

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

AGIS SOFTWARE DEVELOPMENT LLC,  v.  T-MOBILE, USA, INC., AND T-MOBILE US, INC.	CASE NO. 2:21-cv-00072-JRG (Lead Case)
AGIS SOFTWARE DEVELOPMENT LLC,  v.  LYFT, INC.	CASE NO. 2:21-cv-00024-JRG (Member Case)
AGIS SOFTWARE DEVELOPMENT LLC,  v.  UBER TECHNOLOGIES, INC. d/b/a UBER.	CASE NO. 2:21-cv-00026-JRG (Member Case)
AGIS SOFTWARE DEVELOPMENT LLC,  v.  WHATSAPP, INC.  .	CASE NO. 2:21-cv-00029-JRG (Member Case)

**DEFENDANTS T-MOBILE USA, INC. AND T-MOBILE US, INC.'S  
REPLY IN SUPPORT OF ITS MOTION TO DISMISS (D.I. 46)**

## I. INTRODUCTION

AGIS's opposition (D.I. 83) cannot fix the deficiencies in its Complaint against T-Mobile (D.I. 1), as pointed out in T-Mobile's motion to dismiss. D.I. 46. Indeed, AGIS's opposition is largely identical to its opposition to Uber's analogous motion to dismiss (D.I. 43), and fails for the same reasons Uber explained in its reply, which T-Mobile incorporates by reference. D.I. 51. For the reasons discussed there and in T-Mobile's opening papers (D.I. 46), as well as the limited additional grounds discussed below, the Court should dismiss AGIS's Complaint.

## II. ARGUMENT

### A. **AGIS's Opposition to T-Mobile's Motion to Dismiss Is Largely the Same as Its Opposition to Uber's Motion, and the Court Should Grant Both Motions for the Same Reasons.**

In response to Uber's motion to dismiss (D.I. 24), AGIS filed an opposition (D.I. 43), and Uber replied setting out the opposition's failures and the reasons the Court should grant Uber's motion. D.I. 51. Because AGIS's Complaint against T-Mobile suffers from many of the same defects, T-Mobile also moved to dismiss, adopting and incorporating Uber's motion, arguments, and evidence. D.I. 46 at 1. AGIS's assertion that this adoption by reference was somehow improper (D.I. 83 at 1 n.2) is unsupported. In fact, where issues are common across parties, adoption by reference can appropriately preserve judicial and party resources by reducing the volume of briefing before the judge. *See, e.g., Borman v. Shamrock Energy Sols., LLC*, 421 F. Supp. 3d 382, 387 (E.D. La. 2019) (approving "adoption by reference pursuant to Rule 10(c)" of memoranda in support of motions to dismiss). It would be inefficient to require an argument be repeated verbatim, taking up numerous pages, when it has already been made elsewhere. No court would want submission of large quantities of the same materials to read a second time.

Belying its assertion, adoption by reference was appropriate here, as AGIS's opposition to T-Mobile's motion largely copies the same arguments as its opposition to Uber's. The

following sections are *substantively identical* in both oppositions, simply replacing the defendants' names, products, and asserted patents where applicable:

- D.I. 43 at 3-7, D.I. 83 at 3-7: Both sections outline the legal standards for a 35 U.S.C. § 101 claim (patentable subject matter) and a Rule 12(b)(6) motion to dismiss for failure to state a claim.
- D.I. 43 at 11-21, D.I. 83 at 7-17: Both sections give AGIS's § 101 arguments, which Uber's reply addresses by explaining that there are no genuinely disputed claim construction or fact issues, and that the '728 patent fails both steps of the *Alice* analysis. D.I. 51 at 3-7.
- D.I. 43 at 21-26, D.I. 83 at 17-23: Both sections make similar arguments as to joint and direct infringement, and Uber's reply demonstrates why those arguments are unsuccessful, including AGIS's failure to plead joint infringement at all, copy-and-paste errors applying allegations about the '728 patent (asserted against both Uber and T-Mobile) to other patents, and irreconcilable factual allegations. D.I. 51 at 7-10.
- D.I. 43 at 27-28, D.I. 83 at 24: Both sections give AGIS's ineffective arguments on indirect infringement, and Uber's reply explains why they do not meet the required pleadings standard. D.I. 51 at 10.
- D.I. 43 at 28, D.I. 83 at 25: Both sections admit that AGIS is not asserting willful infringement, and Uber's reply establishes that the Court should thus dismiss willful infringement with prejudice. D.I. 51 at 10.

