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

FACET TECHNOLOGY CORP., Plaintiff, v. **MOBILEYE GLOBAL, INC.,** Defendants.	**Case No. 2:24-cv-00058-RWS-RSP** **JURY TRIAL DEMANDED**

DEFENDANT MOBILEYE GLOBAL, INC.'S SUPPLEMENTAL BRIEF
IN SUPPORT OF MOTION TO DISMISS THE COMPLAINT FOR LACK OF VENUE

MOBILEYE EXHIBIT 1026
MOBILEYE v. FACET
IPR2024-01110

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In the absence of any evidence that Defendant Mobileye Global, Inc. ("Mobileye Global") has a regular and established place of business in this District, the Court gave Facet 60 days of discovery to investigate. Facet's discovery confirmed that while Mobileye Global is incorporated in Delaware and traded on the NASDAQ, it does not have a regular and established place of business *anywhere in the U.S.*, let alone in the Eastern District of Texas.

Facing dismissal or transfer, Facet grasps at straws to hold Mobileye Global here. First, Facet overreaches by arguing the private home of a subsidiary's former regional traveling salesman, who testified that he spent most of his time on the road and "just happened" to live in Fairview, Texas when suit was filed, constitutes a regular and established place of business. Since that subsidiary, Mobileye Inc., is a separate company from Defendant Mobileye Global, Facet further overreaches, arguing the two are alter egos. In doing so, Facet bends the facts and twists precedent. There is no evidence either company disregarded corporate formalities, failed to act independently, or is undercapitalized, warranting the draconian measure of an alter ego finding.

As outlined in the co-pending Joinder Opposition, Facet's Joinder Motion was filed after the cut-off to add new parties not for earlier want of knowledge, but for the tactical purpose of supporting its opposition to venue dismissal. Facet's tactics should not be countenanced.

Facet emphasized the criticality of having all three entities it wishes to sue in a single action. For two of the three, venue is improper in this District, as explained herein. In Minnesota, Facet's home, there is already a declaratory judgement action against Facet by the two non-parties to this action. Therefore, with Mobileye Global's consent, this case should be transferred to Minnesota where, for efficiency, all three of Facet's targets can be joined in a single suit.

I. Additional Legal Standards

A. Venue Requires a Regular and Established Place *of the Defendant*

The only aspect of the venue statute at issue is whether Facet sufficiently pled that

Mobileye Global has "a regular and established place of business" in this District.[1] *See* 28 U.S.C. § 1400(b). The physical presence in the district "must be a place *of the defendant*, not solely a place of the defendant's employee." *In re Cray Inc.*, 871 F.3d 1355, 1363 (Fed. Cir. 2017) (emphasis in original). "[T]he defendant must establish or ratify the place of business." *Id.*

B. Plaintiff Bears a "Heavy Burden" to Rely on an Alter Ego Theory

Plaintiff bears a "heavy burden to establish a degree of control sufficient to impute the subsidiary's jurisdictional contacts to the parent." *Admr's of Tulane Educ. Fund v. Ipsen, S.A.*, 450 F. App'x 326, 331 (5th Cir. 2011).[2] The analysis "begins with a presumption that a subsidiary, even a wholly-owned subsidiary, is independent of its parent company . . . ." *Id.* at 329 (citing *Dickson Marine Inc. v. Panalpina, Inc.*, 179 F.3d 331, 338 (5th Cir. 1999)). Overcoming this presumption requires "clear evidence." *Id.* "Invariably such clear evidence requires an additional or a 'plus' factor, 'something beyond the subsidiary's mere presence within the bosom of the corporate family.'" *Id.* (quoting *Dickson Marine*, 179 F.3d at 338). For any "regular and established place of business" of one entity "to be imputed" to a related entity, the entities "must lack formal corporate separateness, which is a difficult standard to meet." *Soverain IP, LLC v. AT&T, Inc.*, No. 2:17-cv-00293-RWS-RSP, 2017 WL 5126158, at *1 (E.D. Tex. Oct. 31, 2017), *report & recommendation adopted*, 2017 WL 6452802 (E.D. Tex. Dec. 18, 2017).

C. Plaintiff Must Show Three Essential Elements to Rely on an Agency Theory—Failure to Show Any of These Three Elements Means There Is No Agency

"An agency relationship is a fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's

[1] Defendant denies that it has committed any acts of infringement here or anywhere but nonetheless focuses this motion on its lack of a regular and established place of business. Facet does not allege—nor could it—that any party "resides" in this District. *See, e.g.*, DI 9; DI 33.

