

**IN THE UNITED STATES DISTRICT COURT  
FOR THE 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 (Lead Case)</p>
<p>AGIS SOFTWARE DEVELOPMENT LLC,  v.  LYFT, INC.</p>	<p>CASE NO. 2:21-cv-00024-JRG (Member Case)</p>
<p>AGIS SOFTWARE DEVELOPMENT LLC,  v.  UBER TECHNOLOGIES, INC. d/b/a UBER.</p>	<p>CASE NO. 2:21-cv-00026-JRG (Member Case)</p>
<p>AGIS SOFTWARE DEVELOPMENT LLC,  v.  WHATSAPP, INC.</p>	<p>CASE NO. 2:21-cv-00029-JRG (Member Case)</p>

**DEFENDANT T-MOBILE USA, INC. AND  
T-MOBILE US, INC.'S MOTION TO DISMISS**

## I. INTRODUCTION

Under Federal Rule of Civil Procedure 12(b)(6), Defendants T-Mobile USA, Inc. and T-Mobile US, Inc. (collectively, “T-Mobile”) move to dismiss the Complaint for Patent Infringement (D.I. 1) filed by Plaintiff AGIS Software Development, LLC (“AGIS”), which asserts U.S. Patent Nos. 7,031,728 (“’728 patent”), 7,630,724 (“’724 patent”), 9,408,055 (“’055 patent”), 9,445,251 (“’251 patent”), 9,467,838 (“’838 patent”), and 9,749,829 (“’829 patent”) (collectively, the “Asserted Patents”).

The basis for T-Mobile’s motion to dismiss, and the supporting argument and citations of law, are set forth in Docket Item 24, which is the motion to dismiss filed by defendant Uber Technologies, Inc., d/b/a Uber (“Uber”), in the co-pending action against that party that has been consolidated with this action. In the interests of judicial economy, T-Mobile adopts and incorporates by reference the motion and supporting papers Uber filed as Docket Item 24, including the arguments, evidence, and authorities cited therein, as permitted by Federal Rule of Civil Procedure 10(c). Uber’s arguments apply in the same or analogous ways to the complaint against T-Mobile, leading to dismissal for the same reasons.

## II. STATEMENT OF THE ISSUES TO BE DECIDED

**Ineligible Subject Matter:** Whether the Complaint should be dismissed for failure to state a claim because asserted claim 7 (and its dependents) of the ’728 patent are directed to patent-ineligible subject matter under 35 U.S.C. § 101.

**Inadequate Pleading:** Whether the Complaint should be dismissed for failure to state a claim of (1) joint infringement, (2) direct infringement, (3) indirect infringement and (4) willful infringement.

## III. ARGUMENT

AGIS’s Complaint alleges that the Asserted Patents relate to “communication system[s]

that [] use integrated software and hardware components on mobile devices to give users situational awareness superior to systems provided by conventional military and first responder radio systems.” D.I. 1, ¶ 13.

As set out in Uber’s motion, AGIS’s claims fail due to invalidity of the ’728 patent, and failure to present plausible claims of direct, indirect, or willful infringement as to all Asserted Patents (including the two that AGIS also asserts against Uber and the four it does not). D.I. 24 at 6-30. AGIS’s complaint asserts patent-ineligible subject matter in the ’728 patent. It fails to plausibly allege any type of infringement, whether direct, indirect, or willful. It resorts to copying and pasting allegations from one patent into allegations directed to other patents with different claims and different limitations. As with the complaint against Uber, this approach leads to irreconcilable inconsistencies and, at bottom, fails to provide T-Mobile with the notice it is due. AGIS’s indifference to that notice warrants dismissal of the entire Complaint.

T-Mobile briefly lays out how Uber’s motion applies to the T-Mobile Complaint below.

**Ineligible Subject Matter:** The Court should dismiss AGIS’ allegations as to the ’728 patent for covering patent-ineligible subject matter. D.I. 24 at 6-17. The ’728 patent’s claims are directed to the abstract idea of storing, organizing, and displaying information. *Id.* at 10-14. Nor do the asserted claims include an inventive concept. *Id.* at 14-17. Thus, as a matter of law, the ’728 patent’s claims are ineligible under 35 U.S.C. § 101, and the Court should dismiss Count VI of the T-Mobile Complaint.

