IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DDC TECHNOLOGY, LLC, Plaintiff, v. EMERGE TECHNOLOGIES, INC. (dba UTOPIA 360); STRUCTURAL GRAPHICS, LLC (dba RED PAPER PLANE); PYRITE VR LTD (dba MAXBOX VR); HMD TECH SARL (dba HOMIDO); LANDSBERG ORORA; and GOOGLE LLC, Defendants.	§ § § § § § § § § § § § § § § §	Case No.: 3:22-cv-01263-B

DEFENDANT LANDSBERG ORORA'S MOTION TO DISMISS
AND SUPPORTING BRIEF

Pursuant to Federal Rules of Civil Procedure 12(b)(2), (3), and (6) and 28 U.S.C. § 1400(b), Defendant Landsberg Orora ("Landsberg") moves the Court to dismiss Plaintiff DDC Technology, LLC's ("Plaintiff") Original Complaint ("Complaint") for lack of personal jurisdiction, improper venue, and failure to state a claim.

TABLE OF CONTENTS

INTRODUCTION 1
FACTUAL BACKGROUND 1
ARGUMENT AND AUTHORITIES 3
I. Plaintiff's Claims Against Landsberg Must be Dismissed Under Rule 12(b)(2) For Lack of Personal Jurisdiction 3
A. The legal standard for jurisdiction 3
B. Landsberg is not subject to general jurisdiction in Texas. 4
C. Landsberg is not subject to specific jurisdiction in Texas. 5
1. Landsberg did not purposefully direct any activities to Texas. 5
a. The Jones Declaration confirms the absence of activity directed to Texas. 5
b. Landsberg's website does not show purposeful activity directed to Texas. 7
c. Operation of Defendant's website with a generic "inquiry form" does not demonstrate purposeful activity directed to Texas. 8
2. Plaintiff's claims do not arise from or relate to any activity by Landsberg in Texas. 9
3. Alternatively, specific jurisdiction over Landsberg is neither fair or reasonable. 10
D. The presence of Orora Packaging in Grapevine is no substitute for Landsberg. 11
II. This Case Must be Dismissed under Rule 12(b)(3) Because Venue in the Northern District of Texas is Improper 13
A. The legal standard for venue 13
1. First venue option: Where a defendant resides 13
2. Second venue option: Where defendant committed an act of infringement and has a regular place of business 14
B. Venue is improper in this District 14
1. Landsberg does not operate a regular and established place of business in this District. 14
a. The Court should reject Plaintiff's unsupported allegations 14
b. Plaintiff's pleadings fail to satisfy the three-part Cray test 15
c. Plaintiff also fails to satisfy the Cray "comparison" factor 16
2. Orora Packaging's operations are no substitute for operations by Landsberg. 17

DDC Tech., LLC - Ex. 2014, p. 2
Google LLC v. DDC Tech., LLC
IPR2023-00709

3. Landsberg did not commit an act of infringement in this District 18

III. This Court Should Dismiss under Rule 12(b)(6) Because Plaintiff has Failed to State a Claim Against Landsberg. 19

CONCLUSION 20

DDC Tech., LLC - Ex. 2014, p. 3
Google LLC v. DDC Tech., LLC
IPR2023-00709

TABLE OF AUTHORITIES

Page(s)

Cases

Ashcroft v. Iqbal,
556 U.S. 662 (2009).....19, 20

Autogenomics, Inc. v. Oxford Gene Tech. Ltd.,
566 F.3d 1012 (Fed. Cir. 2009).....3, 4, 5

Avocent Huntsville Corp. v. Aten Int'l Co.,
552 F.3d 1324 (Fed. Cir. 2008).....11

Bearry v. Beech Aircraft Corp.,
818 F.2d 370 (5th Cir. 1987).....11

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007).....19, 20

Campbell Pet Co. v. Miale,
542 F.3d 879 (Fed. Cir. 2009).....5

Carmona v. Leo Ship Mgmt., Inc.,
924 F.3d 190 (5th Cir. 2019).....12

Celgard, LLC v. SK Innovation Co.,
792 F.3d 1373 (Fed. Cir. 2015).....4, 10, 12

Celgene Corp. v. Myaln Pharmaceuticals Inc.,
17 F.4th 1111 (Fed. Cir. 2021).....17

In re Cray Inc.,
871 F.3d 1355 (Fed. Cir. 2017).....14, 15, 16, 17

Daimler AG v. Bauman,
571 U.S. 117 (2014).....3

EMA Electromechanics, Inc. v. Siemens Corp.,
No. 6:21-CV-1001-ADA, 2022 WL 1241967 (W.D. Tex. Apr. 26, 2022).....15

Galderma Laboratories, L.P. v. Teva Pharmaceuticals, USA, Inc.,
290 F. Supp.3d 599 (N.D. Tex. 2017).....13, 15, 17

Getagadget, LLC v. Jet Creations Inc.,
No. 19-51019, 2022 WL 964204 (5th Cir. March 30, 2022).....8

Goodyear Dunlop Tires Operations, S.A. v. Brown,
564 U.S. 915 (2011).....3

In re Google LLC.,
949 F.3d 1338 (Fed. Cir. 2020).....15, 18

Helicopteros Nacionales de Colombia, S.A. v. Hall,
466 U.S. 408 (1984).....3, 6

International Shoe Co. v. Washington,
326 U.S. 310 (1945).....3

Luv N' Care, Ltd. v. Insta-Mix, Inc.,
438 F.3d 465 (5th Cir. 2006).....5

Nam v. Tex Net, Inc.,
2021 WL 535852 (N.D. Tex. Feb. 12, 2021).....12

Rex Real Est. I, L.P. v. Rex Real Est. Exch., Inc.,
2019 WL 2524830 (E.D. Tex. June 19, 2019).....8, 9