[2] Courts have applied the same analysis to venue. *See, e.g.*, *Andra Grp., LP v. Victoria's Secret Stores, LLC*, No. 4:19-cv-00288-ALM-KPJ, 2020 WL 2478546, at *3-5 (E.D. Tex. Feb. 24, 2020).

behalf and subject to the principal's control, and the agent manifests assent or otherwise consents to act." *In re Google LLC*, 949 F.3d 1338, 1345 (Fed. Cir. 2020) (cleaned up) (quoting Restatement (Third) of Agency § 1.01). Relying on an agency relationship requires showing three essential elements: "(1) the principal's 'right to direct or control' the agent's actions, (2) 'the manifestation of consent by the principal to the agent that the agent shall act on his behalf,' and (3) the 'consent by the agent to act.'" *Id.* (quoting *Meyer v. Holley*, 537 U.S. 280, 286 (2003)). When evaluating whether an agency relationship exists for venue, the Court should bear in mind that "the Supreme Court has cautioned against a broad reading of the venue statute." *Id.* at 1346

II. Facet Fails to Adequately Allege Venue Despite Taking Venue Discovery

A. No Defendant Has a Regular and Established Place of Business in EDTX

1. Plaintiff Does Not Allege Mobileye Global Itself Has a Place in EDTX

Facet does not allege that Mobileye Global itself has any regular and established place of business in EDTX. *See, e.g.*, DI 33 at 1; *see also, e.g.*, DI 32-1 ¶¶ 34-44. Nor could it because Mobileye Global does not have any presence in EDTX, or anywhere in the United States. Ex. 1 at 34:20-36:21. Mobile Global also "has no employees or agents in Texas." *Id.* at 36:22-37:14.

2. Mobileye Inc. Did Not and Does Not Have a Place of Business in EDTX

Facet attempts to establish venue based on a former employee of an indirect subsidiary of Mobileye Global: Thomas Leach, who used to work for Mobileye Inc., a Delaware entity. DI 33 at 2-4; DI 32-1 ¶¶ 39-40. As an initial matter, Facet's conclusory allegations in its Complaint, including that Mobileye Inc. has an established and regular place of business in this District, are entitled to no weight. *See, e.g.*, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). They are also contradicted by the sworn testimony of Mr. Leach and Mr. Nehushtan who Facet deposed. The facts the Court evaluates when considering whether a home office is a place of business of the defendant support that Mr. Leach's home was not a place of business of any Mobileye entity.

Mr. Leach's home's location in EDTX (Dallas suburb) "happen[ed] to be where [he] lived"—i.e., Mobileye Inc. did not specify where Mr. Leach must live. Ex. 2 at 55:18-23. Because Mr. Leach "just happen[ed]" to live in EDTX (*id.*), he could "move his . . . home out of the district at his . . . own instigation, without the approval of the defendant," cutting "against [his] home being considered a place of business of the defendant." *In re Cray*, 871 F.3d at 1363.

There was no requirement or need for Mr. Leach to live in EDTX. Mr. Leach was the "south central" regional sales manager for Arkansas, Louisiana, Oklahoma, and Texas. Ex. 2 at 10:24-11:3, 56:9-23. Mr. Leach explained he did not even "have a lot of customers in Dallas" despite living there. Ex. 2 at 28:11-15 (noting it was "kind of an ironic thing"). Instead, Mr. Leach's position "required heavy travel," mostly by airplane—i.e., to outside of EDTX. Ex. 2 at 11:17-21, 25:12-17. Mr. Leach did not have a dedicated office in his home, and instead worked out of a room with a desk—space he kept and used personally after his employment ended. *See* Ex. 2 at 26:6-16.

Mobileye Inc. did not provide any "reimbursement or any other credit" or benefit for Mr. Leach working out of his home. Ex. 2 at 25:21-26:5. Mobileye Inc. *never* sent any products, prototypes, or anything similar to Mr. Leach's home. Ex. 2 at 26:17-27:6. Mobileye Inc. did not store any of those materials at Mr. Leach's home either. *Id.* Facet latches on to testimony that Mr. Leach, a traveling sales manager, used to have old copies of sales brochures for one product but ignores that those were never sent to his home and that he received them at Mobileye Inc.'s physical office *outside of EDTX*. Ex. 2 at 51:25-52:17 ("I never had any of that stuff sent to my house."), 54:4-14. Indeed, the "majority of the way" that he received brochures was electronically "because it was more convenient" as he sent them to customers electronically. Ex. 2 at 54:4-9.

