

**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**

**SPOTIFY USA INC.’S MOTION TO STAY PENDING RESOLUTION OF SPOTIFY’S  
MOTION TO DISMISS BASED ON IMPROPER VENUE (REC. DOC. 13)**

**NOW INTO COURT**, through undersigned counsel, comes Defendant, Spotify USA Inc. (“Spotify”), and respectfully moves this Court to stay all proceedings in this matter pending resolution of Spotify’s Motion to Dismiss for Improper Venue, or in the alternative, transfer to the Southern District of New York, pursuant to 28 U.S.C. § 1400(b), the Federal Circuit’s controlling law, and rules of judicial economy.

As set forth in the accompanying Memorandum in Support, Spotify’s venue motion presents a threshold issue that must be resolved before requiring the parties to proceed on the merits. The Fifth Circuit and Federal Circuit instruct that venue motions should take priority in case management and that the “trial court must first address [venue] before addressing any substantive portion of the case.” *In re Horseshoe Entm’t*, 337 F.3d 429, 433 (5th Cir. 2003); *see also In re Netflix, Inc.*, No. 2021-190, 2021 WL 4944826, at \*1 (Fed. Cir. Oct. 25, 2021); *In re Apple Inc.*, 979 F.3d 1332, 1337 (Fed. Cir. 2020).

Judicial economy, avoidance of unnecessary harm to Spotify, the lack of prejudice to Tijerino, and the interests of justice also strongly favor a stay while the Court determines

whether venue is proper. *See Cohan v. Fresh Market, Inc.*, C.A. No. 18-8883, 2019 WL 2372972 at \*1 (E.D. La., June 4, 2019). Spotify will suffer significant and irreparable prejudice if forced to proceed with the burdens of fact and expert discovery, claim construction, and pretrial work in a forum where venue is improper and the entire case may soon be dismissed or transferred. Proceeding now would require substantial expenditures of time and resources on litigation activities that may ultimately be rendered unnecessary, resulting in waste, duplication, and inefficiency. In contrast, Tijerino will not be prejudiced by a modest stay, particularly where he delayed in advancing his claims and intentionally chose to file in an improper district. A stay will preserve judicial and party resources and ensure that threshold venue questions are resolved before the parties are required to engage in costly merits litigation.

In support of this Motion, Defendant relies upon Spotify's pending motion to dismiss for improper venue (Rec. Doc. 13), its supporting exhibits, the transcript and filings relevant to venue discovery, and the authorities and reasons set forth in the attached Memorandum in Support.

**WHEREFORE**, Defendant, Spotify USA Inc., prays that its Motion to Stay be granted, staying all proceedings pending resolution of the Motion to Dismiss for Improper Venue (Rec. Doc. 13), and for such other relief as the Court deems just and proper.

Dated: August 29, 2025

Respectfully submitted,

PHELPS DUNBAR LLP

BY: /s/ David L. Patrón

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**CERTIFICATE OF SERVICE**

I do hereby certify that I have on this 29th day of August 2025 served a copy of the foregoing on counsel for all parties to this proceeding via e-mail, and on Tijerino via certified U.S. mail and e-mail.

/s/ David L. Patrón

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

**MANUEL TIJERINO,**

**Plaintiff,**

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**SECTION “B” (3)**

**Judge Ivan L.R. Lemelle**

**Magistrate Judge Donna Phillips Currault**

**SPOTIFY USA INC.’S MEMORANDUM IN SUPPORT OF  
ITS MOTION TO STAY PENDING RESOLUTION OF SPOTIFY’S  
MOTION TO DISMISS BASED ON IMPROPER VENUE (REC. DOC. 13)**

Defendant Spotify USA Inc. (“Spotify”) moves the Court to stay all proceedings pending resolution of Spotify’s Motion to Dismiss, or in the Alternative Transfer to the Southern District of New York, based on improper venue (Rec. Doc. 13) (“Venue Motion”).

**I. BACKGROUND**

On September 18, 2024, Plaintiff Manuel Tijerino (“Tijerino”) filed a Complaint alleging that Spotify infringes U.S. Patent No. 9,146,925. Rec. Doc. 1. On January 14, 2025, Spotify moved to dismiss because, *inter alia*, venue in this Court is improper under 28 U.S.C. § 1400(b). Rec. Doc. 13.<sup>1</sup> On April 9, 2025, Spotify moved to stay discovery pending resolution of Spotify’s Venue Motion. Rec. Doc. 39. On June 11, 2025, the Court dismissed Spotify’s motion to stay. Rec. Doc. 71.

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<sup>1</sup> Spotify also moved to dismiss on the ground that Tijerino failed adequately to allege infringement under *Iqbal* and *Twombly*. Rec. Doc. 13 at 6-10. The Court has not yet addressed that aspect of Spotify’s motion.

On June 24, 2025, the Court held oral argument on Spotify’s Venue Motion. Rec. Doc. 75; *see also* Exhibit 1 (transcript of 6/24/25 hearing). The Court did not resolve Spotify’s Venue Motion at that time. Instead, the Court held open Spotify’s Venue Motion for the purpose of limited discovery concerning “the conditions of employment for [four remote Louisiana employees (“Louisiana Remote Employees”)], particularly whether that employment restricts them to work within this District.” Rec. Doc. 76. The Court ordered Spotify to produce and file certain corroborating documents by July 8, 2025, to produce a corporate representative for deposition by August 22, 2025, and to file the transcript of that deposition by August 25, 2025. *Id.*

Spotify inquired about staying the case pending resolution of the Venue Motion and noted that the current schedule does not include claim construction or other patent deadlines. Exhibit 1 at 63:15-65:24. The Court agreed that “this issue of venue needs to be resolved first before we move to anything else” (Exhibit 1 at 64:25-65:6) but declined to entertain a stay because it did not appear that any Court-ordered deadlines would pass before the additional venue discovery had been completed (*id.* at 64:25-65:12). The Court stated, however, that it was “not preventing anyone from filing a motion” for a stay. *Id.* at 63:25-64:1.

Spotify has now provided Tijerino and the Court with the required venue discovery. On July 8, 2025, Spotify filed the corroborating documents that the Court requested. Rec. Doc. 79. On August 14, 2025, Spotify produced a corporate representative (Lindsey Goring, Senior Global HR Program Manager) to testify regarding the Louisiana Remote Employees’ conditions of employment. Rec. Doc. 92-1. Spotify also responded to additional interrogatories and requests for admission served by Tijerino, despite that they were not authorized by the Court. Rec. Doc. 94-2; Rec. Doc. 92-2; Rec. Doc. 92-27. Spotify then filed on the docket the

deposition transcript and exhibits, including its responses to Tijerino's additional interrogatories and requests for admission, on August 20, 2025. Rec. Doc. 92.

At this point, critically important deadlines have passed or are mere weeks away. Rec. Doc. 22. Tijerino's deadline to serve expert reports was August 22, 2025 (no expert reports were served). *Id.* at 2. Other fast-approaching deadlines include the following:

| <u>Event</u>                                                  | <u>Current Deadline<br/>(Rec. Doc. 22)</u>                                                    |
|---------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Spotify Expert Reports                                        | September 22, 2025                                                                            |
| Trial Witness Lists                                           | September 22, 2025                                                                            |
| Last Day to Serve Written Discovery                           | September 21, 2025                                                                            |
| Summary Judgment Motions                                      | September 30, 2025<br>(to be served in sufficient time to permit hearing by October 15, 2025) |
| Motions In Limine regarding admissibility of expert testimony | September 30, 2025<br>(to be served in sufficient time to permit hearing by October 15, 2025) |
| Close of Discovery                                            | October 21, 2025                                                                              |
| Motions In Limine regarding all other issues                  | November 10, 2025                                                                             |
| Pre-Trial Conference                                          | November 20, 2025                                                                             |
| Trial                                                         | December 8, 2025                                                                              |

To complicate the matter further, the current schedule does not account for any claim construction briefing or other patent deadlines required for this case. Rec. Doc. 22.

## **II. SPOTIFY'S VENUE MOTION MUST BE RESOLVED BEFORE THIS CASE PROCEEDS ON THE MERITS**

Spotify's Venue Motion must be resolved before this case proceeds any further. The Fifth Circuit has explained that resolution of venue motions should take "top priority in the handling

of [a] case.” *In re Horseshoe Entm’t*, 337 F.3d 429, 433 (5th Cir. 2003). The Federal Circuit has also emphasized that “[o]ur precedent and Fifth Circuit law entitle parties to have their venue motions prioritized over substantive proceedings in district court.” *In re Netflix, Inc.*, No. 2021-190, 2021 WL 4944826, at \*1 (Fed. Cir. Oct. 25, 2021); *see also*, *In re Apple Inc.*, 979 F.3d 1332, 1337 (Fed. Cir. 2020) (“Although district courts have discretion as to how to handle their dockets, once a party files a transfer motion, disposing of that motion should unquestionably take top priority.”). Specifically, the “trial court **must** first address [venue] before addressing any substantive portion of the case.” *In re Nintendo Co., Ltd.*, 544 F. App’x 934, 941 (Fed. Cir. 2013) (emphasis added); *see also*, *In re SK Hynix Inc.*, 835 Fed. App’x. 600, 600-01 (Fed. Cir. 2021) (“[O]nce a party files a transfer motion, disposing of that motion should unquestionably take top priority”); *JTH Tax LLC v. Cortorreal*, No. 4:23-0173-P, 2023 WL 4673278, at \*2 (N.D. Tex. July 20, 2023) (“[V]enue is, itself, among the jurisdictional issues a court must address prior to proceeding on the merits”).

Accordingly, the parties cannot be required to move forward with expert reports, claim construction briefing (which is not even accounted for in the current schedule), summary judgment motions, or other merits deadlines until the Court resolves Spotify’s Venue Motion. *See, e.g.*, *In re Google, Inc.*, No. 2015-138, 2015 WL 5294800 at \*1 (Fed. Cir. July 16, 2015) (granting petition for writ of mandamus ordering district court to stay all proceedings until it had issued ruling on motion to transfer motion); *In re SK Hynix Inc.*, 835 Fed. App’x. at 600-01 (granting petition for writ of mandamus ordering district court to stay all proceedings until it had issued ruling on motion to transfer motion); *In re Tracefone Wireless, Inc.*, 848 Fed.Appx. 899, 901-02 (Fed. Cir. 2021) (granting petition for writ of mandamus ordering district court to stay all

proceedings until it had issued ruling on motion to transfer (citing *In re Horseshoe Entm't*, 337 F.3d at 433)).

### III. THE TRADITIONAL STAY FACTORS ALSO ALL WEIGH STRONGLY IN FAVOR OF A DISCRETIONARY STAY

Even ignoring that the case cannot move forward on the merits pending resolution of Spotify's Venue Motion, "[f]ederal courts have inherent authority to 'control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants,'" including "to stay proceedings 'in the control of its docket and in the interests of justice.'" *Cohan v. Fresh Market, Inc.*, C.A. No. 18-8883, 2019 WL 2372972 at \*1 (E.D. La., June 5, 2019) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) and *In re Beebe*, 56 F.3d 1384 (5th Cir. 1995)). When considering whether to grant a motion to stay, courts are to consider "(1) hardship to the moving party if the action proceeds, (2) prejudice to the non-moving party if the stay is granted, and (3) the interests of judicial economy." *Cohan*, 2019 WL 2372972 at \*1. Each of these factors weighs strongly in favor of a stay.

#### A. Spotify Will be Substantially Harmed if the Case Proceeds

If the current schedule holds, Spotify will be substantially and irreparably harmed. This case cannot, as a matter of law, proceed in this Court because venue is improper. *See, e.g.*, Rec. Doc. 13 at 1; Rec. Doc. 13-2 at 3-6. Accordingly, Spotify should not be required to expend **millions of dollars** completing all of the work to be completed in the coming weeks, including, for example, preparing and submitting technical and damages expert reports; serving and responding to document requests, interrogatories, and requests for admission; collecting, reviewing, and producing documents; taking and defending depositions; preparing and filing summary judgment motions; and completing pre-trial work and then preparing for trial. *See, e.g., In re Google, Inc.*, 2015 WL 5294800 at \*1 (defendants should not be "forced to expend

resources litigating substantive matters” pending resolution of venue motion); *Cohan*, 2019 WL 2372972, at \*2 (staying action where proceeding would “force [defendant] to incur additional, unnecessary litigation costs and attorneys’ fees in defending a premature claim”). In addition to the abject waste of time and resources, the current schedule ignores that this is a patent infringement action requiring patent disclosures and claim construction proceedings.<sup>2</sup>

### **B. A Stay Will Not Prejudice Tijerino**

A stay will not prejudice Tijerino. As a threshold matter, Tijerino decided to proceed *pro se*, to ignore controlling Federal Circuit law regarding venue in patent cases, and to file this case in a Court in which venue is clearly improper. *See* Rec. Doc. 13; *see also In re Cray Inc.*, 871 F.3d 1355, 1358-66 (Fed. Cir. 2017) (holding that, pursuant to 28 U.S.C. § 1400(b) patent infringement suit can be filed only in the state in which defendant is incorporated or in district in which defendant has a “regular and established place of business” and allegedly infringes); *Medallia Inc. v. Echospa, Inc.*, 3:22-cv-1243-MMH-LLL, 2023 WL 5352312, at \*4-7 (M.D. Fla. Aug. 21, 2023) (finding that the presence of remote employees in district insufficient to establish venue); *Ingenioshare LLC v. Epic Games*, W-21-CV-00663-ADA, 2022 WL 827808, at \*4 (W.D. Tex. Mar. 18, 2022) (same); *Personal Audio LLC v. Google Inc.*, 280 F. Supp. 3d 922, 935-36 (E.D. Tex. 2017) (same). Tijerino cannot now be heard to complain that his case cannot proceed while the Court addresses the gating venue issue.

Moreover, a stay pending resolution of Spotify’s Venue Motion will very likely spare Tijerino from devoting time, resources, and money to a lawsuit that cannot go forward in this

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<sup>2</sup> *See Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996) (“We hold that the construction of a patent, including terms of art within its claim, is exclusively with the province of the court.”); *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co., Ltd.*, 521 F.3d 1351, 1361-62 (Fed. Cir. 2008) (“When the parties present a fundamental dispute regarding the scope of a claim term, it is the court’s duty to resolve it.”).

Court. *See, e.g., Von Drake v. Nat'l Broad. Co.*, No. 04-cv-00652, 2004 WL 1144142, at \*1 (N.D. Tex. May 20, 2004) (“[T]he disposition of a motion to dismiss ‘might preclude the need for discovery altogether thus saving time and expense.’”); *James v. Terex Corp.*, 5:16-cv-60, 2016 WL 5109152 at \*3 (S.D.Ga. Sept. 20, 2016) (“It would be inefficient and costly for the parties to engage in such discovery when many, if not all, of the discovery requests could be rendered moot by the Court's ruling on the Motion to Dismiss.”).

Even if venue were a close call here (it is not), Tijerino cannot claim any prejudice by a modest stay pending resolution of Spotify’s Venue Motion. Tijerino waited more than six years after Spotify allegedly began infringing his patent before filing suit. *See* Rec. Doc. 19-1 at 2 (alleging Spotify began infringing in 2018). Tijerino also could almost certainly not obtain an injunction even if Spotify did infringe his patent – which it did not and does not. *See eBay Inc. v. MercExchange, L. L. C.*, 547 U.S. 388, 390 (2006) (setting forth factors for injunction). And mere delay alone does not constitute undue prejudice. *See NFC Tech. LLC v. HTC Am., Inc.*, No. 13-CV-1058-WCB, 2015 WL 1069111, at \*2 (E.D. Tex. Mar. 11, 2015).

