

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

USTA TECHNOLOGY, LLC,

Plaintiff,

v.

LENOVO (UNITED STATES), INC., and
LENOVO GLOBAL TECHNOLOGY
(UNITED STATES) INC.,

Defendants.

Civil Action No. 4:24-cv-515-SDJ

JURY TRIAL DEMANDED

**LENOVO (UNITED STATES), INC. AND LENOVO GLOBAL TECHNOLOGY
(UNITED STATES) INC.'S MOTION TO DISMISS FOR IMPROPER VENUE
OR, IN THE ALTERNATIVE, TO TRANSFER VENUE**

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I. INTRODUCTION

Plaintiff USTA Technology, LLC (“USTA”) fails to allege facts supporting that venue is proper over Defendants Lenovo (United States) Inc. (“Lenovo US”) and Lenovo Global Technology (United States) Inc. (“Lenovo Global Tech. US”). Neither Defendant resides in this District or has a regular and established place of business here. Accordingly, venue is improper in the Eastern District of Texas, and this case should be dismissed.

Alternatively, the case should be transferred to the Eastern District of North Carolina where:

- Lenovo US and Lenovo Global Tech. US have their headquarters and main corporate offices;
- The majority of relevant corporate witnesses for the Defendants reside; and
- The majority of Defendants’ documents relevant to the accused products are located.

II. FACTUAL BACKGROUND

USTA’s Amended Complaint alleges that Lenovo (United States), Inc. and Lenovo Global Technology (United States), Inc. infringe U.S. Patent No. RE47,720 (“the ’720 Patent”) by “selling, offering to sell, making, using, and/or providing and causing to be used” products, including laptops, routers, and tablets, that support the IEEE 802.11ac standard.¹

While the Amended Complaint alleges that “[u]pon information and belief, venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b),” it does

¹ Dkt. 19, ¶ 36.

not plead any facts in support of that allegation.² The Amended Complaint concedes that both Lenovo US and Lenovo Global Tech. US are incorporated in Delaware, and the only place of business of either Lenovo US or Lenovo Global Tech. US it alleges is a location in Fort Worth, Texas, which is in the Northern District of Texas.³

USTA further alleges that “Lenovo has authorized sellers and sales representatives that offer for sale and sell the infringing products throughout the State of Texas,” including Best Buy, Costco Wholesale, Office Depot, Target, Wal-Mart, AT&T, Verizon, and T-Mobile, and lists several of those authorized sellers’ retail locations in this District.⁴ But the Amended Complaint does not allege that any of these locations are regular and established places of business of Lenovo US or Lenovo Global Tech. US.⁵ Lenovo US and Lenovo Global Tech. US do not maintain any place of business in the Eastern District of Texas, do not own or rent any property in this District, and do not require their employees to live in the District.⁶ Both Lenovo US and Lenovo Global Tech. US maintain their headquarters and their primary operations in Morrisville, North Carolina in the Eastern District of North Carolina.⁷

² *Id.* at ¶ 9.

³ *Id.* at ¶¶ 3–4.

⁴ *Id.* at ¶ 11.

⁵ *See id.*

⁶ Ex. 1 (“Frazier Dec.”), ¶ 6.

⁷ *Id.* at ¶ 3.

The Amended Complaint does not point to any regular and established place of business of the Defendants in the District—nor could it—because no such place exists.⁸

III. STATEMENT OF ISSUES UNDER LOCAL RULE CV-7(A)(1)

1. Whether venue is proper in the Eastern District of Texas. Neither Lenovo US nor Lenovo Global Tech. US resides in Texas, and neither has a regular and established place of business in this District. Accordingly, the requirements of 28 U.S.C. § 1400(b) are not met here, and the Amended Complaint should be dismissed for improper venue.⁹

2. Whether, in the alternative, venue should be transferred to the Eastern District of North Carolina in the interest of justice. If the case is not dismissed, Defendants request that it be transferred to the Eastern District of North Carolina, where Lenovo US and Lenovo Global Tech. US are headquartered, where their relevant witnesses and documents are located and there is a factual connection to the case, and where the case could have been brought.¹⁰

IV. LEGAL STANDARDS

Federal Rule of Civil Procedure 12(b)(3) permits a court to dismiss a case for improper venue. “In an action with multiple defendants, ‘venue and jurisdiction

⁸ See *id.* at ¶ 6.