Nor did Mobileye Inc. ever ratify Mr. Leach's home as a place of business of Mobileye. Facet argues that Mobileye Inc. ratified his home office as a place of business "by nature of Mr.

Leach's LinkedIn page which uses Mobileye's name and branding and lists his location as McKinney, Texas." DI 33 at 4. But that ignores the law and the nature of LinkedIn. First, a profile like Mr. Leach's is for a person to "navigate their professional life," meaning it is for his personal professional life, not Mobileye Inc.'s presence. Ex. 3 at 5 ("Who is LinkedIn for? Anyone looking to navigate their professional life."). Indeed, Mr. Leach listed all of his past employers, including Mobileye Inc. Second, Mr. Leach's LinkedIn profile does *not* list Mobileye Inc. as located in McKinney, Texas, as Facet alleges, but rather lists it as "Dallas / Fort Worth Area," consistent with its past office locations that were *outside of EDTX*. DI 33-3 at 2. Rather, the "McKinney, Texas" location is listed as where Mr. Leach resides, not Mobileye Inc. Lastly, even if Mr. Leach ratified his home office as one of Mobileye Inc.—he did not do so—that is "not enough" under the law because "*the defendant* must establish or ratify the place of business." *In re Cray*, 871 F.3d at 1363 (emphasis added) ("It is not enough that the employee does so on his or her own.").

These facts further illustrate Mr. Leach's home was not a place of business of any Mobileye entity. Like in *Cray*, "[t]he fact that [Mobileye Inc.] allowed its employee[] to work from the Eastern District of Texas is insufficient. There is no indication that [Mobileye Inc.] own[ed], lease[d], or rent[ed] any portion of Mr. [Leach's] home in the Eastern District of Texas. No evidence indicates that [Mobileye Inc.] played a part in selecting the place's location, stored inventory or conducted demonstrations there, or conditioned Mr. [Leach's] employment or support on the maintenance of an Eastern District of Texas location. No evidence shows that [Mobileye Inc.] believed a location within the Eastern District of Texas to be important to the business performed, or that it had any intention to maintain some place of business in that district in the event Mr. [Leach] decided to terminate [his] residence[] as a place where [he] conducted business." *See In re Cray*, 871 F.3d at 1364-65. "For purposes of § 1400(b), it is of no moment that an

employee may permanently reside at a place or intend to conduct his or her business from that place for present and future employers." *Id.* at 1365. That is all that exists here.

Because Mr. Leach's home was not a place of business of Mobileye Inc., the Court need not reach Facet's second leap of whether Mobileye Inc. and Mobileye Global are alter egos or an agency relationship exists between them (nonetheless, neither is correct, as explained below).

B. The Mobileye Entities Are Separate Companies, Not Alter Egos of Each Other

Facet fails to meet its burden to show that Mobileye entities are alter egos of each other—nor could it because they are not. *See Admr's of Tulane Educ. Fund*, 450 F. App'x at 329 (holding plaintiff bears a "heavy burden"). Instead, Facet bases its theory on two allegations. Facet contends Mobileye entities: 1) "hold themselves out as a single company both on its web page and in public filings with the SEC[3]," including "through use of shared branding and logos"; and 2) "share overlapping control and ownership, file consolidated financial statements, and are not financially independent." DI 33 at 5-6. But Facet's purported evidence does not support these conclusory statements, and even if it did, these allegations are insufficient to support an alter ego theory.

Facet's first allegation concerning Mobileye entities' marketing and branding efforts as "hold[ing] themselves out as a single company" ignores Mr. Leach's deposition and the law. DI 33 at 5. Mr. Leach testified that purchase orders—those sales efforts Facet relies on—were "between the customer and Mobileye, Inc.," i.e., the specific Mobileye entity selling the product, not Mobileye Global. Ex. 2 at 22:14-16. Accordingly, customers knew the specific Mobileye entity they were interacting with. Regardless, sharing "common marketing images, trademarks, and logos, with each entity often simply presenting itself as '[Mobileye]'" is insufficient. *In re Toyota Hybrid Brake Litig.*, No. 4:20-cv-00127, 2021 WL 2805455, at *4 (E.D. Tex. July 6, 2021); *see*

[3] To the contrary, Mobileye Global's SEC filings expressly identify Mobileye Inc. as a subsidiary without any indication that the public should treat the two as a single entity. *See* Ex. 4 at 3.