Schnell v. Peter Eckrich & Sons, Inc.,
365 U.S. 260, 81 S. Ct. 557 (1961).....18

Seven Networks, LLC v. ZTE (USA), Inc.,
No. 3:17-cv-1495-M, 2018 WL 2427147 (N.D. Tex. May 30, 2018).....4

Sightline Payments, LLC v. Everi Holdings Inc.,
No. 6:21-CV-01015, 2022 WL 2078215 (W.D. Tex. June 1, 2022) (Albright, J.).....19

Silent Drive, Inc. v. Strong Indus., Inc.,
326 F.3d 1194 (Fed. Cir. 2004).....3

TC Heartland LLC v. Kraft Foods Grp Brands, LLC,
___U.S.___, 137 S.Ct. 1514 (2017).....13, 14

In re Volkswagon Group of America, Inc.,
28 F.4th 1203 (Fed. Cir. 2022).....14, 17

World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286 (1980).....12

Zilker Cloud Tech., LLC v. RingCentral, Inc.,
No. 3:21-CV-2807-S, 2022 WL 1102863 (N. D. Tex. April 12, 2022).....16

In re ZTE (USA) Inc.,
890 F.3d 1008 (Fed. Cir. 2018).....13, 18

Statutes

28 U.S.C § 1391 18

28 U.S.C. § 1400(b) 1, 13, 14, 18

Other Authorities

Federal Rule of Civil Procedure 12(b)(2) 1, 3

Federal Rule of Civil Procedure 12(b)(3) 1, 13

Federal Rule of Civil Procedure 12(b)(6) 1, 19

INTRODUCTION

Plaintiff hangs its entire jurisdictional hat on two false facts—one physical and one electronic. First, Plaintiff alleges that Defendant Landsberg has a physical office address in this District. It does not. From this false fact, Plaintiff extrapolates that therefore Landsberg must maintain a place of business/conduct business in Texas. Second, Plaintiff alleges that Landsberg maintains a website. From this, Plaintiff falsely infers that residents in this District can purchase the Accused Products on Landsberg's website. They cannot. These allegations are factually false and legally insufficient for this Court to exercise personal jurisdiction over Landsberg, rendering Plaintiff's theory as nothing more than "all hat and no cattle." Plaintiff hangs its entire venue argument on these same two false facts. Its Complaint against Landsberg must accordingly be dismissed for lack of jurisdiction and improper venue.

Because Landsberg does not have a "regular and established place of business" and is not committing an act of infringement in this District, neither personal jurisdiction nor venue is proper in this District. Pursuant to Federal Rules 12(b)(2) and (3) and 28 U.S.C. § 1400(b), Landsberg respectfully asks the Court to dismiss this case against it. Alternatively, this Court should dismiss Landsberg from this case under Federal Rule 12(b)(6) because Plaintiff has failed to state a claim upon which relief can be granted.

FACTUAL BACKGROUND

Landsberg is incorporated in California, with its principal and physical place of business at its headquarters located at 6600 Valley View Street, Buena Park, California, 90620. Declaration of Matt Jones, APP 2, ¶¶ 3-4 ("Jones Decl." filed concurrently). Landsberg has over 869 employees nationwide, 13 who work in its California headquarters, and none who work in Texas. APP 2, ¶ 7.

Landsberg does not manufacture any products, including the Accused Products identified in the Complaint. APP 2, ¶ 8. Landsberg distributes various products throughout the United States, such as primary and secondary packaging, and complementary products such as flexible packaging film and fillers. *Id*.

Landsberg does not have any operations or personnel in Texas. APP 2-3, ¶¶ 9-17. Landsberg does not own or occupy any offices, warehouses, stores, facilities, or other physical places in Texas. APP 2, ¶¶ 10-11. Landsberg does not pay sales or use taxes in Texas. APP 2, ¶ 12. Landsberg does not own any real or personal property in Texas. APP 2, ¶ 13. Landsberg does not own any inventory at warehouses or other facilities in Texas. APP 2, ¶ 14. Landsberg does not have a physical place of business in Texas. APP 2, ¶ 15. Landsberg does not conduct business in Texas, including at 4151 Highway 121 N., Grapevine Texas (the address Plaintiff identified in the Complaint). APP 3, ¶ 16. Likewise, Landsberg does not maintain a registered agent in Texas, nor is it otherwise licensed to do business in Texas. *Id.* Landsberg does not sell, offer to sell, ship to, or distribute the Accused Products identified in the Complaint in Texas. APP 3, ¶ 17.

In sum, Landsberg does not operate in Texas or in this District. Plaintiff's "factual" basis for personal jurisdiction and venue is scant, amounting to nothing more than conjecture with no basis in fact. Landsberg is a California distribution company—and does not sell or offer to sell the Accused Products in Texas.

ARGUMENT AND AUTHORITIES

I. Plaintiff's Claims Against Landsberg Must be Dismissed Under Rule 12(b)(2) For Lack of Personal Jurisdiction

A. The legal standard for jurisdiction

Deciding whether jurisdiction over an out-of-state defendant is proper requires a court to consider whether exercising jurisdiction is consistent with the Due Process Clause. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The Due Process Clause permits a court to exercise jurisdiction over a non-resident defendant if the defendant has "minimum contacts" with the forum state such that maintaining a suit against that defendant "does not offend traditional notions of fair play and substantial justice." *International Shoe*, 326 U.S. at 316. Personal jurisdiction can be general or specific.

