

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

MANUEL TIJERINO

CIVIL ACTION

VERSUS

NO. 24-2290

SPOTIFY USA INC.

SECTION “B”(2)

ORDER AND REASONS

Before the Court are defendant Spotify USA Inc.’s (“Spotify”) Motion to Dismiss (Rec. Doc. 13), plaintiff Manuel Tijerino’s (“Tijerino”) opposition (Rec. Doc. 28), and defendant’s reply memorandum in support of its Motion to Dismiss (Rec. Doc. 25).¹ The Court also considers the information presented in the June 24, 2025, hearing, in addition to, the parties’ subsequent submissions inclusive of the alternative venue transfer issues.² Accordingly,

IT IS ORDERED that defendant Spotify’s alternative motion to transfer to a proper venue (Rec. Doc. 13) is **GRANTED** by transferring this action to the United States District Court for the Southern District of New York, where Spotify has its principal place of business. Pursuant to Local Rule 83.5.1, this Order is stayed for 21 days from the date the Order was entered on the docket.

¹ Upon setting this motion for oral arguments, the Court further ordered the dismissal of other pending motions including: plaintiff’s motion for summary judgment (Rec. Doc. 64), defendant’s motion to deny plaintiff’s motion for summary judgment (Rec. Doc. 67), the plaintiff’s opposed second motion to amend complaint (Rec. Doc. 29), plaintiff’s motion to stay defendant’s motion to dismiss pending discovery (Rec. Doc. 33), and, finally, defendant’s motion to stay discovery pending resolution of Spotify’s motion to dismiss (Rec. Doc. 39). Rec. Doc. 71.

Nonetheless, the Court did review any related memoranda that could be viewed as parties’ arguments for or against defendant’s dismissal motion.

² Following the June 24, 2025, hearing (Rec. Doc. 75) an Order was issued seeking further discovery on the venue matter. Rec. Doc. 76. Our request for clarification on venue discovery was further clarified in another Order issued on July 24, 2025. Rec. Doc. 83. The Court has since received multiple “notices” by both parties, including plaintiff Tijerino filings/notices (Rec. Docs. 88, 90, 91, 93, 96, 97, and 98) and defendant Spotify filings/notices (92, 94, 95, and 102). While these notices do not adhere to the Court’s Order (Rec. Doc. 76) which sought a joint submission without further briefing, the Court considers these submissions for venue purposes.

IT IS FURTHER ORDERED that a ruling on the Rule 12 (b)(6) motion to dismiss (Rec. Doc. 13) is **deferred** for further consideration in the Southern District of New York as it deems fit, for the reasons stated *infra*.

IT IS FURTHER ORDERED that the pending motions at record documents 100 and 101 between the parties are **dismissed as moot**.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This matter arises from a patent infringement action filed by Tijerino, proceeding *pro se* and *in forma pauperis*, in the Eastern District of Louisiana. *See* Rec. Docs. 1 and 32. In his allegations, Tijerino alleges that on July 27, 2010, he filed a U.S. patent application titled “User Defined Internet Jukebox Kiosks Set Top Box.” Rec. Doc. 1-3 at 1. The patent application was approved and issued on September 29, 2015, resulting in Tijerino’s United States Patent No. 9,146,925 (‘925 patent). The patent’s description includes:

“A computer readable storage method and system allowing any artist to upload media, including images, video and music, to a server, have that media uploaded in a system of internet jukeboxes placed in establishments for instant playback of media by paying customers. The system of internet jukeboxes programmed to maintain an account for the artist allowing the artist to earn fees and royalties from playback of the media and to provide for automated payment of rent, and other fees due the establishment and the service provider.”

Rec. Doc. 1-3 at 1.

