

[REDACTED]

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

ELECTRALED, INC.,

Plaintiff,

v.

CHAUVET & SONS, LLC,

Defendant.

Case No. 2:24-cv-00511-JRG-RSP

JURY TRIAL DEMANDED

[REDACTED]

PUBLIC VERSION

**DEFENDANT CHAUVET & SONS, LLC'S MOTION
TO DISMISS OR TRANSFER FOR IMPROPER VENUE UNDER RULE 12(b)(3)
AND TO DISMISS FOR FAILURE TO STATE A CLAIM UNDER RULE 12(b)(6)**



TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 1

III. ISSUES REQUIRING RESOLUTION 2

IV. STATEMENT OF LAW.....2

 A. Rule 12(b)(3).....2

 B. Rule 12(b)(6) and *Twombly* 3

V. ARGUMENT 3

 A. Improper Venue 3

 1. Chauvet Does Not “Reside” In This District 4

 2. Chauvet Does Not Have A “Regular And Established Place Of
Business” In This District 4

 3. Third-Party Dealers, Installers, and Rental Companies Are Not
“Regular and Established Places of Business” of Chauvet..... 4

 B. Failure to State a Claim.....10

 1. The Complaint Fails to Adequately Plead Indirect Infringement. 10

 2. The Complaint Fails to Adequately Plead Willful Infringement..... 11

V. CONCLUSION.....12

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>4WEB, Inc. v. NuVasive, Inc.</i> , No. 2:23-CV-00192-JRG, 2024 WL 1932416, at *4 (E.D. Tex. May 2, 2024)	5
<i>AGIS Software Dev. LLC v. T-Mobile USA, Inc.</i> , No. 221CV00024JRGRSP, 2021 WL 6616856 (E.D. Tex. Nov. 10, 2021).....	5
<i>AGIS Software Dev. LLC v. T-Mobile USA, Inc. and T-Mobile US Inc., Lyft, Inc.</i> , No. 221CV00024JRGRSP, 2022 WL 178804 (E.D. Tex. Jan. 19, 2022)	5
<i>Andra Grp., LP v. Victoria’s Secret Stores, L.L.C.</i> , 6 F.4th 1283 (Fed. Cir. 2021)	9
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	3
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	3
<i>Chapterhouse LLC v. Shopify, Inc.</i> , No. 2:18-cv-00300, 2018 WL 6981828 (E.D. Tex. Dec. 11, 2018)	10
<i>Core Wireless Licensing S.A.R.L. v. Apple Inc.</i> , No. 6:14-CV-752-JRG-JDL, 2015 WL 4910427 (E.D. Tex. Aug. 14, 2015)	10
<i>In re Cray Inc.</i> , 871 F.3d 1355 (Fed. Cir. 2017).....	<i>passim</i>
<i>EMA Electromechanics, Inc. v. Siemens Corp.</i> , No. 6:21-CV-1001-ADA, 2022 WL 1241967 (W.D. Tex. Apr. 26, 2022)	6
<i>Finjan, Inc. v. Cisco Sys., Inc.</i> , No. 17-cv- 00072-BLF, 2017 WL 2462423 (N.D. Cal. Jun. 7, 2017).....	12
<i>Fractus, S.A. v. TCL Corp.</i> , No. 2:20-CV-00097-JRG, 2021 WL 2483155 (E.D. Tex. June 2, 2021)	11, 12
<i>Fujitsu Ltd. v. Netgear Inc.</i> , 620 F.3d 1321 (Fed. Cir. 2010).....	11
<i>Power Integrations, Inc. v. Fairchild Semiconductor Int’l, Inc.</i> , 843 F.3d 1315 (Fed. Cir. 2016).....	10



Schnell v. Peter Eckrich & Sons, Inc.,
365 U.S. 260 (1961).....3

TC Heartland LLC v. Kraft Foods Grp. Brands LLC,
137 S. Ct. 1514 (2017).....2, 4

In re Volkswagen Grp. of Am., Inc.,
28 F.4th 1203 (Fed. Cir. 2022) 7, 9

In re ZTE (USA) Inc.,
890 F.3d 1008 (Fed. Cir. 2018).....3

Statutes

28 U.S.C. § 1391(c)(2).....2

28 U.S.C. § 1400(b) 2, 4, 7, 9

35 U.S.C. § 1406.....1, 3, 10

Rules

Federal Rule of Civil Procedure, Rule 12(b)(3).....1, 2, 6

Federal Rule of Civil Procedure, Rule 12(b)(6).....1, 3

I. INTRODUCTION

Pursuant to Federal Rules of Civil Procedure 12(b)(3) and 12(b)(6), Defendant Chauvet & Sons, LLC (“**Chauvet**”) moves to dismiss this case brought by Plaintiff ElectraLED, Inc. (“**ElectraLED**”).

