EXHIBIT J

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June 9, 2021

VIA EMAIL

Vincent J. Rubino, III
Fabricant LLP
230 Park Avenue
New York, NY 10169
vrubino@fabricantllp.com

Re: *AGIS Software Development, LLC v. WhatsApp, Inc.*, Case No. 2:21-cv-00029-JRG-RSP (E.D. Tex.)

Vincent:

I write regarding AGIS's opposition to WhatsApp's motion to dismiss for improper venue.

First, as we have repeatedly stated, WhatsApp has no regular and established place of business in the Eastern District of Texas. In your opposition, you state: "In the event that the Court finds that venue is not proper over WhatsApp, AGIS respectfully requests that it be permitted to conduct venue discovery prior to a determination of this Motion." Dkt. 82 at 14-15. AGIS should have made this request prior to filing its opposition. AGIS's failure to do so only confirms that there is no need for such discovery and that the request in its opposition is made in bad faith.

Indeed, AGIS identifies no discovery in its opposition that would change the facts material to the venue analysis. Specifically, there is no discovery that will change the fact that there has been no Facebook or WhatsApp equipment, servers, or other property in the INAP Data Center or elsewhere in the Eastern District of Texas for over three years. Further, no amount of discovery will change the fact that Facebook merely used the INAP Data Center as a co-location facility.

Regardless, WhatsApp is willing to provide AGIS with reasonable informal discovery related to venue. Please serve any venue-related discovery requests you believe are necessary ***by June 14***.

AGIS's delay in seeking this venue-related discovery to support its opposition prejudices WhatsApp's ability to litigate this case fully in a proper venue.

Second, AGIS's opposition makes clear that AGIS cannot allege any pre-suit acts of infringement. In particular, AGIS's allegations are limited to indirect infringement against WhatsApp, and there can be no pre-suit acts of indirect infringement because WhatsApp did not

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have any pre-suit knowledge of the Asserted Patents. *DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1304 (Fed. Cir. 2006) (induced infringement requires knowledge of the asserted patent); *Fujitsu Ltd. v. Netgear Inc.*, 620 F.3d 1321, 1326 (Fed. Cir. 2010) (contributory infringement requires knowledge of the asserted patent).

There can be no direct infringement where one makes, sells, or offers for sale less than the complete invention. *Synchronoss Techs., Inc. v. Dropbox, Inc.*, 987 F.3d 1358, 1368 (Fed. Cir. 2021) ("Because Dropbox does not provide its customers with any hardware in conjunction with its accused software, Dropbox does not make, sell, or offer for sale the complete invention."). Nor can there be a "use" for direct infringement without the "use of ***each and every element*** of the system." *Id.* at 1369 (emphasis added); *see also Centillion Data Sys., LLC v. Qwest Commc'ns Int'l, Inc.*, 631 F.3d 1279, 1286 (Fed. Cir. 2011) ("Supplying the software for the customer to use is not the same as using the system."). AGIS's opposition alleges that infringement only occurs when a user—not WhatsApp—uses the WhatsApp Accused Products. *See, e.g.,* Dkt. 82 at 4 ("When a user uses the WhatsApp Accused Products, the 'servers log certain general information.'"), 10 (same). Thus, WhatsApp cannot directly infringe the asserted claims because it does not provide each and every element of the claimed device or system, or perform each and every claimed step.

To the extent that AGIS does allege that WhatsApp directly infringes the Asserted Patents, please identify which claims it alleges that WhatsApp directly infringes ***by June 14.***

Best regards,

Lisa K. Nguyen
of LATHAM & WATKINS LLP

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