The ‘925 patent consists of seventeen (17) claims, two independent and fifteen dependent. Rec. Doc. 1-3 at 55-56. Claim 1, is “[a] computer implemented method for real time music distribution of new media [f]or allowing an artist to control availability of the new media for playback in public venues via a jukebox[.]” Rec. Doc. 1-3 at 55. Claim 3 describes “a non transitory computer-readable media embodying program instructions for execution by a computer[.]” *Id.* at 55-56. Claims 2 and 4-17 rely on Claim 1. *Id.* In his petition for damages,

plaintiff Tijerino alleges that defendant's "Spotify for Artists" program has directly and continually infringes upon every element of Claims 1 and 3 of the '925 patent since 2018-2019[.]" Rec. Doc. 29-1 ¶ 2-3; 8. Plaintiff further alleges that even after defendant ended direct uploads, it continues to infringe on the '925 patent through its "metadata tracking, PRO reporting, and revenue-sharing mechanisms." Rec. Doc. 29-1 at 3 ¶ 9.

Spotify now moves to dismiss the complaint for under Federal Rule of Civil Procedure 12(b)(3), 28 U.S.C. § 1406, and Federal Rule of Civil Procedure 12(b)(6). Rec. Doc. 13. Spotify states the complaint should be dismissed, or in the alternative, transferred to a proper venue under Rule 12(b)(3) and § 1406(a). Spotify is a Delaware corporation with its principal place of business located in New York. Rec. Doc. 32 at 1. Whereas, plaintiff Manuel Tijerino is a resident of Jefferson Parish Louisiana, claiming that Spotify maintains a regular and established place of business in this district. Rec. Doc. 32 at 1. Both parties have been allowed to brief the motions and conduct limited venue-related discovery. Both parties have filed additional evidence into the record on the venue issue. The Court also received oral argument from parties on June 24, 2025.

LAW AND ANALYSIS

A. Rule 12(b)(3) Motion to Dismiss Standard // 28 U.S.C. § 1400(b)

Rule 12(b)(3) of the Federal Rules of Civil Procedures allows a party to move for dismissal of a complaint for "improper venue." FED. R. CIV. P. 12(b)(3). A fundamental and unwavering rule applied by courts when determining whether venue is proper is that the "relevant time for any venue analysis is the time of filing the complaint." *See, e.g., GreatGigz Sols., LLC v. ZipRecruiter, Inc.*, No. W-21-CV-00172-ADA, 2022 WL 432558 (W.D. Tex. Feb. 11, 2022); *eRoad Ltd. v. PerDiemCo LLC*, No. 6:19-CV-00026-ADA, 2019 WL 10303654 (W.D. Tex. Sept. 19, 2019);

Pers. Audio, LLC v. Google, Inc., 280 F.Supp. 3d 922, 931 (E.D. Tex. Dec. 1, 2017). Therefore, this issue is ripe for discussion.

Dismissal for improper venue regarding patent infringement is exclusively governed by 28 U.S.C. § 1406(a), which provides: “[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” 28 U.S.C. § 1406(a). Once a defendant challenges venue, the burden is on the plaintiff to establish that venue is proper. *See Perez v. Pan Am. Life Ins. Co.*, 70 F.3d 1268, at *2 (5th Cir. 1995). “On a Rule 12(b)(3) motion to dismiss for improper venue, the court must accept as true all allegations in the complaint and resolve all conflicts in favor of the plaintiff.” *Braspetro Oil Servs. Co. v. Modec (USA), Inc.*, 240 F. App’x 612, 615 (5th Cir. 2007) (citations omitted). “A court may decide whether venue is improper based upon (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” *IOT Innovations LLC v. Monitronics Int’l, Inc.*, No. 2:22-CV-0432-JRG-RSP, 2023 WL 6318049 (E.D. Tex. Sept. 11, 2023), *report and recommendation adopted*, No. 222CV00432JRGRSP, 2023 WL 6300560 (E.D. Tex. Sept. 27, 2023) (citing *AGIS Software v. T-Mobile USA Inc.*, No. 2:21-cv-72-JRG-RSP, 2021 WL 6616856, at *1 (E.D. Tex. Nov. 10, 2021) (quoting *Ambraco, Inc. v. Bosslip B.V.*, 570 F.3d 233, 238 (5th Cir. 2009) (citation omitted)), *report and recommendation adopted*, 2022 WL 178804 (E.D. Tex. Jan. 19, 2022)); *Galderma Lab’ys, L.P. v. Teva Pharms. USA, Inc.*, 290 F.Supp.3d 599, 606 (N.D. Tex. Nov. 17, 2017) (stating “Where the defendant submits affidavits or evidence controverting specific facts alleged in the complaint, the Court is no longer required to accept those controverted facts as true.”). Here, the Court held oral argument on June 24, 2025, and both sides submitted evidence