First, this case should be dismissed or transferred for improper venue under Rule 12(b)(3). Chauvet does not “reside” in this District. It is incorporated and thus “resides” in Delaware. Chauvet also does not have a “regular and established place of business” in this District. It has no physical locations in the District and is not even registered to do business in Texas. Without factual support, ElectraLED makes a sweeping argument that all third-party companies in this District that can be identified from Chauvet’s website are acting as Chauvet’s “agents” and, thus, their locations should be Chauvet’s places of business for venue purposes. However, these third-party companies are separate and distinct corporate entities and simply purchase products from Chauvet to sell or rent to their own customers. These third-party companies also sell or rent products from Chauvet’s competitors and are competing with one another. They are not owned or controlled by Chauvet in any manner. Thus, there is no basis to impute their locations to Chauvet, and this case should be dismissed for improper venue or, in the alternative pursuant to 35 U.S.C. § 1406, transferred to the Southern District of Florida, where Chauvet has its principal place of business.

Second, the complaint is devoid of any facts from which the Court can plausibly infer that Chauvet is engaged in indirect infringement or willful infringement, and therefore, those claims should be dismissed for this reason as well.

II. FACTUAL BACKGROUND

ElectraLED filed the complaint in this action on July 10, 2024, asserting U.S. Patent No. 7,651,245 against Chauvet. Dkt. 1 at ¶40. In the complaint, ElectraLED alleges that venue is proper in this District as to Chauvet pursuant to at least 28 U.S.C. §§ 1391(c)(2) and 1400(b) because

[REDACTED]

Chauvet allegedly commits act of infringement and maintains a regular and established place of business in this District. *Id.* at ¶¶7-26. ElectraLED does not allege that Chauvet itself owns or operates any facility in this District; rather, it points to locations of “Dealers, Installers, and Rentals that offer, sell, install and rent products pertinent to this Complaint ... in this Judicial District” as Chauvet’s places of business. *Id.* at ¶¶7-25.

III. ISSUES REQUIRING RESOLUTION

1. Whether venue is proper in this District as to Chauvet.
2. Whether ElectraLED sufficiently pleads indirect and willful infringement.

IV. STATEMENT OF LAW

A. Rule 12(b)(3)

Federal Rule of Civil Procedure 12(b)(3) requires dismissal or transfer of a case when venue is improper. Venue in a patent case is governed by 28 U.S.C. § 1400(b), which 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.” *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1516 (2017) (quoting 28 U.S.C. § 1400(b)).

For purposes of § 1400(b), a domestic company “resides” only in the State in which it is incorporated. *TC Heartland*, 137 S. Ct. at 1520. A defendant has “a regular and established place of business” in a district when three requirements are met: “(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 Inc.*, 871 F.3d 1355, 1360 (Fed. Cir. 2017). “If any [of these] statutory requirement[s] is not satisfied, venue is improper under § 1400(b).” *Id.* Doing business in a district cannot, by itself, support a finding of venue in a patent case. *Cray*, 871 F.3d at 1361 (“As the district court correctly stated, the regular and established place of business standard requires more

[REDACTED]

than. . . the doing business standard of the general venue provision[.]” (internal citations and quotation marks omitted).

Plaintiff bears the burden to show venue is proper in patent cases. *In re ZTE (USA) Inc.*, 890 F.3d 1008, 1014 (Fed. Cir. 2018). “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).

B. Rule 12(b)(6) and *Twombly*

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This “plausibility” standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of ‘entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557).

V. ARGUMENT

A. Improper Venue

This case should be dismissed because venue in this District is improper as to Chauvet. Chauvet does not “reside” and has no “regular or established place of business” in this District. Chauvet “resides” in Delaware and has no facilities in this District or, more broadly, in Texas. Goodson Decl. at ¶4.¹ “Dealers, Installers and Rentals” which are allegedly Chauvet’s “agents” in this District are owned and controlled by third parties and, therefore, are not places of business *of Chauvet*. And since Chauvet does not have a regular and established place of business in this

¹ “Goodson Decl.” refers to the accompanying Declaration of Grant Goodson, filed herewith.