**Inadequate Pleading:** AGIS also fails to plead plausible claims of direct, indirect, or willful infringement against T-Mobile as to all the Asserted Patents, leading to dismissal of all Counts. D.I. 24 at 17-30. In particular:

AGIS Fails to Plausibly Plead Direct Infringement Under a Joint Infringement Theory:

T-Mobile adopts Uber's arguments that AGIS fails to plausibly plead direct infringement of the '728 and '724 patents under a joint infringement theory. D.I. 24 at 18-20. As laid out there, direct infringement requires that all elements of the claim be performed by or attributable to a single actor. *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 797 F.3d 1020, 1022 (Fed. Cir. 2015) (*en banc*). Yet AGIS fails to identify a single actor who performs all the method steps of the asserted claims of those patents. D.I. 1 ¶¶ 118-38, 145-63. Indeed, AGIS does not allege that T-Mobile designs or manufactures cellular phones, or directs, controls, or has entered into a joint enterprise with the cellular phone manufacturers or users, as the claims require. *Id.* Because AGIS fails to plausibly allege any direction or control by T-Mobile over the performance of method steps by third parties, or that T-Mobile forms a joint enterprise with these separate actors, the Court should dismiss AGIS's allegations for the '728 and '724 patents.

AGIS Fails to Plead Facts to Plausibly Support Its Direct Infringement Allegations: T-

Mobile also adopts Uber's arguments that AGIS failed to plead facts that would plausibly support its direct infringement claims as to any Asserted Patent. D.I. 24 at 20-27.

As with the Uber complaint, AGIS does not identify facts to enable the Court to draw a reasonable inference that T-Mobile allegedly infringes each patent; instead, AGIS largely copies and pastes purported factual allegations repeatedly across patents. For example, AGIS makes virtually no allegations regarding the '728 patent's claim elements, and instead cuts and pastes screenshots and allegations from its '724 patent allegations. *Compare* D.I. 1 ¶¶ 131-34 *with* ¶¶ 153-59. AGIS uses nearly the same "factual" and conclusory allegations and images throughout its Complaint for multiple patents. *Id.*, ¶¶ 29-35, 51-57, 72-78, 103-109, 125-131, 152-159. It also combines allegations of infringement against three separate and distinct products

(FamilyMode, FamilyWhere, and Fleet Management) by lumping them together as the “Accused Products” throughout the Complaint, where the three products function differently, and were designed and developed separately. *Id.* AGIS even includes pictures of what seem to be non-T-Mobile products, apparently copied from a different complaint against a different party. *Id.*, ¶ 126. AGIS does all this even though this Court has recognized that “cut-and-paste pleading practices” are among those “that Rule 12(b)(6) was meant to address,” such as the “inadvertent inclusion of language presumably taken from a pleading directed to a different case.” *Ruby Sands LLC v. Am. Nat’l Bank of Tex.*, No. 15-1955, 2016 WL 3542430, at \*5 (E.D. Tex. Jun. 28, 2016). D.I. 24 at 20-22.

Due to AGIS’s slapdash shortcuts past its pleading obligations, the Complaint also contains irreconcilable internal consistencies between the legal allegations and factual support. D.I. 24 at 22-25. As with Uber, AGIS does not plausibly explain how the T-Mobile system allegedly allows for a call to be initiated by touching a symbol representing a person or place on a map, as the ’724 and ’728 claims require. D.I. 1, ¶¶ 133-134, 159-160.

AGIS’s other direct infringement allegations are just as vacuous. D.I. 24 at 25-27. The Complaint reuses the same screenshots repeatedly throughout the Complaint, without tying them to the claim limitations as this Court requires. D.I. 1, ¶¶ 30, 34, 35, 52, 56, 57, 73, 77, 78, 104, 108, 109, 131, 153, 157, 158. *See Chapterhouse, LLC v. Shopify, Inc.*, No. 18-300, 2018 WL 6981828, at \*2 (E.D. Tex. Dec. 11, 2018) (“While screenshots may be useful in laying out a plausible allegation of patent infringement, Plaintiff must further allege how the screenshots meet the claim in order to lay out sufficient factual allegations which might permit the Court to find that the *Iqbal/Twombly* standard is met.”). AGIS also fails to address one or more elements of each asserted claim of every patent. D.I. 1, ¶¶ 27-28, 49-50, 70-71, 101-102, 123-124, 150-

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