⁹ See FED. R. CIV. P. 12(b)(3); 28 U.S.C. § 1406(a).

¹⁰ See 28 U.S.C. § 1406(a); 28 U.S.C. § 1404(a).

requirements must be met as to each defendant.”¹¹ “The burden to establish venue in patent infringement cases rests with the plaintiff.”¹²

The patent venue statute, 28 U.S.C. § 1400(b), provides that “[a]ny civil action for patent infringement may be brought 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.” To survive a motion to dismiss for improper venue by a non-resident defendant, a patent-infringement complaint must plead specific facts showing “that the defendant has a regular and established place of business physically located in the judicial district.”¹³ In determining whether venue is proper, “the Court may look beyond the complaint to evidence submitted by the parties.”¹⁴

If the district court finds a case has been filed in the wrong district, the Court can dismiss the case.¹⁵ Alternatively, the district court may, in the interest of justice, transfer the case to a district in which the case could have been brought.¹⁶ “A court’s decision to transfer is discretionary, and often made to prevent waste of time, energy, and money, and to protect litigants, witnesses, and the public against unnecessary inconvenience and expense.”¹⁷

¹¹ *MOV-ology LLC v. BigCommerce Holdings, Inc.*, No. 6:22-CV-00084-ADA, 2022 WL 4286497, at *1 (W.D. Tex. Sept. 16, 2022) (quoting *Magnacoustics, Inc. v. Resonance Tech. Co.*, 132 F.3d 49 (Fed. Cir. 1997)).

¹² *In re Volkswagen Grp. of Am., Inc.*, 28 F.4th 1203, 1207 (Fed. Cir. 2022).

¹³ *Westech Aerosol Corp. v. 3M Co.*, 927 F.3d 1378, 1382 (Fed. Cir. 2019).

¹⁴ *Immanuel v. Cable News Network, Inc.*, No. 4:21-CV-00587, 2022 WL 1748252, at *2 (E.D. Tex. May 31, 2022) (quoting *Ambraco, Inc. v. Bossclip B.V.*, 570 F.3d 233, 238 (5th Cir. 2009)).

¹⁵ 28 U.S.C. § 1406(a).

¹⁶ *Id.*

¹⁷ *Immanuel*, 2022 WL 1748252, at *7 (citations omitted).

V. ARGUMENT

A. Venue is Improper Because Lenovo US and Lenovo Global Tech. US Do Not Have a Place of Business Within the District

USTA has failed to meet its burden of establishing that venue is proper in this District because it failed to even allege that either Lenovo US or Lenovo Global Tech. US has a regular and established place of business here. Under 28 U.S.C. § 1400(b), a plaintiff may bring a patent-infringement action: (1) where the defendant resides or (2) where the defendant has committed acts of infringement and has a regular and established place of business. There can be no dispute that neither defendant “resides” in the District, as a corporate defendant resides only in its state of incorporation.¹⁸

Thus, to establish venue, USTA must show that both Lenovo US and Lenovo Global Tech. US have committed acts of infringement *and* have regular and established places of business in the District. USTA has wholly failed to do so. The Amended Complaint does not even satisfy the bare-minimum requirement of pleading facts supporting that venue is proper as to Lenovo US and Lenovo Global Tech. US. It does not point to any Lenovo US or Lenovo Global Tech. US place of business in this District, and neither Lenovo US nor Lenovo Global Tech. US has any such place of business.¹⁹

While the Amended Complaint provides addresses for retail locations of alleged authorized retailers of the accused products in this District, none of these

¹⁸ *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 270 (2017); Dkt. 19, ¶¶ 3–4.