[REDACTED]

District, the venue flaw in the complaint cannot be remedied; any amendment would be futile. Should the Court be inclined to transfer rather than dismiss this case due to improper venue, then, pursuant to § 1406, this case should be transferred to the Southern District of Florida, where Chauvet has its principal place of business.

1. Chauvet Does Not “Reside” In This District

For venue pursuant to 28 U.S.C. § 1400(b), a corporate defendant “resides” only in its State of incorporation. *TC Heartland*, 137 S. Ct. at 1517. Chauvet is a Delaware limited liability company headquartered in Davie, Florida. Goodson Decl. at ¶3. As a result, Chauvet does not “reside” in this District. ElectraLED does not contend otherwise.

2. Chauvet Does Not Have A “Regular And Established Place Of Business” In This District

Chauvet also does not have a “regular and established place of business” in this District. For Chauvet to have one: “(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.” *Cray*, 871 F.3d at 1360. Chauvet’s principal place of business is in Davie, Florida. Goodson Decl. at ¶3. Chauvet does not have any facilities in this District. *Id.* at ¶¶4-5. Indeed, Chauvet is not even registered to do business in the State of Texas. *Id.* at ¶6. The complaint alleges that Chauvet maintains distributors in this District (Dkt. 1 at ¶7), but this is not true. Chauvet has no distributors in this District. Goodson Decl. at ¶5.

3. Third-Party Dealers, Installers, and Rental Companies Are Not “Regular and Established Places of Business” of Chauvet.

Knowing that Chauvet does not have any physical places in this District, the complaint purports to establish venue by pointing to all dealers, installers, and rental companies located in this District that can be found on Chauvet’s website, including Sweet Southern Sound in Beaumont, Texas and Batts AVL in Dennison Texas, referring to them collectively as “Chauvet

Agents.” Dkt. 1 at ¶8. The complaint attempts to impute the physical locations of these companies to Chauvet on the theory that they are Chauvet’s “agents” that conduct Chauvet’s business in this District and that Chauvet ratifies these companies’ locations as its own place of business. *Id.* at ¶¶9-25. But this unsubstantiated theory has no merit.

First, Batts AVL has not been a customer of Chauvet since 2023 and thus cannot be used as a basis for venue. *See* Goodson Decl. at ¶8. In fact, Batts AVL is permanently closed, as ElectraLED could have easily determined via a cursory Google search. Ex. 2; *AGIS Software Dev. LLC v. T-Mobile USA, Inc.*, No. 221CV00024JRGRSP, 2021 WL 6616856, at *4 (E.D. Tex. Nov. 10, 2021), report and recommendation adopted sub nom.; *AGIS Software Dev. LLC v. T-Mobile USA, Inc. and T-Mobile US Inc., Lyft, Inc.*, No. 221CV00024JRGRSP, 2022 WL 178804 (E.D. Tex. Jan. 19, 2022) (finding patentee failed to establish venue was proper where facility identified was closed at time of filing of complaint).

Second, neither Sweet Southern Sound nor other companies that can be located from the Chauvet DJ Sales Network website (“Third-Party Companies”) are Chauvet’s agents that conduct Chauvet’s business in this District. *See, e.g., 4WEB, Inc. v. NuVasive, Inc.*, No. 2:23-CV-00192-JRG, 2024 WL 1932416, at *4 (E.D. Tex. May 2, 2024) (finding that hospitals and surgery centers owned and operated by third parties are not established places of business of the accused infringer despite that these facilities could be identified using the “surgeon locator” tool on the accused infringer’s website). Sweet Southern Sound and the other Third-Party Companies are simply customers that purchase products from Chauvet and then sell or rent these products, or provide installation services, to their own customers. Goodson Decl. at ¶9. These Third-Party Companies are not exclusive to Chauvet—they also sell, rent, or provide installation services for lighting products from Chauvet’s competitors and they compete with each other. *Id.* These Third-Party

[REDACTED]

Companies’ customers are end users of the products, who are able to locate these companies in numerous ways—including via Google, the companies’ social media accounts (such as on Instagram, YouTube, Facebook, and X), and other advertising of the companies—to buy, rent, or obtain installation services from them. *Id.* at ¶10. But in any event, these end users must interact directly with the Third-Party Companies. *Id.* Chauvet does not sell or rent products or provide installation services to these end users. *Id.* Nor do the Third-Party Companies direct their customers to buy or rent from Chauvet. *Id.* Similarly, the Third Parties provide installation services to end users as their own customer, not for Chauvet. *Id.*