in support of their venue arguments. As set forth herein, the Court made factual findings with respect to certain venue-related allegations, but only to the extent the allegations were contradicted by the evidence in the record.

1. Spotify Does Not Reside in the Eastern District of Louisiana

28 U.S.C. § 1400(b) is the “sole and exclusive provision controlling venue in patent infringement actions. *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 266 (2017) (citing *Fourco Glass Co. v. Transmirra Prod. Corp.*, 353 U.S. 222, 229 (1957)). “The requirement of venue is specific and unambiguous; it is not one of those vague principles which, in the interests of some overriding policy, is to be given a liberal construction.” *In re Cray Inc.*, 871 F.3d 1355, 1361 (Fed. Cir. 2017) (quoting *Schnell v. Peter Eckrich & Sons, Inc.*, 365 U.S. 260, 264 (1961)). Thus, venue lies in the judicial district where the defendant either (1) resides, or (2) committed acts of infringement and has a regular and established place of business. *See* 28 U.S.C. § 1400(b).

“A domestic corporation ‘resides’ only in its State of incorporation for purposes of the patent venue statute.” *See Andra Grp., LP v. Victoria’s Secret Stores, L.L.C.*, 6 F.4th 1283, 1287 (5th Cir. 2012) (quoting *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 258 (2017)). Here, defendant Spotify is incorporated in the State of Delaware and maintains a principal place of business in New York City. Rec. Doc. 13-2 at 3. Therefore, defendant Spotify only resides in Delaware for purposes of the patent venue statute. To prove this District is the correct venue, plaintiff Tijerino must show that Spotify has committed acts of infringement and **maintains a regular and established place of business** here.

2. Regular and Established Place of Business in the Eastern District of Louisiana

“[T]he regular and established place of business standard requires more than the minimum contacts necessary for establishing personal jurisdiction or for satisfying the doing business standard of the general venue provision, 28 U.S.C. § 1391(c).” *In re Cray Inc.*, 871 F.3d 1355 (Fed. Cir. 2017) (citing *Raytheon Co. v. Cray Inc.*, 258 F.Supp.3d 781(E.D. Tex.), *mandamus granted, order vacated sub nom.* (internal quotation marks omitted); *see also Brunette Mach. Works, Ltd. v. Kockum Indus., Inc.*, 406 U.S. 706 (1972)). “To show that a defendant has a regular and established place of business, there are three requirements: ‘(1) there must be a physical place in the district; (2) it must be a regular and established place of business; and (3) it must be the place of the defendant.’” *Andra Grp., LP* 6 F.4th at 1287 (citation omitted). “[I]n determining whether a corporate defendant has a regular and established place of business in a district, the appropriate inquiry is whether the corporate defendant does its business in that district through a permanent and continuous presence there and not . . . whether it has a fixed physical presence in the sense of a formal office or store.” *Id.*; *In re Volkswagen Grp. Am., Inc.*, 28 F.4th 1203, 1208 (Fed. Cir. Mar. 9, 2022).

