

**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, 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 FIRST AMENDED COMPLAINT
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 First Amended Complaint (“FAC”), Plaintiff alleges venue based on a data center owned by Facebook and a second data center owned by Internap (“INAP”). But the Facebook data center is located in Tarrant County, which is part of the Northern District of Texas and not part of this judicial district. And the INAP data center in Plano, Texas is not a regular and established place of business of WhatsApp or Facebook. First and foremost, neither WhatsApp nor Facebook leased any space in, or otherwise used, the INAP data center at the time this suit was filed. Although the INAP data center previously provided colocation services to Facebook, that agreement was terminated years ago and all Facebook equipment that resided at the INAP data center was removed from that facility by April 2018. Facebook has not used the INAP data center

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

² On April 27, 2021, WhatsApp filed a Complaint for Declaratory Judgment against AGIS Software Development LLC in the Northern District of California. On May 18, 2021, a second company, Smith Micro Software, Inc., also filed a complaint seeking declaratory judgment of noninfringement and invalidity against AGIS Software Development LLC in the Northern District of California.

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