

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

INTIRION CORPORATION

Plaintiff,

vs.

COLLEGE PRODUCTS, INC.,

Defendant.

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CIVIL ACTION NO. 6:22-cv-00459-ADA

**DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT FOR  
IMPROPER VENUE UNDER FED. R. CIV. P. 12(B)(3)**

Intirion Corp.’s (“Intirion”) complaint for patent infringement does not belong in this Court. There are no facts that demonstrate this District is a proper venue under 28 U.S.C. §1400(b). College Products has never committed an act of infringement in this District because it has never made, used, offered, for sale or sold the alleged infringing products in this District. College Products also does not reside in this District or have a regular and established place of business in this District. College Products is an Iowa corporation, and is headquartered in Sioux City, Iowa. It does not have any property, employees, or facilities in this District. As such, College Products respectfully requests the Court dismiss Intirion’s complaint under Fed. R. Civ. P. 12(b)(3) for improper venue.<sup>1</sup>

**I. BACKGROUND**

**A. Intirion’s Patent Infringement Allegations**

Intirion filed its complaint for patent infringement against College Products on May 6, 2022. The complaint alleges College Products infringes four of Intirion’s patents by making and

<sup>1</sup> This motion is supported by the Declaration of Eric Hennings, attached hereto as Exhibit 1.

selling the MicroChill systems in the United States (Counts 1-4). *See generally* Dkt. 1. The accused MicroChill systems are a combination of a microwave and a refrigerator into a single unit. *Id.*, ¶¶18-19. Intirion alleges this Court has venue because:

1. Defendant is registered to do business in Texas;
2. Defendant's registered agent is located in the Western District of Texas;
3. Defendant has a regular and established place of business in this District;
4. Defendant has committed acts of infringement in this District; and
5. Defendant has employees and/agents physically present in this judicial district who perform acts for, on behalf of, with the consent of, and/or under the direction of the Defendant.

*Id.*, ¶7.

#### **B. College Products is an Iowa Company**

College Products is one of the nation's leading providers of eco-friendly rental, lease, and sale products to colleges and universities. As stated in Intirion's complaint, College Products is incorporated in Iowa, and it has its principal place of business at 1400 W. 1st St., Sioux City, IA 51103. *Id.*, ¶3; Hennings Decl., ¶3.

Contrary to the venue allegations in Intirion's complaint, College Products has no place of business in Texas. *Id.*, ¶4. College Products (i) does not own any property or equipment in this District, (ii) does not lease any property or equipment in this District, (iii) does not have an office in this District, and (iv) does not have any employees that reside in this District. *Id.*

## **II. LEGAL STANDARDS FOR MOTION TO DISMISS FOR IMPROPER VENUE**

28 U.S.C. §1400(b) "constitute[s] the exclusive provision controlling venue in patent infringement proceedings." *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct.

1514, 1518 (2017) (quoting *Stonite Prods. Co. v. Melvin Lloyd Co.*, 315 U.S. 561, 563 (1942) (internal quotation marks omitted)). Under §1400(b), a claim for patent infringement must be brought (1) “in the judicial district where the defendant resides,” or (2) “where the defendant has committed acts of infringement and has a regular and established place of business.” 28 U.S.C. §1400(b); *Optic153 LLC v. Thorlabs Inc.*, No. 6:19-CV-00667-ADA, 2020 WL 3403076, at \*1 (W.D. Tex. June 19, 2020) (Albright, J.). As to the first prong, “a domestic corporation ‘resides’ only in its State of incorporation for purposes of the patent venue statute.” *TC Heartland*, 137 S. Ct. at 1517. As to the second prong, there are three requirements for establishing a “regular and established place of business”: “(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.” *Optic153*, 2020 WL 3403076, \*1 (quoting *In re Cray Inc.*, 871 F.3d 1355, 1360 (Fed. Cir. 2017) (internal quotation marks omitted)). Venue is improper if any of these three requirements are not satisfied. *Id.* “[Intirion] bears the burden of establishing proper venue” under §1400(b). *Id.* (citing *In re ZTE (USA) Inc.*, 890 F.3d 1008, 1013 (Fed. Cir. 2018)).