General jurisdiction requires that the defendant have "continuous and systematic" contacts with the forum state even though the plaintiff's claims have no relationship with those contacts. *Id.* (quoting *Silent Drive, Inc. v. Strong Indus., Inc.*, 326 F.3d 1194, 1200 (Fed. Cir. 2004)); *see also Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984). To be subject to general jurisdiction, a non-resident corporation must have developed "continuous and systematic general business contacts" with the forum state such that it is essentially "at home" in the forum state. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). Because it requires extensive and sustained contacts, most courts are hesitant to exercise general jurisdiction over non-resident defendants. *Daimler AG v. Bauman*, 571 U.S. 117, 133 (2014); *see also Goodyear*, 564 U.S. at 925 (at most, general jurisdiction plays reduced role in personal jurisdiction analysis). Specific jurisdiction, on the other hand, requires that the defendant purposefully directed activity to the forum **and** that the plaintiff's claims arise out of or relate to that activity. *Autogenomics*, 566 F.3d at 1017.

The plaintiff bears the burden of making a *prima facie* showing that the court has general or specific personal jurisdiction over a defendant. *Celgard, LLC v. SK Innovation Co.*, 792 F.3d 1373, 1378 (Fed. Cir. 2015); *Autogenomics, Inc. v. Oxford Gene Tech. Ltd.*, 566 F.3d 1012, 1017 (Fed. Cir. 2009); *see also Seven Networks, LLC v. ZTE (USA), Inc.*, No. 3:17-cv-1495-M, 2018 WL 2427147, at *1 (N.D. Tex. May 30, 2018). In this instance, Plaintiff has not shown either.

B. Landsberg is not subject to general jurisdiction in Texas.

In its Complaint, Plaintiff does not expressly allege that the Court has general jurisdiction over Landsberg, and the Court does not. Landsberg lacks the level of continuous and systematic contacts with the forum that an entity must have to make it "at home" in this District. This is easily demonstrated by the Jones Declaration. The Declaration clearly confirms that Landsberg is not "at home" in this District because, *inter alia*, it does not have a physical place of business in Texas and it does not operate in Texas. *See, e.g.*, APP 2-3, ¶¶ 9-16.

Plaintiff alleges that Landsberg has a physical presence in this state because it allegedly has an office in this District. *Id.* From Plaintiff's false allegation, it extrapolates that Landsberg maintains a place of business and conducts business in Texas. *See* Complaint, ¶¶ 20, 23. Landsberg does not have an office in this District or anywhere in Texas so it cannot be said on that fact alone that it conducts business in Texas. APP 2-3, ¶¶ 10-11, 15-16.

Plaintiff then alleges that Landsberg has a website which offers non-Google cardboard reality viewers for sale, but offers no allegations connecting the website to any business activities in this forum. *Id.* at ¶¶ 20, 79; *see also supra* Section C.1 (discussing Plaintiff's citation, later in the Complaint, to an image on Landsberg's website of a cardboard viewer that Landsberg does not manufacture). The Court cannot reasonably infer from these allegations that Landsberg has continuous and systematic contacts with this forum such that it is "at home" in Texas.

A defendant's maintenance of a website, without more, does not confer general jurisdiction. *See Campbell Pet Co. v. Miale*, 542 F.3d 879, 884 (Fed. Cir. 2009). For general jurisdiction to attach through a website, sufficient evidence must exist confirming the consistency of interactions between customers in the forum with the defendant's website. *Id.* (sporadic and insubstantial contacts with the forum state insufficient to establish general jurisdiction over defendants).

The Complaint contains no other allegation suggesting that Landsberg has any other contacts with Texas other than Landsberg's website, much less "continuous and systematic" contacts such that it is "at home" in Texas. Standing alone, Plaintiff's allegations do not make a *prima facie* case that Landsberg has sufficient contacts with this forum to confer general jurisdiction here.

C. Landsberg is not subject to specific jurisdiction in Texas.

The Federal Circuit's test for personal jurisdiction is a three-step analysis:

(1) whether the defendant purposefully directed its activities toward the forum state;

(2) whether the plaintiff's claims arise out of or relate to those activities; and

(3) whether the exercise of personal jurisdiction is fair and reasonable.

Autogenomics, 566 F.3d at 1018. Plaintiff cannot meet any of these three prongs here.[1]

1. Landsberg did not purposefully direct any activities to Texas.

a. The Jones Declaration confirms the absence of activity directed to Texas.

Plaintiff's claim of specific jurisdiction fails from the first prong—Plaintiff makes no allegation, nor could it truthfully, that Landsberg has any business or other purposeful activity

[1] The Federal Circuit's test for personal jurisdiction applies in patent matters. *See Autogenomics*, 566 F.3d at 1017. This is the same test the Fifth Circuit utilizes. *See Luv N' Care, Ltd. v. Insta-Mix, Inc.*, 438 F.3d 465, 469 (5th Cir. 2006).

directed towards this forum, and offers no facts to support its false assumption that Landsberg sells or offers to sell the Accused Products in this forum. The reason for this is simple. Landsberg does not sell or offer to sell the Accused Products in Texas. The Jones Declaration confirms that no such sales or offers to sell the Accused Products have occurred in Texas. APP 3, ¶ 17 (attesting to no sale of Accused Products or offer to sell Accused Products to any customer in this state). And Landsberg does not ship to or otherwise distribute the Accused Products in Texas. *Id*.

The Jones Declaration confirms the absence of any other relevant activities in Texas, much less in this District. Plaintiff's claim of specific jurisdiction fails in view of this Declaration. As discussed above, Landsberg does not have a physical place of business in Texas, it does not operate in Texas, and it does not own any real or personal property in Texas. *See* APP 2-3, ¶¶ 9-16. Landsberg operates from its headquarters in California—not Texas. APP 2, ¶¶ 4-5. Landsberg has over 869 employees nationwide, 13 who work in its California headquarters—not one of the 869 are in Texas. APP 2, ¶ 7. Landsberg does not have any employees, officers or directors in Texas, and does not own or occupy any offices, warehouses, stores, facilities, or other physical places in Texas. APP 2-3, ¶¶ 10-11, 15-16. Likewise, Landsberg does not maintain a registered agent in Texas, nor is it otherwise licensed to do business in Texas. APP 2, ¶ 9. Landsberg also does not pay sales or use taxes in Texas. APP 2, ¶ 12.

