

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

THE RESEARCH FOUNDATION FOR THE
STATE UNIVERSITY OF NEW YORK,
UNIVERSITY OF CONNECTICUT and
WORCESTER POLYTECHNIC INSTITUTE,

Plaintiffs,

v.

XIAOMI CORPORATION, XIAOMI H.K.
LTD., XIAOMI COMMUNICATIONS CO.,
LTD., XIAOMI INC., AND ZEPP HEALTH
CORPORATION,

Defendants.

2:23-cv-00353-RWS-RSP

JURY TRIAL DEMANDED

**DEFENDANT ZEPP HEALTH CORPORATION'S MOTION TO DISMISS
THE FIRST AMENDED COMPLAINT UNDER FED. R. CIV. P. 12(b)(2)**

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I. INTRODUCTION

Defendant Zepp Health Corporation (“Zepp Health” or “Defendant”) respectfully submits this motion to dismiss Plaintiffs The Research Foundation for The State University of New York, University of Connecticut, and Worcester Polytechnic Institute’s (collectively, “Plaintiffs” or “the Universities”) First Amended Complaint (“FAC”) (Dkt. 11) pursuant to Rule 12(b)(2). Despite its amendment to the original complaint, the FAC still fails to state a claim upon which relief can be granted, and Zepp Health respectfully requests that the Court grants this motion to dismiss under Rule 12(b)(2) (the “Motion”).

Plaintiffs accuse Zepp Health of direct and indirect infringement of seven patents (the “Asserted Patents”): U.S. Patent Nos. 8,417,326 (“the ’326 Patent”), 9,408,576 (“the ’576 Patent”), 9,713,428 (“the ’428 Patent”), 9,986,921 (“the ’921 Patent”), 10,278,647 (“the ’647 Patent”), 10,285,601 (“the ’601 Patent”), and 10,653,362 (“the ’362 Patent”). For instance, Plaintiffs allege that “[u]pon information and belief, Zepp does business in Texas, directly or through its subsidiaries, and offers its products and/or services, including those accused herein of infringement, to customers and potential customers located in Texas, including in the Judicial District of the Eastern District of Texas.” (FAC at ¶ 10; *see also id.* at ¶¶ 21 and 22.) Plaintiffs also allege that Zepp is “engaged in making, using, offering for sale, selling, importing, or otherwise providing, within the United States and this Judicial District, directly or indirectly, physiological monitoring devices utilizing protected corresponding algorithms and/or related products and services, with features and functionalities that infringe the patents-in-suit. These acts of infringement include inducing and/or contributing to infringement in the U.S. of the patents-in-suits’ claims.” (FAC at ¶ 16.)

However, Defendant Zepp Health is incorporated under the laws of the Cayman Islands. (See Declaration of Jack Shaw, Exhibit 1 (search report for Zepp Health); Declaration of Mike Yan Yeung (“Yeung Decl.”) at ¶ 4.) Zepp Health’s registered office is in the Cayman Islands, and has no offices or physical presence in the State of Texas or the United States. (See Yeung Decl. at ¶¶ 4-5.) Moreover, Zepp Health has never conducted any product sales activities the State of Texas or the United States. (See *id.* at ¶ 5.) Further, Zepp Health does not make, use, offer to sell, or sell any of the accused products or any other products in the United States, and does not import any of the accused products or any other products into the United States. (See *id.* at ¶ 6.) Being a holding company, Zepp Health is an independent company and is not involved in the day-to-day operations of its subsidiaries. (See *id.* at ¶ 7.) Moreover, contrary to the FAC’s baseless allegations (see, e.g., FAC at ¶¶ 115, 116, 357 & 379), Defendant Zepp Health does not operate or own any website that advertises or sells any products. (See Yeung Decl. at ¶ 8.) Zepp Health also does not advertise, offer for sale, or promote any products on any website or through other means. (See *id.* at ¶ 9.)

As further discussed below, the FAC failed to allege plausible facts that would allow this Court to exercise personal jurisdiction over Defendant Zepp Health.

II. STATEMENT OF THE ISSUES TO BE DECIDED

Whether the Court should dismiss the FAC pursuant to Rule 12(b)(2) on the basis of lack of personal jurisdiction in that Defendant Zepp Health does not have the requisite minimum contacts with Texas nor would exercising jurisdiction over it comport with due process.

