



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

AGIS SOFTWARE DEVELOPMENT LLC §
v. § CASE NO. 2:21-cv-00072-JRG
(Lead Case)

T-MOBILE USA, INC., and T-MOBILE §
US, INC. § **JURY TRIAL DEMANDED**

AGIS SOFTWARE DEVELOPMENT LLC §
v. § CASE NO. 2:21-cv-00024-JRG
(Member Case)

LYFT, INC. §
§ **JURY TRIAL DEMANDED**

**DEFENDANT LYFT, INC.’S OPPOSED MOTION FOR ATTORNEYS’ FEES
UNDER 35 U.S.C. § 285 AND ENTRY OF BILL OF COSTS**

[REDACTED]

On January 19, 2022, this Court granted Lyft, Inc.’s (“Lyft’s”) motion to dismiss for improper venue (Dkt. 334), confirming what Lyft has maintained throughout the entirety of this case: this District is not an appropriate forum for AGIS Software Development LLC’s (“AGIS”) patent infringement claims against Lyft. AGIS premised its venue allegations on a falsehood that AGIS could have, and should have, confirmed before filing suit—that Lyft had an Express Drive at 928 West Spring Creek Parkway, Plano, Texas at the time the complaint was filed, when it did not. Not only did AGIS fail to verify its venue allegations before filing suit (something that could have been done as easily as simply driving to the cited address), as was its obligation, but when Lyft informed AGIS shortly after the lawsuit was filed that it had no Express Drive location in Plano, AGIS ignored Lyft and pressed forward with litigation. AGIS forced the Court and the parties to waste their time on unnecessary motion practice, discovery, an evidentiary hearing, and objections to the Court’s report and recommendation to dismiss the case for improper venue, which all just reaffirmed a fact presented to AGIS at the start of this action: Lyft did not maintain an Express Drive Location in Plano, Texas.

AGIS’s inadequate pre-suit investigation on venue was compounded by AGIS’s refusal to stay the case when the Court recommended dismissal for improper venue, agreeing with Lyft that it did not maintain a regular and established place of business in this District. AGIS’s refusal to stay the case, because it planned to re-argue again that Lyft maintained an Express Drive in Plano, resulted in the parties having to prepare expert reports, exchange discovery motions, and engage in other time-consuming activities in late November. These were unnecessary efforts that would have been avoided if AGIS had performed an adequate pre-suit investigation and/or agreed to mitigate the damages resulting from its inadequate pre-suit investigation with a prompt stay following the Court’s report and recommendation to dismiss. The unreasonable manner in which

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AGIS has litigated this case is reminiscent of the conduct of AGIS's affiliate and predecessor-in-interest to the Asserted Patents, Advanced Ground Information Systems, Inc., which was sanctioned in 2015 for litigating "an exceptionally weak case." *Advanced Ground Information Systems, Inc. v. Life360, Inc.*, No. 9:14-cv-80651 (S.D. Fla.), Dkt. 200 at 2.

The Court granted Lyft's motion to dismiss this case for improper venue, making Lyft the prevailing party against AGIS's attempt to hold Lyft legally liable for patent infringement. As the prevailing party, Lyft respectfully requests this Court to enter its Bill of Costs. Separately, Lyft respectfully requests an award of a limited portion of its attorneys' fees relating to issues that would have been avoided if AGIS had performed an adequate pre-suit investigation and agreed to mitigate ongoing costs when the Court confirmed Lyft's position.

I. STATEMENT OF FACTS

AGIS initiated the instant lawsuit against Lyft on January 29, 2021. *AGIS Software Development LLC v. Lyft, Inc.*, No. 2:21-cv-00024-JRG (E.D. Tex. Jan 29, 2021), Dkt. 1 ("Complaint"); *see also* Dkt. 14 (consolidating 2:21-cv-00024-JRG with 2:21-cv-00072-JRG). In its Complaint, AGIS alleged venue was proper in the Eastern District of Texas based primarily on a purported Express Drive location located at 928 West Spring Creek Parkway, Plano, Texas 75023 ("Alleged Plano Express Drive Location"). *See* Complaint, ¶¶ 6-7. The only other bases for venue that AGIS identified in its Complaint were "dedicated pickup locations," which AGIS abandoned during briefing on Lyft's motion to dismiss, and "vehicles of Lyft Drivers" allegedly located in the Eastern District of Texas, which the Court swiftly dismissed as far removed from the "established" place of business required to find venue in a district. *See id.*, ¶¶ 8-10.

