

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

MANUEL TIJERINO,

Plaintiff,

v.

SPOTIFY USA INC.,

Defendant.

Civil Action No.

2:24-cv-02290-ILRL-DPC

Section “B” (3)

Judge Ivan L.R. Lemelle

Magistrate Judge Donna Phillips Currault

DEFENDANT SPOTIFY USA INC.’S REPLY MEMORANDUM
IN SUPPORT OF ITS MOTION TO DISMISS

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I. INTRODUCTION

This case is ripe for resolution on the pleadings. As a threshold matter, Plaintiff Manuel Tijerino has not established that patent venue for this infringement case against Spotify USA Inc. (“Spotify”) is proper in this judicial district, where Spotify neither resides nor has a regular or established place of business. Therefore, this case should either be dismissed for improper patent venue, or else transferred to the Southern District of New York. In addition, the Court should find that neither the Complaint (Rec. Doc. 1 (“Complaint” or “Cmplt.”) nor the proposed Amended Complaint¹ (Rec. Doc. 19 (“Amended Complaint”)) plausibly alleges that Spotify performs the Automatic Calculation Limitations: under any reasonable definition of the claim term “venue,” Spotify does not pay “venues” as required by the asserted claims. For that further reason, the Court should dismiss this case with prejudice.

II. ARGUMENT

A. Plaintiff Has Not Established Patent Venue in This Judicial District.

1. Spotify does not reside in this district.

A patent infringement lawsuit may be brought only in the judicial district where the defendant resides or where the defendant has a regular and established place of business. 28 U.S.C. § 1400(b); Rec. Doc. 13-2 (“Moving Brief” or “Br.”) at 3. As to the first prong, Tijerino concedes that Spotify does not reside in Louisiana or the Eastern District of Louisiana. (“Opposition” or “Opp.”) at 12; *see also* Rec. Doc. 13-3 (“Folsom Decl.”) at ¶3.

¹ Spotify timely filed its motion to dismiss the Complaint for improper venue under Rule 12(b)(3) and for failure to state a claim under Rule 12(b)(6). Rec. Doc. 13. Tijerino responded by filing a motion for leave to amend the complaint (Rec. Doc. 19), and Spotify filed a notice of non-opposition to Tijerino’s motion for leave to amend the complaint (Rec. Doc. 21). During the February 4, 2025 scheduling conference, the Court ordered Tijerino to file an opposition to Spotify’s motion to dismiss, with a February 18, 2025 submission date for the motion.

2. Spotify does not maintain a regular and established place of business in this district.

As to the second prong, neither the conclusory allegation in the Complaint nor the exhibits attached to the Opposition (which merely show that Spotify has remote employees, one of whom resides in Louisiana) establish that Spotify has a regular and established place of business in the Eastern District of Louisiana. Br. at 5; Folsom Decl. at ¶5.

As to the Complaint, the Court cannot accept its conclusory allegation that Spotify “has a substantial presence and conducts business in this judicial district” (Cmplt. at 1) as true. Folsom Decl. at ¶5; *see Ambraco, Inc. v. Bossclip B.V.*, 570 F.3d 233 (5th Cir. 2009) (Under Fed. R. Civ. P 12(b)(3), “the court is permitted to look at evidence in the record beyond simply those facts alleged in the complaint and its proper attachments.”) (quotations omitted). The declaration testimony provided by Spotify’s head of real estate stands unrebutted and confirms that Spotify does not maintain a physical office in Louisiana, nor any other regular and established place of business in Louisiana. Folsom Decl. at ¶5.

Even accepting the allegation as true for purposes of this motion, however, it still fails to satisfy the strict requirements for patent venue, which require the physical presence of Spotify in this judicial district. 28 U.S.C. § 1400(b). As the Federal Circuit explained in *Cray*, the patent venue statute requires that: “(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 1355, 1360 (Fed. Cir. 2017); *see Andra Grp., LP v. Victoria’s Secret Stores, L.L.C.*, 6 F.4th 1283, 1287 (Fed. Cir. 2021) (“[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.’”) (quoting *In re Google LLC*, 949 F.3d 1338, 1345 (Fed. Cir. 2020)).

i. The Opposition relies on inapplicable facts and distinguishable law.