¹⁹ Dkt. 19, ¶ 11; Frazier Dec., ¶¶ 6-7.

are places “of the [D]efendant[s].”²⁰ USTA does not contend otherwise. In fact, the Amended Complaint concedes that all of these locations are places of the alleged resellers: “Best Buy, . . . Costco Wholesale, . . . Office Depot, . . . Target, . . . Wal-Mart, . . . Verizon, . . . AT&T, . . . [and] T-Mobile.”²¹ The Amended Complaint does not allege that either Defendant rents space at these retail stores or has ratified these locations as places “of the Defendants.”²² It alleges no more than that the accused products arrive in this District through the “stream of commerce” and that Lenovo US and Lenovo Global Tech. US authorize retailers to sell them within the District.²³

That is not sufficient to establish proper venue in this District. USTA must show that these retail locations are places that belong to or are ratified by both Defendants.²⁴ A complaint cannot establish proper venue by merely “point[ing] to retailers who sell accused [] products” in the District without “explain[ing] the level of contractual control, if any,” that the defendant exercises over the locations.²⁵ For example, in *Alexsam, Inc. v. Simon Prop. Grp. (Texas), L.P.*, a Court in this District held that venue was improper when a complaint “identif[ied] Dollar General, CVS, Family Dollar, and Walmart locations in Tyler, TX and Marshall, TX” as locations where accused products were sold, despite the plaintiff’s argument that the

²⁰ See *In re Cray Inc.*, 871 F.3d 1355, 1363 (Fed. Cir. 2017).

²¹ Dkt. 19, ¶ 11.

²² *Id.*; see also *In re Cray Inc.*, 871 F.3d at 1363.

²³ Dkt. 19, ¶ 11.

²⁴ *Alexam, Inc. v. Simon Prop. Grp. (Texas), L.P.*, No. 2:19-CV-00331-JRG, 2021 WL 8441707, at *2 (E.D. Tex. Sept. 3, 2021); *Quantum Tech. Innovations, LLC v. Valve Corp.*, No. 2:23-CV-425-JRG-RSP, 2024 WL 4329020, at *3 (E.D. Tex. Aug. 8, 2024); *EMED Techs. Corp. v. Repro-Med Sys., Inc.*, No. 2:17-CV-728-WCB-RSP, 2018 WL 2544564, at *2 (E.D. Tex. June 4, 2018) (collecting cases).

²⁵ *Alexsam*, 2021 WL 8441707, at *2.

defendant “controls its products within retailers’ stores.”²⁶ The Court explained that merely authorizing a retailer to sell products is not sufficient—even where the defendant controls products within the retailer’s store—because, “[t]aking [this] argument to its logical end, retailers like [Target, Wal-Mart, Best Buy, etc.] would be the ‘regular and established place of business’ of numerous brands who merely sell products in [those] retail locations.”²⁷ “That is not consistent with current venue law in patent cases.”²⁸

The venue statute requires that the defendant control a *location* within the district—not merely products.²⁹ The Amended Complaint does not and cannot allege that either Defendant exercises control over stores owned by third-party retailers.³⁰

And any further amendment would be futile. USTA cannot allege that either defendant has a regular and established place of business in this District because no such place exists.³¹ Defendants do not own, lease, or exercise other attributes of possession or control over stores belonging to Best Buy, Costco Wholesale, Office Depot, Target, Wal-Mart, Verizon, AT&T, or T-Mobile within the District.³² Nor do

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*; see also *Quantum Technology Innovations*, 2024 WL 4329020, at *3 (recommending that a motion to dismiss be granted when a complaint merely alleged that a defendant’s products were sold “in stores such as Best Buy, GameStop, and Walmart”) (internal quotations omitted).

²⁹ See 28 U.S.C. § 1400; *In re Cray Inc.*, 871 F.3d at 1363.

³⁰ See Dkt. 19.

³¹ *Id.*

³² See Frazier Dec. ¶ 6.