Sweet Southern Sound and the other Third-Party Companies are independent business entities. *Id.* at ¶7. They are not owned or controlled by Chauvet, and they are not affiliates of Chauvet. *Id.* Each of these Third-Party Companies, including Sweet Southern Sound, operates independently. *Id.* at ¶11. Chauvet has a business relationship with each of the Third-Party Companies which was the result of an arms-length negotiation, but Chauvet is not involved in and does not exercise any control of their operation. *Id.* None of the owners or operators or employees of these third parties are employees or agents of Chauvet. *Id.*; Ex. 1, Dealer Agreement between Sweet Southern Sound and Chauvet, at 4 (acknowledging that nothing in the Agreement constitutes Dealer as an agent, partner, joint venture or legal representative of Chauvet). Moreover, the allegation that “Chauvet provides regular instructions directing the Chauvet Agents’ performance of the repairing, refurbishing, warehousing, and packaging services that Chauvet offers to its customers” is simply not true. *See* Goodson Decl. at ¶11; *EMA Electromechanics, Inc. v. Siemens Corp.*, No. 6:21-CV-1001-ADA, 2022 WL 1241967, at *7 (W.D. Tex. Apr. 26, 2022) (holding that in the 12(b)(3) context allegations in the complaint are only accepted as true to the extent that they are uncontroverted by Defendant’s affidavit).

[REDACTED]

The complaint points to Chauvet’s “Dealer Site” as evidence that the Third-Party Companies “are truly sales and customer service agents for [Chauvet].” Dkt. 1 at ¶16. However, this Dealer Site is simply an online platform for Chauvet’s customers, including Third-Party Company like Sweet Southern Sound, to purchase products from Chauvet. Goodson Decl. at ¶14. Again, Chauvet does not exercise control over the Third-Party Companies via this website or in any other manner. *Id.* at ¶11. *In re Volkswagen Grp. of Am., Inc.*, 28 F.4th 1203, 1208 (Fed. Cir. 2022) (holding that dealerships do not constitute regular and established places of business of supplier under §1400(b) where patentee failed to carry its burden to show that such dealerships were agents of the supplier).

ElectraLED also attaches “Chauvet & Sons, LLC General Terms and Conditions of Sale” (Dkt. 1-3) as purported evidence (“Exhibit B”) that (1) Chauvet has the right to direct and control the “Chauvet Agents,” such as “all aspects of [their] inventory, loaner and demonstration sets” (Dkt. 1 at ¶¶18, 20), and (2) the “Chauvet Agents” have consented to act on behalf of Chauvet, such as to “sell, monitor, train, oversee use, and handle complaints and returns ... lighting fixtures obtained from and on behalf of Defendant for customers in this District.” *Id.* at ¶¶20-21. ElectraLED also alleges that Exhibit B is evidence that Chauvet “has established and ratified the Chauvet Agents’ places of business because the contracts affect how they perform sales, installations and rentals with [Chauvet] product.” *Id.* at ¶22. But Exhibit B is simply a form of purchase terms that Chauvet uses for sales of its products to its customers and does not support any of these allegations. Goodson Decl. at ¶15. The terms titled “Conflicts,” “Product Sale Terms” and “Product Orders” in Exhibit B are simply typical terms that a customer would abide by in purchasing products from Chauvet. *See* Dkt. 1-3 at 1. Exhibit B does not mention anything about or suggest any alleged control by Chauvet over the purported “Chauvet Agents” or alleged

activities that such purported “Chauvet Agents” perform on behalf of Chauvet. Nor does the Dealer Agreement referenced in Exhibit B. *See* Ex. 1.²

Third, Chauvet does not ratify the Third-Party Companies’ locations as its place of business. The complaint alleges that Chauvet ratifies these facilities “because it exercises interim control over the Chauvet Agents’ activities and holds out to the public that [Chauvet’s] distribution, warehousing, marketing, installing, renting and sales of the products are being performed at and by Chauvet Agents’ locations in this District.” Dkt. 1 at ¶25. First, as discussed, Chauvet does not exercise any control—let alone interim control—over these third parties’ activities. Goodson Decl. at ¶11. Second, Chauvet has never held out any of these third parties within this District as its own place of business. Chauvet’s website makes clear that Chauvet does not own or operate these third parties and is simply providing information of where to buy or rent Chauvet’s products or receive installation services, as Chauvet itself does not sell, rent, or provide installation services to end users. *Id.* at ¶10. Chauvet’s website redirects customers to the third-party dealers, installers, and rental companies, with which customers directly interact.