Similarly, the Opposition and its attached exhibits fail to establish Spotify's presence in this judicial district. As to the facts, first, Tijerino argues that "business-focused revenue generation, Louisiana-based employees, company-provided resources, and job recruitment efforts establish[] that Spotify maintains a regular place of business in Louisiana." Opp. at 18. But that does not establish any physical presence or place of Spotify in the district as required for patent venue. See Folsom Decl. at ¶5; *Cray*, 871 F.3d at 1360.

Second, Tijerino points to a remote employee in Louisiana and Spotify's policy of providing furniture and IT equipment for use by remote employees. Opp at 15. But these facts also fail to establish the remote employee's physical presence in Louisiana as "the place of the defendant," *i.e.*, Spotify. Rather, Spotify's remote work arrangements are analogous to those that the Federal Circuit in *Cray* found insufficient to establish a place of business and thus patent venue. See *Cray*, 871 F.3d at 1364–65 (improper venue in judicial district where a remote employee resided where the remote employee's home was not "the place of the defendant" because there was no evidence that the defendant owns, leases or rents any portion of the employee's home, that the defendant had selected the home's location, stored inventory or conducted demonstrations at the home, or conditioned the employee's continuing employment on maintaining a place in the district); Declaration of Lindsey Goring, ¶¶7–12 (Spotify does not: (1) own, lease, or rent any portion of a remote employee's home; (2) identify a remote employee's home as its own place of business; (3) store materials or equipment at their homes other than that what is typical in a home office (e.g., a laptop and accessories), (4) expect or require remote employees to engage in in-person interactions with customers or business partners in their homes; or (5) exercise control over a remote employee's living arrangements or use of their home office).

Finally, Tijerino points to a web-scraped job posting on ZipRecruiter’s website as evidence that Spotify seeks to “expand its workforce in Louisiana.” Opp. at 15 (citing Ex. C to the Opposition). However, Spotify does not work with ZipRecruiter and did not create the job posting on the ZipRecruiter website. Goring Decl. ¶¶4–5. Spotify’s true and accurate job posting shows that Spotify is not soliciting employees from Louisiana or any other specific state, because there is no requirement for the applicant to be located in any particular state. Goring Decl. ¶6, Attachment A. Accordingly, none of the newly introduced facts in the Opposition change the fact that Spotify does not maintain its own physical presence in this judicial district.

As to the law, all of the cases cited in the Opposition are distinguishable and inapplicable. Opp. at 14–18. All of the cases involve circumstances in which the defendant sought employees to work in the judicial district, and the employees stored and maintained the defendant’s products in their homes as part of their employment. *See RegenLab USA LLC v. Estar Techs. Ltd.*, 335 F.Supp.3d 526, 552 (S.D.N.Y. 2018) (defendant publicly solicited salespeople to cover the district, and preferred that the salespeople live in their assigned district; salespeople possessed the defendant’s products in their homes, which were used as sales kits for performing demonstrations in customer’s homes in the district); *In re Monolithic Power Sys., Inc.*, 50 F.4th 157, 160 (Fed. Cir. 2022) (defendant had a “history of soliciting employees to work in the [district] to support Monolithic’s local OEM customers in that district and the extent and type of laboratory equipment and product maintained in the homes of those employees”, provided equipment “not typically found in a generic home office,” including “oscilloscopes, four to five power supplies, two electric loads, a logic analyzer, a soldering iron, a multimeter, a function generator, three to five samples of microcontrollers, MOSFETs, five op-amps, ten to fifteen comparators, twenty inductors, and fifty sample demonstration boards,” the employee performed tests for in-district customers using

the equipment, and there was evidence that the employee’s location in the district was material to the defendant); *In re Cordis Corp.*, 769 F.2d 733, 735–36 (Fed. Cir. 1985) (defendant’s salespeople made sales calls to doctors and hospitals in the district, acted as technical consultants during surgeries, and maintained an inventory of cardiac pacemakers in their homes).²