In sum, Plaintiff has failed to establish that Landsberg has any contacts with Texas, much less **the required *prima facie* showing** for specific jurisdiction. Plaintiff has not established specific jurisdiction over Landsberg, a California corporation that does not have a place of business in Texas and is not licensed to do business in Texas. *See Helicopteros*, 466 U.S. at 416 (denying personal jurisdiction where "[i]t is undisputed that [defendant] does not have a place of business

in Texas and never has been licensed to do business in the State"). Landsberg has not purposefully directed any activity to Texas.

b. Landsberg's website does not show purposeful activity directed to Texas.

In a misguided effort to bolster its scant allegations supporting jurisdiction, Plaintiff includes a link in the Complaint to the Landsberg.com website. Complaint, ¶ 20, Ex. U. Plaintiff suggests that Landsberg is selling or offering to sell the Accused Products, *i.e.*, "cardboard virtual reality viewers" on its website that Plaintiff characterizes as "non-Google." *See id.* Landsberg's use and/or maintenance of a website that includes an image of a cardboard virtual reality viewer is insufficient to show specific jurisdiction.

The Federal Circuit case, *NexLearn, LLC v. Allen Interactions, Inc.*, is instructive. 859 F.3d 1371 (Fed. Cir. 2017). In *NexLearn*, the plaintiff sued a defendant for patent infringement in federal court in Kansas. The plaintiff alleged specific jurisdiction over the defendant based largely on the defendant's "interactive website" that purportedly "specifically targeted Kansas residents" because it included the state of Kansas in a "dropdown menu." *Id.* at 1374, 1378-79. The district court dismissed the case for lack of jurisdiction over the defendant. The plaintiff appealed and the Federal Circuit affirmed. [2]

The Court analogized the defendant's website to "an out-of-state store." *Id.* at 1379. Much like the defendant's website, such a store "could accept payment from a hypothetical out-of-state resident" and then "ship its product there." *See id.* But the store's "willingness to enter into future transactions" with hypothetical out-of-state residents does not show "purposeful availment" in the forum and "does not create a substantial connection." *See id.* Put differently, the "mere existence" of a website is not enough for specific jurisdiction. *d.* ("Something more is needed—whether it

[2] The Federal Circuit maintained exclusive jurisdiction because the case involved a patent issue.

be actual sales, targeted advertising, or contractual relationships—to connect the defendant's infringing acts of making, using, offering, or selling its product with the forum State.").

The Federal Circuit is not alone in this holding. As the Fifth Circuit recently observed, courts "universally" hold that maintenance of a website that residents of the forum state can access is **not** sufficient for a court to exercise specific jurisdiction over a non-resident defendant. *Getagadget, LLC v. Jet Creations Inc.*, No. 19-51019, 2022 WL 964204 at *4, n.2, *6 (5th Cir. March 30, 2022) (affirming district court's determination that it lacked personal jurisdiction citing, *inter alia*, Federal Circuit law). Based on this "universally" accepted principle, Landsberg's website is not enough for this Court to find purposeful activity directed to Texas.

c. Operation of Defendant's website with a generic "inquiry form" does not demonstrate purposeful activity directed to Texas.

Plaintiff alleges that Landsberg directly infringes its asserted patents by offering to sell and/or selling virtual reality cardboard viewers on its website and induces third parties to infringe its asserted patents by purchasing the Landsberg cardboard viewers from the website. Plaintiff did not plead, however, that anyone in Texas actually used the website to facilitate any sale of the virtual reality cardboard viewers. Even if Plaintiff had pled that such contact from the website led to a sale, the site's generic inquiry form is insufficient to support specific jurisdiction. The *Rex Real Estate* opinion is instructive, and builds upon the Federal Circuit's opinion in *NexLearn*. *See Rex Real Est. I, L.P. v. Rex Real Est. Exch., Inc.*, 2019 WL 2524830 (E.D. Tex. June 19, 2019).

In *Rex Real Estate*, the plaintiff asserted, *inter alia*, that the defendant's website created a "purposeful contact" with the district where the website "invited" visitors to "secure a referral for an agent". *Id.* at *4. The court properly rejected this theory. The court concluded that the plaintiff had provided no evidence that the defendant had actually used the website to "consciously form any commercial relationship with a District resident." *Id.* Instead, the court looked to the

defendant's evidence that its referral program had "not led to a single referral relationship with a District resident." *Id.* The court properly dismissed the case on this and other jurisdictional grounds, concluding that any contacts to the district "derived from the website" were "inconsequential for purposes of jurisdiction." *Id.*

Here, as in *Rex Real Estate*, there is no evidence of any contacts from Landsberg's website sufficient for personal jurisdiction. The screenshot of the website that is Exhibit U shows that the site allows a visitor to "learn more about our custom corrugated solutions & how we can partner with you . . ." by filling out a generic inquiry form. The form advises that "a packaging expert will be in touch shortly." *See* Ex. U. But as discussed in the Jones Declaration, no customer in Texas ever actually used this form. Even if they did, no sales or orders involving the Accused Products ever occurred. APP 5, ¶¶ 32-35. Accordingly, the Court should reject Plaintiff's reliance on Exhibit U to establish purposeful activity directed to Texas. *See Rex Real Estate*, 2019 WL 2524830 at *4.