### III. ARGUMENT

#### A. Intirion’s Complaint Should Be Dismissed Under Rule 12(b)(3) Because Venue is Improper

Venue is improper in this District. As Intirion’s complaint admits, “College Products is a corporation organized and existing under the laws of Iowa.” Dkt. 1, ¶3; Hennings Decl., ¶3. College Products therefore does not “reside” in this District. *See TC Heartland*, 137 S. Ct. at 1517; *Optic153*, 2020 WL 3403076, at \*1. Because Intirion cannot establish venue under the residency prong of §1400(b), it must show both that College Products “committed acts of infringement” in this District and “has a regular and established place of business” in this District for venue to be proper. As explained below, Intirion cannot satisfy its burden.

First, College Products has never committed an alleged act of infringement in this District. It has never made, used, offered for sale, or sold any accused MicroChill product in the Western District of Texas. Hennings Decl., ¶3. For this reason alone, this District is not a proper venue. *See* 28 U.S.C. §1400(b); *Celgene Corp. v. Mylan Pharms. Inc.*, 17 F.4th 1111, 1120–22 (Fed. Cir. 2021) (affirming venue was improper because the plaintiff did not show the defendants committed acts of infringement in New Jersey); *S. Visions, LLP v. Red Diamond, Inc.*, No. 1:18-CV-04566-ELR, 2018 WL 8221528, at \*4 (N.D. Ga. Dec. 10, 2018) (finding venue improper in the Northern District of Georgia because the plaintiff failed to show the defendant committed any infringement in that district).

Second, College Products has no regular and established place of business in this District. Intirion’s complaint alleges College Products has a regular and established place of business in this District (Dkt. 1, ¶7), but provides no facts to support that allegation. That alone warrants dismissal of Intirion’s complaint. *See Westech Aerosol Corp. v. 3M Co.*, 927 F.3d 1378, 1382 (Fed. Cir. 2019) (affirming a motion to dismiss for improper patent venue because the patentee “wholly failed to allege facts showing [the alleged infringer] had a regular and established place of business” in the judicial district). Even if Intirion requested leave to amend its deficient pleading, it could not establish that College Products has a regular and established place of business in this District because College Products “does not have any employees, lease any property, or have an office or other place of business in the District.” *Optics153*, 2020 WL 3403076, at \*2; *see also* Hennings Decl., ¶4.

In conclusory fashion, Intirion’s complaint also alleges venue is proper because College Products (i) is registered to do business in Texas, (ii) has its registered agent located in this District, and (iii) has employees physically present in this District who act on behalf of College

Products. That College Products does business in Texas and has a registered agent for service of process does not show that College Products has a “physical place” of business in this District. *See, e.g., Optic153*, 2020 WL 3403076, \*2 (“The mere fact that Defendant is registered and earns revenue in Texas has no bearing on the Court’s venue analysis.”) (citations omitted); *BillingNetwork Pat., Inc. v. Modernizing Med., Inc.*, No. 17 C 5636, 2017 WL 5146008, at \*3 (N.D. Ill. Nov. 6, 2017) (holding the fact that defendant is registered to do business in the state and has appointed an agent for service of process in the state “has no bearing on whether Defendant maintains a physical place of business in this District”); *cf. Schnell v. Peter Eckrich & Sons, Inc.*, 365 U.S. 260, 262 (1961) (“Congress adopted the predecessor to s 1400(b) as a special venue statute in patent infringement actions to eliminate the ‘abuses engendered’ by previous venue provisions allowing such suits to be brought in any district in which the defendant could be served.”). Moreover, Intirion’s allegation that College Products has employees physically present in this District is wrong. None of College Products’ employees reside in Texas. Hennings Decl., ¶4.

For these reasons, Intirion has failed to establish this Court has venue under §1400(b).

#### **IV. CONCLUSION**

Because College Products has not committed an act of infringement in this District, and is an Iowa company with no physical presence in Texas, the Court should grant College Products’ motion to dismiss for improper venue under Fed. R. Civ. 12(b)(3).

Dated: September 27, 2022

Respectfully submitted,

BLANK ROME LLP

/s/ Domingo M. LLagostera

**Domingo M. LLagostera**

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**ATTORNEY FOR DEFENDANT  
COLLEGE PRODUCTS, INC.**

**CERTIFICATE OF SERVICE**

The undersigned certifies that all counsel of record were electronically served with a copy of the foregoing on September 27, 2022 via the Court's ECF system.

/s/ Domingo M. LLagostera

Domingo M. LLagostera