In contrast, it is well-established in the Fifth Circuit that remote work arrangements like Spotify’s (*See supra* p. 3; Goring Decl. ¶¶7–12) do not rise to the level of constituting a regular and established place of business in this district. *See GreatGigz Sols., LLC v. Maplebear Inc.*, No. W-20-CV-00737, 2021 WL 4691145, at *2–3 (W.D. Tex. Oct. 6, 2021) (remote employees’ home offices did not qualify as regular and established places of business, noting the absence of several key factors including: (1) no reimbursement of housing cost, (2) lack of control over living arrangements, and (3) minimal business activities); *Personal Audio, LLC v. Google, Inc.*, 280 F. Supp. 3d 922, 936 (E.D. Tex. 2017) (distinguishing *Cordis*, finding that six remote employees’ homes did not constitute Google’s place of businesses because (1) the employees’ homes were not used for storing business materials/products; (2) the homes were not under Google’s control; and (3) Google did not hold out the homes as places of business); *see also Galderma Labs., L.P. v. Teva Pharm. USA, Inc.*, 290 F. Supp. 3d 599, 613 (N.D. Tex. 2017) (remote employees’ homes were insufficient to establish a regular and established place of business); *Adnexus Inc., LLC v. LinkedIn Corp.*, No. 6:23-CV-0151, 2023 U.S. Dist. LEXIS 177778, at *8-10 (W.D. Tex. Oct. 3, 2023) (employee’s homes were not places of business because the employer did not own, lease or reimburse the housing and did not require the employees to store inventories, promotional materials, or equipment).

² *Cordis* is further distinguishable as *Cordis* did not “evaluate [patent] venue in light of the statutory language of § 1400(b).” *Cray*, 871 F.3d at 1359.

Finally, Tijerino’s personal jurisdiction argument – that patent venue in this judicial district is proper because Spotify is subject to personal jurisdiction under Louisiana’s long-arm statute – is incorrect. Proposed Amended Complaint (Rec. Doc. 19-1) at 1–3. Patent venue is not established by a showing of personal jurisdiction. Indeed, the Federal Circuit has cautioned courts against “conflat[ing] showings that may be sufficient for other purposes, *e.g.*, personal jurisdiction or the general venue statute, with the necessary showing to establish proper venue in patent cases.” *Cray*, 871 F.3d at 1361 (observing that “the regular and established place of business standard requires more than the minimum contacts necessary for establishing personal jurisdiction”) (quotations omitted).

3. The Complaint Should Be Dismissed For Improper Venue or Transferred to the Southern District of New York.

Because patent venue is not proper in this judicial district, 28 U.S.C. §1406(a) requires that this Court either dismiss or transfer this case to a district to which it could have been brought, if transfer is in the interest of justice. Spotify maintains its principal place of business, which is indisputably a regular and established place of business, in the Southern District of New York. Folsom Decl. at ¶4. Spotify has not contested patent venue in that district and will not in this case. *See Err Content IP, LLC v. Spotify USA, Inc.*, Case No. 1-24-cv-09530 (S.D.N.Y.) (complaint filed on Dec. 13, 2024); *Guvera IP Pty Ltd. v. Spotify USA, Inc.*, Case No. 1:21-cv-04544 (S.D.N.Y.) (complaint filed on May 20, 2021); *Mobile Transformation LLC v. Spotify USA, Inc.*, Case No. 1:13-cv-03598 (S.D.N.Y.) (complaint filed May 29, 2013). Moreover, it would be in the interest of justice that this case be transferred to S.D.N.Y. because it would avoid the need for Tijerino to refile his lawsuit, and it is more likely that witnesses and sources of proof are located in that district.

Accordingly, Spotify requests that the Court either dismiss this case for improper patent venue or transfer this case to S.D.N.Y. under Section 1406(a).