III. RULE 12(b)(2) LEGAL STANDARDS

For patent-related cases, Federal Circuit law governs the issue of personal jurisdiction. *Deprenyl Animal Health, Inc. v. The Univ. of Toronto Innovations Found.*, 297 F.3d 1343, 1348

(Fed. Cir. 2002). A court may exercise personal jurisdiction over a foreign defendant if the forum state's long-arm statute permits jurisdiction without violating federal due process. *HTI IP LLC v. DriveOk, Inc.*, No. 6:09-CV-370, 2010 WL 3075200, at *4 (E.D. Tex. Aug. 4, 2010) (citing *LSI Indus. Inc. v. Hubbell Lighting, Inc.*, 232 F.3d 1369, 1371 (Fed. Cir. 2000)). Because the Texas long-arm statute allows the exercise of personal jurisdiction to the full extent of the Constitution's limits, the sole inquiry is whether the exercise of personal jurisdiction on the foreign defendant comports with due process. *Dainippon Screen Mfg. Co. v. CFMT, Inc.*, 142 F.3d 1266, 1270 (Fed. Cir. 1998). To determine whether the exercise of personal jurisdiction comports with due process, the court looks at (1) whether the defendant has sufficient "minimum contacts" with the forum state and (2) whether the exercise of personal jurisdiction over the defendant comports with "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945). Here, Plaintiffs have failed to allege plausible facts that would allow this Court to exercise personal jurisdiction over Defendant Zepp Health.

IV. ARGUMENTS

A. Defendant Zepp Health Does Not Have the Requisite "Minimum Contacts" With Texas That Would Allow This Court to Exercise Personal Jurisdiction Over It

The "minimum contacts" prong is satisfied when a defendant "purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). The foreign defendant's availment must be such that the defendant "should reasonably anticipate being haled into court" in the forum state. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). When evaluating whether the foreign defendant has sufficient minimum contacts with the forum, courts consider specific jurisdiction and general jurisdiction. *Viam Corp. v. Iowa Export-*

Import Trading Co., 84 F.3d 424, 427 (Fed. Cir. 1996). General jurisdiction exists when a foreign defendant’s “affiliations with the State are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (quoting *Int’l Shoe*, 326 U.S. at 317). “It is, therefore, incredibly difficult to establish general jurisdiction in a forum other than the place of incorporation or principal place of business.” *Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 432 (5th Cir. 2014). “[E]ven repeated contacts with forum residents by a foreign defendant may not constitute the requisite substantial, continuous and systematic contacts required for a finding of general jurisdiction” *Revell v. Lidov*, 317 F.3d 467, 471 (5th Cir. 2002) (citations omitted). “[T]o confer general jurisdiction, a defendant must have a business presence in Texas.” *Johnston v. Multidata Sys. Int’l Corp.*, 523 F.3d 602, 611 (5th Cir. 2008) (citations omitted). Specific jurisdiction exists when the foreign defendant (1) has “purposefully directed” his activities at the residents of the forum, and (2) the litigation results from alleged injuries that “arise out of or relate to” those activities. *Burger King*, 471 U.S. at 474 (citations omitted). “The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation.” *Walden v. Fiore*, 571 U.S. 277, 283–84 (2014) (citations and internal quotation marks omitted). In order to exercise jurisdiction, “the defendant’s suit-related conduct must create a substantial connection with the forum State.” *Walden*, 571 U.S. at 284 (2014). Here, Plaintiff has not alleged facts sufficient to establish either general or specific personal jurisdiction.

As an initial matter, Plaintiff offers only vague and conclusory allegations that should be wholly disregarded by this Court (FAC at ¶¶ 10, 18-24). *Felch v. Transposes Lar-Mex SA DE CV*, 92 F.3d 320, 326 n.16 (5th Cir. 1996) (courts are only to credit “nonconclusional factual allegations of the complaint”). For example, Plaintiff alleges that jurisdiction attaches allegedly because

“[u]pon information and belief, Zepp [Health] does business in Texas, directly or through its subsidiaries, and offers its products and/or services, including those accused herein of infringement, to customers and potential customers located in Texas, including in the Judicial District of the Eastern District of Texas,” has “a presence and/or a regular and established place of business in the State of Texas and this Judicial District,” has “purposefully availed” itself of the rights and benefits of the laws of the State of Texas and this Judicial District, has done and is doing “substantial business in the State of Texas and this Judicial District, directly or through intermediaries,” maintains “continuous and systematic contacts in the State of Texas and this Judicial District,” places “products alleged to be infringing in this Complaint in the stream of commerce, directly or through intermediaries, with awareness that those products are likely destined for use, offered for sale, sold, and/or imported, in the State of Texas and this Judicial District,” has “authorized retailers and distributors in the State of Texas and this Judicial District for the products alleged to be infringing in this Complaint,” has derived “substantial revenues from their infringing acts occurring within the State of Texas and this Judicial District,” and “has purposefully directed activities at residents of the State of Texas and this Judicial District.” (FAC at ¶¶ 10, 20, 21 & 23.)

The foregoing allegations are purely a speculative and scatter-shot approach that fails to make *any* non-conclusory allegation, much less sufficient allegations that could allow this Court to find that the exercise of personal jurisdiction over Zepp Health is proper. *See Pederson v. Unilever N.V.*, No. SA-20-CV-20-XR, 2020 WL 8408971, at *3 (W.D. Tex. Oct. 2, 2020) (“[A]ny allegation of jurisdiction over [defendant] should be more than a formulaic recitation of the requirements for personal jurisdiction.”); *see also Panda Brandywine Corp. v. Potomac Elec. Power Co.*, 253 F.3d 865 (affirming the district court’s decision to exclude uncontroverted

assertions offered to show personal jurisdiction over a foreign defendant because those assertions were conclusory).

