

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

AGIS SOFTWARE DEVELOPMENT LLC,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Case No. 2:21-cv-00072-JRG-RSP
	§	
T-MOBILE USA, INC. and T-MOBILE US,	§	LEAD CASE
INC.,	§	
	§	
LYFT, INC.,	§	Case No. 2:21-cv-00024-JRG-RSP
	§	
	§	MEMBER CASE
	§	
	§	
UBER TECHNOLOGIES, INC., d/b/a	§	Case No. 2:21-cv-00026-JRG-RSP
UBER,	§	
	§	MEMBER CASE
	§	
	§	
WHATSAPP, INC.,	§	Case No. 2:21-cv-00029-JRG-RSP
<i>Defendants.</i>	§	
	§	MEMBER CASE
	§	
	§	

DISCOVERY ORDER

After a review of the pleaded claims and defenses in this action, in furtherance of the management of the Court's docket under Federal Rule of Civil Procedure 16, and after receiving the input of the parties to this action, it is **ORDERED AS FOLLOWS**:

- Initial Disclosures.** In lieu of the disclosures required by Federal Rule of Civil Procedure 26(a)(1), each party shall disclose to every other party the following information:
 - the correct names of the parties to the lawsuit;
 - the name, address, and telephone number of any potential parties;

- (c) the legal theories and, in general, the factual bases of the disclosing party's claims or defenses (the disclosing party need not marshal all evidence that may be offered at trial);
- (d) the name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person's connection with the case, and a brief, fair summary of the substance of the information known by any such person;
- (e) any indemnity and insuring agreements under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment;
- (f) any settlement agreements relevant to the subject matter of this action; and
- (g) any statement of any party to the litigation.

2. Disclosure of Expert Testimony. A party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703 or 705, and:

- (a) if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, provide the disclosures required by Federal Rule of Civil Procedure 26(a)(2)(B) and Local Rule CV-26; and
- (b) for all other such witnesses, provide the disclosure required by Federal Rule of Civil Procedure 26(a)(2)(C).

3. **Additional Disclosures.** Without awaiting a discovery request,¹ each party will make the following disclosures to every other party:

- (a) provide the disclosures required by the Patent Rules for the Eastern District of Texas with the following modifications to P.R. 3-1 and P.R. 3-3:
 - i. If a party claiming patent infringement asserts that a claim element is a software limitation, the party need not comply with P.R. 3-1 for those claim elements until thirty (30) days after source code for each Accused Instrumentality is produced by the opposing party. Thereafter, the party claiming patent infringement shall identify, on an element-by-element basis for each asserted claim, what source code of each Accused Instrumentality allegedly satisfies the software limitations of the asserted claim elements.
 - ii. If a party claiming patent infringement exercises the provisions of Paragraph 3(a)(i) of this Discovery Order, the party opposing a claim of patent infringement may serve, not later than thirty (30) days after receipt of a Paragraph 3(a)(i) disclosure, supplemental “Invalidity Contentions” that amend only those claim elements identified as software limitations by the party claiming patent infringement.
- (b) produce or permit the inspection of all documents, electronically stored information, and tangible things in the possession, custody, or control of the party that are relevant to the pleaded claims or defenses involved in this action, except to

¹ The Court anticipates that this disclosure requirement will obviate the need for requests for production.

the extent these disclosures are affected by the time limits set forth in the Patent Rules for the Eastern District of Texas; and

- (c) provide a complete computation of any category of damages claimed by any party to the action, and produce or permit the inspection of documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered, except that the disclosure of the computation of damages may be deferred until the time for Expert Disclosures if a party will rely on a damages expert.

4. Protective Orders. The Court will enter the parties' Agreed Protective Order.

5. Discovery Limitations. The discovery in this cause is limited to the disclosures described in Paragraphs 1-3 together with:²

- (a) Interrogatories: Plaintiff may serve 25 interrogatories on each Defendant, and each Defendant may serve 25 interrogatories on Plaintiff.
- (b) Requests for Admission: Plaintiff may serve 40 requests for admissions on each Defendant, and each Defendant may serve 40 requests for admissions on Plaintiff. In addition, the parties will be permitted to serve a reasonable number of requests for admission that seek an admission as to (a) the authenticity of a particular document or thing, (b) the admissibility of a particular document or thing, and/or (c) whether a document qualifies as a "printed publication" or other prior art as of a certain date under 35 U.S.C. § 102.

² The limits in this Discovery Order are exclusive of any discovery permitted in connection with Uber's Motion to Stay Pending Resolution of Standing Issue (D.I. 25) or any venue-related discovery permitted by the Court.

- (c) Depositions: Each party may take up to 40 total hours of deposition testimony of another party (inclusive of both 30(b)(1) and 30(b)(6) depositions). Depositions of experts, third parties, and inventors do not count against these limits. Absent a showing of good cause, each deposition will be limited to no more than 7 hours.
- (d) Expert Depositions: Each party is limited to 5 testifying expert witnesses. Plaintiff may depose each of Defendants' experts for up to seven (7) hours per report. Each Defendant may depose each of Plaintiff's experts for up to seven (7) hours per report.
- (e) Third-Party Discovery: The parties may conduct third-party discovery including depositions and document subpoenas. The total hours for these third-party depositions shall not exceed eighty (80) hours per party.
- (f) Any party may later move to modify these limitations for good cause.

6. Privileged Information. There is no duty to disclose privileged documents or information. However, the parties are directed to meet and confer concerning privileged documents or information after the Status Conference. By the deadline set in the Docket Control Order, the parties shall exchange privilege logs identifying the documents or information and the basis for any disputed claim of privilege in a manner that, without revealing information itself privileged or protected, will enable the other parties to assess the applicability of the privilege or protection. Any party may move the Court for an order compelling the production of any documents or information identified on any other party's privilege log. If such a motion is made, the party asserting privilege shall respond to the motion within the time period provided by Local Rule CV-7. The party asserting privilege

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