On the flip side, the Third-Party Companies in this District do not hold themselves out or their property (*e.g.*, their physical locations, their websites) as being owned or operated by Chauvet because they are not. *See* Ex. 3. These so-called “Chauvet Agents” do not use “Chauvet” in their business names, do not use Chauvet’s trademarks on their signage, and do not display any signage or information to hold their locations out to the public as ***Chauvet places of business***. Goodson Decl. at ¶13. Nor are they authorized to hold themselves out as being affiliated with or a

² The complaint appears to advance an alternative theory that Chauvet has “exclusive and separate areas within the Chauvet Agents’ locations” which allegedly satisfies the *Cray* factors. Dkt. 1 at ¶¶10-14. However, the complaint does not provide evidence to show the existence of these “exclusive and separate areas” because there is none. Goodson Decl. at ¶12. Thus, this theory also fails.

representative or agent for Chauvet in their signage, website, or marketing materials. *Id.*

The complaint also alleges that Chauvet ratifies these facilities “through its advertising of them through its website,” citing the link to Chauvet DJ Sales Network. Dkt. 1 at ¶9. This is also not true. Chauvet does not proactively list the “USA dealers, USA installers and USA rental companies” or promote any of them on its website. Rather, a user has to enter an address or a zip code and click the “Find Locations” button before any of the dealers, installers, or rental companies will show up. Thus, Chauvet does not advertise the “Chauvet Agents” as alleged in the complaint. And even if it did, “the mere fact that a defendant has advertised that it has a place of business ... is not sufficient” to show ratification. *Andra Grp., LP v. Victoria’s Secret Stores, L.L.C.*, 6 F.4th 1283, 1289 (Fed. Cir. 2021) (quoting *Cray*, 871 F.3d at 1364).

Therefore, because the Third-Party Companies in this District, including Sweet Southern Sound, as identified by ElectraLED are independent business entities that are not owned or controlled by Chauvet and Chauvet does not ratify their locations as its place of business, these companies’ places are not Chauvet’s places of business under §1400(b). *See, e.g., Volkswagen*, 28 F.4th at 1214 (holding independent car dealerships do not constitute regular and established places of business of car distributors); *Andra*, 6 F.4th at 1289 (holding that one company’s place of business cannot be imputed to another for venue purposes when corporate separateness is maintained).

In sum, as explained, Chauvet does not “reside” and has no “regular and established place of business” in this District, and the claims against Chauvet should be dismissed for improper venue. In the alternative, should the Court be inclined to transfer the case due to venue being improper, the present action should be transferred pursuant to § 1406 to the Southern District of

[REDACTED]

Florida, where Chauvet has its principal place of business.³

B. Failure to State a Claim

1. The Complaint Fails to Adequately Plead Indirect Infringement.

The complaint must also be dismissed as to indirect infringement for failure to state a plausible claim.

To state a claim for inducement, one must plead (1) underlying direct infringement by another and (2) that the defendant undertook an affirmative act to encourage infringement, with knowledge that its actions would cause infringement. *Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, 843 F.3d 1315, 1332 (Fed. Cir. 2016). Here, the complaint does not identify any specific third-party direct infringer, but simply makes general allegations that Chauvet “actively and knowingly aiding and abetting infringement of *others* ... with the specific intent to induce *others* to directly [infringe].” Dkt. 1 at ¶46 (emphasis added). Because the complaint fails to put Chauvet on notice of the allegations against it, the induced infringement claim should be dismissed. *Chapterhouse LLC v. Shopify, Inc.*, No. 2:18-cv-00300, 2018 WL 6981828, at *4 (E.D. Tex. Dec. 11, 2018) (“By failing to include even general allegations stating how Shopify indirectly infringes or how some other party, such as a customer, directly infringes at the behest of Shopify, Plaintiff has failed to provide adequate notice.”); *Core Wireless Licensing S.A.R.L. v. Apple Inc.*, No. 6:14-CV-752-JRG-JDL, 2015 WL 4910427, at *4 (E.D. Tex. Aug. 14, 2015) (dismissing inducement claim because complaint failed to provide defendant with adequate notice).