Plaintiff Tijerino basis his venue argument on the assertion that Spotify maintains a regular and established place of business in this District. To support his argument, plaintiff Tijerino asserts that: (1) Spotify employs four (4) remote work staff in Louisiana; (2) Spotify’s recruitment practices seeks individuals from this District; (3) Spotify “supplies Louisiana employees with company-controlled equipment, proving an operational base within the state”; (4) “Spotify partners with companies, organizations, and studios in the City of New Orleans” (5) “Spotify requires employees to remain in this District in order to perform their assigned work” (6) Spotify has and maintains a “studio” in Lafayette, Louisiana; and (7) the Louisiana Legislature has increased taxes on streaming services by five (5) percent. *See* Rec. Docs. 28 and 98.

Regarding the last two assertions made in his opposition filing, both are insufficient to prove that Spotify maintains a regular and established place of business in this district. First, the Louisiana Government's decision to issue a tax has no bearing on venue in the instant matter. Spotify does not have the authority to determine tax legislation in Louisiana, thus the plaintiff's use of this evidence is flawed. Second, even if Spotify does maintain a studio in Lafayette, Louisiana, that evidence does not create proper venue in the Eastern District of Louisiana.³ Therefore, the only analysis necessary is whether plaintiff's other assertions evidence a regular and established place for business for Spotify. Spotify contends that the plaintiff's assertions do not constitute a regular and established place of business. *See* Rec. Doc. 95. The Court agrees.

3. A physical location in the Eastern District of Louisiana

One requirement of show[ing] that a defendant has a regular and established place of business is that there must be a physical place in the district. *Andra Grp., LP* 6 F.4th at 1287 (citation omitted). "A 'place' merely needs to be a 'physical geographical location in the district from which the business of the defendant is carried out.'" *In re Google LLC*, 949 F.3d 1338, 1342 (Fed. Cir. 2020) (quoting *Cray*, 871 F.3d at 1362 (Fed. Cir. 2017)). The requirement, "cannot be read to refer merely to a virtual space or to electronic communications from one person to another. *In re Google LLC*, 949 F.3d 1338, 1343 (Fed. Cir. 2020) (citing *In re Cray Inc.*, 871 F.3d at 1362). At the same time, the place the absence of a physical building it not dispositive. *In re Cordis Corp.*, 769 F.2d 733, 737 (Fed. Cir. 1985). Additionally, "[a] 'place of business' is not restricted to real property that the defendant must 'own[] or lease,' . . . the statute could be satisfied by any physical place that the defendant could 'possess[] or control.'" *In re Google LLC*, 949 F.3d at 1343 (citing *In re Cray Inc.*, 871 F.3d at 1363).

³ Louisiana Western District Court would be the appropriate venue for matters arising out of Shreveport, Monroe, Alexandria, Lake Charles, and Lafayette. *See* lawd.uscourts.gov/clerks-office.

Here, the parties acknowledge that Spotify employs four employees in this District. Rec. Docs. 92 and 93. Further that these employees are remote workers. Rec. Doc. 92-1. It is axiomatic that a remote employee's home can be considered a "physical place" as it applies to this requirement.

4. The presence of employees in the District is insufficient to satisfy a regular and established place of business for Spotify

Plaintiff Tijerino argues that Spotify's remote employees' homes are sufficient to satisfy the regular and established business requirement. To determine "whether a place is 'regular' and 'established' courts consider the permanence of the location, whether the activity at the location is sporadic, and, if the place is an employee's home, whether the employee can move out of the district without the approval of his employer." *GreatGigz Sols. LLC. v. ZipRecruiter, Inc.*, No. W-21-CV-00172-ADA, 2022 WL 432558, at *4 (W.D. Tex. Feb. 11, 2022) (citing *Cray*, 871 F.3d at 1362-63).

Regarding the permanence of the location, plaintiff Tijerino states that the remote employees "residence is not a personal choice." Rec. Doc. 93-1 at 8. Defendant Spotify argues the contrary, stating three of the four employees located in this district were initially hired to work in Spotify's New York headquarters and each moved to this district voluntarily and upon personal request. Rec. Doc. 95 at 2 (citing Rec. Doc. 92-1 at 23-30 (Goring Deposition at 88:20-89:9, 91:22-92:5, 95:17-96:2, 98:8-17, 116:18-21)). Further, Spotify states upon hiring one of the employees, they were already voluntarily working remotely from this district. *Id.* Thus, the plaintiff's assertion is seemingly unfounded that the employees are restricted to this location, as all have voluntarily requested this assigned location, despite three being hired for Spotify's New York location.