After reviewing the Complaint, Lyft informed AGIS that the Alleged Plano Express Drive Location could not serve as a basis for venue because it had closed over 1.5 years earlier and filed a motion to dismiss on this basis, but AGIS neither withdrew nor amended its Complaint upon

receiving this information. *See* Dkt. 30 (Lyft’s April 27, 2021 Motion to Dismiss for Improper Venue (“Motion”)). In its Motion, Lyft explained via a sworn declaration that the Alleged Plano Express Drive Location closed in 2019, and thus, it could not serve as a basis for venue in this case because venue is assessed at the time the complaint is filed. *See id.* at 4; *Pers. Audio, LLC v. Google, Inc.*, 280 F. Supp. 3d 922, 930 (E.D. Tex. 2017). In its Motion, Lyft also explained that it does not have “dedicated pickup locations”—an assertion AGIS tacitly dropped in its response to Lyft’s motion—and that it is implausible to consider moving vehicles as “established” places of business under *In re Cray*. *See id.*; *see also In re Cray Inc.*, 871 F.3d 1355 (Fed. Cir. 2017). The parties completed briefing on the venue issues on June 22, 2021, with AGIS maintaining that the Alleged Plano Express Drive Location both existed and could serve as a basis for venue against Lyft, ignoring Lyft’s sworn declaration testifying to its closure, and apparently refusing to visit the Plano location to confirm its alleged presence. *See* Dkt. 64 (AGIS’s Response to Lyft’s Motion); Dkt. 87 (Lyft’s Reply in Support of Lyft’s Motion); Dkt. 90 (AGIS’s Sur-Reply in Support of Dkt. 64). Lyft invited AGIS to serve venue discovery shortly after the parties completed their briefing, but AGIS never took Lyft up on its offer. *See* Ex. 1.

On August 18, 2021, the Court *sua sponte* ordered an evidentiary hearing on Lyft’s Motion, specifically identifying “the operations at 928 West Spring Creek Parkway, Plano, Texas, at the time of filing suit” to be a factual issue “that must be determined.” Dkt. 125. It was only then that AGIS propounded venue discovery on Lyft—three months after fact discovery had first opened and nearly two months after Lyft had invited AGIS to serve discovery—in the form of interrogatories, document requests, and a 30(b)(6) deposition, and requested Lyft’s compliance with the requested discovery on an expedited basis. *See* Ex. 2. Lyft worked diligently to provide written discovery responses, several document productions containing documents responsive to

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AGIS's requests, and a 30(b)(6) witness (Mr. Loosen) for deposition all before the Court-ordered evidentiary hearing on September 29, 2021, and all of which confirmed the information Lyft provided at the start of the litigation: the Alleged Plano Express Drive location closed 1.5 years ago in 2019. Lyft also made Mr. Loosen available for further questioning by counsel for AGIS and the Court at the evidentiary hearing. Mr. Loosen confirmed again through sworn testimony at both his deposition and the evidentiary hearing that Lyft closed the Alleged Plano Express Drive Location in August 2019. *See* Ex. 3; Ex. 4; *see also* Dkt. 212 at 8.

Judge Payne issued a Report and Recommendation on November 10, 2021, which recommended that Lyft's Motion to Dismiss for improper venue be granted. *See* Dkt. 212. Notably, the Report and Recommendation included specific findings that the Alleged Plano Express Drive Location "was closed at the time of filing suit" and that AGIS's alternative bases for venue either "fail as matter of law under *Cray* or lack factual support in the record." *Id.* at 9, 13. Shortly after issuance of the Report and Recommendation, counsel for Lyft reached out to counsel for AGIS to discuss a stipulated stay of case deadlines while the parties awaited a decision from Judge Gilstrap regarding the recommendation to dismiss. AGIS refused to agree to a stay because it intended to object to the Report and Recommendation, arguing again (and without evidence) that the Alleged Plano Express Drive location existed despite ample testimony to the contrary, forcing the parties to continue preparing rebuttal expert reports, respond to discovery motions, and other pressing tasks required during the close-of-discovery and expert phases of the case. Dkt. 217 at 2. As a result of AGIS's refusal, Lyft promptly filed an Opposed Motion to Stay Pending Adoption of the Dispositive Report and Recommendation (Dkt. 212) ("Motion to Stay") and a request for an expedited briefing schedule. *See* Dkts. 217 & 218. In its Motion to Stay, Lyft identified the many impending briefing and expert report deadlines that could be avoided if the

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