To state a claim for contributory infringement, one must plead: “1) that there is direct infringement, 2) that the accused infringer had knowledge of the patent, 3) that the component has no substantial noninfringing uses, and 4) the component is a material part of the invention.” *Fujitsu*

³ ElectraLED has its principal place of business near Chauvet, in Clearwater, Florida. Dkt. 1 at ¶1.

[REDACTED]

Ltd. v. Netgear Inc., 620 F.3d 1321, 1326 (Fed. Cir. 2010). Here, the complaint similarly makes general allegations that Chauvet is contributorily infringing by “making, using, selling, offering for sale, and/or importing, [sic] **material parts** of the inventions in the ’245 Patent, which are not a staple article or commodity of commerce suitable for substantial non-infringing use” and that Chauvet knows “**the accused parts** to be especially made or especially adapted for use in an infringement of the ’245 claims.” Dkt. 1 at ¶47 (emphasis added). However, **it never identifies the purported “parts”** (e.g., in the accused products or otherwise) that are allegedly being used to infringe the asserted patent. The complaint is also devoid of any facts from which the Court can plausibly infer that any such “parts” being sold have no substantial non-infringing uses. Thus, ElectraLED fails to sufficiently plead contributory infringement, and the claim should be dismissed. *See, e.g., Core Wireless*, 2015 WL 4910427, at *5.

2. The Complaint Fails to Adequately Plead Willful Infringement.

In the complaint, ElectraLED seeks enhanced damages and states in passing that Chauvet became aware of the asserted patent when the complaint was filed, has infringed with knowledge of the patent, and thus is liable for willful infringement. Dkt. 1 at ¶48. However, the complaint does not plead any facts describing how Chauvet’s conduct is willful and egregious beyond the alleged typical infringement. It is insufficient to allege only notice of the patent asserted without any factual allegations demonstrating, or from which one can infer, culpable conduct. *See Fractus, S.A. v. TCL Corp.*, No. 2:20-CV-00097-JRG, 2021 WL 2483155, at *4 (E.D. Tex. June 2, 2021) (dismissing willful infringement claim where complaint alleges only notice of the patents-in-suit but “does not allege any culpable conduct or any set of facts supporting an inference of culpable conduct”); *see also Finjan, Inc. v. Cisco Sys., Inc.*, No. 17-cv- 00072-BLF, 2017 WL 2462423, at *5 (N.D. Cal. Jun. 7, 2017) (dismissing plaintiff’s willful infringement claim because the complaint failed to provide sufficient factual allegations that Defendant’s behavior was “egregious

... beyond typical infringement”). Because the complaint does not provide sufficient factual detail from which one can plausibly infer that Chauvet has engaged in deliberate or intentional culpable conduct of any kind, the willful infringement claim should be dismissed in its entirety. *See, e.g., Fractus*, 2021 WL2483155 at *4.

V. CONCLUSION

For the reasons discussed above, (1) this case should be dismissed for improper venue or alternatively transferred to the Southern District of Florida, where Chauvet has its principal place of business, and (2) ElectraLED’s indirect and willful infringement claims should be dismissed for failure to state a claim.

Dated: September 16, 2024

Respectfully submitted,

/s/ Shaun W. Hassett, with permission for
Joseph J. Raffetto

HOGAN LOVELLS US LLP

Joseph J. Raffetto (*PHV application upcoming*)
Hogan Lovells US LLP
555 Thirteenth St, NW
Washington, DC 20004
Telephone: (202) 637-5703
Facsimile: (202) 637-5910
Email: joseph.raffetto@hoganlovells.com

POTTER MINTON PC

Michael E. Jones (SBN: 10929400)
Shaun William Hassett (SBN: 24074372)
102 N College, Suite 900
Tyler, TX 75702
Tel: (903) 597-8311
Fax: (903) 593-0846
Email: mikejones@ptterminton.com
Email: shaunhassett@potterminton.com

Counsel for Defendant Chauvet & Sons, LLC

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via electronic mail on September 16, 2024.

I also hereby certify that all counsel of record who have consented to electronic service are being served with a notice of filing of this document, under seal, pursuant to L.R. CV-5(a)(7) on September 16, 2024.

/s/ Shaun W. Hassett

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I certify that the foregoing document is authorized to be filed under seal pursuant to the Unopposed Motion to File Under Seal filed concurrently in this case.

/s/ Shaun W. Hassett