B. The Complaint and Proposed Amended Complaint Fail to Plausibly Allege That Spotify Performs Payment of Venues as Required by the Automatic Calculation Limitations.

The Complaint should also be dismissed on Fed. R. Civ. P. 12(b)(6) grounds because it fails to plausibly allege that Spotify automatically calculates amounts earned by an artist and a venue playing the music as required by the Automatic Calculation Limitations.³ Specifically, Spotify does not calculate and pay music royalties to “venues” where the music is performed, as the patent claim and plain meaning of the word (*e.g.*, bars, cafes, concert halls) require.

Recognizing this, Tijerino nonsensically rewrites the word “venue” – where the music is played – to include Performance Rights Organizations (“PROs”) (like BMI and ASCAP, organizations that Tijerino admits only pay artists and rightsholders, not serve as “venues”), and then Tijerino alleges Spotify’s supposed calculation and payment to PROs is a calculation and payment to a “venue.” Amended Complaint at 30–32. This rewrite is entirely inconsistent with not only Tijerino’s patent, but also the plain meaning of the word “venue.” Tijerino’s implausible infringement claim thus fails as a matter of law.

There is no dispute that the independent claims of the ’925 patent (claims 1 and 3) recite the same Automatic Calculation Limitations: “automatically calculating, by the processor, amounts earned by an artist and a venue playing the new media.” Br. at 7–8 (emphasis added). Tijerino must plausibly allege that Spotify performs each and every limitation of the asserted patent claims. *See Wright’s Well Control Servs., LLC v. Oceaneering Int’l, Inc.*, No. 15-1720, 2017 WL 568781, at *5 (E.D. La. Feb. 13, 2017) (explaining that the complaint must plausibly “allege facts showing that an accused product contains each and every limitation or element of at

³ If the Court decides to transfer this case to S.D.N.Y. instead of dismissing the case for improper venue, the Court has the option of defer ruling on the Rule 12(b)(6) portion of Spotify’s Motion so that it may be decided by the transferee court.

least one patented claim.”); Br. at 6–7 (describing legal standard). The Automatic Calculation Limitations require automatically calculating two separate amounts earned: (1) the amount earned by the artist, and (2) the amount earned by a venue playing the new media.

As explained in the Motion, the Complaint’s allegation that Spotify pays “venues” is baseless. Br. at 8–10. The Opposition repeatedly cites to material first filed with the Amended Complaint, but its length cannot cure the basic deficiency of the Complaint: Spotify doesn’t pay “venues.” See Opp. at 48–51 (referencing Exhibit M to the proposed Amended Complaint).

1. The Patent Makes Clear a Venue (where music is played) is not a Rights Organization (which pays rightsholders).

Tijerino’s revised theory contorts the Automatic Calculation Limitation in an impossible way: Tijerino claims that calculating and paying a “venue” where the music is played is the same as calculating streaming royalties owed to PROs on a territorial basis (*e.g.*, U.S., Canada, Germany, etc.). See Amended Complaint at 30–32; Opp. at 48–51.

A detailed claim construction determination is unnecessary to determine what “venue” means: Tijerino’s novel interpretation is inconsistent with any reasonable definition of venue, including the plain language of the patent itself.

First, as Tijerino admits, PROs don’t pay venues – they pay artists and rightsholders responsible for writing the music. Amended Complaint at 30. They are “performance” rights organizations, not “venue” rights organizations.

Second, there is no plausible claim construction of the term “venue” that would include PROs or their territories. The ’925 patent specifically distinguishes “venues” and “artists” from rights associations as different parties, in a way inconsistent with Tijerino’s attempted rewrite of the claim in his Amended Complaint:

Every party meaning the venue, the artists, the digital rights associations, and check1two is responsible for paying their own taxes.

'925 pat. (Rec. Doc. 1-3), 9:39–41. Even further, the specification makes clear a venue is a location with playback capabilities – where the invention avoids “ruining the speaker system at the venue.” *Id.* at 7:59–60.