### **C. A Stay Will Conserve Court Resources**

A stay pending resolution of Spotify’s Venue Motion will also conserve the judicial resources associated with overseeing briefing and motions over the coming weeks. By staying the case, the Court will head off unnecessary motion practice and discovery disputes caused by Tijerino. *See, e.g., In re Nintendo*, 554 Fed. Appx at 941 (“Judicial economy requires that [a] district court should not burden itself with the merits of the action until it is decided [whether] a transfer should be effected[.]”). These savings will be particularly significant here. Tijerino continues to multiply these proceedings and impose a burden on the Court by filing a litany of meritless motions and notices. *See, e.g.,* Rec Docs. 42, 63, 64, 72, 73, 74, 80, 93, 98. Tijerino continues to file such motions despite the Court repeatedly cautioning Tijerino that, despite his

*pro se* status, he must abide by all applicable rules and court orders. *See, e.g.*, Rec. Doc. 31 (“Represented and non-represented parties are required to comply with the Federal and Local Rules. Failure to comply may lead to financial and, where warranted, dismissal of requested actions.”); Rec. Doc. 78 (“[A] *pro se* litigant like Plaintiff must still ‘abide by the rules that govern the federal courts,’ including the Federal Rules of Civil Procedure.”); Rec. Doc. 83 (cautioning Tijerino “against filing duplicative motions that were the subject of prior rulings”).

Finally, granting a stay will also spare the Court the energy of familiarizing itself with the technical intricacies of this specific patent suit, for example, by conducting claim construction and dealing with discovery disputes. Thus, a stay will allow the Court to “avoid[] duplicative efforts ... [and] evade ‘needlessly expending its energies familiarizing itself with the intricacies of a case that the transferee judge may have to duplicate[.]’” *Sparling v. Doyle*, EP-13-CV-00323-DCG, 2014 WL 12489985 at \*4 (W.D. Tex. Mar. 3. 2014).

#### **IV. CONCLUSION**

For the foregoing reasons, Spotify requests that the Court stay all proceedings pending resolution of Spotify’s Venue Motion, and grant whatever other and further relief it deems just and proper. Spotify respectfully requests that the Court rule on this motion by September 12, 2025, so that, if the Court denies a stay, Spotify may consider seeking further relief, as necessary, before additional case deadlines pass.

Dated: August 29, 2025

Respectfully submitted,

PHELPS DUNBAR LLP

BY: /s/ David L. Patrón

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**CERTIFICATE OF SERVICE**

I do hereby certify that I have on this 29th day of August 2025 served a copy of the foregoing on counsel for all parties to this proceeding via e-mail, and on Tijerino via certified U.S. mail and e-mail.

/s/ David L. Patrón

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

\*\*\*\*\*  
MANUEL TIJERINO

v. Docket No. 24-CV-2290  
Section "B"  
New Orleans, Louisiana  
Tuesday, June 24, 2025

SPOTIFY USA, INC.  
\*\*\*\*\*

TRANSCRIPT OF MOTION PROCEEDINGS  
HEARD BEFORE THE HONORABLE IVAN L.R. LEMELLE  
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(TUESDAY, JUNE 24, 2025)

(MOTION PROCEEDINGS)

(OPEN COURT.)

THE COURT: Good afternoon. Be seated, please. All right, Dena, let's call it.

THE DEPUTY CLERK: Civil Action No. 24-2290, Section B, *Manuel Tijerino v. Spotify USA, Inc.* Please make your appearances for the record.

THE COURT: Your full name, sir.

MR. TIJERINO: Manuel Tijerino. My name is Manuel Tijerino here pro se, in forma pauperis in this matter.

THE COURT: All right.

MR. MOONEY: Your Honor, David Patron of Phelps Dunbar. With me is Kyle Mooney of Morrison & Foerster and Mark Ackal of Phelps Dunbar, and we have a client representative from Spotify as well.

THE COURT: All right. Before we begin, I just wanted to confirm some things with Mr. Tijerino.

Mr. Tijerino, I know that you're proceeding pro se representing yourself in this case. Whenever you represent yourself in a court action like this, you're held responsible just like represented parties, parties who have lawyers, to comply with Court orders, with the rules of Court, both local rules as well as

12:57:41 1 our federal rules of procedure and evidence, et cetera.

12:57:44 2 In that regards, we do liberally construe pro se  
12:57:54 3 pleadings to try to make certain we understand what's being  
12:58:00 4 presented by the pro se litigant. So far I had no problems reading  
12:58:04 5 your pleadings, including the ones that we're about to address here  
12:58:10 6 today.

12:58:11 7 But I wanted to make certain that you understand that and  
12:58:15 8 I wanted to ask you if you had any questions about that.

12:58:20 9 MR. TIJERINO: No, your Honor.

12:58:21 10 THE COURT: And another rule you got to comply with is,  
12:58:25 11 whenever you address the Court, you have to stand.

12:58:31 12 In that regards, you know, I am not trying to pick on  
12:58:36 13 you, I am only trying to point out some things to you. Have you  
12:58:40 14 ever appeared in court before?

12:58:41 15 MR. TIJERINO: No, your Honor, it's my first time.

12:58:43 16 THE COURT: All right. And are you having any trouble  
12:58:46 17 understanding, not necessarily agreeing with, obviously, but  
12:58:50 18 understanding the court orders so far?

12:58:54 19 MR. TIJERINO: Not so far. I've been learning as I go.

12:58:58 20 THE COURT: All right. And in regards to your learning,  
12:59:03 21 are you seeking the assistance of counsel?

12:59:06 22 MR. TIJERINO: I just use Google and AI and stuff like  
12:59:10 23 that.

12:59:11 24 THE COURT: Be careful on AI because I've seen a lot of  
12:59:14 25 instances, not a lot, but some instances where even judges using AI

12:59:21 1 in trying to draft an opinion being incorrect on the AI citation of  
12:59:28 2 cases and holdings on cases and what they stand for. So be careful  
12:59:32 3 on using AI in that regards.

12:59:36 4 I know that you had a lawyer help you, though, in  
12:59:43 5 obtaining your patent.

12:59:44 6 MR. TIJERINO: Yes, sir. I had lawyers help me while I  
12:59:47 7 was obtaining the patent. First it was Juan Lizarraga from New  
12:59:52 8 Orleans, he's got 50 years of experience, and then we switched over  
12:59:54 9 to a different firm in California who helped us with that.

12:59:59 10 THE COURT: All right. And do you feel -- I know you're  
13:00:01 11 an educated person, obviously, because you've given some, you know,  
13:00:08 12 clear pleadings so far. But you understand at any time if you do  
13:00:17 13 enroll counsel in the case to represent you, that lawyer has to  
13:00:24 14 comply with all orders that were previously issued, as well as  
13:00:28 15 current and future ones?

13:00:29 16 MR. TIJERINO: Yes, your Honor.

13:00:32 17 THE COURT: Okay. I know that in the pleadings that I  
13:00:40 18 have in this record, you're a resident of this area?

13:00:44 19 MR. TIJERINO: Yes, sir. I live in Gretna.

13:00:47 20 THE COURT: And in that regards, you understand that this  
13:00:52 21 motion in part filed by your opponents, the defendant, seeks to  
13:01:00 22 change venue, that is from this court, this district to another  
13:01:07 23 district out of state, New York in particular?

13:01:09 24 MR. TIJERINO: Yes, your Honor.

13:01:13 25 THE COURT: Do you have any connections in New York, if

13:01:20 1 the case is transferred, do you have any connections in New York  
13:01:24 2 that could help you?

13:01:26 3 MR. TIJERINO: No, your Honor. I'd be very disadvantaged  
13:01:28 4 if it got transferred to New York.

13:01:30 5 THE COURT: Okay. We'll get into it in a minute, I am  
13:01:33 6 not trying to get into the merits of it, I am just, you know,  
13:01:36 7 trying to explore to what extent, if any, you're able to continue  
13:01:40 8 representing yourself, not only here but also if it's transferred  
13:01:44 9 elsewhere.

13:01:45 10 Do you have any questions you want to ask me at this  
13:01:47 11 particular time about your understanding of the proceedings and how  
13:01:55 12 you're going to represent yourself?

13:01:57 13 MR. TIJERINO: Just I was wondering, your Honor, how many  
13:02:01 14 minutes you get to say your side? How many minutes you get to  
13:02:06 15 present your side?

13:02:07 16 THE COURT: I don't generally give a time period in oral  
13:02:11 17 arguments these days because we don't hold as many oral arguments  
13:02:16 18 as we used to, and hearings in person like we're doing right now,  
13:02:21 19 so I don't give a time limit. And generally, I have direct  
13:02:26 20 questions to ask of you and your opponent, opposing counsel. But I  
13:02:34 21 allow lawyers, as well as you representing yourself, to say  
13:02:38 22 anything else you want to say in oral argument after I finish  
13:02:41 23 asking questions. Okay?

13:02:44 24 MR. TIJERINO: Yes, sir.

13:02:45 25 THE COURT: All right. All right. So we begin with the

13:02:49 1 movant, the person who filed the motion is entitled to go first  
13:02:52 2 with their oral argument, and then followed by you with your oral  
13:02:57 3 argument, and then they're entitled, the movant is entitled to give  
13:03:03 4 a rebuttal or closing argument. Do you understand that?

13:03:06 5 MR. TIJERINO: Yes, sir.

13:03:06 6 THE COURT: So anything that you have to say, just like  
13:03:10 7 anything they have to say, that you think is important for the  
13:03:13 8 Court to know, needs to come out now. You can't hold something  
13:03:20 9 back and then come out later, oh, well, you know, I wanted to say  
13:03:24 10 this, that, or the other. Okay?

13:03:28 11 MR. TIJERINO: Yes, sir.

13:03:28 12 THE COURT: All right. Thank you. Who is handling this  
13:03:31 13 for the movant?

13:03:32 14 MR. MOONEY: Myself, Kyle Mooney, your Honor.

13:03:36 15 THE COURT: All right. To the podium, sir. Your full  
13:03:39 16 name again for the record.

13:03:40 17 MR. MOONEY: Kyle Mooney, M-O-O-N-E-Y, from Morrison &  
13:03:42 18 Forester representing Spotify USA, your Honor.

13:03:45 19 THE COURT: All right. Let's take up the issue  
13:03:47 20 concerning venue because that's the first issue to deal with here.

13:03:55 21 The last time I had a patent infringement action, I  
13:04:03 22 recall, while there was no motion like this dealing with a venue  
13:04:09 23 issue, that was at least discussed in an informal conference with  
13:04:16 24 the lawyers who were, I guess, trying to educate me because  
13:04:17 25 obviously I wasn't a patent lawyer before I became a judge. My

13:04:22 1 first time handling a patent-related matter was when I sat by  
13:04:27 2 designation on the Fifth Circuit Court of Appeals, but since then I  
13:04:31 3 guess I found out more about patent law that maybe I didn't really  
13:04:36 4 want to know but I guess I had to.

13:04:47 5 And I do recall back then and the motion here from -- in  
13:04:58 6 pleadings from both to you and the plaintiff Mr. Tijerino, remind  
13:05:01 7 me of the unique venue interpretations to these kinds of actions.  
13:05:10 8 And it appears as if your reliance is basically on the venue issue  
13:05:18 9 on the *Cray* case, I believe, more than anything else.

13:05:22 10 Your opponent has addressed certain issues concerning  
13:05:28 11 venue insofar as he maintains that the actions of your company in  
13:05:35 12 alleged violations of his patent is reaping your client revenues  
13:05:47 13 from within this district.

13:05:51 14 As a matter of, I guess, fact, I don't see where you  
13:05:59 15 disagree with that, your client is getting some sort of revenue  
13:06:05 16 from the use of its product or software, whatever you want to call  
13:06:13 17 it, probably throughout the country. Is that incorrect or correct?

13:06:19 18 MR. MOONEY: Your Honor, we do not dispute that Spotify  
13:06:21 19 has users throughout the country. In fact, across the world. We  
13:06:25 20 don't dispute that those subscribers, many of them are paying  
13:06:30 21 subscribers. That, of course, is not relevant to the determination  
13:06:33 22 of venue, but we don't dispute that.

13:06:36 23 THE COURT: Do you advertise throughout the country,  
13:06:38 24 including in this district?

13:06:40 25 MR. MOONEY: Spotify does run national and international

13:06:43 1 advertisements. Again, not relevant to venue but we do do that,  
13:06:46 2 yes.

13:06:46 3 THE COURT: But is there any targeted advertisements to  
13:06:48 4 this district? When I say targeted, I mean to businesses,  
13:06:54 5 potential clients, customers, venders within this district.

13:06:58 6 MR. MOONEY: Not to my knowledge, no.

13:06:59 7 THE COURT: When you say national advertisement, can you  
13:07:02 8 give me an example of that?

13:07:03 9 MR. MOONEY: I believe that Spotify runs sponsorships --

13:07:06 10 THE COURT: You believe or do you know?

13:07:08 11 MR. MOONEY: Spotify sponsors different events, Spotify  
13:07:12 12 does advertise online, for example. Again, this is not relevant to  
13:07:17 13 venue. I do have a client representative here who if you have  
13:07:21 14 specific questions I can ask and see if we have detailed answers to  
13:07:21 15 your questions.

13:07:24 16 But these things aren't relevant, of course, to venue.

13:07:26 17 THE COURT: Okay. Well, if you feel that you need to ask  
13:07:29 18 him (SIC) for the answer to my question, feel free to do so. I  
13:07:33 19 don't want to have you stand up there guessing. Do you need to  
13:07:35 20 talk to him about my questions?

13:07:37 21 MR. MOONEY: As to whether it sponsors -- if you give me  
13:07:42 22 one moment, your Honor.

13:07:42 23 (WHEREUPON, THERE WAS A DISCUSSION OFF THE RECORD.)

13:08:04 24 MR. MOONEY: Your Honor, Spotify does not do targeted  
13:08:08 25 advertising in Louisiana.

13:08:10 1 As far as national advertising, I understand that there  
13:08:12 2 is some outdoor advertising, maybe not sponsorships. I could be  
13:08:17 3 wrong.

13:08:17 4 THE COURT: What type of advertising?

13:08:18 5 MR. MOONEY: Outdoor advertising.

13:08:21 6 THE COURT: Outdoor advertising? What do you mean, like  
13:08:24 7 on billboards, some highways, and all of that?

13:08:26 8 MR. MOONEY: Print, billboards, exactly, your Honor.

13:08:30 9 THE COURT: I haven't noticed any in this area. Are  
13:08:34 10 there any in this district?

13:08:35 11 MR. MOONEY: I didn't see any last night. I don't know  
13:08:40 12 that -- I am not aware of any in this district, your Honor, no.

13:08:43 13 THE COURT: And I know your argument is that for this  
13:08:47 14 type of action, the patent infringement action, those type of  
13:08:53 15 questions, according to you, may be irrelevant, but I just want to  
13:08:57 16 make certain that the record is clear on a couple of things.

13:09:02 17 You state in your motion that your client has a policy of  
13:09:11 18 providing furniture and IT equipment, information technology  
13:09:18 19 equipment for remote employee use. Providing furniture and IT  
13:09:25 20 equipment for remote employee use. Help me understand what that  
13:09:33 21 is. I mean, a chair or two or the whole office that the employee  
13:09:37 22 is using?