2. Plaintiff's claims do not arise from or relate to any activity by Landsberg in Texas.

Maintenance of a website is equally unavailing in the second necessary inquiry of specific jurisdiction: whether Plaintiff's claims arise out of Landsberg's contacts with this forum. As the Federal Circuit explained in *NexLearn*, the presence of a website is conceptually no different than operating an out-of-state store that might make a sale to a hypothetical resident of the forum state —"[s]omething more" is needed to establish minimum contacts arising out of or relating to the infringement claim, such as an actual sale or targeted advertising. *See NexLearn*, 859 F.3d at 1379. Here, however, Plaintiff does not allege that any customer in Texas completed a sales transaction relating to an Accused Product via Landsberg's website. Plaintiff does not allege that a customer in Texas placed an order for any Accused Products with Landsberg via its website. And Plaintiff

does not allege that an order for any Accused Products was ever fulfilled in Texas. Absent evidence that any residents in this forum have actually used Landsberg's website to transact business, Plaintiff's allegations are insufficient to show specific jurisdiction over Landsberg, a non-resident defendant. *See NexLearn,* 859 F.3d at 1371. In other words, Plaintiff has failed to demonstrate the required "substantial connection" with this District. *See id*. at 1379.

In *NexLearn*, the Federal Circuit offered suggestions to future plaintiffs of the type of facts that are "[s]omething more" than a mere website, and that could resolve pleading challenges such as the one Plaintiff faced. But Plaintiff failed to incorporate any such facts, because they do not exist: Plaintiff has not pled any connection with the forum based on "actual sales," or "targeted advertising," or "contractual relationships" involving the alleged "infringing acts of making, using, offering, or selling its product with the forum State." *Id.* Here, Landsberg's website does not contain an "online store" page. No customer in Texas could actually purchase the Accused Products from Landsberg through the website identified by Exhibit U, and no Texas customer has ever done so. APP 5, ¶¶ 32-35. Exhibit U simply provides a form that a visitor to the webpage could complete and send to a sales representative for further discussion. APP 5, ¶ 31. A visitor from Texas to Landsberg's website (shown in the Complaint at Exhibit U) **cannot complete a sales transaction for any Accused Products on the identified webpage**. APP 5, at ¶ 32. The visitor cannot place an order for any Accused Products on the identified webpage. APP 5, ¶ 33. Accordingly, Plaintiff's claim of specific jurisdiction fails the second prong too.

3. Alternatively, specific jurisdiction over Landsberg is neither fair or reasonable.

In the unlikely event that the Court were persuaded that Plaintiff has satisfied its burden to establish the first two elements of the Due Process requirement, "the burden shifts to [Landsberg] to prove that personal jurisdiction is unreasonable." *Celgard*, 792 F.3d at 1378. The facts

discussed above and in the Jones Declaration demonstrate that any exercise of jurisdiction over Landsberg is neither fair nor reasonable. The Federal Circuit considers the following factors, derived from Supreme Court jurisprudence, to determine whether the court's exercise of jurisdiction is fair or reasonable in any case:

(1) the burden on the defendant;
(2) the forum state's interest in adjudicating the dispute;
(3) the plaintiff's interest in obtaining convenient and effective relief;
(4) the interest of the interstate judicial system in the efficient resolution of controversies; and
(5) the shared interest of the several states in furthering fundamental substantive social policies.

See Avocent Huntsville Corp. v. Aten Int'l Co., 552 F.3d 1324, 1331 (Fed. Cir. 2008) (citations omitted). Forcing Landsberg—a California corporation—to defend itself in a forum where it is clearly "not at home" and clearly has never purposefully directed contacts does not satisfy this test. As discussed, Landsberg is not registered to do business in Texas, owns no property in Texas, and has no facilities in Texas. APP 2-3, ¶¶ 9-16. This lawsuit implicates virtually no distinct interest of Texas. *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 377 (5th Cir. 1987). To the contrary, Landsberg has established that it does not sell, offer to sell, ship to or distribute the Accused Products in Texas. Landsberg's operations are in California. APP 2, ¶¶ 3-7. For at least all of these reasons, this Court must reasonably conclude that Texas has no interest in adjudicating Plaintiff's claims against Landsberg, and to do so certainly does not further any fundamental substantive social policy.

D. The presence of Orora Packaging in Grapevine is no substitute for Landsberg.

Desperate to litigate this case in the Northern District of Texas, Plaintiff points to an address in Grapevine, Texas from which it claims Landsberg is selling or offering to sell the Accused Products. *See* Complaint, ¶¶ 13, 23. But as previously discussed, this is not **Landsberg's**

address, and **Landsberg** does not conduct any operations or business from this address. A simple search of the Texas Secretary of State's website reveals that the only company registered to do business from this address is Orora Packaging Texas, LP, ("Orora Packaging"). Orora Packaging is a completely different company from Landsberg and not a defendant in this lawsuit. Both Landsberg and Orora Packaging are within the Orora Limited group. To the extent Plaintiff is attempting to allege that the Court can attribute Orora Packaging's activities in this District to Landsberg for purpose of jurisdiction[3] or that Orora Packaging is Landsberg, it is incorrect.

Both the Supreme Court and courts in this District have made clear that activities of third parties are irrelevant to the personal jurisdiction analysis. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). As another court in this District recently noted, the relationship required for specific personal jurisdiction must arise out of contacts that the **defendant itself** creates with the forum state. *Nam v. Tex Net, Inc.,* 2021 WL 535852, at *4 (N.D. Tex. Feb. 12, 2021). Thus, the activity of a third party, even one that has some corporate relationship to the defendant, has **no** relevance to the Court's personal jurisdiction analysis as to Landsberg.

This purposeful availment requirement is a constitutional touchstone. *Carmona v. Leo Ship Mgmt., Inc*., 924 F.3d 190 (5th Cir. 2019). It ensures that no defendant is haled into a forum solely on the basis of random, fortuitous, or unilateral activity of some third person. *Id.* at 193-94, 197; *see Celgard*, 792 F.3d at 1380 (same).