The parties disagree on whether the current remote workers have a period for which the employee is restricted to this location. Plaintiff Tijerino supplies reference to the Spotify Human Resource Webpage and Spotify's established corporate business controls to suggest that contractual obligations dictate the restrictions to the employees' movements. Rec. Docs. 92, 93-1 at 3-8, and 98. These references are unpersuasive, however, as Spotify's human resource representative, Mrs. Goring testified to the opposite of this assertion. Rec. Doc. 92-1 at 10 page 34-38 (Q: Okay. Eastern District of Louisiana employees are required to comply with the same 12-month commitment and approval process for their work location, correct? A: Yes. And all four remote employees in the Eastern District of Louisiana have been present for more than 12 months and could apply to move at any time. . . . Q: Okay. The same policy also states when an employee may request a change of location, including any required advance notice, correct? A: Yes. And the main reason we ask for both notice and commitment is more from an administrative perspective, to make sure that we can set them up for any payrolling and procedures from an HR matter. . . . Q: Okay. That section states that if an employee plans to move to another city, they must first discuss it with their manager, correct? A: Yes. We ask this for time zone reasons. Specifically, we operate under the Eastern Standard Time, and so if someone is moving to a different time zone, we want them to discuss that with their manager . . . Q: Okay. So under the policy, an employee in Jefferson Parish who wanted to move to Kenner or wanted to move from Kenner to Gretna, both within the same parish and without change in work mode, would still be required to first discuss the move with their manager, correct? A: No. Within the same state they do not. . . But within the state, they do not need to notify Spotify at all, they simply need to update their address in their system, so we know if we need to mail them their W-2.). The plaintiff cannot establish that Spotify conditions employment on an employee's continued residence in this District. Instead, the evidence

highlighted by the plaintiff only establishes that Spotify is requiring its employees to comply with corporate policies. This alone does not show that Spotify controls a place in this district, but its employees, who seemingly would have the same restrictions here or any other location.

Further, no evidence has been provided showing Spotify solicits this District's workers or provides inventory to this Districts remote workers to distribute product or create specialized workstations such as the lab in *Monolithic*. *In re Monolithic Power Systems, Inc.*, 50 F.4th at 159; Rec. Docs. 13-3 and 25-1. *In re Monolithic Power Systems, Inc.*, the district court's finding of proper venue was upheld, as the company was shown to have a regular and established place of business in the district—demonstrated by its history of soliciting remote employment there to support local customers. 50 F.4th 157, 159 (Fed. Cir. 2022). This conclusion was further supported by evidence that the company supplied its employees with lab equipment and products to be used in or distributed from their homes as part of their responsibilities. *Id.* While the district court's finding of proper venue in *Monolithic* was upheld due to the company's established business presence—evidenced by local hiring practices and the provision of specialized inventory equipment provided to remote employees—the instant matter is distinguishable as it contains no such evidence.

Plaintiff has stated that “Spotify operates virtually within Louisiana, using cloud-based infrastructure and contractual relationships.” Rec. Doc. 29-1 at 2-3. However, the evidence provided in deposition provides the opposite. Specifically, Goring's testimony provided that “Louisiana Remote Employees' work does not have any nexus to the Eastern District of Louisiana, and has never had any such nexus, and their choosing to live and work from this District does not advance Spotify's commercial interests in the Eastern District of Louisiana or anywhere else.” Rec. Doc. 95 at 5 (citing *see, e.g.*, Rec. Doc. 92-1 at 89:13-16, 92:6-9, 96:3-7 98:18-21, and 120:23-

121 (Goring Deposition)). Previously in cases such as *In re Cray Inc.*, it has been held that “the mere fact that a defendant has advertised that it has a place of business or has even set up an office is not sufficient; the defendant must actually engage in business from that location.” 871 F.3d at 1363-64. Unfortunately, the facts presented here do not support a finding of venue in the Eastern District of Louisiana. Plaintiff’s allegations of Employee #2’s family’s affiliation with a New Orleans company and related cultural partners is a stretch to establish venue, as the affiliates activities are irrelevant to Spotify’s actions. Rec. Doc. 98 at 2-3. Therefore, again, because there has been no evidence presented, plaintiff is unable to establish that Spotify maintains a regular and established place of business in this District.