13:09:37 23 MR. MOONEY: Sure. So Spotify, like almost every other  
13:09:40 24 company I'm sure, has some employees that work predominantly at  
13:09:45 25 home. And as part of that, Spotify does provide a computer and

13:09:53 1 sometimes a mobile phone for their employees to use. The only  
13:09:57 2 other equipment that Spotify provides, other than perhaps  
13:10:02 3 disability or ADA accommodation equipment, would be on request, and  
13:10:07 4 things like perhaps a mat for under the chair or a second computer  
13:10:12 5 monitor for somebody that requires that. And again --

13:10:17 6 THE COURT: How do you --

13:10:19 7 MR. MOONEY: -- I am trying to -- I'm sorry, your Honor,  
13:10:19 8 go ahead.

13:10:19 9 THE COURT: No, go ahead.

13:10:20 10 MR. MOONEY: I am trying to respond to your questions.  
13:10:21 11 Again, this is something that clearly doesn't give rise to venue,  
13:10:24 12 but that is the policy of Spotify, yes.

13:10:26 13 THE COURT: And when you say employee, we're talking  
13:10:29 14 about an exclusive employee of Spotify or contract type person?

13:10:34 15 MR. MOONEY: Employees.

13:10:38 16 THE COURT: Employee reaping compensation, benefits,  
13:10:40 17 percentages of transactions, commissions?

13:10:43 18 MR. MOONEY: The employees are salary paid employees.

13:10:46 19 THE COURT: Salary. How are they selected? Do you  
13:10:49 20 advertise or give an area that you want to place that employee?

13:10:52 21 MR. MOONEY: Spotify does engage in some job postings for  
13:10:57 22 ads on their website. For example, your Honor, in the record  
13:11:02 23 attached to the Goring declaration there is an ad that is not  
13:11:07 24 unlike many of the Spotify ads -- I was looking for it here, your  
13:11:14 25 Honor. This is the declaration of Lindsey Goring, which is Docket

13:11:19 1 25-1, and Ms. Goring attaches as Attachment A a Spotify job  
13:11:27 2 posting, which is exemplary of job postings of Spotify. This one  
13:11:32 3 happens to be for a Lead Workforce Planning Analyst.

13:11:36 4 And as your Honor can see, this is not targeted to any  
13:11:40 5 state at all, this is for the United States of America. In fact,  
13:11:44 6 the second page of the ad, this is 25-1, page 2, it says so much,  
13:11:50 7 it says, quote, "We offer you the flexibility to work where you  
13:11:55 8 work best, anywhere within the United States." So there are ads  
13:12:00 9 like that. They're not, of course, targeted by jurisdiction.

13:12:04 10 THE COURT: So given that sort of advertisement  
13:12:11 11 facilitating the operation of your company's business through an  
13:12:16 12 employee in this district and obviously earning revenue for your  
13:12:24 13 client, you argue that that still does not mean that the remote  
13:12:32 14 employee's presence in Louisiana makes it -- it meaning Louisiana  
13:12:41 15 or specifically this district -- Spotify's place of business. Your  
13:12:45 16 opponent, as you know, points to an operation in Lafayette,  
13:12:51 17 Louisiana, which is in the Western District of Louisiana. Is there  
13:12:59 18 such an entity, office, place of business in this district like the  
13:13:05 19 one in Lafayette?

13:13:07 20 MR. MOONEY: There is no regular and established place of  
13:13:11 21 business in this district, your Honor, no.

13:13:13 22 THE COURT: How did your client or how does your client  
13:13:18 23 choose, or did they choose, for instance, Lafayette?

13:13:22 24 MR. MOONEY: There is not an office in Lafayette, your  
13:13:24 25 Honor.

13:13:24 1 THE COURT: There is not?

13:13:25 2 MR. MOONEY: There is not. Your Honor --

13:13:28 3 THE COURT: Is that going to be a factual issue that your  
13:13:31 4 opponent may say that they need discovery on?

13:13:34 5 MR. MOONEY: Well, it would not matter as to whether or  
13:13:38 6 not venue is relevant here if it's in a different district for one  
13:13:41 7 thing. But in order to -- well, we've already submitted  
13:13:45 8 declarations, your Honor, and this would be the Folsom declaration  
13:13:49 9 as well as perhaps the Goring declaration, establishing that  
13:13:53 10 Spotify does not own, lease, or rent any property in the State of  
13:13:58 11 Louisiana, this district or anywhere else.

13:14:01 12 THE COURT: Do any of the cases that you gave me  
13:14:05 13 concerning the use of material outside of the pleadings applicable  
13:14:12 14 here to, for instance, that declaration of your client? Was that  
13:14:19 15 part of the answer to the petition or was that part of the petition  
13:14:23 16 itself in reference to this person?

13:14:31 17 Ordinarily in the sense of -- and I am thinking more  
13:14:36 18 about 12(b)(6) motions, we're limited to looking at the pleadings  
13:14:43 19 or things attached to the pleadings. In a venue motion as this one  
13:14:49 20 under a separate section of Rule 12, I do realize that there is,  
13:14:54 21 again, more leeway perhaps in looking beyond the pleadings. But is  
13:15:02 22 there some limit that the Court has in that regards?

13:15:06 23 MR. MOONEY: Well, your Honor, you're right, this is  
13:15:09 24 unlike a 12(b)(6) situation in which we're going to be looking at,  
13:15:11 25 of course, the allegations or things that are incorporated by

13:15:12 1 reference into the allegations. In the case of venue in a 12(b)(3)  
13:15:19 2 motion, the Court is permitted to look to declarations beyond the  
13:15:22 3 complaint. And I would refer your Honor --

13:15:22 4 THE COURT: Did that occur in *Cray*?

13:15:23 5 MR. MOONEY: I'm sorry?

13:15:24 6 THE COURT: Did that occur in the *Cray* case?

13:15:26 7 MR. MOONEY: I don't know whether the Court looked to  
13:15:30 8 declarations in the *Cray* case in particular, but both Fifth Circuit  
13:15:33 9 law, that's the *Ambraco v. Bossclip* case, 570 F.3d 233, Fifth  
13:15:40 10 Circuit 2009, at page 238; as well as your Honor's decision in  
13:15:46 11 *RedHawk Holdings v. Schreiber*, that's 2017 Westlaw 6211037 at one,  
13:15:55 12 August 16, 2017, of course this district. Those cases both stand  
13:15:59 13 for the proposition that's also found in other cases. The  
13:16:02 14 declarations can be considered on 12(b)(3) motions.

13:16:11 15 THE COURT: For the record, tell me what is -- and both  
13:16:18 16 of you discussed this in your pleadings, in your motions here in  
13:16:22 17 opposition -- what is ZipRecruiter?

13:16:30 18 MR. MOONEY: ZipRecruiter is, I believe, your Honor --  
13:16:35 19 well, it's a third party, it has nothing to do with Spotify first  
13:16:38 20 off. My understanding, only from listening to the radio, is that  
13:16:45 21 ZipRecruiter is a job recruiting platform that finds job postings  
13:16:51 22 from various different places and then posts them to people for  
13:16:56 23 them to be able to efficiently try to find work in their area,  
13:17:01 24 perhaps.

13:17:01 25 And so that -- one of those ads was raised, as you know

13:17:04 1 in Mr. Tijerino's motion, and I am happy to talk about that if you  
13:17:07 2 would like.

13:17:07 3 THE COURT: Uh-huh.

13:17:07 4 MR. MOONEY: I don't know if you have any other questions  
13:17:09 5 first, I'm happy to address them.

13:17:10 6 THE COURT: Uh-huh.

13:17:12 7 MR. MOONEY: ZipRecruiter?

13:17:14 8 THE COURT: Uh-huh.

13:17:15 9 MR. MOONEY: Okay. So in this case Mr. Tijerino, this is  
13:17:16 10 the one of the key things that he points to, this ZipRecruiter ad  
13:17:20 11 which is a job posting for a Spotify position, ostensibly in  
13:17:24 12 Louisiana. That ad is irrelevant to venue. And if anything, it  
13:17:33 13 reinforces the venue here is improper. A few reasons. First --

13:17:39 14 THE COURT: But before you get into that. You argued  
13:17:45 15 that the cases cited by your opponent in its opposition are  
13:17:51 16 distinguishable and inapplicable here on the venue question because  
13:17:56 17 you go on to say that those cases cited focused on where the  
13:18:04 18 defendants in those cases sought employees to work in the judicial  
13:18:09 19 district and the employees stored and maintained the defendant's  
13:18:16 20 products in their homes as part of their employment. Isn't that  
13:18:23 21 what you've done here? Not necessarily in this district, but maybe  
13:18:28 22 elsewhere.

13:18:28 23 MR. MOONEY: Not in this district and not in any district  
13:18:31 24 that I am aware of, your Honor, no.

13:18:33 25 THE COURT: You just said that you recruit and advertise

13:18:36 1 to recruit in certain areas like in Louisiana.

13:18:42 2 MR. MOONEY: We advertise and recruit nationally. Where  
13:18:45 3 people live is up to them. In fact, that is part of the job  
13:18:49 4 posting as your Honor just saw. We do not target recruitment in  
13:18:56 5 Louisiana, we do not --

13:18:58 6 THE COURT: Didn't that ad target Louisiana or made it  
13:19:02 7 part of its territory it's recruiting from?

13:19:05 8 MR. MOONEY: The ZipRecruiter ad? Well, yes. And, your  
13:19:08 9 Honor, if I may just continue on that ad.

13:19:11 10 The un rebutted declaration of Lindsey Goring, who is  
13:19:15 11 Spotify's Senior Global HR Program Manager, establishes that  
13:19:20 12 Spotify did not post that ad. What it appears happened is that  
13:19:29 13 ZipRecruiter, this is an unaffiliated third party having nothing to  
13:19:33 14 do with Spotify, copied that Spotify job by what we refer to as  
13:19:41 15 scraping the internet, just taking something from another internet  
13:19:44 16 site, and then reposting the job on their own third-party website.

13:19:51 17 In fact, if you look at the actual job posting, posted by  
13:19:57 18 Spotify --

13:19:58 19 THE COURT: Certainly your client either knew or should  
13:20:01 20 have known that they had that sort of a practice.

13:20:05 21 MR. MOONEY: I disagree, your Honor.

13:20:06 22 THE COURT: Well, you may disagree, but --

13:20:09 23 MR. MOONEY: Your Honor, our client had no way to know or  
13:20:13 24 to -- should not have known necessarily that ZipRecruiter was --

13:20:17 25 THE COURT: I can't believe any corporate client would

13:20:19 1 simply allow a job recruiter to go willy-nilly out there and say,  
13:20:25 2 okay. We're looking for people who can work in certain areas or  
13:20:29 3 what have you or do certain things without knowing what the client  
13:20:33 4 wants.

13:20:35 5 MR. MOONEY: With respect, your Honor, it happens all the  
13:20:37 6 time. It's happening right now. This is a third party that is  
13:20:41 7 going online, on the internet as though you would, or I would, and  
13:20:45 8 they find job postings and they repost some of them. This was not  
13:20:50 9 a party that was contacted or contracted by Spotify. This was done  
13:20:53 10 without our knowledge.

13:20:55 11 But this is not just me, your Honor, this is --

13:20:58 12 THE COURT: So you don't disagree, however, that your  
13:21:01 13 client has, through ZipRecruiter, employed people to work in  
13:21:11 14 certain localities, you simply disagree that that was done for this  
13:21:19 15 locality?

13:21:19 16 MR. MOONEY: I disagree with both, your Honor. Spotify  
13:21:22 17 did not employ ZipRecruiter to employ people in this locality or  
13:21:27 18 any other locality.

13:21:29 19 THE COURT: So you're saying ZipRecruiter when it  
13:21:32 20 advertised, and I assume we're talking about billboards as well,  
13:21:38 21 your client didn't know that they were placing billboards in  
13:21:41 22 certain areas?

13:21:42 23 MR. MOONEY: Your Honor, there may be a misunderstanding.  
13:21:45 24 ZipRecruiter I don't believe advertises job postings on billboards.

13:21:50 25 THE COURT: It's all virtually or website?

13:21:53 1 MR. MOONEY: That's -- again, this is a different company  
13:21:54 2 and my understanding -- this is a lay person's understanding at  
13:21:58 3 this point, your Honor, based on what I see about this completely  
13:22:01 4 separate company. But I do believe ZipRecruiter may do some  
13:22:05 5 national advertising on things like billboards as far as them  
13:22:08 6 existing as a company. But I believe that the job postings that  
13:22:12 7 ZipRecruiter puts out there are, as your Honor has described, just  
13:22:16 8 made available online to people. And whether that's by  
13:22:20 9 subscription or not, I just don't know. Spotify didn't contract  
13:22:24 10 with them and did not authorize ZipRecruiter to engage in this  
13:22:29 11 behavior.

13:22:40 12 THE COURT: Help me understand, perhaps better, the *Cray*  
13:22:44 13 decision that observed that, quote, "the regular and established  
13:22:49 14 place of business standard requires more than the minimum contacts  
13:22:55 15 for establishing in that case personal jurisdiction." That phrase  
13:23:03 16 "regular and established place of business standard," has that  
13:23:11 17 varied within the Federal Circuit over the years?

13:23:17 18 MR. MOONEY: Has the phrase varied? Well, your Honor, I  
13:23:20 19 think it's important very quickly, if I may, your Honor, to go back  
13:23:23 20 to the statute --

13:23:24 21 THE COURT: Yes, no, you don't know, to my question?

13:23:26 22 MR. MOONEY: Whether the standard has varied? No. Since  
13:23:30 23 the Supreme Court's decision in *TC Heartland*, that is the standard  
13:23:34 24 that the Federal Circuit has been applying. And the one that ought  
13:23:41 25 to be applied here, regular and established place of business.

13:23:43 1 And what *Cray* did is *Cray* laid out -- *Cray* did two  
13:23:48 2 things: One, *Cray* held very clearly that a remote employee's  
13:23:55 3 business by itself is not enough.

13:23:58 4 THE COURT: That I understand. That I understand.

13:24:02 5 MR. MOONEY: Okay.

13:24:03 6 THE COURT: But you go on to talk about how the cases  
13:24:11 7 cited by your opponent referenced how these employees were obtained  
13:24:19 8 by those defendants, recruited, et cetera, based on what we said  
13:24:26 9 earlier. But in that connection, once you set up shop, that  
13:24:34 10 language about "regular and established place of business standard"  
13:24:46 11 is what I am asking you to clarify for me, if you can, beyond what  
13:24:52 12 you've said so far. And you cited the Supreme Court case in that  
13:24:57 13 regards that I've seen, but help me, give me your interpretation of  
13:25:02 14 that case.

13:25:03 15 MR. MOONEY: In *Cray*, your Honor? So *in re*: *Cray* --

13:25:08 16 THE COURT: Well, *Cray* was the circuit case.

13:25:10 17 MR. MOONEY: *Cray* was the Federal Circuit, which is  
13:25:13 18 controlling here, yes. And in that case, in *Cray* the Federal  
13:25:14 19 Circuit held that to be a regular and established place of  
13:25:18 20 business, there must be: One, a physical place in the district;  
13:25:24 21 two, the physical place must be a regular and established place of  
13:25:30 22 business; and importantly, three, it must be the place of the  
13:25:36 23 defendant. That is what *Cray* held.