also, e.g., *In re Chinese-Manufactured Drywall Prod. Liab. Litig.*, 168 F. Supp. 3d 918, 937 (E.D. La. 2016) ("[T]he sharing of a common logo and part of a common name does not evince alter ego status." (citation omitted)); *In re Enter. Rent-A-Car Wage & Hour Emp. Pracs. Litig.*, 735 F. Supp. 2d 277, 323 (W.D. Pa. 2010) (holding that related corporations being "portrayed as a single brand to the public . . . does not demonstrate the necessary control by defendant parent over the subsidiaries." (citation omitted)), *aff'd*, 683 F.3d 462 (3d Cir. 2012).

Similarly, Facet's reliance on common ownership, commonality of officers and directors, common counsel, and financial relatedness[4] are insufficient. As a preliminary matter, Facet failed to establish any of the above, other than common ownership. But even if true, none "are outside normal activities consistent with a parent-subsidiary relationship." *Nat'l Steel Car Ltd. v. Greenbrier Cos., Inc.*, No. 6:19-cv-00721, 2020 WL 4289388, at *5 (W.D. Tex. July 27, 2020). "The degree of control exercised by the parent must be greater than that normally associated with common ownership and directorship." *Hargrave v. Fibreboard Corp.*, 710 F.2d 1154, 1160 (5th Cir. 1983) ("[1]00% stock ownership and commonality of officers and directors are not alone sufficient to establish an alter ego relationship between two corporations. Generally, our cases demand proof of control by the parent over the internal business operations and affairs of the subsidiary in order to fuse the two for jurisdictional purposes.") (citations omitted); *Gardemal v. Westin Hotel Co.*, 186 F.3d 588, 594 (5th Cir. 1999) ("[O]ne-hundred percent ownership and identity of directors and officers are, even together, an insufficient basis for applying the alter ego theory to pierce the corporate veil."); *Jekyll Island-State Park Auth. v. Polygroup Macau Ltd.*, No.

[4] Facet's contention that the Mobileye entities "file consolidated financial statements" ignores that the SEC requires public companies to file financial statements complying with Generally Accepted Accounting Principles (GAAP), requiring, *inter alia*, filing consolidated financial statements absent exception. *See, e.g.*, 17 C.F.R. § 210.3A-02 ("Consolidated financial statements of the registrant and its subsidiaries"); Accounting Standards Codification ("ASC") 810-10-45-1.

2:21-cv-00008, 2023 WL 2632813, at *14 (S.D. Ga. Mar. 24, 2023) (finding use of the same law firm does not impact corporate separateness determination). Facet's allegations fail to show the necessary control. *See Brooks & Baker, L.L.C. v. Flambeau, Inc.*, No. 2:10-cv-00146-TJW-CE, 2011 WL 4591905, at *5 (E.D. Tex. Sept. 30, 2011) ("Although Nordic owns 100% of Flambeau's stock and the two companies have a few officers and directors in common, there is no actual evidence that Nordic exercises any control over Flambeau's general policy or its daily operation.").

Despite taking venue discovery, Facet fails to provide any allegations beyond those normally associated with related companies. This is insufficient because "even if a parent corporation controls a subsidiary's operations and the companies share a unitary business purpose, the subsidiary's presence in a venue cannot be imputed to the parent absent disregard for corporate separateness." *Soverain IP*, 2017 WL 5126158, at *1 (citing *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 334-35 (1925)). The testimony Facet obtained supports the opposite conclusion because Mobileye Global has done no business in Texas, has no employees in Texas, and confirmed its corporate structure as presented in its organizational chart. Ex. 1 at 35:6-37:14.

C. Mobileye Inc. Is Not an Agent of Mobileye Global

Facet acknowledges the three "essential elements" to establish an agency relationship but fails to address any of them, instead simply proclaiming that Mobileye Inc. acts as Mobileye Global's agent "by nature of its sales and support conducted in this region." DI 33 at 6. The only "sales and support" Facet identifies is Mobileye Inc. sending "field engineers to conduct a formal two-day class to show the customer how to install and service the products." *Id.* at 6-7. There is no evidence that sending the field engineers was done on Mobileye Global's behalf, as there is no evidence that the field engineers worked for anyone other than Mobileye Inc. But even if otherwise, the law requires more for an agency relationship. *See* Section I.C.

