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

MULTIMEDIA TECHNOLOGIES PTE. LTD., Plaintiff, v. VIZIO, INC., Defendant.	Civil Action No. 2:23-CV-00124-JRG

DEFENDANT VIZIO, INC.'S MOTION TO DISMISS
FOR IMPROPER VENUE UNDER RULE 12(b)(3)

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I. INTRODUCTION

Multimedia Technologies Pte. Ltd. ("Multimedia") filed a complaint accusing Defendant VIZIO, Inc. ("VIZIO") of infringing U.S. Patent Nos. 9,055,255 ("the '255 Patent"), 9,232,168 ("the '168 Patent"), 9,247,174 ("the '174 Patent"), 9,510,040 ("the '040 Patent"), 9,578,384 ("the '384 Patent"), 10,419,805 ("the '805 Patent"), 9,215,393 ("the '393 Patent"), 9,426,527 ("the '527 Patent"), 9,077,928 ("the '928 Patent"), and 9,185,325 ("the '325 Patent") (collectively, the "Asserted Patents"). VIZIO respectfully moves to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(3) for improper venue under 28 U.S.C. § 1400(b).

VIZIO is a California corporation headquartered in Irvine, California, and lacks any physical presence in the Eastern District of Texas ("EDTX"). Indeed, VIZIO does not maintain any offices or places of business in this District. VIZIO does not own, rent, or lease any real estate in this District, nor does it maintain any manufacturing plants or other facilities in this District.

The complaint attempts to establish venue through (1) VIZIO's Dallas office located in the Northern District of Texas, (2) a third-party distribution center in Fort Worth operated by a non-VIZIO related company, (3) the sales of VIZIO products through third-party retailers, such as Costco, Sam's Club, Best Buy, Wal-Mart, and Target, (4) information contained in the personal LinkedIn pages of five current and former VIZIO employees, and (5) two VIZIO job advertisements. However, the complaint's allegations are superficial at best. Importantly, Multimedia does not plead facts necessary to satisfy the statutory requirements to show a regular and established place of business of VIZIO in EDTX.

This Court should dismiss Multimedia's complaint because it does not, and cannot, establish that venue is proper in this District.

[redacted]

II. BACKGROUND

VIZIO is a California corporation with its principal place of business in Irvine, California. (Mer Decl., ¶¶2-3.) VIZIO [redacted]. VIZIO then sells those products in the United States, primarily to retailers such as Best Buy, Walmart, Target, and Sam's Club. (Mer Decl., ¶¶4-5.)

While VIZIO does have an office located in Dallas, VIZIO does not maintain any offices or places of business in the EDTX. (Mer Decl., ¶¶6, 8.) It does not own, rent, or lease any real estate in the EDTX, nor does it maintain any manufacturing plants or other facilities in EDTX. (Mer Decl., ¶8.)

III. LEGAL STANDARD

"Venue requirements exist for the benefit of defendants," *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 84 F.3d 1408, 1410 (Fed. Cir. 1996), and they are mandatory. *See* 28 U.S.C. § 1406 ("The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or… transfer such case to any district or division in which it could have been brought.") (emphasis added). "[T]he Supreme Court has cautioned against a broad reading of the venue statute." *In re Google LLC*, 949 F.3d 1338, 1346-47 (Fed. Cir. 2020).

"The requirement of venue is specific and unambiguous; it is not one of those vague principles which, in the interest of some overriding policy, is to be given a 'liberal' construction." *Schnell v. Peter Eckrich & Sons, Inc.*, 365 U.S. 260, 264 (1961) (citation omitted). The patent venue statute provides that venue is appropriate either (1) "where 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). It is the plaintiff's burden to show that venue is appropriate. *In re ZTE (USA) Inc.*, 890 F.3d 1008 (Fed. Cir. 2018).

When analyzing a Rule 12(b)(3) motion, the court need not credit conclusory allegations. *Am. GNC Corp. v. ZTE Corp.*, No. 4:17-cv-00620, 2017 WL 5163605, at *2 (E.D. Tex. Oct. 4, 2017). "[W]hen unsubstantiated allegations are controverted by affidavit or declaration, the affidavit or declaration trumps the allegation." *Alexsam, Inc. v. Simon Prop. Grp. (Texas), L.P.*, No. 2:19-CV-00331-JRG, 2021 WL 8441707, at *1 (E.D. Tex. Sept. 3, 2021) (quoting *Walker v. Inter-Americas Ins.*, No. 7:03-CV-222, 2004 WL 1620790, at *1 (N.D. Tex. July 19, 2004)).