5. Are the remote employees’ homes the place of the defendant?

Plaintiff Tijerino states that the employees’ homes are places of Spotify. He alleges that “Spotify conditions [the remote workers’] employment on remaining in the District to perform Spotify’s business.” Rec. Doc. 93-1 at 8. Spotify contests these assertions. Rec. Doc. 13. “A work-from-home employee’s residence is insufficient” to establish the place of the defendant. *IngenioShare, LLC v. Epic Games, Inc.*, No. W-21-CV-0063-ADA, 2022 WL 827808 (W.D. Tex. Mar. 18, 2022) (citing *In re Cray*, 871 F.3d at 1365 (“The statute clearly requires that venue be laid where ‘the defendant has a regular and established place of business,’ not where the defendant’s employee owns a home in which he carries on some of the work that he does for the defendant”) (citation omitted)). The Federal Circuit has issued several factors to consider in this analysis, but “stress[ed] that no one fact is controlling.” *In re Cray*, 871 F.3d at 1366. In determining whether a place is “of the defendant” “courts may consider: (1) whether the defendant owns or leases the place; (2) whether the defendant exercises other attributes of possession or control over the place; (3) whether the defendant conditioned the employees’ employment on

continued residence in the district; and (4) whether the home was used to store, distribute, or sell the defendant's goods. *GreatGigz Sols. LLC.*, 2022 WL 432558 at *4 (citing *Cray*, 871 F.3d at 1363-64).

A court may also compare the alleged place of business with other places of business of the defendant in other venues. *RegenLab USA LLC v. Estar Techs. Ltd.*, 335 F. Supp. 3d 526, 551 (S.D.N.Y. 2018) (citing *Cray*, 871 F.3d at 1364). Cases have also determined that marketing and advertising means may also be examined, "but only to the extent they indicate that the defendant itself holds out a place for its business." *Id.* (citing *Cray*, 871 F.3d at 1363). Nonetheless, "the mere fact that a defendant has advertised that it has a place of business or has even set up an office is not sufficient; the defendant must actually engage in business from that location." *Id.* (citing *Cray*, 871 F.3d at 1364).

Spotify does not own, operate, or control any office, warehouse, store, or real estate in this District. *See* Rec. Doc. 13-3 ¶ 5; *see also* Rec. Doc. 95 at 6 ("Spotify has never owned, operated, or controlled any office, warehouse, store, or real estate in the Eastern District of Louisiana."); Rec. Doc. 92-1 at 29 page 113:1-22 (Goring Deposition). Spotify does not reimburse its Louisiana remote employees for their housing costs. Rec. Doc. 92-1 at 29 page 113:1-22 (Goring Deposition). Spotify allows its employees to choose where they will work from remotely, and the Louisiana remote employees can move freely, within the state and country at any time. Rec. Doc. 92-1 at 23-24, 29 (Goring Deposition). Regarding allegations made that Spotify provides work equipment for its Louisiana employees, those provisions do not make this District the proper venue, as no evidence has been provided that these provisions are conditioned on these employees remaining in this District. Rec. Doc. 93-1. Further, there has been nothing to suggest that Spotify

uses its remote employees homes to store, distribute, or sell the its goods. Due to the lack of evidence presented, plaintiff has failed to properly assert venue in the Eastern District of Louisiana.

