft has no legal basis to hold itself out as the “prevailing party.” Lyft has been aware of the Court's findings in the Report and Recommendation since November 10, 2021. If Lyft had intended to seek costs and fees, it could have moved for reconsideration of the Report and Recommendation. Lyft failed to

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