IV. VENUE IS IMPROPER IN THE EASTERN DISTRICT OF TEXAS

A. VIZIO Does Not "Reside" In The Eastern District of Texas

Under § 1400(b)'s first prong, a domestic corporate defendant "resides" only where it is incorporated. *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 137 S.Ct. 1514, 1517 (2017) ("We therefore hold that a domestic corporation 'resides' only in its State of incorporation for purposes of the patent venue statute."). As the complaint admits, VIZIO is incorporated in California. (Dkt. 1, ⁋3; Mer Decl., ⁋⁋2-3.) Accordingly, VIZIO does not reside in EDTX under the first prong of § 1400(b). *See, e.g., In re Cray Inc.*, 871 F.3d 1355, 1360 (Fed. Cir. 2017) ("Because Cray is incorporated in the State of Washington, there is no dispute that the residency requirement of that statute cannot be met here under the definition provided in *TC Heartland*."). Thus, Multimedia does not, and cannot, establish venue in this District under the first prong of § 1400(b).

B. VIZIO Does Not Have A "Regular and Established Place of Business" In The Eastern District of Texas

To establish venue under the second prong of § 1400(b), Multimedia must show that VIZIO committed acts of infringement and maintains a regular and established place of business

[redacted]

in the EDTX. For a corporation to have "a regular and established place of business" under the second prong of Section 1400(b), three distinct factors must be satisfied: "(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*, 871 F.3d at 1360. A "physical place" in the district means a "a fixed physical location" "from which the business of the defendant is carried out." *Id.* at 1362. A "regular and established place of business" means a "stable," "permanent," and "not transient" place, which "operates in a 'steady, uniform, orderly, and methodical' manner," *id.* at 1362-63 (alterations omitted), where there is a "regular, physical presence of an employee or other agent of the defendant conducting the defendant's business." *In re Google,* 949 F.3d at 1344-45. A place "of the defendant" is one that the defendant itself "must establish or ratify," and not one that an "employee does so on his or her own." *In re Cray*, 871 F.3d at 1363.

A plaintiff must satisfy all three *Cray* factors to establish venue. *In re Cray*, 871 F.3d at 1360 ("If any statutory requirement is not satisfied, venue is improper under § 1400(b)."); *Andra Grp., LP v. Victoria's Secret Stores, L.L.C.*, 6 F.4th 1283, 1290 (Fed. Cir. 2021) ("All three *Cray* factors must be met for venue to be proper against a defendant.").

The complaint makes several cursory allegations that are venue-adjacent but fails to plead facts establishing venue is proper in the EDTX.

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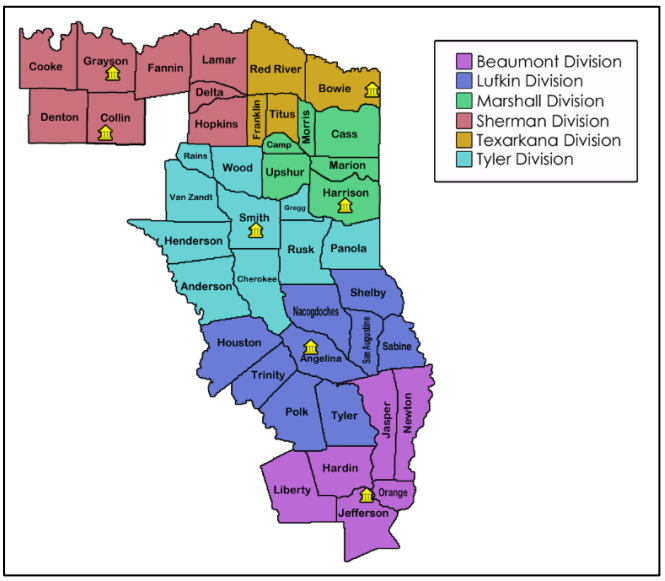
1. The VIZIO Dallas Location Identified In The Complaint Is Not In The Eastern District of Texas