[3] The Kent H. Landsberg Company Inc. ("Kent Landsberg) was established in 1947 in California. APP 3, ¶ 20. Kent Landsberg quickly grew to one of the largest manufacturers and distributors of packaging solutions in North America. As it expanded, its affiliated entities were often formed or identified by their location. *Id.* at ¶ 21. For example, Orora Packaging was previously known as Kent H. Landsberg Company of Dallas, L.P. In 1983, Orora Limited purchased Kent Landsberg and its affiliates. Over time, many of the affiliated entities in the Orora Limited group were renamed. Many of those companies, however, retained their regional identity in addition to their regional operations. For example, Orora Packaging is still often referred to as Landsberg Dallas. Landsberg Orora and Orora Packaging are among the many companies in the Orora Limited group.

To the extent Plaintiff is contending that Orora Packaging's business at the Grapevine location is the basis for its infringement claims, Plaintiff failed to plead this. The Complaint is entirely devoid of any facts relating to Orora Packaging's alleged infringing conduct at 4151 Highway 121 N. in Grapevine Texas. Moreover, Plaintiff failed to plead any connection between Orora Packaging and Landsberg.

In sum, Plaintiff has not shown that Landsberg has contacts with Texas sufficient to confer personal jurisdiction. Without any facts to support "minimum contacts" with this forum, the Court must dismiss Plaintiff's Complaint against Landsberg in its entirety.

II. This Case Must be Dismissed under Rule 12(b)(3) Because Venue in the Northern District of Texas is Improper

A. The legal standard for venue

Venue in patent infringement cases is governed exclusively by Section 1400(b) of Title 28 of the United States Code. *See* 28 U.S.C. § 1400(b); *TC Heartland LLC v. Kraft Foods Grp Brands, LLC*, ___U.S.___, 137 S.Ct. 1514, 1518 (2017). This section provides that a plaintiff **must** bring a claim for infringement either "in the judicial District where the defendant resides" or "where the defendant has committed acts of infringement **and** has a regular and established place of business." 28 U.S.C. § 1400(b); (emphasis added); *Galderma Laboratories, L.P. v. Teva Pharmaceuticals, USA, Inc.*, 290 F. Supp.3d 599, 606 (N.D. Tex. 2017). It is the plaintiff's burden to establish that venue is proper. *In re ZTE (USA) Inc.*, 890 F.3d 1008, 1013–14 (Fed. Cir. 2018); *Galderma*, 290 F. Supp.3d at 605.

1. First venue option: Where a defendant resides

Under the first option of § 1400(b) for venue in a patent case, the plaintiff must file the lawsuit where the defendant "resides". If the defendant is a corporation, such as Landsberg, the plaintiff must file the lawsuit in the defendant's state of incorporation because that is the only place

where the defendant is deemed to reside. *See TC Heartland*, 137 S. Ct. at 1517 (citing 28 U.S.C. § 1400(b)); *In re Volkswagon Group of America, Inc.*, 28 F.4th 1203, 1207 (Fed. Cir. 2022).

2. Second venue option: Where defendant committed an act of infringement and has a regular place of business

Under the second option of § 1400(b) to satisfy venue in a patent case, a plaintiff must allege that (1) the defendant committed an act of infringement in the venue, **and** (2) maintains a "regular and established place of business" in the venue. In order to show a defendant's "regular and established place of business" in a particular venue, the plaintiff must satisfy each of the following requirements: "(1) there must be a physical place in the District; (2) it must be a regular and established place of business; and (3) it must be the place of the defendant." *In re Cray Inc.*, 871 F.3d 1355, 1360 (Fed. Cir. 2017) (the *Cray* test).

B. Venue is improper in this District

It is undisputed that Landsberg does not reside in this District. *See* Complaint, ¶ 13 (conceding that Landsberg "is a California corporation"). Because Landsberg is incorporated in California, it cannot "reside" in Texas for purposes of venue under 28 U.S.C. § 1400(b)(1). *See TC Heartland*, 137 S.Ct. at 1517. Therefore, the first option for patent venue is not available.

The only available venue option to Plaintiff as to Landsberg is the second option. Plaintiff must demonstrate that Landsberg maintains a "regular and established place of business" in this District. It cannot. Second, Plaintiff must demonstrate that Landsberg has committed "an act of infringement" in this District. It cannot show this either.

1. Landsberg does not operate a regular and established place of business in this District.

a. The Court should reject Plaintiff's unsupported allegations

In ruling on a motion to dismiss, a court initially accepts as true well-pleaded allegations in the complaint. *Id.* However, a court should reject those allegations where a defendant has

offered a controverting affidavit. *See EMA Electromechanics, Inc. v. Siemens Corp*., No. 6:21-CV-1001-ADA, 2022 WL 1241967, at *7–8 (W.D. Tex. Apr. 26, 2022). Here, Plaintiff alleged, without any factual support, that Landsberg operates a regular and established place of business in this District. That is false. Landsberg submitted a declaration controverting Plaintiff's allegations that Landsberg has a place of business in this District. *See generally*, APP 2-3, ¶¶ 9-16. Consequently, this Court should reject the allegations in the Complaint that Landsberg conducts business in Grapevine, Texas because it does not. *Galderma*, 290 F. Supp.3d at 606.

b. Plaintiff's pleadings fail to satisfy the three-part *Cray* test.

The test for demonstrating a "regular and established place of business" under *Cray* imposes three requirements. First, Plaintiff must show that Landsberg occupies a place from which it conducts business in this District. A "place" refers to a "'building or a part of a building set apart for any purpose' or 'quarters of any kind' from which business is conducted." *In re Cray Inc.*, 871 F.3d at 1362 (citations omitted).

Second, Plaintiff must show that Landsberg's business from this place must be regular. "Regular" means that the business must operate in a "steady, uniform, orderly, and methodical manner." *In re Cray*, 871 F.3d at 1362. "Sporadic" activity cannot create venue. *Id.*; *In re Google LLC.*, 949 F.3d 1338, 1345 (Fed. Cir. 2020) (granting petition for writ of mandamus ordering district court to dismiss or transfer lawsuit because Google had "no employee or agent" who was "regularly conducting" its business within district).