Facet must first show that Mobileye Global has the "right to direct or control" Mobileye

Inc.'s actions. *In re Google*, 949 F.3d at 1345. Facet's allegation does nothing to show of the sort. Instead, Facet merely refers to Mobileye Inc. conducting a training class for its own customers. Indeed, the purchase orders for the sales were between "the customer and Mobileye, Inc." (Ex. 2 at 22:14-16) such that any training was on behalf of Mobileye Inc., not as an agent of Mobileye Global. Regardless, none of this supports any "right to direct or control" Mobileye Inc.

Facet must also show that Mobileye Global manifested consent for Mobileye Inc. to act on its behalf. *In re Google*, 949 F.3d at 1345. Facet simply ignores this "essential element[] of agency." DI 33 at 6-7 (quoting *In re Google*, 949 F.3d at 1345). There is no such evidence.

Similarly, Facet must show that Mobileye Inc. manifested consent to act on Mobileye Global's behalf. *In re Google*, 949 F.3d at 1345. Facet again ignores this "essential element[] of agency." DI 33 at 6-7 (quoting *In re Google*, 949 F.3d at 1345). Again, there is no such evidence.

In sum, Facet fails to show Mobileye Inc. is an agent of Mobileye Global—it is not.

D. Third Parties Are Not Agents of Mobileye Global

Facet's allegations concerning third parties acting as agents of Mobileye Global similarly fall short. Facet's entire basis for alleging third parties, specifically EOBR Logistics, act as agents for Mobileye Global is because a field engineer for Mobileye Inc. conducted a two-day training to show EOBR Logistics how to install a Mobileye Inc. product. DI 33 at 7. Facet's third-party theory first requires attributing the actions of Mobileye Inc. to Mobileye Global, which for the reasons stated above, is improper. *See* Sections II.B and II.C. Regardless, Facet's third-party theory fails.

Facet addresses only one of the three "essential elements of agency": control. For this element, Facet relies solely on a "one-time" training class. DI 33 at 7; Ex. 2 at 33:11-13 ("It was a one-time" training class). But that training class did not give Mobileye Inc. (let alone Mobileye Global) any "right to direct or control" the actions of a third party, which is a necessary element for an agency relationship. *See In re Google*, 949 F.3d at 1345. Rather, it was mostly a "hands on"

class teaching them how to install the product. Ex. 2 at 30:14-19. That is in stark contrast to the *IOT Innovations* case that Facet relies on. DI 33 at 7-8. In *IOT Innovations*, there were contracts with the third parties that specified how they "perform installations and repairs, what products they can use, the timing and location for customer equipment installations, and compliance with [defendant's] branding," and also with "an application accessible at the store and at customer sites" that "provides directions to customer locations, and step-by-step instructions to perform their installations, repairs, and other services involving [defendant's] equipment." *IOT Innovations LLC v. Monitronics Int'l, Inc.*, No. 2:22-cv-00432-JRG-RSP, 2023 WL 6318049, at *6 (E.D. Tex. Sept. 11, 2023), *report and recommendation adopted*, 2023 WL 6300560 (E.D. Tex. Sept. 27, 2023).[5] None of that is present here. Rather, the "hands on" one-time class does not provide any Mobileye entity the "right of interim control" over the third parties necessary to establish an agency relationship. *See In re Google*, 949 F.3d at 1345-46. It was simply an initial training class.

Facet also fails to support or even address the requisite consent of any Mobileye entity and of the third parties necessary for an agency relationship under the second and third elements. *In re Google*, 949 F.3d at 1345. Without this requisite consent, there can be no agency relationship. *Id.*

III. Conclusion

The Court should grant Mobileye Global's motion to dismiss for improper venue. There is already a case pending in Minnesota to which all three of Facet's targets can be joined, thereby accomplishing Facet's stated "extreme[ly] important[t]" goal of joining all three in a single action.

[5] Mr. Leach's home office is also distinct from those in *IOT Innovations*, where employees stored company vehicles and "more than ten thousand dollars of equipment and inventory (Accused Products) at their homes" for servicing "customer homes or businesses in this District to deliver, install, and repair the Accused Products." *IOT Innovations*, 2023 WL 6318049, at *3. That is in stark contrast to Mr. Leach who did not have a company car, did not store accused products, was not sent any brochures or products to his home, and instead "just happened" to live in this District, with most of his customers a flight away. Ex. 2 at 25:8-27:6, 51:25-52:15, 55:18-23.

DATED: December 5, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a) on December 5, 2024.

/s/ Melissa R. Smith
Melissa R. Smith