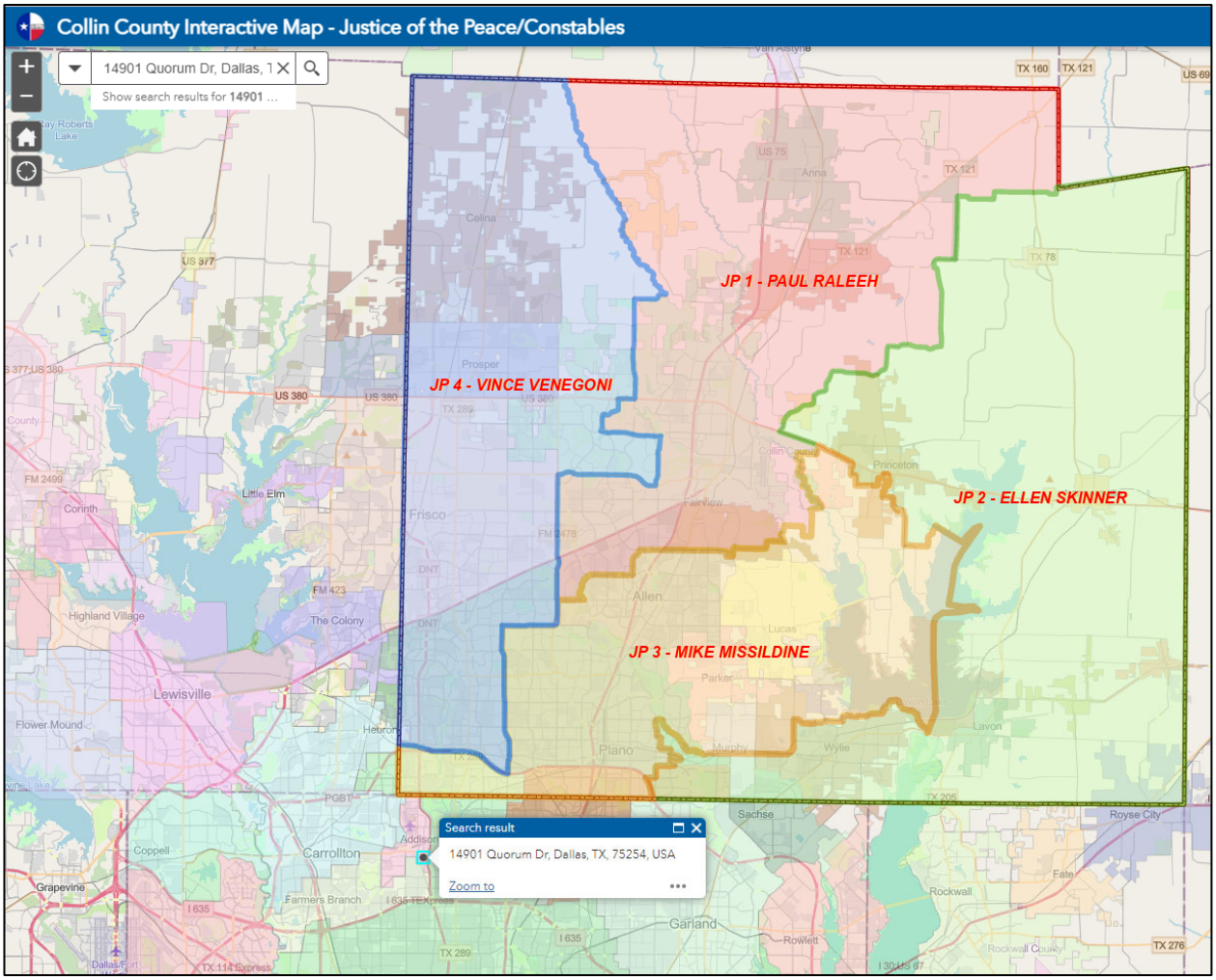
Multimedia alleges, "Vizio maintains a place of business at 14901 Quorum Dr, Dallas, TX 75254." (Dkt. 1, ⁋7; *see also id.*, ⁋8.) However, that address is outside the EDTX borders. *In re Cray Inc.*, 871 F.3d at 1362 ("when determining venue, the first requirement is that there 'must be a physical place in the district.'"). Title 28, United States Code, Sections 124(a) and (c) prescribe the Texas counties included in the Northern and Eastern Districts of Texas. 28 U.S.C. § 124. The counties in the Eastern District of Texas are illustrated on this Court's website, and do not include Dallas County:



See https://www.txed.uscourts.gov/?q=court-locator (last visited May 23, 2023.)

