

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

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

LYFT, INC.'S MOTION TO DISMISS FOR IMPROPER VENUE

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. STATEMENT OF ISSUES	2
III. PROCEDURAL HISTORY AND FACTUAL BACKGROUND	2
IV. LEGAL STANDARD.....	3
V. ARGUMENT.....	3
A. Lyft Does Not Reside in This District.....	3
B. AGIS Cannot Show That Lyft Has a Regular and Established Place of Business in this District	4
1. The Alleged Plano Express Drive Location was Closed for Over a Year Before AGIS Filed Its Lawsuit and Cannot Serve as a Basis for Venue.	4
2. The Closed Plano Express Drive Location Could Not Support Venue Against Lyft Even If It Were Open.	5
3. Pickup Locations Do Not Create a Sufficient Basis for Venue against Lyft.	7
4. Vehicles of Drivers Cannot Serve as a Basis for Venue Against Lyft.....	10
a. Driver’s Vehicles are Not Regular and Established Places of Business for Lyft.....	10
b. Vehicles of Drivers using the Lyft App are Not Places “Of Lyft”	12
C. AGIS Cannot Show That Lyft Has Infringed the ’838 Patent in This District.	14
VI. CONCLUSION.....	15

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Andra Grp., LP v. Victoria's Secret Stores, LLC</i> , No. 4:19-cv-288-ALM-KPJ, 2020 WL 1465894 (E.D. Tex. Mar. 26, 2020).....	6, 7
<i>AptusTech LLC v. Trimfoot Co.</i> , No. 4:19-CV-00133-ALM, 2020 WL 1190070 (E.D. Tex. Mar. 12, 2020).....	7
<i>C.R. Bard, Inc. v. AngioDynamics, Inc.</i> , No. 2:12-cv-00035-RJS-DAO, 2020 WL 6710423 (D. Utah Nov. 16, 2020).....	4
<i>EMED Techs. Corp. v. Repro-Med Sys., Inc.</i> , No. 2:17-cv-728-WCB-RSP, 2018 WL 2544564 (E.D. Tex. June 4, 2018)	7
<i>Fourco Glass Co. v. Transmirra Prod. Corp.</i> , 353 U.S. 222 (1957).....	3
<i>In re Cray Inc.</i> , 871 F.3d 1355 (Fed. Cir. 2017).....	passim
<i>In re ZTE (USA) Inc.</i> , 890 F.3d 1008 (Fed. Cir. 2018).....	3
<i>Int'l Techs. & Sys. Corp. v. Samsung Elecs. Co.</i> , No. SA CV 17-1748-DOC, 2018 WL 4963129 (C.D. Cal. June 22, 2018).....	4, 7, 8
<i>Pers. Audio, LLC v. Google, Inc.</i> , 280 F. Supp. 3d 922 (E.D. Tex. 2017).....	3, 4, 5, 8
<i>Phillips v. Baker</i> , 121 F.2d 752 (9th Cir. 1941)	9
<i>Schnell v. Peter Eckrich & Sons, Inc.</i> , 365 U.S. 260 (1961).....	9
<i>TC Heartland LLC v. Kraft Foods Grp. Brands LLC</i> , 137 S. Ct. 1514 (2017).....	3
<i>Uniloc USA, Inc. v. Nutanix, Inc.</i> , No. 2:17-cv-00174-JRG, 2017 U.S. Dist. LEXIS 229347 (E.D. Tex. Dec. 6, 2017).....	12, 13
<i>Valeant Pharm. N. Am. LLC v. Mylan Pharm. Inc.</i> , 978 F.3d 1374 (Fed. Cir. 2020).....	14

STATUTES

28 U.S.C. § 1400(b)3, 5, 14
28 U.S.C. § 1406(a)2, 3, 15

OTHER AUTHORITIES

Local Rule 7(a)(1).....2
Fed. R. Civ. P. 12(b)(3).....2, 3

I. INTRODUCTION

The Eastern District of Texas is not a proper venue for the instant case. Lyft does not reside in this District, nor does it have a “regular and established place of business” here (either when AGIS filed its complaint or thereafter). AGIS bases its venue allegations on incorrect information and a misunderstanding of the requirements to show proper venue in a patent infringement lawsuit. Notably, the foundation for several of AGIS’s venue assertions rests on the erroneous assumption that Lyft maintains an Express Drive location in Plano, Texas. Although Lyft offered Express Drive services at a Pep Boys site in Plano at one time, it closed over 1.5 years before AGIS filed its Complaint. Moreover, even when the Plano Pep Boys site offered Express Drive services, the site was not owned by Lyft.

AGIS’s other venue assertions similarly fail. First, AGIS proposes that venue is proper because Lyft allegedly maintains “dedicated pickup locations” in this District. AGIS identifies a single purported example of such location—the Plano Pep Boys store. Notwithstanding the fact that a closed site which was never owned by Lyft cannot serve as a basis for venue, pickup locations, generally, cannot provide a basis for venue because they fail to meet the “regular and established place of business” requirements set forth by the Federal Circuit. Second, AGIS alleges that the vehicles of drivers using the Lyft app provide a basis for venue in this District. Such vehicles, however, are neither “regular and established places of business” for Lyft, nor are they places “of Lyft.”

Furthermore, AGIS’s claims regarding U.S. Patent 10,341,838 (“the ’838 Patent”) cannot proceed in this District because AGIS cannot show that Lyft has committed acts of infringement here. Notably, AGIS’s assertions regarding this patent require Lyft’s servers to execute a claimed method. Lyft’s servers are not located in Texas, let alone the Eastern District of Texas, and thus AGIS cannot show that infringement occurred here. For these reasons, which are described in

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.