

**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 REPLY IN SUPPORT OF ITS MOTION TO DISMISS  
FIRST AMENDED COMPLAINT FOR IMPROPER VENUE**

**TABLE OF CONTENTS**

I. Introduction.....1

II. WhatsApp Does Not Reside in this District .....1

III. WhatsApp Does Not Have A “Regular and Established Place of Business” In This District.....2

    A. The Like Way Data Center is not located in this District.....2

    B. The INAP Data Center is not a regular and established place of business of WhatsApp .....4

        1. AGIS does not dispute that WhatsApp did not use the INAP Data Center at the time of filing.....5

        2. WhatsApp had no regular, physical employee presence at the INAP Data Center. ....6

        3. WhatsApp never conducted business from the INAP Data Center. ....8

IV. Venue Discovery Is Unnecessary .....9

V. Transfer Is Inapposite .....10

VI. Conclusion .....10

**TABLE OF AUTHORITIES**

**Page(s)**

**CASES**

*Blitzsafe Texas LL v. Mitsubishi Elec. Corp.*,  
 No. 2:17-cv-00430-JRG, 2018 WL 2210686 (E.D. Tex. May 22, 2019).....9

*Blue Spike, LLC v. Nook Dig., LLC*,  
 No. 6:16-CV-1361-RWS-JDL, 2017 WL 3263871 (E.D. Tex. July 28, 2017).....1

*In re Cray*,  
 871 F.3d 1355 (Fed. Cir. 2017).....2

*Cummins-Allison Corp. v. Glory Ltd.*,  
 No. 2-03-cv-358TJ, 2004 WL 1635534 (E.D. Tex. May 26, 2004).....10

*Global-Tech Appliances, Inc. v. SEB S.A.*,  
 563 U.S. 754 (2011).....6

*In re Google LLC*,  
 949 F.3d 1338 (Fed. Cir. 2020).....6, 7, 8, 9

*Hoffman v. Blaski*,  
 363 U.S. 335 (1960).....5

*Intellectual Ventures II LLC v. FedEx Corp.*,  
 No. 2:16-cv-980-JRG, 2017 WL 5630023 (E.D. Tex. Nov. 22, 2017) .....8

*Level Sleep LLC v. Dormeo North America, LLC*,  
 Case No. 2:18-cv-00120-RWS, 2019 WL 458467 (E.D. Tex. Feb. 1, 2019).....6

*Life360, Inc. v. Advanced Ground Information Systems, Inc.*,  
 Case No. 5:15-v-00151-BLF (N.D. Cal.) .....10

*Magnacoustics, Inc. v. Resonance Tech. Co.*,  
 No. 97-1247, 1997 WL 592863 (Fed. Cir. Sept. 25, 1997) .....1

*Meyer v. Holley*,  
 537 U.S. 280 (2003).....7

*In re Nitro Fluids LLC*,  
 978 F.3d 1308 (Fed. Cir. 2020).....10

*Peerless Network, Inc. v. Blitz Telecom Consulting, LLC*,  
 No. 17-cv-1725 (JPO), 2018 WL 1478047 (S.D.N.Y. Mar. 26, 2018) .....6, 8, 9

*Personal Audio, LLC v. Google, Inc.*,  
280 F. Supp. 3d 922 (E.D. Tex. 2017).....4

*TC Heartland LLC v. Kraft Foods Grp. Brands LLC*,  
137 S.Ct 1514 (2017).....1

*Tinnus Enter. v. Telebrands Corp.*,  
No. 6:17-cv-00170-RWS, 2018 WL 4560742 (E.D. Tex. Mar. 9, 2018).....8

*Welch Sci. Co. v. Human Eng'g Inst., Inc.*,  
416 F.2d 32 (7th Cir. 1969) .....5, 7, 8

**STATUTES**

28 U.S.C. § 1400(b) .....1

35 U.S.C. § 286.....8

TEX. PROP. CODE ANN. § 12.001 (West 2003).....2

TEX. PROP. CODE ANN. § 13.002 (West 2003).....2

TEX. TAX CODE ANN. § 22.01 (West 2014).....4

**TREATISES**

Restatement (Third) of Agency § 1.01, cmt. d .....7

Restatement (Third) of Agency § 1.03 .....7

## I. INTRODUCTION

AGIS cannot establish venue for WhatsApp in this District. In its opposition, AGIS argues venue based on the Like Way Data Center owned by Facebook and a second data center owned by INAP. But AGIS relies on inaccurate information, unsupported statements, and misinterpretation of agency law in attempts to establish venue in this District. Dkt. 82 (“Opp. Br.”) at 7-15. Consequently, these arguments fail. First, contrary to AGIS’ contentions, the Facebook Like Way Data Center is wholly located in Tarrant County, which is not part of this judicial district. Inaccurate maps expressly acknowledged as unsuitable for legal purposes cannot change this fact. Second, the INAP Data Center in Plano, Texas is not a regular and established place of business of WhatsApp or Facebook. Critically, Facebook terminated use of the INAP Data Center as a co-location facility more than three years ago in 2018, and therefore the INAP Data Center cannot serve as a place of business of WhatsApp under any established legal theory.

AGIS further provides significant background on the Court’s experience with the asserted patents and other litigants in this District. But this is irrelevant in establishing proper venue. Venue decisions for other actions or against other defendants cannot form the basis of any facts to establish proper venue for WhatsApp in this action. *See Blue Spike, LLC v. Nook Dig., LLC*, No. 6:16-CV-1361-RWS-JDL, 2017 WL 3263871, at \*3 (E.D. Tex. July 28, 2017) (quoting *Magnacoustics, Inc. v. Resonance Tech. Co.*, No. 97-1247, 1997 WL 592863, at \*1 (Fed. Cir. Sept. 25, 1997)) (explaining that venue and jurisdiction requirements must be met as to each defendant).

Accordingly, venue in this District is improper and the case should be dismissed.

## II. WHATSAPP DOES NOT RESIDE IN THIS DISTRICT

AGIS does not dispute that, as a matter of law, WhatsApp does not reside in this District and there is no basis for venue under the first prong of the patent venue statute. *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S.Ct. 1514, 1517 (2017); *see also* 28 U.S.C. § 1400(b).

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.