The government of Collin County, Texas maintains a website that shows the location of specific addresses relative to the borders of Collin County. The building located at 14901 Quorum Dr, Dallas, TX 75254, is in Dallas County (as the address suggests), not Collin County, so it is not in this District.

[redacted]



See https://maps.collincountytx.gov/ccmap_jpc/ (last visited May 31, 2023); *see also* Hartsell Decl., Ex. 5 (printout from the Dallas Central Appraisal District confirming the address is in Dallas County).

Because the Quorum location is not physically located in the EDTX, the first *Cray* factor is not satisfied, and venue based on that location is improper. *In re Cray Inc.*, 871 F.3d at 1360; *Andra*, 6 F.4th at 1290.

2. The iDC Distribution Center Does Not Establish Venue As To VIZIO

Multimedia alleges, "[u]pon information and belief, Vizio's systematic and continuous business activities in Texas and this District further include operating, in conjunction with iDC

[redacted]

Logistics, or otherwise using a distribution center located in this District at 2773 TX-114, Fort Worth, TX 76177, to distribute Vizio's infringing products throughout Texas and this District." (Dkt. 1, ⁋9.) For this distribution center to constitute a regular and established place of business, VIZIO must "establish or ratify" the place of business. *In re Cray*, 871 F.3d at 1363. Ratification might be shown through a defendant paying the rent or exercising control over the location. *Id*. Moreover, under the second *Cray* factor, a "'regular and established place of business' requires the regular, physical presence of an employee or other agent of the defendant conducting the defendant's business at the alleged "place of business." *In re Google*, 949 F.3d at 1345.

Courts have repeatedly confronted the question of whether the physical presence of corporate entities independent and distinct from the defendant, such as distributors, dealers, sellers, service providers, and the like, satisfy the statutory requirements for venue. And, consistently, courts do not impute the location of one corporate entity to another for venue purposes. For purposes of venue, "[s]o long as a formal separation of entities is preserved, the courts ordinarily will not treat the place of business of one corporation as the place of business of the other." *See, e.g.*, *EMED Techs. Corp. v. Repro-med Sys., Inc.*, 2018 WL 2544564, at *2 (E.D. Tex. June 4, 2018) (citing *Wright & Miller*, Fed. Prac. & Proc. Juris. § 3823 (4th ed.)) (Bryson, J., sitting by designation).

An internet search reveals that iDC Logistics "is a leading end-to-end logistics company, providing comprehensive design, implementation and operational capabilities in freight forwarding, contract logistics, transportation and distribution management." (Hartsell Dec., Ex. 1.) iDC Logistics' website confirms that the location at 2773 Texas Highway 114, Fort Worth, Texas 76177, is an iDC Logistics facility. (Hartsell Dec., Ex. 2.) Nowhere does the complaint allege, much less plead facts, that the iDC Logistics distribution center is a regular and

[redacted]

established place of business *of VIZIO*. There is no allegation that VIZIO employees work at the iDC Logistics distribution center, or that VIZIO controls operations there. [redacted] Because of this, VIZIO has no employees at the iDC distribution center. (Mer Decl., ⁋9.)

The only connection to VIZIO in the complaint to the iDC distribution center comes from a "BusinessYab.com" webpage for "iDC Logistics – Ft Worth TX." (Dkt. 1, ⁋9) "BusinessYab.com provides an online national 'yellow pages' directory for all the US States," but warns that it "cannot be held responsible or liable for the accuracy, correctness, usefulness or reliability of the data." (Hartsell Decl., Ex. 3.) In its Complaint, Multimedia alleges that this webpages states "This is VIZIO." (Dkt. 1, ⁋9.) However, that reference is from an unknown person named Eduardo Quinones who, in June 2022, commented: "This is VIZIO. Super quick! Make sure you have safety vest on you, you'll have to witness while they're loading you but out in 1.5hrs." (Hartsell Decl., Ex. 4.) VIZIO has no record of an employee by that name, so the statement is not attributable to a current or former VIZIO employee. (Mer Decl., ⁋10.) Random webpage comments do not establish venue, as such statements are not attributable to the defendant. The venue statute would be rendered a nullity if all it took to establish a venue was an anonymous person posting a comment on a website unaffiliated with the defendant.