13:25:39 24 And *Cray* in that case what happened was Raytheon,  
13:25:48 25 computer manufacturer, filed a patent infringement case against

13:25:52 1 Cray in the Eastern District of Texas. Cray moved to dismiss that  
13:25:57 2 case arguing that the homes of its employees in the district did  
13:26:05 3 not constitute Cray's regular and established place of business.  
13:26:12 4 The district court judge, Judge Gilstrap, rejected that argument  
13:26:18 5 and found that the employee homes were enough to constitute Cray's  
13:26:23 6 regular and established business.

13:26:26 7 The Federal Circuit though, your Honor, then granted  
13:26:30 8 petition for a writ of mandamus, found that Judge Gilstrap abused  
13:26:36 9 his discretion, vacated the decision, and ordered Judge Gilstrap to  
13:26:41 10 transfer that case. And it did that because the Court held that  
13:26:45 11 Cray's employees' homes could not be considered Cray's regular and  
13:26:51 12 established place of business absent additional factors that might  
13:26:59 13 transform them into a regular and established business.

13:27:02 14 THE COURT: What would be an additional factor?

13:27:04 15 MR. MOONEY: The additional factors are, for example, if  
13:27:07 16 the employer owns, leases, or rents a portion of the employees'  
13:27:11 17 homes; if the employer stores inventory or requires that the  
13:27:16 18 employee store inventory at their home; or if the employer  
13:27:21 19 conditions employment on that employee remaining in that district.

13:27:26 20 And your Honor raised earlier the cases that were brought  
13:27:29 21 up by Mr. Tijerino, those cases are *in re: Monolithic, Regen Lab*  
13:27:36 22 and *in re: Cordis*. And as, your Honor -- I can certainly talk to  
13:27:40 23 them -- that was true in every one of those cases. In every one of  
13:27:44 24 those cases, the employer required that the employees store  
13:27:48 25 inventory or other hard sales kits at their home, or required that

13:27:56 1 the employees continued to live in the district, or both.

13:28:00 2 That's the line that's been drawn in the Federal Circuit  
13:28:03 3 cases that your Honor sees cited in the papers, that's the line  
13:28:06 4 that applies here. And applying that line, venue is improper here.

13:28:12 5 THE COURT: You had two arguments in response to  
13:28:15 6 plaintiff's statement that, and I don't want to misquote it,  
13:28:26 7 "plaintiff claims that calculating and paying a venue is the same  
13:28:33 8 as calculating streaming royalties owed to PROs on a territorial  
13:28:40 9 basis, giving examples of certain countries or localities.

13:28:48 10 First of all, for the record, what's a PRO? And also,  
13:29:00 11 your alternative argument that even if there is a calculation  
13:29:10 12 streaming royalties owed to PROs on a territorial basis, that still  
13:29:16 13 would not satisfy the so-called automatic calculation limitations.  
13:29:23 14 As I understand it, PROs pay royalties to composers, song writers  
13:29:32 15 who wrote the music, but not necessarily an artist performing at  
13:29:38 16 the venue. Has there been any cases directly on point to that  
13:29:47 17 contention or argument that you raised concerning PROs and the  
13:29:52 18 calculation and application of payment?

13:29:56 19 MR. MOONEY: Your Honor, if the question is whether there  
13:29:58 20 is a real 12(b)(6) patent infringement case addressing whether  
13:30:06 21 payment to a PRO satisfies similar claim limitations, I am not  
13:30:10 22 aware of one.

13:30:11 23 THE COURT: I am only talking about venue, not 12(b)(6).  
13:30:16 24 Because you say that there's no plausible claim construction of the  
13:30:22 25 term venue that would include PROs or their territories, right?

13:30:30 1 MR. MOONEY: So there may be some confusion in the  
13:30:34 2 papers, your Honor. The first ground for dismissal, as your Honor  
13:30:37 3 is well aware, is venue. Venue is improper here. Second ground  
13:30:42 4 for dismissal is the 12(b)(6) dismissal, failure to state a claim;  
13:30:46 5 and that failure to state a claim is based on the fact that  
13:30:50 6 Mr. Tijerino has not alleged any facts giving rise to a plausible  
13:30:58 7 likelihood that Spotify meets this limitation in the patent claim  
13:31:04 8 that includes the word venue.

13:31:09 9 These are two separate arguments, I am just not sure  
13:31:11 10 which one your Honor is --

13:31:13 11 THE COURT: Regarding improper venue, your opponent  
13:31:16 12 states the automatic calculation limitation provides that venue is  
13:31:22 13 a territory since PRO licenses are territorial. So he says that  
13:31:33 14 automatically there's a calculation of money earned by the artist  
13:31:39 15 and venue playing in those media. Is that accurate for venue  
13:31:46 16 purposes?

13:31:47 17 MR. MOONEY: This issue that I believe we're discussing  
13:31:54 18 right now is irrelevant to whether or not venue is proper in this  
13:31:58 19 court. The issue is -- that you're raising right now, as I  
13:32:02 20 understand it, relates to the 12(b)(6) issue. And I am happy to  
13:32:06 21 discuss that, if your Honor would like.

13:32:09 22 I might also offer that, yes, Spotify does --

13:32:13 23 THE COURT: So you believe his argument in that regards  
13:32:15 24 concerning venue is irrelevant and more properly addressed on the  
13:32:20 25 12(b)(6) side?

13:32:22 1 MR. MOONEY: An argument that --

13:32:25 2 THE COURT: Or would the automatic calculation?

13:32:27 3 MR. MOONEY: Arguments regarding automatic calculation,  
13:32:29 4 yes, are irrelevant to whether or not venue is proper in this  
13:32:33 5 court, your Honor.

13:32:39 6 THE COURT: Can venue establish here by referencing any  
13:32:52 7 partnership that Spotify might have with other entities operating  
13:32:59 8 within this district?

13:33:01 9 MR. MOONEY: A partnership with another entity, no, that  
13:33:05 10 would not establish venue in this district. Again, only two things  
13:33:09 11 establish venue in this district and this is, again, 28 U.S.C.  
13:33:14 12 Section 1400(b), Supreme Court's decision in *TC Heartland* and the  
13:33:19 13 Federal Circuit decision in *in re: Cray*. The only two things that  
13:33:24 14 can give rise to venue, or the only two places where venue is  
13:33:28 15 proper, your Honor, in a patent case is: No. 1, where the  
13:33:32 16 defendant resides, or No. 2, where the defendant has a regular and  
13:33:39 17 established place of business and commits acts of infringement.

13:33:45 18 The first of those I believe, we may hear otherwise, I  
13:33:51 19 believe is not disputed, that's the "reside" prong. In *TC*  
13:33:58 20 *Heartland* the Supreme Court held that a defendant resides only in  
13:34:02 21 the state of its incorporation. And here there is no dispute that  
13:34:08 22 Spotify USA is incorporated in Delaware. The Folsom declaration  
13:34:15 23 before the Court, Docket 13-3 establishes that. Mr. Tijerino in  
13:34:21 24 his opposition papers, that's Docket 28 at pages 12 and 13,  
13:34:28 25 concedes that Spotify is incorporated in Delaware. And so because

13:34:33 1 Spotify is incorporated in Delaware, it resides there. It does not  
13:34:36 2 reside here. And the only issue for your Honor on venue is whether  
13:34:41 3 Spotify has a regular and established place of business here.

13:34:55 4 THE COURT: I reprimand myself for not turning this off.  
13:34:58 5 Sorry about that.

13:35:05 6 Anything else you want to point out to me before I go to  
13:35:07 7 your opponent?

13:35:08 8 MR. MOONEY: On venue, your Honor or both issues?

13:35:11 9 THE COURT: On venue.

13:35:13 10 MR. MOONEY: On venue.

13:35:15 11 THE COURT: Well, I do ask this question. And I've seen  
13:35:20 12 this both ways, although I think in the circuit it's preferred one  
13:35:25 13 way.

13:35:26 14 Ordinarily if the Court grants a change of venue, which I  
13:35:34 15 note your alternative argument here, if I grant a change of venue,  
13:35:44 16 traditionally within this circuit the transferring court will defer  
13:35:54 17 ruling on a dispositive motion, like a 12(b)(6) motion or summary  
13:36:02 18 judgment motion, to the transferee court. Do you agree, however,  
13:36:16 19 that -- or that might be the preferred rule of our circuit. Would  
13:36:22 20 this be court be incorrect if it ruled on the 12(b)(6) motion and  
13:36:29 21 at the same time say venue is proper elsewhere?

13:36:32 22 MR. MOONEY: Your Honor, I do think if the Court  
13:36:37 23 dismisses the case for improper venue, then it wouldn't get to the  
13:36:41 24 12(b)(6), of course. Though it could get to that as an alternate  
13:36:46 25 ground.

13:36:46 1 If the Court decides to transfer, for example, to New  
13:36:50 2 York rather than dismiss the case, then generally, no, I would say  
13:36:53 3 the 12(b)(6) would be deferred and left to the Southern District of  
13:36:59 4 New York. Though I am not aware, your Honor, of authority that  
13:37:02 5 would preclude you from --

13:37:03 6 THE COURT: You mentioned that venue in the Southern  
13:37:06 7 District of New York is best because that's where most of the  
13:37:11 8 witnesses and documents are located, even though your state of  
13:37:18 9 incorporation is Delaware. When you talk about documents, are we  
13:37:26 10 talking about something that's virtual or paper?

13:37:30 11 MR. MOONEY: The documents, your Honor, no, it is largely  
13:37:34 12 virtual now. There may be some paper, probably not a lot, at a  
13:37:39 13 company like Spotify, and so I would submit, and I think courts  
13:37:41 14 have found, that that prong is entitled to a little bit less weight  
13:37:45 15 in deciding on the transferee court.

13:37:48 16 But I do believe that weight should be given to the  
13:37:51 17 witnesses, location of the witnesses here.

13:37:53 18 THE COURT: How many are we talking about, potentially?

13:37:55 19 MR. MOONEY: How many potential witnesses? I don't know.  
13:37:58 20 Mr. Tijerino is entitled, as your Honor knows, to notice up to ten  
13:38:02 21 depositions without leave of court. And what I do know is that the  
13:38:07 22 Spotify engineers, the Spotify marketing arm, and the Spotify  
13:38:17 23 financial center, those positions are persons that are based in New  
13:38:22 24 York and those are persons that are generally deposed and have  
13:38:29 25 relevant testimony in a patent case such as this.

13:38:32 1 THE COURT: Are there any witnesses in this district?

13:38:34 2 MR. MOONEY: Not aware of any, no.

13:38:36 3 THE COURT: When I say witnesses, I'm talking about how  
13:38:39 4 does Spotify obtain a customer in this district to use its platform  
13:38:48 5 or services?

13:38:49 6 MR. MOONEY: Sure. Well, what happens here would be the  
13:38:53 7 same as what happens anywhere else in the country and anywhere else  
13:38:56 8 in the world, and that would be that if the --

13:38:59 9 THE COURT: Counsel, I am not talking about anywheres  
13:39:02 10 else, I am talking about right here.

13:39:05 11 MR. MOONEY: Right here, okay. So, right, I was just  
13:39:06 12 saying it would be the same as elsewhere. But here what would  
13:39:08 13 happen would be somebody if they had an Apple product, like an  
13:39:12 14 iPhone or an iPad, they would go to the Apple store, and they would  
13:39:20 15 download the app or the software that is --

13:39:25 16 THE WITNESS: Spotify app?

13:39:27 17 MR. MOONEY: Exactly. And if they had a Google -- an  
13:39:29 18 Android, excuse me, an Android device they would go to the --

13:39:31 19 THE COURT: I understand that, I am not that big of a  
13:39:33 20 dinosaur, but go ahead.

13:39:35 21 MR. MOONEY: They would go to either of the stores for  
13:39:37 22 their electronic device where people download apps, such as  
13:39:41 23 weather, music, news, et cetera. They would download that and then  
13:39:46 24 the would through the app sign up and start playing, you know,  
13:39:49 25 music, in the case of Spotify.

13:39:51 1 THE COURT: So why does Spotify have employees in certain  
13:39:54 2 localities?

13:40:00 3 MR. MOONEY: I mean, your Honor, this is going to sound  
13:40:02 4 flippant, I don't mean it as that, but it's because people have to  
13:40:05 5 live somewhere. Spotify looks for the best people to fill their  
13:40:08 6 positions as your Honor saw in the --

13:40:10 7 THE COURT: So what do they do --

13:40:12 8 MR. MOONEY: What do the employees do?

13:40:14 9 THE COURT: -- with these remote employees?

13:40:16 10 MR. MOONEY: Oh, all sorts of functions. I mean, they  
13:40:18 11 could do -- some of them could do marketing, some could be coding,  
13:40:22 12 some could be financial, etc. They do whatever Spotify needs  
13:40:27 13 employees to do and can be done, you know, almost exclusively on a  
13:40:30 14 computer, it doesn't require an in-person presence, can be done  
13:40:34 15 remotely. And that gives the employees flexibility to live  
13:40:37 16 wherever they want.

13:40:38 17 THE COURT: When your IT gurus have to, say, troubleshoot  
13:40:42 18 some issue, if they can't take care of that issue virtually, do  
13:40:49 19 they ever have to go out to, say, a customer who downloaded the app  
13:40:55 20 or whatever to use and, say, oh, well, and it may be a major  
13:41:00 21 customer, for instance -- I guess you don't do it if it was just  
13:41:04 22 me. But let's say it's a major company or entity, what does it do,  
13:41:08 23 or do you know?

13:41:10 24 MR. MOONEY: I am not -- I don't believe that they do,  
13:41:13 25 your Honor --

13:41:14 1 THE COURT: "I believe" stuff gotta go.

13:41:17 2 MR. MOONEY: If I may, your Honor?

13:41:18 3 THE COURT: Yes.

13:41:28 4 (WHEREUPON, A DISCUSSION WAS HELD OFF THE RECORD.)

13:41:28 5 MR. MOONEY: They don't, your Honor.

13:41:32 6 THE COURT: There's never an instance where your IT  
13:41:36 7 people have to go out and resolve a problem that a major customer  
13:41:42 8 has with its app or whatever?

13:41:48 9 MR. MOONEY: No, your Honor. And there's a reason  
13:41:51 10 perhaps for that. And one of the -- and a reason for that is we  
13:41:55 11 only have personal customers - a you, a me, maybe others in the  
13:42:02 12 courtroom, maybe not, at least one other in the courtroom. Spotify  
13:42:06 13 doesn't have commercial customers. In fact, the Spotify terms and  
13:42:11 14 conditions prohibit the use of the app for commercial purposes,  
13:42:16 15 like bars and restaurants and clubs. Which is relevant to the  
13:42:21 16 12(b)(6) motion but I think also relevant to your Honor's question  
13:42:27 17 here. They don't have these sorts of large customers that would  
13:42:30 18 cause them to need an IT force to go out and support on the ground.

13:42:35 19 THE COURT: I imagine there's all sorts of devices that  
13:42:38 20 could download an app. Would one of those devices be some type of  
13:42:44 21 fancy jukebox?

13:42:49 22 MR. MOONEY: I mean, jukebox term of art in the patent,  
13:42:56 23 but I believe that you can download the app on -- you can download  
13:43:02 24 the app on phones, mobile phones, on tablet computers --

13:43:07 25 THE COURT: Anything that as an internet capability.

13:43:10 1 MR. MOONEY: -- and also a PC computer. So if you had a  
13:43:12 2 fancy computer, you could download the app, you could use Spotify.

13:43:19 3 THE COURT: Does Spotify manufacture or partnership in  
13:43:24 4 the manufacture of devices that are internet capable --

13:43:31 5 MR. MOONEY: No.