Further, Plaintiff's baseless and conclusory allegations discussed above are easily refuted by admissible evidence. For example, Zepp Health is not registered to do business in Texas; does not have an office in Texas; does not own, rent, lease, or possess any real property in Texas; does not maintain a mailing address or telephone listing in Texas; does not employ any Texas residents; does not have any distributors or vendors located in Texas or any that sell or offer Zepp Health's products in Texas; does not solicit business in Texas; does not have any customers in Texas; does not direct advertisements at Texas or its residents; does not receive revenue from Texas or its residents; and, Zepp Health does not make, use, offer to sell, or sell any of the accused products or any other products in the State of Texas, and also does not import any of the accused products or any other products into the United States. (See Yeung Decl. at ¶¶ 6, 10 & 11.)

Zepp Health also has not "purposefully directed" any activities towards this forum and Plaintiff has not and cannot adduce facts to the contrary. Even if Plaintiff could show any connection to this forum, it could not show that any patent infringement by any product could "arise out of or relate to" those connections because Zepp Health does not make, use, offer to sell, or sell any of the accused products or any other products in this forum or the United States. (See Yeung Decl. at ¶ 6.) Accordingly, Plaintiff has not made the requisite showing that could allow this Court to find that the exercise of specific jurisdiction over Zepp Health is proper. Furthermore, Plaintiff also fails to proffer facts sufficient to meet the high standard required for general jurisdiction. Even as Plaintiff concedes, Zepp Health is a foreign corporation. (FAC at ¶ 24; see also Yeung Decl. at ¶ 4.) As such, Zepp Health does not have the business presence in Texas

required to confer general jurisdiction. *Johnston*, 523 F.3d at 611 (“[T]o confer general jurisdiction, a defendant must have a business presence *in Texas*.”)

Accordingly, this Court does not have personal jurisdiction over Zepp Health.

B. Exercise of Jurisdiction Over Zepp Health Would Not Comport with Traditional Notions of Fair Play and Substantial Justice

As discussed above, Plaintiff is not able to demonstrate sufficient minimum contacts to establish personal jurisdiction over Zepp Health. Even assuming, *arguendo*, that it could, traditional notions of fair play and substantial justice should dissuade this Court from exercising personal jurisdiction. *See World-Wide Volkswagen*, 444 U.S. at 291–92.

In evaluating whether the exercise of personal jurisdiction over Zepp Health comports with traditional notions of fair play and substantial justice, the Court must examine a number of factors in order to determine fairness and reasonableness, including: (1) the defendant’s burden; (2) the forum state’s interests; (3) the plaintiff’s interest in convenient and effective relief; (4) the judicial system’s interest in efficient resolution of controversies; and (5) the state’s shared interest in furthering social policies. *Asahi Metals Indus. Co. v. Superior Court*, 480 U.S. 102, 112 (1987).

Here, exercising jurisdiction over Zepp Health would offend traditional notions of fair play and substantial justice. Zepp Health is a foreign defendant incorporated in Cayman Islands. (*See* Declaration of Jack Shaw, Exhibit 1 (search report for Zepp Health); Yeung Decl. at ¶ 4.) Zepp Health’s registered office is in the Cayman Islands, and has no offices or physical presence in the State of Texas or the United States. (*See* Yeung Decl. at ¶¶ 4-5.) It would be significantly burdened if it were forced to defend itself in Texas as it has no contacts, connections, or relationship with Texas. The forum state likewise has no interest in this matter because Zepp Health has no contacts with it nor does it do business within it or with its residents. Accordingly, Zepp Health would not reasonably anticipate being hauled into this Court. *See World-Wide*

Volkswagen, 444 U.S. at 297 (“[T]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being hauled into court there.”).

Plaintiff has failed to allege facts that demonstrate that Zepp Health has sufficient minimum contacts with Texas. Accordingly, exercising jurisdiction over Zepp Health would offend traditional notions of fair play and substantial justice.

For the reasons stated above, this Court should grant Zepp Health’s motion to dismiss based on lack of personal jurisdiction under Rule 12(b)(2).

V. CONCLUSION

For the foregoing reasons, Defendant Zepp Health respectfully requests that the Court grant its motion to dismiss under Rule 12(b)(2).

Dated: May 6, 2024

RESPECTFULLY SUBMITTED,

/s/ Jack Shaw

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CERTIFICATE OF SERVICE

I hereby certify that, on May 6, 2024, the foregoing document was filed electronically in compliance with Local Rule CV-5(a), and any and all counsel of record who are deemed to have consented to electronic service will be served with a copy of this document via the Court's CM/ECF system.

/s/ Jack Shaw
Jack Shaw