Because the second and third *Cray* factors are not satisfied, the iDC distribution center is not a regular and established place of VIZIO, and venue is not proper. *In re Cray*, 871 F.3d at 1360; *Andra,* 6 F.4th at 1290.

[redacted]

3. Third-party Retailers Do Not Constitute Regular And Established Places Of Business of VIZIO

Multimedia alleges, "[u]pon information and belief, Vizio has sold, is selling and offers to sell infringing products across the entirety of Texas and specifically in this District through one or more authorized resellers and distributors including but not limited to: Costco and Sam's Club and mass market retailers such as Best Buy, Target and Wal-Mart. On information and belief, these retail stores, collectively, have over 25 outlets in this District, and these retailers currently sell and/or offer for sale Vizio television products." (Dkt. 1, ⁋10.)[1] To the extent that Multimedia intends to argue that third-party retail stores constitute a regular and established place of business of VIZIO, such arguments are routinely rejected.

For example, in *Andra*, the Federal Circuit affirmed Magistrate Judge Johnson's and Judge Mazzant's dismissal for improper venue based on sales by authorized retailers. *Andra*, 6 F.4th 1283. In *Andra,* there were related companies that maintained separate legal entities. On the one hand, was Victoria Secret Stores LLC ("Stores"), which operates physical Victoria Secrets locations. On the other, there were several "Non-Store Defendants," including (1) L Brands, Inc. (LBI), the corporate parent, (2) Victoria's Secret Direct Brand Management, LLC (Direct), which manages the victoriassecret.com website and Victoria's Secret mobile application, and (3) Victoria's Secret Stores Brand Management, Inc. (Brand), which creates Victoria's Secret branded intimate apparel and beauty products. *Andra*, 6 F.4th at 1285. In affirming improper venue, the Federal Circuit noted, "Andra has not shown that the Non-Store

[1] Multimedia also states that "Vizio, through its website, directly sells product through distributors based in the District." (Dkt. 1, ⁋10.) The complaint includes screen shot showing a "Buy Now" button for a VIZIO D24fM-K01 TV located at https://www.vizio.com/en/tv/d-series/D24fM-K01. (*Id.*) But clicking on the "Buy Now" redirects to Sam's Club's website, not a VIZIO website. (Hartsell Decl. ⁋2.)

Defendants actually engage in business at Stores locations." *Id*. at 1289-90. The Court went on to identify additional facts weighing against plaintiff's ratification theory, including (1) the "Non-Store defendants do not own or lease Stores locations," (2) the "Non-Store Defendants do not display their corporate names in the retail locations," and (3) the "Non-Store Defendants carry out different business functions than Stores." *Id*. at 1290.

Similarly, this Court has previously rejected venue arguments premised on product sales at third-party retailers. In *Alexsam*, plaintiff "point[ed] to retailers who sell accused Amex products in this District to establish venue." *Alexsam*, 2021 WL 8441707, at *2. Specifically, Alexsam argued that "AmEx has control over the employees at these retailers because (1) the retailer must establish a network connection to AmEx; (2) [the retailer must] format infringing activation transactions into a standardized message proscribed by AmEx; and (3) the clerks must perform the steps proscribed by AmEx." *Id*.

This Court held that the retailers did not establish venue. First, Alexsam failed to support its allegations with any evidence showing how the defendant allegedly controlled the retailers. Second, as a policy matter, "[t]aking Alexsam's argument to its logical end, retailers like CVS would be the 'regular and established place of business" of numerous brands who merely sell products in CVS's retail locations. That is not consistent with current venue law in patent cases." *Id*. (citing *In re Google*, 949 F.3d at 1345 (to establish an agency relationship, the principal must have the "'right to direct or control' the agent's actions")).

Much like in *Alexsam*, Multimedia does not allege that VIZIO controls any third-party retailers, nor does the complaint plead facts suggesting VIZIO controls the retailers or their locations. There are no allegations that (1) VIZIO employees work at the retail locations, (2) VIZIO owns or leases the retail locations, or (3) VIZIO displays its name at the retail locations.