B. Transfer

Finding that venue is not proper in this district, the Court finds that in the interest of justice this case should be transferred. 28 U.S.C. § 1406(a) (“The district court of a district in which is filed a case laying venue in the wrong division or district, shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought”). As previously stated, Spotify is a Delaware corporation, venue properly lies in Delaware under the first prong of the patent venue statute. 28 U.S.C. § 1400(b). This matter could have been raised in the District of Delaware and could be transferred to Delaware, in the interest of justice. *See Regents of Univ. of Minnesota v. Gilead Scis., Inc.*, 299 F.Supp. 3d 1034 (D. Minn. 2017) (transferring patent case to district where defendant was incorporated after finding that case was originally brought in a district the defendant did not have a regular and established place of business).

Nonetheless, Spotify, in its motion, request dismissal or, in the alternative, for the matter to be transferred to the Southern District of New York. Rec. Doc. 13. Defendant concedes that the case could have been brought in that district. Rec. Doc. 13-2 at 3. Being that the parties have not identified nor agreed on any alternative district where venue would be suitable, the Court will transfer the case to the Southern District of New York.

C. Rule 12(b)(6) Motion to Dismiss

a. Standard for Pro Se Pleadings

It is long “axiomatic that courts are required to liberally construe pro se complaints.” *Jackson v. Reese*, 608 F.2d 159, 160 (5th Cir. 1979); *see also Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (internal quotation omitted) (“[A] pro se complaint, however inartfully pleaded, must be held to

less stringent standards than formal pleadings drafted by lawyers.”). Such a construction looks to “the substance of the relief sought by a pro se pleading, not the label that the petitioner has attached to it.” *Hernandez v. Thaler*, 630 F.3d 420, 426-27 (5th Cir. 2011). Accordingly, pro se filings are not evaluated for technical precision but are “so construed as to do substantial justice.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting (Fed. R. Civ. P. 8(f)); *see also Arredondo v. Univ. of Texas Med. Branch at Galveston*, 950 F.3d 294, 298 (5th Cir. 2020) (“[W]e can consider a pro se litigant’s non-complaint brief when the non-compliance did not prejudice the opposing party.”). This measure has led courts to speculate on the true issues the pro se litigant is asserting. *See Grant v. Cuellar*, 59 F.3d 523, 525 (5th Cir. 1995) (finding the district court’s speculative review to be overly narrow).

However, the *pro se* filer cannot rely on conclusory allegations nor avoid procedural requirements. *See Abram v. McConnell*, 3 F.4th 783, 787 (5th Cir. 2021); *Prince v. Digital Equip. Corp.*, 846 F.2d 1026, 102 (5th Cir. 1988); *Johnson v. Gonzalez*, 172 F.3d 869 (5th Cir. 1999). Where a defendant seeks dismissal of a complaint, “regardless of whether the plaintiff is proceeding pro se or is represented by counsel, conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss.” *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002) (citation omitted).

b. Motion to Dismiss Standard

Rule 12(b)(6) of the Federal Rules of Civil Procedure allows a party to move for dismissal of a complaint for failure to state a claim upon which relief can be granted. To survive a motion to dismiss under Rule 12(b)(6), a plaintiff’s complaint “must contain ‘enough facts to state a claim to relief that is plausible on its face.’” *Varela v. Gonzales*, 773 F.3d 704, 707 (5th Cir. 2014) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In other words, a plaintiff’s

“[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555 (discussing Fed. R. Civ. P. 8(a)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 556 U.S. at 556).

When deciding whether a plaintiff has met its burden, a court “accept[s] all well-pleaded factual allegations as true and interpret[s] the complaint in the light most favorable to the plaintiff, but ‘[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements’ cannot establish facial plausibility.” *Snow Ingredients, Inc. v. Snowizard, Inc.*, 833 F.3d 512, 520 (5th Cir. 2016) (quoting *Iqbal*, 556 U.S. at 678) (some internal citations and quotation marks omitted). Plaintiffs must “nudge [] their claims across the line from conceivable to plausible.” *Twombly*, 550 U.S. at 570. A complaint does not meet the plausibility standard “if it offers only labels and conclusions, or a formulaic recitation of the elements of a cause of action.” *Whitley v. Hanna*, 726 F.3d 631, 638 (5th Cir. 2013) (internal quotation marks omitted) (citing *Twombly*, 556 U.S. at 555).