13:43:33 6 THE COURT: -- that it sells or rents or leases to  
13:43:36 7 customers?

13:43:36 8 MR. MOONEY: No.

13:43:37 9 THE COURT: You're certain of that?

13:43:39 10 MR. MOONEY: Yes. If I may correct something said a  
13:43:43 11 moment ago, your Honor. For downloading the apps, on phones or  
13:43:47 12 tablets you would download an app. If you were on a personal  
13:43:52 13 computer or a fancy computer, windows computer, you may access it  
13:43:57 14 on the website. It might not strictly speaking be an app but you  
13:44:03 15 could access it.

13:44:03 16 THE COURT: I understand that, I understand that. All  
13:44:05 17 right. Let's go to your opponent and you'll have some time for  
13:44:08 18 rebuttal.

13:44:10 19 MR. MOONEY: Thank you, your Honor.

13:44:10 20 THE COURT: Mr. Tijerino, I am going to let you begin  
13:44:14 21 with any statement you want to make in response to what counsel for  
13:44:20 22 Spotify just said in answer to my various questions, and then I  
13:44:23 23 have some specific questions for you.

13:44:25 24 MR. TIJERINO: Yes, sir.

13:44:28 25 THE COURT: I am going to do it a little bit differently.

13:44:30 1 I asked your opponent specific questions that I wanted to ask to  
13:44:34 2 clarify the record, and I am giving you the opportunity to respond  
13:44:38 3 to his answers and maybe go a little beyond once I start asking you  
13:44:42 4 questions. Do you understand?

13:44:44 5 MR. TIJERINO: Okay. Yes, sir.

13:44:45 6 THE COURT: Go ahead.

13:44:46 7 MR. TIJERINO: Well, I had this paper like a speech to  
13:44:49 8 give kind of sort of kind of thing, but you said that's after or  
13:44:52 9 would that be now?

13:44:53 10 THE COURT: A paper on what?

13:44:55 11 MR. TIJERINO: Just basically my -- what I was going to  
13:44:58 12 say in court.

13:44:59 13 THE COURT: You can use whatever aid you have in making  
13:45:02 14 your oral argument, it doesn't matter to me.

13:45:05 15 MR. TIJERINO: So I can make my oral argument now or do I  
13:45:07 16 have to answer --

13:45:07 17 THE COURT: You can make an oral argument now.

13:45:09 18 MR. TIJERINO: Okay, okay. I guess I'll make my oral  
13:45:14 19 argument.

13:45:14 20 So may it please the Court, my name is Manuel Tijerino, I  
13:45:18 21 appear pro se and in forma pauperis in the matter.

13:45:22 22 Before I begin, I want to note that this is my first time  
13:45:24 23 presenting an oral argument in federal court.

13:45:26 24 THE COURT: Wait. Maybe I missed that. You're appearing  
13:45:32 25 in forma pauperis?

13:45:33 1 MR. TIJERINO: Yes, sir.

13:45:34 2 THE COURT: So without prepayment of any fees or costs,  
13:45:38 3 right?

13:45:38 4 MR. TIJERINO: Correct.

13:45:38 5 THE COURT: You're claiming here that you're losing a  
13:45:41 6 million dollars a day or a month?

13:45:43 7 MR. TIJERINO: Well, a day mostly.

13:45:45 8 THE COURT: What's your basis for saying that --

13:45:48 9 MR. TIJERINO: Well --

13:45:49 10 THE COURT: -- if you're a pauper?

13:45:50 11 MR. TIJERINO: You can charge anything you want for your  
13:45:53 12 licensing fees.

13:45:54 13 THE COURT: Have you ever made a million dollars a day  
13:45:56 14 for this app?

13:45:58 15 MR. TIJERINO: I've never made any money off of it.

13:46:00 16 THE COURT: Okay. All right. I'm sorry, go ahead.

13:46:03 17 MR. TIJERINO: Okay. So I prepared this document  
13:46:11 18 carefully. I'll do my best to stay focused and efficient. With  
13:46:15 19 the Court's permission, I may refer to the written outline to help  
13:46:18 20 me keep my remarks organized. And if there are any objections on  
13:46:22 21 the other side, I respectfully ask that we address them after I  
13:46:26 22 finish.

13:46:26 23 So we're here today to defend Spotify's motion to dismiss  
13:46:30 24 under Rule 12(b)(3) for improper venue and Rule 12(b)(6) for  
13:46:35 25 failure to state a claim. First I want to acknowledge that Spotify

13:46:39 1 preserved its rights to challenge venue procedurally, and I respect  
13:46:42 2 the Court's decision to grant a hearing on that point. I also  
13:46:45 3 thank the Court for clarifying in the June 11th order, Record  
13:46:48 4 Document 71, that my filings, including Docket 29, 33, 36, and 38,  
13:46:54 5 will be treated as part of my opposition. Those filings explain my  
13:46:58 6 patent claims, responds to Spotify's defense declarations, and  
13:47:03 7 address the venue and infringement in detail.

13:47:06 8 But today I present something a little bit more  
13:47:10 9 dispositive. The Rule 36 admissions resolve the matter. And, your  
13:47:18 10 Honor, I understand the Court may ask, why would we rely on these  
13:47:20 11 RFAs if they weren't part of the complaint? Well, respectfully the  
13:47:24 12 answer is simple. Under Rule 33(a)(3), the effect is automatic.  
13:47:29 13 These facts became binding admissions the moment Spotify failed to  
13:47:34 14 respond properly. I am not asking of sort to -- the Court to  
13:47:39 15 assume the facts, I am pointing to admission that are already  
13:47:42 16 legally established. And under the Court's June 11th order, the  
13:47:46 17 Court stated that my filings, including factual clarifications,  
13:47:49 18 would be construed as oppositions to Docket 13.

13:47:52 19 So that's all these notices do, they clarify what Spotify  
13:47:56 20 has already admitted under Rule 36.

13:47:58 21 As such, the legal landscape has shifted --

13:48:02 22 THE COURT: You understand that the Court has discretion  
13:48:09 23 to consider issues raised in motions? For instance, even though  
13:48:20 24 you correctly cited the rule regarding admissions, the Court has  
13:48:27 25 discretion to go to the dispositive motions that's been filed in

13:48:38 1 order to consider those motions and also use your rule concerning  
13:48:49 2 admissions to ask questions of your opponent. Your opponent has  
13:48:56 3 basically in oral argument here today denied -- and in their  
13:48:59 4 motions -- denied your allegations in your petition and in your  
13:49:07 5 admissions. That's the way I interpret where we are today.

13:49:12 6           You're correct, they didn't formally state a response to  
13:49:24 7 your admissions, but the effect of their motions for venue, for  
13:49:33 8 change of venue -- I mean, for dismissal under 12(b)(6), Rule 12,  
13:49:41 9 are in my view their basic response to your request for admissions.

13:49:53 10           I am making that decision because -- and I am not saying  
13:49:58 11 I agree with their position -- but at least in terms of your  
13:50:04 12 request for a default judgment, basically, because you're saying  
13:50:10 13 that by failing to formally respond to your admissions, they've  
13:50:16 14 admitted everything that you've requested in terms of the facts.

13:50:20 15           MR. TIJERINO: Yes, your Honor.

13:50:21 16           THE COURT: And I am saying to you that, no, that's  
13:50:27 17 denied, and being denied here for default judgment because they  
13:50:38 18 have preserved their rights by their motions here.

13:50:41 19           MR. TIJERINO: Correct, your Honor.

13:50:43 20           THE COURT: Do you understand? I know it may sound  
13:50:46 21 convoluted, but --

13:50:46 22           MR. TIJERINO: No, no, it makes sense, your Honor.

13:50:47 23           THE COURT: -- the law is sometimes difficult for me to  
13:50:49 24 understand, but I am clear on this point that I can go directly to  
13:50:55 25 dispositive motions in order to consider those motions in the

entire record within the confines of our rules to interpret how to deal with your argument as well as their argument.

But talk to me about -- and I understand, your position that their failure to give you a formal response to an admission is tantamount to them giving you the right to say that they have not contested your claims and that default judgment should be entered, from your point of view. I am disagreeing with you --

MR. TIJERINO: Well, I am not --

THE COURT: -- because I am going to the motions here.

MR. TIJERINO: Well, I agree with you, your Honor.

THE COURT: Your rights are preserved in that regards.

But help me understand, for instance, their venue argument. You heard me talk to them about the automatic calculation, they believe that that's irrelevant in terms of determining venue issues. They also talked about having no employees here in this district, which is a 13-parish area, the Eastern District of Louisiana, and that they have no employees or place of business here.

They do acknowledge that anyone throughout the United States, including here, can download their app and proceed to make money from whoever I guess uses it or what have you. Obviously you're saying it's a violation of your patent. But we're talking about venue right now, not the merits of your case, not whether or not you're correct in saying that they violated your patent. We're only talking about where should this case best be heard? Here --

13:52:59 1 MR. TIJERINO: Yes, your Honor.

13:52:59 2 THE COURT: -- or elsewhere?

13:53:00 3 MR. TIJERINO: It should be heard here.

13:53:02 4 THE COURT: Okay. Tell me why.

13:53:04 5 MR. TIJERINO: Well, because without reading my paper,  
13:53:09 6 effect --

13:53:09 7 THE COURT: You can read your paper.

13:53:11 8 MR. TIJERINO: Well, I mean, it's ten minutes, but.

13:53:14 9 Effectively, so what happened is that they asserted their rights to  
13:53:18 10 dismiss the case through the patent venue, but at the same time  
13:53:22 11 they admitted to venue so that means that that matter is resolved.

13:53:25 12 THE COURT: How did they admit to venue?

13:53:28 13 MR. TIJERINO: Because their request for admissions, they  
13:53:30 14 have 30 days to answer them; if they don't answer them, they're  
13:53:32 15 automatic. Like, they don't have to be ruled on, it's just  
13:53:35 16 automatic.

13:53:35 17 THE COURT: It's not simple, Mr. Tijerino.

13:53:38 18 MR. TIJERINO: But that's what I understood with the case  
13:53:42 19 law.

13:53:43 20 THE COURT: You need to give me more in terms of -- I  
13:53:48 21 understand what the rules say, the law says.

13:53:51 22 MR. TIJERINO: Okay, okay, sir.

13:53:53 23 THE COURT: But we're beyond that, we're beyond that.  
13:53:58 24 When I say we're beyond that, I disagree with you.

13:54:02 25 MR. TIJERINO: Okay.

13:54:04 1 THE COURT: They have not admitted venue.

13:54:07 2 MR. TIJERINO: But they admitted to employees in the  
13:54:09 3 district, correct, your Honor?

13:54:10 4 THE COURT: No, they didn't admit they had an employee in  
13:54:13 5 the district. You heard them say that they have no employee within  
13:54:16 6 this district.

13:54:16 7 MR. TIJERINO: They admitted to four employees in the  
13:54:19 8 district.

13:54:19 9 THE COURT: I'm sorry?

13:54:20 10 MR. TIJERINO: They admitted to four employees in the  
13:54:22 11 district.

13:54:22 12 THE COURT: Four?

13:54:22 13 MR. TIJERINO: Yes, your Honor.

13:54:23 14 THE COURT: Where?

13:54:24 15 MR. TIJERINO: In my request for admissions. They said  
13:54:28 16 it was admitted, they said we admit to four employees in the  
13:54:30 17 district.

13:54:31 18 THE COURT: Help me understand that. What four employees  
13:54:38 19 did they admit were in this district?

13:54:41 20 MR. TIJERINO: I mean, they didn't specify -- because I  
13:54:44 21 found one, because at first they said they don't have employees in  
13:54:47 22 the district --

13:54:48 23 THE COURT: Right.

13:54:48 24 MR. TIJERINO: -- in their motion to dismiss. So I found  
13:54:51 25 somebody on LinkedIn saying --

13:54:52 1 THE COURT: And in the motion to change venue.

13:54:56 2 MR. TIJERINO: Right. So I found one that said that they  
13:54:58 3 work in New Orleans, that they work for Spotify.

13:55:01 4 THE COURT: Who?

13:55:02 5 MR. TIJERINO: Some lady on LinkedIn.

13:55:04 6 THE COURT: On LinkedIn?

13:55:05 7 MR. TIJERINO: On LinkedIn.

13:55:08 8 THE COURT: Do you have that in your pleadings?

13:55:09 9 MR. TIJERINO: I do have it on the record.

13:55:11 10 THE COURT: Where?

13:55:12 11 MR. TIJERINO: Docket 24 as an exhibit.

13:55:15 12 THE COURT: This is the one concerning admissions?

13:55:17 13 MR. TIJERINO: This is the one concerning venue. Like I  
13:55:19 14 said, I found an employee in the district, so...

13:55:22 15 THE COURT: What's that employee's name?

13:55:24 16 MR. TIJERINO: I don't have it like on me right now.

13:55:28 17 THE COURT: I didn't see that in your opposition. Your  
13:55:30 18 opposition is at Record Document 28, not 24.

13:55:38 19 MR. TIJERINO: So my opposition is 28? Then it would be  
13:55:40 20 in 28 then.

13:55:50 21 THE COURT: One of the things you have to remember is,  
13:55:52 22 just like they have to comply with this, when you respond to the  
13:55:57 23 other side's motion, you've got to state your support for that  
13:56:07 24 motion, facts, law, et cetera.

13:56:10 25 MR. TIJERINO: So I do have, your Honor, their answers to

13:56:13 1 my requests for admissions with me.

13:56:15 2 THE COURT: Okay.

13:56:16 3 MR. TIJERINO: And in that exhibit it will say that it  
13:56:18 4 was submitted that they have four employees in the district.

13:56:20 5 THE COURT: Let me just go to them on that particular  
13:56:23 6 point. Do you want to respond to that, Counsel?

13:56:25 7 MR. MOONEY: Yes, your Honor. We do have four employees  
13:56:31 8 who work remotely from this district and I do believe --

13:56:33 9 THE COURT: From this district or working in this  
13:56:36 10 district?

13:56:37 11 MR. MOONEY: I am not sure I understand the distinction,  
13:56:42 12 your Honor. We have four --

13:56:42 13 THE COURT: There's a big distinction. If they're from  
13:56:44 14 here and living elsewheres, that's different from if they're living  
13:56:48 15 here at the time the complaint was filed.

13:56:50 16 MR. MOONEY: My understanding is that today there are  
13:56:52 17 four Spotify employees who live in the district and work remotely  
13:56:59 18 from their homes in the district.

13:57:01 19 THE COURT: Well, that's what I asked you earlier and you  
13:57:03 20 told me that you didn't have anyone.

13:57:06 21 MR. MOONEY: I don't believe that --

13:57:08 22 THE COURT: Which is it?

13:57:09 23 MR. MOONEY: I don't believe that I said that, your  
13:57:10 24 Honor, and I hope that I didn't. We have four employees.

13:57:12 25 And that's the only reason, your Honor, that we're here

13:57:14 1 talking about anything. The question before the Court is whether  
13:57:19 2 four remote employees can constitute a regular and established  
13:57:23 3 place of business. That's the issue before the Court today.

13:57:32 4 THE COURT: Let me simplify this. By statute, Title 28,  
13:57:45 5 United States Code, Section 1406(a), "The district court of a  
13:57:50 6 district in which is filed a case laying venue in the wrong  
13:57:56 7 division or district shall dismiss, or if in the interest of  
13:58:00 8 justice, transfer such case to any district or division in which it  
13:58:05 9 could have been brought. Once a defendant challenges venue, the  
13:58:10 10 burden is on the plaintiff to establish that venue is proper.