Because AGIS's opposition to T-Mobile's motion to dismiss is substantively identical to the analogous portions of AGIS's Uber opposition (D.I. 43), T-Mobile adopts and incorporates the relevant parts of Uber's reply. D.I. 51 at 3-10.

**B. AGIS' Limited Additional Arguments on Joint and Direct Infringement Are Defective, and the Court Should Reject Them.**

Only a few scattered sentences—on joint and divided infringement—in AGIS's T-Mobile opposition are not substantively the same as in its Uber opposition. But they do not help AGIS, nor provide any basis to deny T-Mobile's motion.

First, AGIS argues that the patents asserted against Uber and T-Mobile are only partially overlapping. D.I. 83 at 17-18 n.9. But AGIS does not even *try* to explain how the non-overlapping patents make any difference to the analysis, nor attempt to contradict T-Mobile's evidence that the *same errors* infect both complaints in the same ways as to both overlapping and non-overlapping patents. *Id.*; D.I. 46 at 3-5. The Court may disregard AGIS's argument on this score, as “a difference which makes no difference is no difference at all.” *William James: The Essential Writings* p.xiii (Bruce W. Wilshire, ed., State University of New York Press 1971).

Second, AGIS tries to rebut T-Mobile's argument that the Complaint improperly runs together three separate accused products because it supposedly “specifically identified exemplary T-Mobile Products as the infringing Accused Products, and describe[d], with specificity... exemplary claims AGIS contends T-Mobile infringes.” D.I. 83 at 20. That is wrong. D.I. 46 at 3-4. AGIS in fact accuses *three distinct T-Mobile products* (FamilyMode, FamilyWhere, and Fleet Management) but rarely addresses them separately, instead almost always lumping them together. *See, e.g.*, D.I. 1, ¶ 16 (“T-Mobile has manufactured, used, marketed, distributed, sold, offered for sale, and exported from and imported into the United States... T-Mobile Family Mode application and systems, T-Mobile FamilyWhere application and systems, and T-Mobile Fleet Management Solutions... (collectively, the ‘Accused Products’)”); ¶ 17 (referencing the functionalities of the “Accused Products” as a whole and stating that the “Accused Products practice the claims of the Asserted Patents to improve user experiences and to improve T-

Mobile’s position in the market.”); ¶ 25 (“Defendants have and continue to directly infringe at least claim 8 of the ’055 Patent, either literally or under the doctrine of equivalents, by making, using, selling, offering for sale, distributing, exporting from, and/or importing into the United States the Accused Products…”); ¶¶ 47, 68, 99, 121, 148 (similar allegations for other patents); ¶¶ 29-35, 51-57, 72-78, 103-109, 125-131, 152-159 (further mixed allegations).

AGIS’s opposition tardily attempts to draw more alleged distinctions between the Accused Products (D.I. 83 at 18-21), but it cannot fix or even address these defects in its Complaint, the only document that matters on a motion to dismiss. *See, e.g., Cevallos v. Silva*, 541 F. App’x 390, 393-94 (5th Cir. 2013) (“It is also not enough that [Plaintiff’s] Response [to Defendants’] motions to dismiss elaborated on his allegations against [one Defendant]. Even if his Response stated a claim for relief cognizable under *Twombly*, the **complaint** must contain either direct allegations on every material point necessary to sustain recovery or contain allegations from which an inference may be fairly drawn that evidence will be introduced at trial.”) (emphasis original). This Court should reject AGIS’s efforts to augment, through its opposition, the Complaint’s allegations to try to save its claims.

### III. CONCLUSION

For the above reasons and those in T-Mobile’s opening papers (D.I. 46) and Uber’s reply (D.I. 51), the Court should dismiss AGIS’s Complaint with prejudice.

Date: June 15, 2021

Respectfully submitted,

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