Although motions to dismiss are evaluated by the content in the complaint, the United States Supreme Court has described the extent of possible evidence: “[C]ourts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (citation omitted). Further, “[d]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff’s complaint and are central to [the plaintiff’s] claims.” *Collins v. Morgan Stanley Dean Witter*, 224

F.3d 496, 498–99 (5th Cir. 2000) (quotation omitted); *see also Lormand v. US Unwired, Inc.*, 565 F.3d 228, 251 (5th Cir. 2009) (citing *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007)). The Court may take judicial notice of public records while conducting a 12(b)(6) analysis. *See Viking Constr. Grp., LLC et al. v. Satterfield & Pontikes Constr. Grp., et al.*, No. 17-12838, 2018 WL 398751, at *4 n.18 (E.D. La. Jan. 12, 2018); *Rantz v. Shield Coat, Inc.*, No. 17-3338, 2017 WL 3188415, at *5 (E.D. La. July 26, 2017). Otherwise, if “matters outside of the pleading are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56.” Fed. R.Civ. P. 12(d).

To prevail on a claim for direct patent infringement, plaintiff Tijerino must show that Spotify, without authorization made, used, offered to sell, sold, or imported his patented invention after the patent issued. *See* 35 U.S.C. § 271(a). To prove his claim, plaintiff Tijerino filed his first amended complaint on March 19, 2025. Rec. Doc. 32. However, the defendants still assert that Tijerino has failed to plausibly allege any basis for accusing Spotify of infringing the asserted patent. *See* Rec. Doc. 13-2. Specifically, Spotify assert that the complaint fails to state a claim for infringement because Tijerino did not allege any facts plausibly showing that Spotify “automatically calculate[es], by a processor, amounts earned by an artist and a venue playing the new media.” Rec. Doc. 13-2 at 7-10. This infringement per the defendant is a requirement of every claim of the ‘925 patent. *Id.* In plaintiff’s first amended complaint, the plaintiff mainly focuses on identifying “a regular and established physical place of business” for Spotify in Louisiana. *See* Rec. Doc. 28. Further, plaintiff alleged that Spotify infringed because its “system has an API that responds from client request, returning metadata of the new media over the Internet.” Rec. Doc. 28 at 44-45. Then, plaintiff alleges that “Spotify[’s] server(processor) automatically calculate[es]. . . amounts earned by an artist and a venue playing the new media.” Rec. Doc. 28 at 50-51.

Spotify argues that to prove an infringement, plaintiff must show that the alleged infringer either performs the claimed computer-implemented method or that the alleged infringer provides software on a computer readable media that performs the same steps. *Rec. Doc.* 13-2 at 8. Spotify acknowledges that if the plaintiff were able to plausibly allege infringement through the Automatic Calculation Limitations, which Spotify argues the plaintiff cannot, his claim still fails because Spotify does not calculate earnings for venues, and the patent requires automatically calculating earnings for both an artist and a venue. *Rec. Doc.* 13-2 at 9-10. Tijerino's argues that "venue" can include "where the music is played"—including Performance Rights Organizations or territories. *Rec. Doc.* 32 at 30-32. Indisputable facts and law, cited *supra*, do not support the latter argument.

Defendant acknowledges that if this Court decides to transfer venue to the Southern District of New York, there is a viable option to defer ruling on the Rule 12(b)(6) dismissal motion to the transferee court. *Rec. Doc.* 25 at 9. Because the Court has opted to transfer this matter, further consideration of the Rule 12(b)(6) motion or other substantive matter is deferred to the transferee court.

New Orleans, Louisiana, this 8th day of September, 2025



SENIOR UNITED STATES DISTRICT JUDGE