13:58:14 11 On a Rule 12(b)(3) motion to dismiss for improper venue,  
13:58:20 12 the Court must accept as true all allegations in the complaint and  
13:58:25 13 resolve all conflicts in favor of the plaintiff.

13:58:31 14 Under that rule, the Court is permitted, however, to look  
13:58:34 15 at evidence in the record beyond simply those facts alleged in the  
13:58:39 16 complaint and its proper attachments. Whether venue is proper  
13:58:45 17 under Section 1400(b), however, is an issue unique to patent law  
13:58:50 18 and is governed in Federal Circuit law. *In re: ZTE (USA) Inc.*,  
13:58:58 19 Federal Circuit case from 2018. "The requirement of venue is  
13:59:04 20 specific and unambiguous; it is not one of those vague principles  
13:59:09 21 which, in the interest of some overriding policy, is to be given a  
13:59:13 22 liberal construction. Citing *in re: Cray*, Fifth Circuit case from  
13:59:19 23 2017.

13:59:21 24 Quoting the Supreme Court case of *Schnell v. Peter*  
13:59:25 25 *Eckrich & Sons, Inc.* from 1961. A civil action for patent

13:59:33 1 infringement may be brought in a judicial district where the  
13:59:36 2 defendant either: One, resides; or two, committed acts of  
13:59:42 3 infringement and has a regular and established place of business.

13:59:50 4 See Title 28, U.S. Code, Section 1400(b). A domestic  
13:59:56 5 corporation resides only in the state of incorporation for purposes  
14:00:01 6 of the patent venue statute. Fifth Circuit case of 2012, *Andra*  
14:00:09 7 *Group, LP v. Victoria Secret*, quoting from Supreme Court case of *TC*  
14:00:18 8 *Heartland, LLC v. Kraft Foods*, Supreme Court 2017.

14:00:23 9 Here, no one disputes that the defendant Spotify USA is  
14:00:32 10 incorporated in the state of Delaware and has its principal place  
14:00:36 11 of business in New York City. See Record Documents 12 and 13-3,  
14:00:45 12 paragraph three and four.

14:00:57 13 The issue here is whether or not Spotify has an office in  
14:01:03 14 the Eastern District of Louisiana or otherwise own or lease real  
14:01:08 15 estate in this district. According to Spotify, it does not own or  
14:01:18 16 lease real estate in this district. So the question becomes does  
14:01:23 17 it have an office here, and the only remaining venue question then  
14:01:28 18 is whether it is made a showing -- whether Mr. Tijerino has made a  
14:01:34 19 showing that Spotify has a regular and established place of  
14:01:39 20 business in this district and whether an act of patent infringement  
14:01:46 21 occurred in this district.

14:01:49 22 As I questioned counsel for defendant earlier about the  
14:01:55 23 term regular and established place of business, there are three  
14:02:01 24 requirements to show that: (1) there must be a physical place in  
14:02:06 25 the district; (2) it must be a regular and established place of

14:02:11 1 business; and (3) it must be in the place -- it must be the place  
14:02:18 2 of the defendant. Again, Federal Circuit case of 2021 *Andra Group,*  
14:02:26 3 *LP v. Victoria Secret, LLC*. "A 'place' merely needs to be a  
14:02:34 4 'physical geographical location in the district from which the  
14:02:37 5 business of the defendant is carried out.'" *In re: Google, LLC*  
14:02:43 6 from the Federal Circuit 2020 (quoting again the *Cray* case from the  
14:02:50 7 Federal Circuit in 2017). "A 'place of business' is not restricted  
14:02:56 8 to real property that the defendant must own or lease ... the  
14:03:02 9 statute could be satisfied by any physical place that the defendant  
14:03:05 10 could possess or control. Again, the *in re: Google, LLC* case  
14:03:15 11 (citing again the Federal Circuit case of *Cray*). "A 'place of  
14:03:20 12 business' generally requires an employee or agent of the defendant  
14:03:25 13 to be conducting business at that place.

14:03:30 14 I ask you again, Counsel for Spotify, do you have such an  
14:03:35 15 employee in this district?

14:03:36 16 MR. MOONEY: Your Honor, we have four remote employees  
14:03:43 17 who work in this district. Those remote employees considered  
14:03:47 18 individually or collectively do not as a matter of law under  
14:03:50 19 controlling Supreme Court and Federal Circuit constitute Spotify's  
14:03:55 20 established a regular place of business.

14:03:56 21 MR. TIJERINO: Your Honor, I would like to object to  
14:03:58 22 that.

14:03:58 23 THE COURT: "In determining whether a corporate defendant  
14:04:01 24 has a regular and established place of business in the district,  
14:04:03 25 the appropriate inquiry is whether the corporate defendant does its

14:04:07 1 business in that district through a permanent and continuing  
14:04:11 2 presence there and not whether it has a fixed physical presence in  
14:04:16 3 the sense of a formal office or store. In other words, it could be  
14:04:22 4 a virtual presence. Thus, in the absence of a physical building it  
14:04:31 5 is not dispositive. Even so, a 'virtual place' or 'electronic  
14:04:37 6 communications from one person to another' does not constitute a  
14:04:42 7 regular and established place of business. *In re: Google*, Federal  
14:04:47 8 Circuit, 2020.

14:04:50 9 That, Mr. Tijerino, is what the defendant is saying.  
14:04:55 10 That even though it may have employees here who operate through a  
14:05:09 11 virtual manner, they're saying that that virtual or electronic  
14:05:16 12 communications from one person to another does not constitute a  
14:05:21 13 regular and established place of business. What's your response to  
14:05:24 14 that case?

14:05:25 15 MR. TIJERINO: Okay, your Honor. My response to that is  
14:05:28 16 that venue is controlled by 1400(b) and all circuit cases, not  
14:05:33 17 just -- *Cray* is like the standard, that was the original one,  
14:05:37 18 everybody refers to *Cray*, but there is many cases that go --  
14:05:43 19 they're a little bit different but they refer to *Cray*.

14:05:45 20 So the reason why it's a regular established place of  
14:05:48 21 business is because it's not a transient thing, it's not a  
14:05:52 22 temporary employee. It's a permanent salaried employee. So  
14:05:55 23 they're here permanently and they're doing business permanently,  
14:05:59 24 they work in this district, they make money for Spotify. So it's  
14:06:04 25 not remote employees that work for themselves. Whatever they do

14:06:08 1 benefits Spotify. And in the *Monolithic* case that I showed, that  
14:06:15 2 it was four remote employees, that satisfied the *Cray* rule. They  
14:06:22 3 refer back to *Cray* as well.

14:06:24 4 But they said it didn't matter if the employment can be  
14:06:29 5 performed anywhere else, it didn't matter if they were remote  
14:06:32 6 employees, it didn't matter that they didn't have an office. The  
14:06:37 7 person's home is considered the office of the company. So because  
14:06:42 8 the person is conducting business at their home, you're working  
14:06:47 9 from home, it's still considered part of the -- for the venue part  
14:06:53 10 that an employee working from home can be considered as permanent  
14:06:57 11 and established for that purpose.

14:07:04 12 So that's kind of like the points that I had with that.

14:07:09 13 I had another point, I almost had it. Permanent and  
14:07:14 14 established -- and I mean, they even advertise here. They said it  
14:07:18 15 was an accidental thing, but the application that they use is a job  
14:07:26 16 tracking system, which is connected to a job application system,  
14:07:29 17 which is ZipRecruiter, they're connected and that's why, you  
14:07:38 18 know --

14:07:38 19 THE COURT: I am not counting your argument concerning  
14:07:42 20 this issue of Louisiana legislature and its taxation or what have  
14:07:52 21 you on streaming services. That to me is irrelevant.

14:07:57 22 What I am looking at, however, is to what extent, if any,  
14:08:01 23 Spotify employs remote work staff in Louisiana, post job openings  
14:08:07 24 in this district, supplies Louisiana employees in this district  
14:08:12 25 with company equipment, provides an operational base within the

14:08:18 1 state. Which you've argued here.

14:08:20 2 Is there anything else that you want to argue to me on  
14:08:24 3 that point, on those points?

14:08:25 4 MR. TIJERINO: Well, on that specific point, there were  
14:08:28 5 multiple venue arguments, so that is one venue argument, which is  
14:08:33 6 more of a brick and mortar one.

14:08:36 7 THE COURT: I am not -- brick and mortar doesn't matter.  
14:08:39 8 They could be a virtual business.

14:08:40 9 MR. TIJERINO: Yes, your Honor.

14:08:41 10 THE COURT: Is there any other argument you want to give  
14:08:43 11 me?

14:08:44 12 MR. TIJERINO: For that, venue, or for --

14:08:47 13 THE COURT: Venue in general.

14:08:49 14 MR. TIJERINO: Okay. So -- yes, your Honor.

14:08:52 15 THE COURT: I need you to tell me other than if they have  
14:08:57 16 employees in this district and they're operating Spotify's business  
14:09:02 17 and they're doing it virtually, is there anything else to support  
14:09:06 18 venue other than those issues?

14:09:08 19 MR. TIJERINO: Yes, your Honor, there is.

14:09:09 20 THE COURT: What?

14:09:10 21 MR. TIJERINO: That the Spotify for Artists platform is a  
14:09:14 22 for business, it's not a public facing app. The app that they told  
14:09:19 23 you about was the one that plays music for regular customers and  
14:09:23 24 they say this isn't commercial, but the infringing product Spotify  
14:09:26 25 for Artists is commercial. And so they use it at studios in

14:09:30 1 Louisiana with record labels and that's -- that was why I showed  
14:09:36 2 the record label and stuff. But that's also a different venue  
14:09:39 3 argument, but it still supports venue because the infringing  
14:09:44 4 product is being used --

14:09:45 5 THE COURT: All right. It requires them to conduct  
14:09:49 6 regular business, okay. If that's regular business, that's regular  
14:09:52 7 business. Is there anything else?

14:09:55 8 MR. TIJERINO: That's what I have.

14:09:56 9 THE COURT: Let's go to your opponent on rebuttal.

14:10:03 10 MR. TIJERINO: Okay. Thank you, your Honor.

14:10:05 11 THE COURT: Counsel.

14:10:06 12 MR. MOONEY: Thank you, your Honor. Just quickly, your  
14:10:09 13 Honor.

14:10:09 14 THE COURT: You're sinking right now.

14:10:13 15 MR. MOONEY: Sinking?

14:10:16 16 THE COURT: Uh-huh. Tell me why I shouldn't sink you all  
14:10:18 17 the way.

14:10:19 18 MR. MOONEY: Well, venue here, your Honor, what we just  
14:10:24 19 heard is just not the law, if I may just very quickly.

14:10:26 20 Spotify for Artists, Spotify is not here in the district  
14:10:28 21 doing any work with artists using Spotify for Artists.

14:10:33 22 As far as what the law is --

14:10:34 23 THE COURT: I am not concerned about artists, I am only  
14:10:38 24 concerned about employees of Spotify.

14:10:39 25 MR. MOONEY: Yeah. I don't know, your Honor, that I can

14:10:41 1 make it any clearer, but this is the law.

14:10:45 2 THE COURT: I don't want to know right now the law. I  
14:10:47 3 know the law. My question to you is, again, if I have to make it  
14:10:53 4 clearer, do you have employees in this district working for Spotify  
14:10:57 5 conducting business for Spotify virtually?

14:11:00 6 MR. MOONEY: Spotify has employees --

14:11:03 7 THE COURT: Yes, no, you don't know.

14:11:05 8 MR. MOONEY: I don't know what conducting business  
14:11:07 9 virtually means, but if that means having remote employees who work  
14:11:11 10 in the district, we have four of them and --

14:11:13 11 THE COURT: Then your answer to my question is yes.

14:11:17 12 MR. MOONEY: Yes, Spotify has four employees who choose  
14:11:20 13 to live in this district and do their work in this district, that  
14:11:23 14 is correct.

14:11:23 15 THE COURT: And they do that on a regular basis?

14:11:25 16 MR. MOONEY: I don't have their time sheets, but I'm sure  
14:11:29 17 that they do work many of their hours at their homes --

14:11:32 18 THE COURT: Are they exclusive employees of Spotify or  
14:11:33 19 are they shared with other entities?

14:11:35 20 MR. MOONEY: I am not aware of them having other  
14:11:38 21 employers. But again, *in re: Cray* by itself could not be clearer  
14:11:43 22 that that is not enough for a regular and established place of  
14:11:47 23 business.

14:11:47 24 THE COURT: Do you supply them with equipment to operate  
14:11:50 25 the virtual business?

14:11:52 1 MR. MOONEY: Those employees do have a computer in order  
14:11:57 2 to do their work, and the cases are quite clear that the provision  
14:12:00 3 of --

14:12:01 4 THE COURT: Is that supplied to them by Spotify?

14:12:03 5 MR. MOONEY: The computer is a company-owned computer  
14:12:06 6 and --

14:12:06 7 THE COURT: So the answer to my question is yes.

14:12:08 8 MR. MOONEY: -- case law, again, is clear that the  
14:12:09 9 provision of a company-owned computer is simply not enough to make  
14:12:14 10 that a regular and established place of business of the employer.

14:12:15 11 THE COURT: So how can *Cray* be more clear and the cases  
14:12:20 12 interpreting *Cray*, including the *Google* case, the Secret Service  
14:12:25 13 case -- the *Victoria Secret* case be more clear? If you had  
14:12:30 14 employees working in this district conducting regular business for  
14:12:36 15 Spotify virtually, supplying them with company-owned equipment to  
14:12:48 16 do that, how can that not be considered maintaining a regular place  
14:12:55 17 of business under venue for patent cases and the statute that I  
14:13:02 18 quoted in that regards?

14:13:04 19 MR. MOONEY: Because --

14:13:05 20 THE COURT: Is that subject to some interpretation or  
14:13:07 21 exception than what I am talking about here?

14:13:09 22 MR. MOONEY: Well, with all due respect, your Honor, it's  
14:13:12 23 not up to us to define what that is and the Federal Circuit has  
14:13:16 24 explained what that is. And *in re: Cray*, by itself, establishes  
14:13:20 25 that the presence of a remote employee is not enough to have a

14:13:24 1 regular and established place of business. That's what the Federal  
14:13:28 2 Circuit held, that case has been followed, and several district  
14:13:31 3 courts since then have found exactly the same thing, that the  
14:13:35 4 presence of a remote employee working in their home is not enough  
14:13:38 5 as a matter of law to constitute --

14:13:41 6 THE COURT: Conducting Spotify business with a Spotify  
14:13:43 7 computer and equipment?

14:13:44 8 MR. MOONEY: Correct, your Honor. Correct, your Honor.  
14:13:45 9 And the remote employee cases, we have cited several of them --

14:13:50 10 THE COURT: Back to the question I asked you earlier.  
14:13:52 11 Then what's enough?

14:13:54 12 MR. MOONEY: What's enough? The courts have been very  
14:13:56 13 clear in that regard, both you look at *in re: Cray*. *In re: Cray*  
14:14:01 14 provides a list of factors, plus factors to consider, which I went  
14:14:06 15 through, I won't go through that again, but the decisions since  
14:14:09 16 then have drawn a very firm line.

14:14:12 17 THE COURT: I'm asking you what are the factors?

14:14:13 18 MR. MOONEY: Yes, this is the line.