Finally, Plaintiff must show that the physical place is the place of this Defendant, *i.e.,* Landsberg. *Cray*, 871 F.3d at 1360. This last factor requires that the defendant must establish or ratify the place of business as its own place of business. *Cray*, 871 F.3d at 1363. Failure to satisfy any of these statutory requirements requires a finding of improper venue. *Id.*

Plaintiff failed to establish **all** of the above statutory requirements here. First, as previously discussed, Landsberg does not have a physical place (building) in this District. APP 2, ¶¶ 10-11. Instead, Landsberg operates from its headquarters at 6600 Valley View Street, Buena Park, California. APP 2, ¶ 4. Landsberg has over 869 employees nationwide, 13 who work in its California headquarters, APP 2, ¶ 7, not from Texas. Landsberg does not have any employees, officers or directors in this District, and does not own or occupy any offices, warehouses, stores, facilities, or other physical places in this District. APP 2, ¶ 11.

The Grapevine address identified in the Complaint at paragraph 13 is not registered to or associated with Landsberg. As already noted, this is the physical place of business of Orora Packaging. APP 3, ¶ 23. It necessarily follows that Landsberg does not operates in a "steady, uniform, orderly and methodical manner" from the Grapevine address.

Finally, the Grapevine address is not the place of this Defendant and Landsberg has not established that location as its address. In sum, Landsberg does not have a "regular and established place of business" in this District. On that basis alone, venue fails.

c. Plaintiff also fails to satisfy the *Cray* "comparison" factor

In *Cray*, the Federal Circuit also opined that a comparison of the defendant's business activities in different fora is a handy tool to determine whether a plaintiff has satisfied the "regular and established" business test. The Court explained that district courts can analyze the "nature and activity" of the defendant's alleged place of business **compared with** the activity at the defendant's other places of business. *In re Cray*, 871 F.3d at 1363; *see also Zilker Cloud Tech., LLC v. RingCentral, Inc.*, No. 3:21-CV-2807-S, 2022 WL 1102863, at *3 (N. D. Tex. April 12, 2022) (Scholer, M.J.) (granting defendant's motion to dismiss in part because defendant had only 30 remote workers in the district, but had over 600 working in its California headquarters). Here, the comparison is between Landsberg's activity in this District (none) with Landsberg's activities

in California and elsewhere. The result confirms this District is clearly not the proper venue for Plaintiff's lawsuit against Landsberg.

Landsberg has zero employees, sales, operations, or physical locations in this District. In contrast, Landsberg has hundreds of employees at other locations, including in California. This comparison confirms that the alleged Grapevine location "is not really a place of business at all" of Landsberg. *See Cray*, 871 F.3d at 1364.

2. Orora Packaging's operations are no substitute for operations by Landsberg.

Plaintiff cannot impute the physical presence of a third party, Orora Packaging (even if part of the same corporate family) to Landsberg for purposes of venue. *See Galderma*, 290 F. Supp. 3d at 611. Simply put, the Grapevine location of Orora Packaging is not Landsberg's "physical place of business", nor is it the "regular and established place of business of this defendant." *In re Cray*, 871 F.3d at 1364; *Galderma*, 290 F. Supp.3d at 610.

The Complaint is devoid of any other allegations relating to an established place of business from which Landsberg regularly conducts business in this District. More importantly, the Complaint is completely silent about Orora Packaging regarding jurisdiction, venue and the merits of Plaintiff's claims. Without more, this Court cannot cast aside the distinct and separate corporate form of these two entities for venue purposes. *See In re Volkswagon Group*, 28 F.4th at 1208 (where venue is predicated on presence of third party in district, plaintiff bears burden of pleading and proving that agency relationship exists). Plaintiff's allegations are insufficient to establish that venue is proper in this District as to Landsberg. *See Celgene Corp. v. Myaln Pharmaceuticals Inc.*, 17 F.4th 1111, 1128 (Fed. Cir. 2021) (court disregards rote recitals and mere conclusory statements). Because Plaintiff has failed to show that Landsberg regularly conducts business in this District, venue in this District is improper.

3. Landsberg did not commit an act of infringement in this District

The patent venue statute is intentionally restrictive. *In re ZTE (USA), Inc.* 890 F.3d at 1014. It is not one of those vague principles that this Court can liberally construe. *See Schnell v. Peter Eckrich & Sons, Inc.*, 365 U.S. 260, 264, 81 S. Ct. 557, 560–61 (1961). Patent venue requires that Plaintiff establish with specificity that Landsberg maintains a regular and established place of business in this District **and** that it committed an act of infringement here. 28 U.S.C § 1400(b). Plaintiff has failed in the first part and accordingly cannot meet its burden on the second part of this conjunctive requirement.

Moreover, *Schnell* and its progeny caution against a broad reading of the statute and recognize that some remote fact that could support venue for other purposes (*e.g.,* 28 U.S.C § 1391) will not support patent venue. *Schnell*, 365 U.S. at 262; *In re Google*, 949 F.3d at 1347. Initially, in the only paragraph directed to venue, Plaintiff alleges "Landsberg maintains a physical place of business in this Judicial District." *See* Complaint, ¶ 24. This paragraph does not contain a single allegation of an act of patent infringement committed by Landsberg in this District. *See id.* On its face, the Complaint is fatally defective as to venue.

Plaintiff's other, more general, allegations are likewise insufficient. At paragraph 20, the Complaint alleges that Landsberg has a website. Plaintiff then jumps to the erroneous conclusion that Landsberg "conducts business in this Judicial District" including through "sales and offers for sale" of the Accused Products occurring "in this Judicial District" at paragraph 23. This is a false statement. Landsberg has submitted a declaration executed by Mr. Jones that controverts Plaintiff's allegation. Landsberg has never sold or offered for sale any of the Accused Products in this District, including through its website. *See* APP 5, ¶¶ 17, 31-34.