[redacted]

Nothing suggests VIZIO "*engage[s] in business* from [the retail] location." *Andra,* 6 F.4th at 1289 (quoting and emphasizing *In re Cray*, 871 F.3d at 1364.). Indeed, VIZIO does not.

Likewise, there is no reason for this Court to depart from its prior precedent that product sales at third-party retail stores are insufficient to establish venue. *Alexsam*, 2021 WL 8441707, at *2; *see also AptusTech LLC v. Trimfoot Co., LLC*, 2020 WL 1190070, at *5 (E.D. Tex. Mar. 12, 2020) ("So too, the Court joins the vast number of other district courts, including those within this District, that have held an independent retailer or a distributor, does not satisfy the requirement that the defendant has a regular and established place of business in the forum."); *OptoLum, Inc. v. Cree, Inc.*, 2017 WL 3130642, at *6 (D. Ariz. July 24, 2017) (selling allegedly infringing products at Home Depot stores in the district does not establish a place of business for the manufacturer); *Galderma Labs., L.P. v. Teva Pharm. USA, Inc.*, 290 F. Supp. 3d 599, 611 (N.D. Tex. 2017) (presence of third-party sales representatives insufficient).

The complaint does not plead any facts establishing that VIZIO has ratified any third party retailer as a regular and established place *of VIZIO*. Because Multimedia does not satisfy the second and third *Cray* factors as applied to the retailers, venue is not proper in this District.

4. Personal Employee LinkedIn Pages Do Not Establish Venue

Multimedia alleges, "[u]pon information and belief, Vizio's systematic and continuous business activities in Texas and this District include employing at least five individuals who work in this District: Barry Woodward, located in Flower Mound, TX; Ed Okerson, located in Plano, TX; Moses Thompson, located in Allen, TX; Ramya Swaminathan, located in Carrolton, TX; and Shane Taylor, located in Denton, TX." (Dkt. 1, ⁋8.) Any reliance on these individuals to establish venue fails for several reasons.

First, as a threshold matter, Mr. Okerson is [redacted], nearly a year before the filing date of the Complaint. (Dkt. 1, ⁋8; (Mer Decl., ⁋12.)

[redacted]

Second, the remaining identified individuals work/worked at the Dallas office on Quorum Dr., which, as established above, is not in the EDTX. (*See* Section IV(B)(1); Mer Decl., ⁋6.) No VIZIO offices or locations exist in Flower Mound, Texas; Plano, Texas; Allen, Texas; Carrolton, Texas; or Denton, Texas. (Dkt. 1, ⁋8; (Mer Decl., ⁋6.)

Third, the locations displayed on the personal LinkedIn profiles of these individuals appear to correspond to their home addresses. (*Compare* Exs. A-E *with* Mer Decl., ⁋⁋13-16.) In determining if an employee's residence constitutes "the place of the defendant," relevant considerations may include (1) whether the defendant owns or leases the place, (2) whether the defendant exercises other attributes of possession or control over the place, (3) whether the defendant conditioned employment on an employee's continued residence in the district or the storing of materials at a place in the district so that they can be distributed or sold from that place, (4) whether defendant itself holds out the place for its business in marketing and advertising, (5) a defendant's representations that it has a place of business in the district. *In re Cray*, 817 F.3d 1363-64.

According to personnel records, two of the remaining four VIZIO employees identified the Complaint, [redacted], do not even live in the EDTX. (Mer Decl., ⁋⁋15-16.) To the extent that the other two remaining identified VIZIO employees, [redacted], reside within the District, that alone is insufficient to establish venue. In *Cray*, the Federal Circuit determined that a company did not have a regular and established place of business within a district merely because two employees resided within the district. *In re Cray*, 817 F.3d 1364-67. The court also determined that the employees' residences did not constitute "the place of the defendant." *Id*. at 1364-65.

[redacted]

Here, VIZIO (1) does not own or lease the residences of the identified individuals, (2) does not condition employment based on an individual living in the EDTX, (3) does not store products at employees' homes for distribution or sale from the homes of the identified individuals, and (4) does not market itself as operating its business from the residences of the identified individuals. (Mer Decl., ⁋⁋17-20.)