14:14:13 19 THE COURT: What are the factors?

14:14:14 20 MR. MOONEY: This is the line, your Honor. If an  
14:14:16 21 employer requires as a condition of the employee's business that  
14:14:20 22 they -- the employment rather, that that employee stay in the  
14:14:25 23 district or the employer shows that they're going to employ more  
14:14:30 24 people in that district, if they require the employee to stay  
14:14:32 25 working in that district, that could be enough. We don't have that

14:14:38 1 here --

14:14:39 2 THE COURT: I don't read *Cray* to say that.

14:14:45 3 MR. MOONEY: -- in fact, we have the opposite. Your  
14:14:45 4 Honor, that's one of the things that *Cray* says to look -- that's  
14:14:48 5 exactly one of the things that *Cray* says to look at. There's a  
14:14:51 6 list of features in *Cray* --

14:14:52 7 THE COURT: I agree with you, it requires that you have  
14:14:54 8 an employee that works in the district, carrying on Spotify's  
14:14:58 9 business, using Spotify's supplied equipment or owned equipment to  
14:15:05 10 do that virtually. What you're saying is that the exception to  
14:15:12 11 that rule is where Spotify would require that employee to operate  
14:15:18 12 only in this district. Is that the way you read *Cray*?

14:15:23 13 MR. MOONEY: Not my reading of *Cray* and not my intended  
14:15:26 14 argument, your Honor. Once again --

14:15:27 15 THE COURT: Then what is, because you're confusing me  
14:15:29 16 now.

14:15:30 17 MR. MOONEY: So *Cray* laid out several factors, right. So  
14:15:33 18 *Cray* -- again, *Cray* had remote employees, right. So if a remote  
14:15:38 19 employee working in a district was enough, that decision wouldn't  
14:15:42 20 have been so long, right. *Cray* said it wasn't enough. And *Cray*  
14:15:46 21 said what you have to do in that circumstance because that's not  
14:15:49 22 enough, is you have to look to see if there are other things that  
14:15:54 23 would transform that employee's house into an employer's place of  
14:15:59 24 business.

14:16:00 25 The things that *Cray* said to look to were whether the

14:16:04 1 company owned, leased, or rented part of the home; whether the  
14:16:08 2 company required that the employee store inventory or conduct  
14:16:15 3 demonstrations from its home; or whether the employee's employment  
14:16:19 4 was conditioned on them staying in the district. That's what Cray  
14:16:24 5 suggested ought to be looked to. Cray found that those things  
14:16:28 6 weren't present, and therefore, even though there were remote  
14:16:33 7 employees working on computers at their home, it wasn't enough, and  
14:16:37 8 the Federal Circuit told Judge Gilstrap that he had to transfer the  
14:16:43 9 case. Since the --

14:16:44 10 THE COURT: So even if they're working in this district,  
14:16:51 11 conducting Spotify's business on a regular basis with company  
14:16:54 12 equipment from Spotify, don't own or lease the residence that the  
14:17:00 13 employee's working out of, that the only way that venue would exist  
14:17:06 14 here from your reading of Cray would be if Spotify required that  
14:17:10 15 person to only operate in this district?

14:17:15 16 MR. MOONEY: A little different, your Honor. What I am  
14:17:17 17 saying --

14:17:17 18 THE COURT: How is it different from what you just said?

14:17:20 19 MR. MOONEY: In this way. Cray finds that the very  
14:17:25 20 situation we have here, remote employees regularly working in the  
14:17:29 21 district, is not enough.

14:17:31 22 THE COURT: And you just identified a factor if you  
14:17:34 23 required them to only work in this district.

14:17:36 24 MR. MOONEY: Yes. Cray explained that remote employees  
14:17:41 25 working in the district is not enough.

14:17:42 1 THE COURT: Okay.

14:17:43 2 MR. MOONEY: Cray said instead you have to look to see if  
14:17:46 3 there's some reason beyond somebody typing on a computer at home,  
14:17:51 4 like much of the work force today, if there's some other reason to  
14:17:55 5 transform that house into the employer's regular and established  
14:17:58 6 place of business. And the Federal Circuit said what you should  
14:18:01 7 look for --

14:18:02 8 THE COURT: Like requiring them to only operate in this  
14:18:04 9 district?

14:18:05 10 MR. MOONEY: No, your Honor. There are three different  
14:18:07 11 things that I called out there. One was whether they owned, lease,  
14:18:10 12 or rent part of the house --

14:18:11 13 THE COURT: You think that's exclusive?

14:18:13 14 MR. MOONEY: I don't. Once again, there are three things  
14:18:15 15 I was going to go through, your Honor. One is that. A second one  
14:18:18 16 is whether they conditioned the employee's employment on remaining  
14:18:23 17 in the district; and a third one is whether they store inventory or  
14:18:27 18 some sort of physical goods, et cetera. Those are the, at a high  
14:18:30 19 level, those are the important factors.

14:18:32 20 And at a very high level, the cases following Cray have  
14:18:35 21 come down like this:

14:18:36 22 If an employee is required to stay in a district or an  
14:18:42 23 employee is required to store equipment or inventory at their home,  
14:18:47 24 that generally is going to be enough to transform their home into a  
14:18:52 25 regular and established place of business. If the employee is not

14:18:55 1 required to stay in the district as a condition of their employment  
14:18:58 2 and the employee is not required to store inventory and other hard  
14:19:04 3 goods of the employer at their home, that is not going to be enough  
14:19:07 4 to transform their home to the employer's place of business. And  
14:19:11 5 this is --

14:19:12 6 THE COURT: If that first factor that you mentioned about  
14:19:15 7 requiring them to stay in the district to conduct that business, we  
14:19:25 8 already excluded the other factor, the one about storing inventory,  
14:19:29 9 all we're talking about here is requiring them to stay in the  
14:19:33 10 district. If there is some question about that, should not,  
14:19:40 11 according to the cases interpreting the venue for patent matters,  
14:19:46 12 give the benefit of the doubt to the plaintiff?

14:19:49 13 MR. MOONEY: On the issue of requiring the employees to  
14:19:53 14 stay in the district --

14:19:54 15 THE COURT: If there's doubt.

14:19:56 16 MR. MOONEY: Well, there is no doubt.

14:19:58 17 THE COURT: If there is doubt though.

14:19:59 18 MR. MOONEY: Well, I think in this circumstance, your  
14:20:01 19 Honor, there is no doubt because both --

14:20:02 20 THE COURT: You're not answering my question.

14:20:04 21 MR. MOONEY: If there is doubt --

14:20:05 22 THE COURT: If I find there is doubt in that regard, is  
14:20:08 23 that enough, if I am correct there's doubt -- if, you're not  
14:20:13 24 conceding that there's doubt, I am just asking as a hypothetical --  
14:20:16 25 if I find that there is doubt and I am correct on that finding, is

14:20:21 1 that enough to maintain venue here?

14:20:23 2 MR. MOONEY: I think, your Honor, to maintain --

14:20:26 3 THE COURT: Giving the benefit of the doubt to the  
14:20:29 4 plaintiff.

14:20:29 5 MR. MOONEY: A couple of things, your Honor. I think  
14:20:31 6 that if there was an allegation of that or an allegation that could  
14:20:38 7 be favorably construed to suggest that, or if there were other  
14:20:41 8 reasons to believe --

14:20:43 9 THE COURT: We're not talking about a factual allegation,  
14:20:44 10 we're talking about a legal principle. If I am correct in saying  
14:20:49 11 that there is doubt and giving the benefit of that doubt to the  
14:20:52 12 plaintiff, as a matter of law is that incorrect?

14:20:56 13 MR. MOONEY: I do not believe that you could hold the  
14:20:59 14 case here and find that venue is proper if there is doubt. What  
14:21:03 15 might happen in that case is you would have to resolve the doubt,  
14:21:06 16 perhaps through venue-related discovery in that particular case.  
14:21:12 17 And that would resolve the doubt and then your Honor would decide  
14:21:15 18 one way or the other.

14:21:17 19 Now, that is not this case, because in this case we have  
14:21:20 20 a declaration submitted by Ms. Goring establishing that the  
14:21:23 21 employees are not required to stay here.

14:21:25 22 Moreover, we have an advertisement, the Spotify version  
14:21:30 23 of the ad submitted by Mr. Tijerino, there on its face says  
14:21:35 24 employees can live wherever they want to live. And so here there  
14:21:37 25 is no reason to believe it --

14:21:38 1 THE COURT: All right. Here is what we're going to do  
14:21:41 2 because I want to make this record clear. I am going to allow  
14:21:45 3 discovery, limited discovery on the venue issue on that declaration  
14:21:55 4 of your Spotify executive that it does not require the employee in  
14:22:03 5 this district to maintain a residence in this district in order to  
14:22:15 6 conduct Spotify's business. That can be done by written  
14:22:20 7 interrogatory or it can be done by in-person depositions.

14:22:27 8 Mr. Tijerino, I am giving you the opportunity because  
14:22:32 9 it's your burden to prove venue. But if I have some question, some  
14:22:39 10 doubt on what the facts are, and given the Circuit's directive to  
14:22:50 11 trial courts to give pro se plaintiffs like yourself level  
14:22:58 12 opportunity in connection with your pleadings, I am allowing you to  
14:23:05 13 conduct a deposition of their representative who gave their  
14:23:08 14 declaration that they do not require employees in this district to  
14:23:16 15 maintain a presence in this district. Do you understand that?

14:23:20 16 MR. TIJERINO: Yes, your Honor.

14:23:22 17 THE COURT: Do you understand what a deposition is?

14:23:24 18 MR. TIJERINO: It's when I ask them verbal questions,  
14:23:27 19 your Honor?

14:23:27 20 THE COURT: You ask them verbal questions, they're under  
14:23:31 21 oath, and then the opposing counsel is present who can then ask  
14:23:36 22 questions after you, and just like we did here today, you would  
14:23:40 23 have a chance to follow-up with any rebuttal or redirect questions.

14:23:46 24 You would be the proponent for the deposition. You would  
14:23:52 25 have to give them what we call a written notice of deposition,

14:23:56 1 that's under the rule, Rule 30. You would have to have a  
14:24:04 2 deposition -- and it can be done either way, it can be done orally  
14:24:08 3 in person or even remotely, but I prefer this one to be done in  
14:24:14 4 person. In fact, it should be done maybe today since everybody is  
14:24:18 5 here, because I don't think it would be a long deposition.

14:24:21 6 But I am going to require, though, that in connection  
14:24:23 7 with that deposition that whatever advertisement that's made to  
14:24:35 8 recruit those employees or employees in this district showing the  
14:24:42 9 conditions of that employment be made part of that deposition  
14:24:47 10 record. So they're required to produce corroborative information  
14:24:56 11 to that statement that employees are not required to work in this  
14:25:02 12 district.

14:25:03 13 That can be the recruiting advertisements that say what  
14:25:08 14 the conditions of employment is, it can be an actual agreement  
14:25:12 15 between the employee and Spotify to show what the conditions of  
14:25:16 16 their employment is. Any corroboration like that. That should be  
14:25:25 17 given to you prior to the deposition.

14:25:28 18 MR. TIJERINO: Your Honor, I do have a question. In that  
14:25:31 19 case that I cited in re: *Monolithic*, like I said, there was a lot  
14:25:36 20 of cases that all refer back to *Cray* and every case is individually  
14:25:42 21 different. The one that the defendant is citing, it's kind of  
14:25:46 22 making it sound like it's a warehouse kind of thing, oh, you don't  
14:25:49 23 have to store stuff and all that. But there have been cases --

14:25:51 24 THE COURT: We're not talking about storing of equipment.  
14:25:54 25 We're talking about whether or not they require the employee to

14:25:57 1 work in the district. That's a simple question.

14:25:59 2 MR. TIJERINO: Yes, sir.

14:26:00 3 THE COURT: And what corroboration do they have for that  
14:26:03 4 statement.

14:26:03 5 MR. TIJERINO: What I was going to say, your Honor, is  
14:26:06 6 how is that relevant to venue because --

14:26:08 7 THE COURT: It is very relevant to venue under Cray if  
14:26:11 8 you read Cray again --

14:26:12 9 MR. TIJERINO: But only in the case that he cited.

14:26:14 10 THE COURT: -- and also in cases interpreting Cray. It  
14:26:17 11 is very relevant. Even if you disagree with me that it's relevant,  
14:26:21 12 it is relevant.

14:26:22 13 MR. TIJERINO: I wasn't disagreeing, I was just saying  
14:26:25 14 that in the case that I cited, that was just kind of like the icing  
14:26:28 15 on the cake, you know --

14:26:28 16 THE COURT: There is no icing on the cake in this case, I  
14:26:31 17 haven't seen any, from either one of you.

14:26:36 18 I am giving you that opportunity, Mr. Tijerino. You all  
14:26:40 19 can work it out, but you're the proponent on that.

14:26:48 20 How much time do you think you need to prepare for that  
14:26:50 21 deposition because -- well, let me first ask counsel for Spotify.  
14:26:54 22 How much time do you think your client needs to provide the  
14:26:58 23 corroborative information?

14:26:59 24 MR. MOONEY: Well, your Honor, I was wondering whether a  
14:27:02 25 deposition is necessary or whether --

14:27:03 1 THE COURT: Counsel, I am ordering a deposition.

14:27:05 2 MR. MOONEY: A deposition, okay. So for us to provide  
14:27:06 3 information relating to the terms of employment for those four  
14:27:10 4 employees, maybe a week or ten days. Not because it's difficult,  
14:27:16 5 your Honor, it's a big organization --

14:27:17 6 THE COURT: I give 14 days from today to provide  
14:27:20 7 corroborative information to Mr. Tijerino on that declaration  
14:27:24 8 statement respecting the locality of employees and where they're  
14:27:29 9 required to work or not. The conditions of their services in that  
14:27:33 10 regards.

14:27:34 11 MR. MOONEY: Okay, your Honor, understood.

14:27:37 12 THE COURT: You already indicated the other things that  
14:27:39 13 doesn't seem to be contested, that they are here, they have company  
14:27:44 14 equipment, they conduct Spotify business. The only question is,  
14:27:51 15 does Spotify have corroborative information to show that they are  
14:27:56 16 not required to live in this district.

14:28:00 17 MR. MOONEY: Understood, your Honor.

14:28:02 18 THE COURT: And 14 days he will give you that  
14:28:05 19 information, Mr. Tijerino. I am going to give you another 14 days  
14:28:09 20 to review that information from the point of receipt of it, 14 days  
14:28:15 21 to review it, and then to give to the defense a notice of the  
14:28:24 22 deposition. Read Rule 30 and Rule 31 of the rules concerning how  
14:28:31 23 depositions are set up and to be conducted.

14:28:35 24 Thirty is for oral examination, 31 is by written  
14:28:39 25 interrogatory. Just like you submitted to them written requests

14:28:43 1 for admissions, you can submit under Rule 31 a written set of  
14:28:51 2 interrogatories. I would think no more than 10 or 20 questions  
14:28:58 3 would be enough, but I am giving you up to 25 questions if you  
14:29:04 4 want.

14:29:04 5 MR. TIJERINO: I did submit interrogatories, your Honor.

14:29:07 6 THE COURT: You did?

14:29:07 7 MR. TIJERINO: Yes, sir, they didn't answer them. They  
14:29:10 8 objected to everything.

14:29:11 9 THE COURT: Okay. Well, they're being ordered to answer  
14:29:13 10 now. But if you submit to them a question that's irrelevant to the  
14:29:17 11 issue of venue, then they have the right to make that objection to  
14:29:20 12 your interrogatory or even if it's orally done.