Defendants ratify these locations as places of Lenovo US or Lenovo Global Tech. US.³³

While some Lenovo US and Lenovo Global Tech. US employees work remotely from their homes within the District,³⁴ USTA has failed to plead any facts concerning these employees or allege that any of their homes are “place[s] of the defendant.”³⁵ The fact that Lenovo US and Lenovo Global Tech. US have remote employees that live in the District, on its own, is insufficient to establish that venue in this District is proper.³⁶ Even if USTA were to amend its complaint, again, to mention these employees or their homes, it still could not establish that the employees’ homes are “place[s] *of the [D]efendant[s]*” and not merely “place[s] of the [D]efendant[s]’ employees.”³⁷ For example, neither Lenovo US nor Lenovo Global Tech. US (1) owns, leases, or “exercises other attributes of possession or control” over their employees’ homes; (2) “ratif[ies]” the employee homes by marketing or advertising the homes as a place of its business; (3) conditions employment on continued residence in the District; or (4) requires employees to store materials at a place in the District.³⁸

There are no facts—pleaded or unpleaded—that can show a regular and established place of business of Lenovo US or Lenovo Global Tech. US in this District. Venue is therefore improper, and this case should be dismissed.

³³ *See id.*

³⁴ *Id.* at ¶ 7.

³⁵ *In re Cray*, 871 F.3d at 1363.

³⁶ *See id.*; *4WEB, Inc. v. NuVasive, Inc.*, No. 2:23-CV-00192-JRG, 2024 WL 1932416 (E.D. Tex. May 2, 2024).

³⁷ *See In re Cray*, 871 F.3d at 1363.

³⁸ *Frazier Dec.*, ¶ 7; *see id.*

B. In the Alternative, the Case Should be Transferred to the Eastern District of North Carolina

If a district court finds a case has been filed in the wrong district, the district court may, in the interest of justice, transfer the case to “any district or division in which it could have been brought” to prevent “waste of time, energy, and money, and to protect litigants, witnesses, and the public against unnecessary inconvenience and expense.”³⁹ Proper venue exists in the Eastern District of North Carolina, as both Defendants are headquartered and have a regular and established place of business in Morrisville, North Carolina in that district.⁴⁰

In determining a transfer destination for a case filed in the wrong venue, courts often consider the convenience of the transferee forum.⁴¹ The Eastern District of North Carolina would be a convenient forum for this action because both Defendants have their headquarters and primary operations in Morrisville, North Carolina, which is within that venue.⁴² Over 2,500 employees work out of these Morrisville headquarters, and Defendants have identified several employees likely to possess knowledge about the design, development, and sales of the Accused Products who reside in North Carolina.⁴³ Defendants also maintain most of the documentation regarding the Accused Products in these headquarters.⁴⁴ Therefore, transfer to the Eastern District of North Carolina is in the interest of justice.

³⁹ 28 U.S.C. § 1406(a); *Immanuel v. Cable News Network, Inc.*, No. 4:21-CV-00587, 2022 WL 1748252, at *7 (E.D. Tex. May 31, 2022) (citations omitted).

⁴⁰ Frazier Dec., ¶ 3.

⁴¹ See, e.g., *CUPP Cybersecurity LLC v. Symantec Corp.*, No. 3:18-CV-01554-M, 2019 WL 1070869, at *6 (N.D. Tex. Jan. 16, 2019).

⁴² Frazier Dec., ¶ 3.

⁴³ *Id.* at ¶ 4.

⁴⁴ *Id.* at ¶ 5.

VI. CONCLUSION

This case should be dismissed because venue is improper as to Defendants Lenovo (United States), Inc. and Lenovo Global Technology (United States) Inc. Neither of those entities resides in Texas or has a regular and established place of business in the District. Accordingly, Defendants respectfully request that the Court dismiss this action or transfer it to the Eastern District of North Carolina in the interest of justice.

Dated: November 6, 2024

/s/ John R. Emerson

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CERTIFICATE OF SERVICE

The undersigned certifies that, on November 6, 2024, the foregoing document was filed electronically with the Clerk of the Court through the CM/ECF system, which will send a notice of electronic filing to all counsel of record who are deemed to have consented to electronic service.

/s/ John R. Emerson
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