Similarly, while the claims require payment to the artist and venue, the patent describes other parties that could be paid but were not claimed, including digital rights organizations and the inventor:

At any time the venue can see what the machine has earned. Earnings are shared between the artists, venues, digital rights associations and the inventor if the preferred method is used.

Id. at 8:58–61. If there were any doubt, Tijerino excludes third parties like PROs from collecting royalties as part of the invention:

Notice there was no 3rd party involved in collecting royalties from the machine, paying royalties to the venue or paying royalties to the artist, it is all automated by the self-maintained, service-oriented architecture (SOA), cloud based, open, Web 2.0 system.

Id. at 9:60–64.⁴ Tijerino decided to claim calculating and paying “artists” and “venues,” not artists and rights associations (or PROs).

These examples show the core flaw with Tijerino’s novel theory that its dozens of pages cannot overcome: he cannot rewrite the claim term “venue” – where the music is played – to include a PRO that pays rightsholders who wrote the music. Tijerino decided to require automatic

⁴ While not necessary to dismiss this case, Spotify notes that even if it calculated streaming royalties owed to PROs on a territorial basis, that still would not satisfy the Automatic Calculation Limitations: PROs pay royalties to composers and songwriters who wrote the music, not the artist performing at the venue. Thus it is never an “amount earned...by a venue playing the new media.”

calculation and payment to “venues” in his claims, and cannot change that to mean another party retroactively.

Thus, both the Complaint and the proposed Amended Complaint fail to plausibly allege that Spotify meets the “venue” part of the Automatic Calculation Limitation, and Spotify requests that the Plaintiff’s claims be dismissed with prejudice for failure to state a claim.

III. CONCLUSION

For the foregoing reasons, Spotify respectfully requests that the Court (a) dismiss this case for improper venue pursuant to 28 U.S.C. § 1400(b), or in the alternative, transfer this case to the Southern District of New York pursuant to 28 U.S.C. § 1406(a), and (b) dismiss this case with prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

[SIGNATURE PAGE FOLLOWS NEXT]

Respectfully submitted,

PHELPS DUNBAR LLP

BY: /s/ David L. Patrón

David L. Patrón (La. Bar #22566)
Lindsay Calhoun (La. Bar #35070)
Mark D. Ackal (La. Bar #41470)
Canal Place | 365 Canal Street, Suite 2000
New Orleans, Louisiana 70130-6534
Telephone: 504-566-1311
Telecopier: 504-568-9130
Email: david.patron@phelps.com
lindsay.calhoun@phelps.com
mark.ackal@phelps.com

and

Harper S. Batts (Ca. Bar #242603)
(Admitted *pro hac vice*)
Christopher Ponder (Ca. Bar #296546)
(Admitted *pro hac vice*)
1540 El Camino Real, Suite 120
Menlo Park, CA 94025
Telephone: 650-815-2600
Telecopier: 650-815-2601
Email: HBatts@sheppardmullin.com
CPonder@sheppardmullin.com

**ATTORNEYS FOR DEFENDANT
SPOTIFY USA INC.**

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 14th day of February 2025 served a copy of the foregoing Reply Memorandum in Support of the Motion to Dismiss on counsel for all parties to this proceeding via e-mail, and on Plaintiff via certified U.S. mail and e-mail.

/s/ David L. Patrón

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

MANUEL TIJERINO,

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2:24-cv-02290-ILRL-DPC

SECTION “B” (3)

JUDGE IVAN L.R. LEMELLE

**MAGISTRATE JUDGE DONNA
PHILLIPS CURRAULT**

DECLARATION OF LINDSEY GORING
IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS

I, Lindsey Goring, declare as follows:

1. I have personal knowledge of the facts set forth in this declaration and, if called to testify as a witness, could and would competently do so under oath.