14:29:24 13 You have the option of doing an oral deposition in person  
14:29:32 14 or the written interrogatory.

14:29:34 15 Let me give you another thing that you may not know.  
14:29:40 16 When you do an oral deposition in person of a corporate  
14:29:46 17 representative, they're ordinarily entitled to have that deposition  
14:29:49 18 occur in their principal place of business where their records are  
14:29:57 19 kept. That might be New York, may be Delaware, they say New York.  
14:30:04 20 So if you do an oral deposition, under the rule it would ordinarily  
14:30:10 21 be conducted in New York of their corporate representative because  
14:30:14 22 that's where they say their principal place of business is. Or you  
14:30:18 23 have that option to do it by written interrogatory.

14:30:23 24 We're only talking about venue --

14:30:25 25 MR. TIJERINO: Yes, your Honor.

14:30:26 1 THE COURT: -- we're not talking about the merits of your  
14:30:29 2 case.

14:30:29 3 MR. TIJERINO: And I am deposing who exactly? Am I  
14:30:31 4 deposing the employees that work --

14:30:31 5 THE COURT: The person who gave the declaration saying  
14:30:33 6 that they have -- they do not require their employees to reside in  
14:30:38 7 this district to conduct Spotify business.

14:30:41 8 MR. TIJERINO: Which declaration was that, Mr. Mooney?

14:30:45 9 THE COURT: Read the declaration, he quoted it a number  
14:30:47 10 of times.

14:30:49 11 MR. TIJERINO: I only saw two. I saw --

14:30:51 12 THE COURT: Is it the lady here?

14:30:53 13 MR. MOONEY: The declaration is not from the corporate  
14:30:55 14 representative here today, no.

14:30:56 15 THE COURT: Who is the corporate representative?

14:30:58 16 MR. MOONEY: Lindsey Goring is the Senior Global HR  
14:31:02 17 Program Manager.

14:31:03 18 THE COURT: Goring is the person who gave that  
14:31:05 19 declaration.

14:31:05 20 MR. TIJERINO: That was about the ad, correct?

14:31:07 21 THE COURT: That's about what?

14:31:09 22 MR. TIJERINO: The advertisement, like she said she  
14:31:10 23 didn't know how the ad --

14:31:12 24 THE COURT: No, it's about, it's about do they require.  
14:31:18 25 He said -- that declaration said they don't require employees to

14:31:21 1 work in the district, exclusively within the district, or just they  
14:31:26 2 don't require them to work in the district. Do you understand?

14:31:30 3 MR. TIJERINO: Yes, sir.

14:31:32 4 THE COURT: We're not talking about inventory, we're not  
14:31:35 5 talking about --

14:31:36 6 MR. TIJERINO: I understand.

14:31:37 7 THE COURT: We're only talking about that one very fine  
14:31:40 8 question. So if you ask a bunch of questions that has no  
14:31:46 9 relationship to that matter, they're going to object to it, and I  
14:31:50 10 might have to sustain that objection if they are correct. Do you  
14:31:56 11 follow me?

14:31:56 12 MR. TIJERINO: Yes, sir.

14:31:57 13 THE COURT: All right. I am trying to simplify this as  
14:32:00 14 best as I can.

14:32:00 15 MR. TIJERINO: Yes, your Honor. I was just asking  
14:32:02 16 because when I read the declaration it was mostly about  
14:32:06 17 regarding --

14:32:07 18 THE COURT: We're not talking about anything in the  
14:32:09 19 declaration other than --

14:32:10 20 MR. TIJERINO: Other than --

14:32:11 21 THE COURT: -- do they require Spotify employees to work  
14:32:14 22 just in this district.

14:32:16 23 MR. TIJERINO: Okay.

14:32:17 24 THE COURT: Because your opponent is saying that if it  
14:32:21 25 doesn't require that, then Cray controls and venue may be granted,

14:32:30 1 change of venue may be granted. Do you understand that?

14:32:32 2 MR. TIJERINO: Yes, sir.

14:32:34 3 THE COURT: Questions?

14:32:34 4 MR. TIJERINO: Yes, your Honor. Is that only for the  
14:32:36 5 case that's citing *Cray*, or is he citing specifically *Cray* or --  
14:32:41 6 because I know *Cray* is like the baseline, but there's different  
14:32:45 7 cases underneath *Cray*.

14:32:46 8 THE COURT: If there's a case that shows an exception,  
14:32:52 9 but that exception has to be only dealing with the factor we're  
14:33:00 10 talking about here.

14:33:01 11 MR. TIJERINO: Yes, sir.

14:33:02 12 THE COURT: In other words, if the U.S. Supreme Court  
14:33:04 13 case comes down that says that, no, there are other factors to  
14:33:09 14 consider, that's different. Okay. If there's another Federal  
14:33:15 15 Circuit case that comes down and says that, no, there's other  
14:33:19 16 factors that need to be considered, that's different.

14:33:22 17 I am not talking about cases you all have already cited  
14:33:25 18 to me. I am not talking about anything old. If there's a new case  
14:33:31 19 from the Federal Circuit, if there's a new case in the Fifth  
14:33:35 20 Circuit, if there's a new case from the U.S. Supreme Court that  
14:33:41 21 said there's other factors in addition to the so-called *Cray*  
14:33:44 22 factors to be considered for venue, that's all we're talking about  
14:33:52 23 that would be something new. Right now there is nothing new, it's  
14:33:56 24 only that question of the exclusivity of employees' location of  
14:34:04 25 work.

14:34:05 1 MR. TIJERINO: Your Honor, just a question. But if there  
14:34:08 2 is a case that says it doesn't matter if you have -- if they're  
14:34:13 3 forced to stay there or not, like say there is a case that says it  
14:34:17 4 doesn't matter if the company says they can stay there or they  
14:34:20 5 don't have to stay there, that doesn't matter with venue, would  
14:34:23 6 that be considered?

14:34:24 7 THE COURT: Counsel, if it's a Federal Circuit case that  
14:34:28 8 creates another factor exception new, that would be considered. I  
14:34:35 9 have not seen anything like that here that creates any other  
14:34:39 10 factors other than what's in *Cray* because that's the leading case  
14:34:46 11 and that Supreme Court case that he quotes from. Do you  
14:34:52 12 understand?

14:34:52 13 MR. TIJERINO: Um, somewhat, your Honor. It's a little  
14:34:57 14 confusing. You said that you haven't seen any other cases that --

14:35:00 15 THE COURT: Don't make this more complicated than you  
14:35:08 16 need to make it.

14:35:08 17 MR. TIJERINO: Okay.

14:35:09 18 THE COURT: Your mind should be focused on what I said is  
14:35:11 19 the issue here. There's only one issue. Okay?

14:35:17 20 MR. TIJERINO: Yes, sir.

14:35:18 21 THE COURT: Do you understand the time periods that I am  
14:35:20 22 giving everybody?

14:35:21 23 MR. TIJERINO: Fourteen days.

14:35:22 24 THE WITNESS: They got 14 days to produce the  
14:35:24 25 information, you have 14 days to review it; and within that same

14:35:29 1 14-day period, notice how you want this deposition to occur, either  
14:35:34 2 in person, which in the event you may have to go to New York to do  
14:35:37 3 it, or by written interrogatory. Read Rule 30, read Rule 31.  
14:35:45 4 Okay?

14:35:45 5 MR. TIJERINO: Yes, sir.

14:35:47 6 THE COURT: Counsel, do you have any questions?

14:35:50 7 MR. MOONEY: I just wanted to make sure that I'm clear on  
14:35:52 8 the process, your Honor. I appreciate your patience but there's  
14:35:55 9 been a lot of filings in the case.

14:35:57 10 THE COURT: Go ahead.

14:35:58 11 MR. MOONEY: So as far as the process, we'll have 14 days  
14:36:00 12 to produce the requested information about the requirement that  
14:36:02 13 they stay in the district. Mr. Tijerino will then have 14 days to  
14:36:09 14 either notice the deposition, which would be in person in New York,  
14:36:12 15 or to serve 10 to 20 interrogatories. In the case of the  
14:36:20 16 interrogatories, I take it it would be a regular response time,  
14:36:23 17 30 days or is that -- a 30-day response time?

14:36:24 18 THE COURT: That's the regular response time done by Rule  
14:36:27 19 31.

14:36:27 20 MR. MOONEY: Perfect. As far as the scope, it's my  
14:36:30 21 understanding that it's just the requirement that the employees  
14:36:34 22 continue to live in this district --

14:36:38 23 THE COURT: Corroborative information that your client  
14:36:40 24 has that the employees are required to live in this district.

14:36:43 25 MR. MOONEY: Okay. And lastly, your Honor, once this has

14:36:46 1 been completed, what is it that your Honor would like to see?

14:36:50 2 THE COURT: I'd need to see the deposition.

14:36:52 3 MR. MOONEY: Okay. Would your Honor like any briefing,  
14:36:54 4 five or seven pages each?

14:36:56 5 THE COURT: If I need it, you'll hear about it.

14:36:59 6 MR. MOONEY: Excellent.

14:37:00 7 THE COURT: Which I doubt. On that particular kind of  
14:37:02 8 issue, that seems very simple. And that will all be part of the  
14:37:06 9 record.

14:37:06 10 MR. MOONEY: Okay.

14:37:07 11 THE COURT: All right. Gentlemen and lady, good luck.

14:37:10 12 MR. MOONEY: Your Honor, if I may --

14:37:11 13 THE COURT: I am taking under advisement the 12(b)(6)  
14:37:16 14 motion.

14:37:17 15 MR. MOONEY: Thank you, your Honor. One more quick issue  
14:37:19 16 I'd like to raise.

14:37:20 17 Currently there is a case schedule that's in place.  
14:37:25 18 There are two issues with that case schedule: No. 1, is that it's  
14:37:30 19 moving along and we had expert reports, for example, due in a  
14:37:33 20 couple of months, et cetera. I would request that we stay  
14:37:40 21 discovery pending resolution of venue, which is, I think the proper  
14:37:45 22 approach under cases you have seen, I can cite them to you. I know  
14:37:49 23 that you dismissed a pending discovery stay motion --

14:37:52 24 THE COURT: I am not doing anything on this case until I  
14:37:55 25 see the results of that deposition, but I am not preventing anyone

14:38:01 1 from filing a motion.

14:38:06 2 MR. MOONEY: Okay, your Honor. So I expect that we would  
14:38:08 3 then renew our motion --

14:38:09 4 THE COURT: For instance, if there's a new case that  
14:38:12 5 comes in concerning either venue or the 12(b)(6) motion, I would  
14:38:19 6 assume that both sides would want to address that new case if you  
14:38:22 7 think it's pertinent to this Court.

14:38:26 8 MR. MOONEY: Right, your Honor. I'm talking about not  
14:38:27 9 the briefing on the venue issue itself, but the issue is that as  
14:38:30 10 this threshold issue of venue is being decided, we still have a  
14:38:35 11 schedule that is moving forward. And, in fact, that schedule is a  
14:38:38 12 schedule that is not a schedule for a patent case, it doesn't have  
14:38:42 13 required patent deadlines --

14:38:44 14 THE COURT: Give me an example of a deadline that you're  
14:38:47 15 concerned with, because assuming that you've got now 28 days total  
14:38:51 16 to do a lot of work and then assuming another ten days or whatever  
14:38:57 17 to get me the deposition after that, that puts it at about, what, a  
14:39:04 18 two-month period from now. What deadline within the next two  
14:39:08 19 months are you talking about?

14:39:10 20 MR. MOONEY: There are no case deadlines in the next two  
14:39:13 21 months, but there's nothing to stop parties from -- we would not --  
14:39:17 22 but to stop Mr. Tijerino from serving additional discovery, which  
14:39:23 23 we think is improper, frankly, under controlling law while the  
14:39:24 24 venue issue is being decided.

14:39:26 25 THE COURT: As a practical matter, Mr. Tijerino, he is

14:39:29 1 saying that, as I just said, this issue of venue needs to be  
14:39:34 2 resolved first before we move to anything else. But I am not  
14:39:39 3 preventing either side from filing motions on that particular issue  
14:39:44 4 when it's new, not something old. I don't need either one of you  
14:39:48 5 to send me something else that's already in this record on cases,  
14:39:52 6 only anything new.

14:39:55 7 So concentrate on that issue, Mr. Tijerino, you  
14:39:58 8 concentrate on that issue, and we'll go on from there. There are  
14:40:01 9 no deadlines at direct present that needs to be extended. I am not  
14:40:05 10 staying this case, except for getting for me the information that  
14:40:11 11 I've ordered. Period. You file something that is irrelevant, I  
14:40:19 12 will dismiss it. Do you understand that?

14:40:23 13 MR. TIJERINO: Yes.

14:40:23 14 THE COURT: Do you understand that?

14:40:24 15 MR. MOONEY: I do.

14:40:25 16 One last question, your Honor, though is, to the extent  
14:40:29 17 that this case moves forward -- and obviously it's our position it  
14:40:34 18 should not -- we will have to have a new schedule that contemplates  
14:40:39 19 the required claim --

14:40:40 20 THE COURT: Counsel, I am not predicting the future and I  
14:40:44 21 am in no position to discuss that now.

14:40:46 22 MR. MOONEY: We'll file at the appropriate time. Thank  
14:40:49 23 you, your Honor.

14:40:49 24 THE COURT: All right. Thank you both.

14:40:50 25 MR. TIJERINO: Thank you, your Honor.

14:40:51 1 THE DEPUTY CLERK: Court is adjourned.

14:40:53 2 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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4 \* \* \* \* \*

5  
6  
7  
8  
9  
10 REPORTER'S CERTIFICATE

11  
12 I, Karen A. Ibos, CCR, Official Court Reporter, United  
13 States District Court, Eastern District of Louisiana, do hereby  
14 certify that the foregoing is a true and correct transcript, to the  
15 best of my ability and understanding, from the record of the  
16 proceedings in the above-entitled and numbered matter.

17  
18  
19 /s/ Karen A. Ibos

20 Karen A. Ibos, CCR, RPR, CRR, RMR

21 Official Court Reporter  
22  
23  
24  
25

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

|                                                                                                                            |                                                                                                                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>MANUEL TIJERINO,</b><br><br><b>Plaintiff,</b><br><br><b>v.</b><br><br><b>SPOTIFY USA INC.,</b><br><br><b>Defendant.</b> | <b>Civil Action No.</b><br><br><b>2:24-cv-02290-ILRL-DPC</b><br><br><b>SECTION “B” (3)</b><br><br><b>Judge Ivan L.R. Lemelle</b><br><br><b>Magistrate Judge Donna Phillips Currault</b> |
|----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**NOTICE OF SUBMISSION**

**PLEASE TAKE NOTICE** that Defendant Spotify USA Inc. (“Spotify”) will bring for submission its Motion to Stay Pending Resolution of Spotify’s Motion to Dismiss Based on Improper Venue (Rec. Doc. 13) before the Honorable Ivan L.R. Lemelle, United States District Court Judge, Eastern District of Louisiana, 500 Poydras Street, New Orleans, Louisiana 70130, on the 17th day of September, 2025.

DATED: August 29, 2025

**[SIGNATURE PAGE FOLLOWS]**

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I do hereby certify that I have on this 29th day of August, 2025 served a copy of the foregoing on counsel for all parties to this proceeding via e-mail, and on Tijerino via certified U.S. mail and e-mail.

/s/ David L. Patrón