Fourth, Multimedia implies that "hybrid" work or work-from-home arrangements establish venue, but this Court has rejected similar arguments. *See, e.g., Westport Fuel Sys. Canada, Inc. v. Ford Motor Co.*, No. 221CV00453RWS-RSP, 2022 WL 7376137, at *4 (E.D. Tex. Aug. 22, 2022), *report and recommendation adopted,* No. 2:21-CV-00453-RWS, 2022 WL 4280490 (E.D. Tex. Sept. 15, 2022) ("Westport also argues that FCA employees live in and work from home within the district. However, the Federal Circuit rejected this argument in the absence of control over the employee's residence.") (citing *In re Cray*, 871 F.3d at 1363-66); *Uniloc USA, Inc. v. Ubisoft, Inc.*, No. 2:16-CV-00781-RWS, 2018 WL 11436305, at *4 (E.D. Tex. Mar. 29, 2018) ("There is no indication that Ubisoft controls, owns, or leases the employee's house, or that Ubisoft has otherwise established or ratified Mr. Starkweather's home as a place of business."); *see also IngenioShare, LLC v. Epic Games, Inc.*, No. W-21-CV-00663-ADA, 2022 WL 827808, at *2 (W.D. Tex. Mar. 18, 2022) ("Time and again, this Court has rejected remote employees as a basis for establishing venue under similar facts. And, while Plaintiff tries to support its argument with nuanced arguments of Zoom policies enforced at home, stipends, and location restrictions, such arguments still do not meet the demands of venue set out by the Federal Circuit."); *Gesture Tech. Partners, LLC v. Lenovo Grp. Ltd.*, No. W-21-CV-00122-ADA, 2021 WL 6205789, at *3 (W.D. Tex. Dec. 29, 2021) (finding work-from-home employees do not establish venue and stating: "In order for the employees to be working from a place of the

Defendants, Defendants must have a business model where 'many employees' homes are used by the business as a place of business of the defendant.'"). Here, Multimedia pleads no facts warranting a departure from the great weight of authority on this issue.

Because the personal residences of the identified VIZIO employees are not a regular and established place of business of VIZIO, the second and third *Cray* factors are not satisfied, and venue based on their personal LinkedIn pages is improper. *In re Cray*, 871 F.3d at 1360; *Andra,* 6 F.4th at 1290.

5. VIZIO's Job Advertisements Do Not Confer Venue

Multimedia alleges that "Vizio further is attempting to hire additional employees located in Texas generally and this District specifically. In particular, Vizio is recruiting and attempting to hire 'hybrid' employees, who are intended to work partially at Vizio's Dallas office, located at 14901 Quorum Dr, Dallas, TX 75254, and partially remotely, including within this District." (Dkt. 1, ⁋8.)

As to the allegation that VIZIO specifically targets individuals to work in the EDTX, nothing in the exhibits attached to the complaint suggests that the advertised positions require candidates to work in the EDTX. (*See* Dkt. 1-7 and 1-8.) Rather, as the complaint admits, the positions are for working at the Quorum Dr. location, which is not in the EDTX. Further, to the extent a successful candidate engages in hybrid work, such arrangements alone do not establish venue. (*See* Section IV(B)(1).)

As to the allegation that VIZIO is "attempting to hire" individuals "in this District specifically," such an argument is a non-starter. The job postings come from VIZIO's company LinkedIn page (*see* Dkts. 1-7 and 1-8) and are available to anyone regardless of whether or not they reside within the EDTX.

[redacted]

Because the job advertisements do not identify a location in the EDTX, much less establish a regular and established place of business *of VIZIO*, none of the *Cray* factors are satisfied. *In re Cray*, 871 F.3d at 1360; *Andra,* 6 F.4th at 1290.

V. CONCLUSION

For the foregoing reasons, VIZIO respectfully requests that its Motion to Dismiss for Improper Venue be granted and that the Court dismiss all claims alleged in Multimedia's Complaint.

[redacted]

Dated: June 1, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2023, a true and correct copy of the foregoing was filed electronically, pursuant to Local Rule CV-5(a), and served via email on all counsel who have consented to electronic service.

/s/ Charles Everingham IV

[redacted]

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

Pursuant to Local Rule CV-5(a)(7)(A), the undersigned hereby certifies that a motion for leave to file this document under seal has been filed and is pending before the Court.

/s/ Charles Everingham IV