Therefore, even if the Court finds that Landsberg maintains a "regular and established place of business in this District" (it does not), the Court should still dismiss this lawsuit for improper

venue as to Landsberg because (1) Plaintiff did not correctly or adequately plead an act of infringement in this District, and (2) Landsberg never committed an act of infringement in this District.

III. This Court Should Dismiss under Rule 12(b)(6) Because Plaintiff has Failed to State a Claim Against Landsberg.

To avoid dismissal under Rule 12(b)(6), a plaintiff must plead sufficient facts to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombl*y, 550 U.S. 544, 570 (2007). The "mere possibility of misconduct" is not enough. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (court can accept as true any well-plead factual allegations and all reasonable inferences that can be drawn from them, but must disregard rote recitals, legal conclusions and conclusory statements).

In order to state a claim for patent infringement, Plaintiff must allege sufficient facts from which this Court can plausibly draw an inference that Landsberg actually committed an act of infringement. *See, Sightline Payments, LLC v. Everi Holdings Inc*., No. 6:21-CV-01015, 2022 WL 2078215, at *9 (W.D. Tex. June 1, 2022) (Albright, J.). This case is not unlike the *Sightline* case, where Judge Albright found the Complaint "threadbare" as to acts of infringement where the Complaint failed to identify, with specificity, those acts of infringement that the defendant committed in the district. *Id.* Due to the absence of more specific allegations, the court found that venue was improper. Because the Complaint failed to identify specific acts of infringement in the district for venue purposes, the court also found that the Complaint failed to state a claim of infringement and dismissed under Rule 12(b)(6). *Id*.

The Complaint here is equally threadbare as to Landsberg, as explained above. There are only two allegations relating specifically to Landsberg. At paragraphs 76 and 77, Plaintiff references an article from Landsberg's website about the design of an earlier, non-infringing

version of the Google cardboard viewer, not the Accused Products. At paragraphs 20 and 79, Plaintiff includes a link to Landsberg's website and an image from that website and falsely infers that the Accused Products are sold or offered for sale from Landsberg's website. They cannot. These allegations are factually false and legally insufficient to nudge the Court across the line from conceivable to plausible. *Twombly*, 550 U.S. at 570. Accordingly, the Court must find that Plaintiff has failed to plead a claim for patent infringement against Landsberg and dismiss under *Twombly* and *Iqbal*.

CONCLUSION

Defendant Landsberg respectfully requests that the Court grant its Motion to Dismiss all claims in their entirety against Landsberg, and for all further relief to which it may be entitled.

Respectfully submitted,

/s/Lisa H. Meyerhoff
Lisa H. Meyerhoff
Texas Bar No. 14000255
Email: LMeyerhoff@seyfarth.com
Stephanie Johnson Manning
Texas Bar No. 24099422
Email: smanning@seyfarth.com
SEYFARTH SHAW LLP
700 Milam St., Suite 1400
Houston, Texas 77002
Phone: (713) 225-2300
Fax: (713) 225-2340

ATTORNEYS FOR DEFENDANT
LANDSBERG ORORA

CERTIFICATE OF SERVICE

I certify that, on September 13, 2022, a true and correct copy of the foregoing "Defendant Landsberg Orora's Motion to Dismiss and Supporting Brief" was filed with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

Timothy J. Haller
Email: haller@haller-iplaw.com
Attorney for Plaintiff
Haller Law PLLC
230 E Delaware Pl, Ste 5E
Chicago, IL 60611

Steven E Aldous
Email: saldous@forsheyprostok.com
Attorney for Plaintiff
Forshey & Prostok LLP
500 Crescent Court, Suite 240
Dallas, TX 75201

Nicholas Adam Guinn
Email: nick@gunn-lee.com
Attorneys for Structural Graphics LLC d/b/a Red Paper Plane
Gunn Lee & Cave PC
8023 Vantage Drive, Suite 1500
San Antonio, TX 78230

Amy K Liang
Email: aliang@omm.com
Darin W Snyder
Email: dsnyder@omm.com
Luann L Simmons
Email: lsimmons@omm.com
Mark Liang
Email: mliang@omm.com
Attorneys for Google LLC
O'Melveny & Myers LLP
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111

Gabriel I Opatken
Email: gabriel@nobleipllc.com
Attorney for Plaintiff
Noble IP LLC
4515 W School Street Apt 2
Chicago, IL 60641

Jordan Christine Strauss
Email: jstrauss@munckwilson.com
Amy Elizabeth LaValle
Email: alavalle@munckwilson.com
Attorneys for Emerge Technologies Inc.
Munck Wilson Mandala LLP
12770 Coit Road, Suite 600
Dallas, TX 75251

Aaron Wilkerson
Email: awilkerson@jhsfirm.com
Attorney for Pyrite VR Ltd. d/b/a Maxbox VR
Johnson Hobbs Squires LLP
400 Austin Avenue, Suite 903
Waco, TX 76701

Andrew Bledsoe
Email: abledsoe@omm.com
Attorney for Google LLC
O'Melveny & Myers LLP
610 Newport Center Drive, 17th Floor
Newport Beach, CA 92660

Kristin Collins Cope
Email: kcope@omm.com
Frances Mackay
Email: fmackay@omm.com
Attorney for Google LLC
O'Melveny & Myers LLP
2501 North Harwood Street, Suite 1700
Dallas, TX 75201

Ben Quarmby
Email: bquarmby@mololamken.com
Attorney for HMD Tech Sarl d/b/a Homido
MoloLamken LLP
430 Park Avenue
New York, NY 10022

/s/Lisa H. Meyerhoff