2. I am employed by Spotify USA Inc. (“Spotify”) in the capacity of Senior Global HR Program Manager.

3. I am familiar with how Spotify posts job openings.

4. I have been shown a document that is marked “Exhibit-C: Spotify Post Job Openings in Louisiana.” This document appears to come from a website named ZipRecruiter. Spotify does not work with ZipRecruiter and did not create the job post on ZipRecruiter.

5. I believe that ZipRecruiter likely created its version of the job opening based on a real job opening that was posted by Spotify at <https://jobs.lever.co/spotify/9bf6a1a8-0d55-47b9-aea0-abfe3fffc84a>. **Attachment A** is a true and correct copy of Spotify’s job posting for the “Lead Workforce Planning Analyst, Customer Service.”

6. As shown in Attachment A, the position is a remote position, open to applicants located anywhere within the United States. There is no requirement for the applicant to be located in Louisiana or any other particular state.

7. I am familiar with Spotify's arrangements for remote employees in the United States.

8. Spotify does not own, lease or rent any portion of a remote employee's home.

9. Spotify does not exercise control over a remote employee's living arrangements or the use of their home office.

10. Spotify does not expect or require remote employees to engage in in-person interactions with Spotify's customers or business partners physically in their home.

11. Spotify does not advertise or list a remote employee's home as one of Spotify's places of business.

12. Spotify does not require remote employees to store Spotify's materials or equipment in their home, other than the standard equipment typically used in a home office, such as a laptop and computer accessories.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 13, 2025 at New York, New York.

DocuSigned by:
Lindsey Goring
9547050F8DED42F...
Lindsey Goring

ATTACHMENT A



Lead Workforce Planning Analyst, Customer Service

United States Of America (Home Mix)

Customer Service – Customer Service / Permanent / Remote

We are looking for a Lead Workforce Planning Analyst to join Spotify's Customer Service (CS) team. You will report to the Associate Director of Workforce Management, and will work with Spotify colleagues as well as our vendor partners from around the world to manage invoicing, budget models, and financial reporting for CS.

Customer Service is a globally distributed team that advocates relentlessly for Spotify's customers, artists, authors and creators. Your work will ensure that CS is scaling effectively to meet demand while maintaining alignment with Spotify's overall financial goals.

What You'll Do

- Build and maintain models to predict monthly spend for CS variable expenses, and partner with finance to track and reconcile these expenses for financial reporting in monthly, quarterly and annual cycles.
- Normalize vendor invoices and maintain these records in a database for the purpose of analysis.
- Summarize expected vs actual spend into meaningful reports for CS leadership, and prepare other ad-hoc reports as needed.

- Gain a deep understanding of the full service delivery cycle (forecasting, workforce planning, operations) so that you can effectively model its complexity.
- Create monthly purchase orders for CS vendors and approve vendor invoices.
- Size the financial impact of new CS initiatives.
- Work closely with internal stakeholders to understand changes to our vendor contracts, and ensure these changes are reflected in the financial models.

Who You Are

- 5+ years of professional experience in a similar role with a focus on accounting or finance. Domain experience within a service delivery environment, business process outsourcer, or customer service department is a plus.
- A spreadsheet master. You are as comfortable in Google Sheets as you are in Microsoft Excel, and writing a series of nested IF statements or a custom number format does not phase you.
- Detail-oriented with a focus on accuracy.
- A great communicator in all respects (written, verbal, or with data).
- Comfortable working with a globally distributed team, with occasional international travel.
- Intellectually curious. You will need to understand many CS functions outside of your own in order to do your job effectively.
- Goal-oriented and motivated, with a strong sense of personal accountability.
- Comfort with data visualization tools like Tableau or Looker Studio is a plus.

Where You'll Be

- We offer you the flexibility to work where you work best! For this role, you can be within the United States as long as we have a work location.
- This team operates within the Eastern Time Zone time zone for collaboration.

The United States base range for this position is \$77,223-\$110,319 plus equity. The benefits available for this position include health insurance, six month paid parental leave, 401(k) retirement plan, 23 paid days off, 13 paid flexible holidays.

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