

1 Michael R. Rhodes (CA SBN 319432)
2 DESMARAIS LLP
3 101 California Street, Suite 3000
4 San Francisco, CA 94111
5 Tel: (415) 573-1900
6 Fax: (415) 573-1901
7 Email: mrhodes@desmaraisllp.com
8 **Additional Counsel Listed on Signature**
9 **Page**

10 *Counsel for Plaintiff Cisco Systems, Inc.*

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CISCO SYSTEMS, INC.,

Plaintiff,

v.

DYNAMIC MESH NETWORKS, INC.
D/B/A MESHDYNAMICS, and FRANCIS
DACOSTA

Defendants.

Case No. 5:25-cv-06441-NW

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' RULE 12 MOTION
TO DISMISS**

Date: October 22, 2025

Time: 9:00 a.m.

Location: Courtroom 3, 5th Floor

Judge: Hon. Noël Wise

Complaint Filed: July 31, 2025

Trial Date: None Set

PUBLIC VERSION

MeshDynamics Exhibit 2001

Cisco Systems, Inc. v. Dynamic Mesh Networks, Inc. D/B/A MeshDynamics
IPR2025-01303

TABLE OF CONTENTS

		<u>Pages</u>
1		
2		
3	INTRODUCTION	1
4	STATEMENT OF ISSUES TO BE DECIDED	2
5	STATEMENT OF RELEVANT FACTS	2
6	A. This Dispute Arises From The Northern District Of California, Not Texas	2
7	B. Mr. daCosta Never Assigned His Rights In The '537 Patent To Dynamic Mesh	4
8	C. The March 1, 2022 Chirp Assignment Did Not Transfer Ownership Of Any	
9	Of The Patents From Dynamic Mesh To Its Alter Ego, Chirp	4
10	D. The Alter Ego Relationship Between Chirp, Dynamic Mesh And Mr. DaCosta	
11	Continued After The March 1, 2022 Chirp Assignment.....	5
12	E. In July 2025, Dynamic Mesh Said That It Would Dismiss Its Texas Lawsuits,	
13	But It Did Not Say Why It Needed To Dismiss Or When It Would Refile.....	6
14	F. On July 31, 2025, Dynamic Mesh Dismissed Its Texas Cases, And Cisco Filed	
15	Declaratory Judgment Actions Naming All Publicly Listed Former Assignees	7
16	G. Two Weeks Later, On August 12, 2025, Dynamic Mesh Refiled Its Texas	
17	Actions, With Complaints That Make No Mention Of Chirp	7
18	H. Dynamic Mesh Filed Its Motion To Dismiss But Has Refused To Provide	
19	Necessary Jurisdictional Discovery On Its Patent Ownership Theories.....	7
20	ARGUMENT	8
21	I. THIS COURT HAS SUBJECT MATTER JURISDICTION AS A CONTROVERSY	
22	EXISTS BETWEEN CISCO, DYNAMIC MESH, AND FRANCIS DACOSTA	8
23	A. Mr. daCosta Has Always Owned The '537 Patent	8
24	B. Dynamic Mesh Was The Proper Assignee Of The Remaining Patents When	
25	Cisco Filed Its Declaratory Judgement Complaint	10
26	C. Alternatively, Dynamic Mesh Owned The Patents As The Alter-Ego Of Chirp...	12
27	1. Dynamic Mesh And Chirp Have Unity Of Interest And Ownership.....	12
28	2. It Would Be Inequitable For Mr. daCosta To Avoid Liability Here	13
	II. THIS ACTION IS THE FIRST-FILED ACTION.....	14
	III. THE COURT SHOULD NOT DEPART FROM FIRST-TO-FILE PRINCIPLES	15
	A. This First-Filed Action Squarely Falls Under The Declaratory Judgment Act	15

1	B.	There Is No Basis To Relate Back To The Later-Filed Texas Actions	17
2	C.	No Exceptions To The First-To-File Rule Preclude Its Application	18
3	1.	This Action Is Not Anticipatory	19
4	2.	The Northern District Of California Is The Most Convenient Forum	19
5	IV.	CISCO SUFFICIENTLY PLEADS NONINFRINGEMENT	21
6	A.	The Detail In Cisco’s Pleadings Satisfies The Pleading Standards	21
7	B.	Alternatively, Cisco Should Be Granted Leave To Amend.....	23

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES**Page(s)**

<i>Abraxis Bioscience, Inc. v. Navinta LLC</i> , 672 F.3d 1239 (Fed. Cir. 2011).....	4
<i>Activision Blizzard Inc. v. Acceleration Bay LLC</i> , No. 16-CV-3378, D.I. 28, 2016 WL 4548985 (N.D. Cal. Sept. 1, 2016).....	17, 18, 19
<i>Adobe Sys. Inc. v. Bargain Software Shop LLC</i> , No. 14-CV-3721, D.I. 38, 2014 WL 6982515 (N.D. Cal. Dec. 8, 2014).....	17, 18
<i>Alpha One Transporter, Inc. v. Perkins Motor Transport, Inc.</i> , No. 13-CV-2662, D.I. 64, 2014 WL 4537012 (S.D. Cal. Sep. 11, 2014).....	10
<i>Apple Inc. v. Fundamental Innovation Sys. Intl. LLC</i> , No. 19-CV-638, D.I. 36, 2019 WL 1923106 (N.D. Cal. Apr. 30, 2019).....	21
<i>Barnes & Noble, Inc. v. LSI Corp.</i> , 823 F. Supp. 2d 980 (N.D. Cal. 2011)	9, 24
<i>Bd. of Trs. of Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.</i> , 563 U.S. 776 (2011).....	8
<i>Bot M8 LLC v. Sony Corp. of Am.</i> , No. 19-CV-7027, D.I. 91, 2020 WL 418938 (N.D. Cal. Jan. 27, 2020), <i>aff'd in part, rev'd in part and remanded</i> , 4 F.4th 1342 (Fed. Cir. 2021).....	23
<i>In re Bozic</i> , 888 F.3d 1048 (9th Cir. 2018)	20
<i>Capo, Inc. v. Dioptics Med. Prods.</i> , 387 F.3d 1352 (Fed. Cir. 2004).....	16
<i>Centocor, Inc. v. MedImmune, Inc.</i> , No. 02-CV-03252, D.I. 49, 2002 WL 31465299 (N.D. Cal. Oct. 22, 2002) . Thus, this Action	15
<i>City & Cnty. of San Francisco v. Purdue Pharma L.P.</i> , 491 F. Supp. 3d 610 (N.D. Cal. 2020)	12
<i>Com. Space Mgmt. Co. v. Boeing Co.</i> , 193 F.3d 1074 (9th Cir. 1999)	14
<i>Comcast Cable Commc'ns, LLC v. OpenTV, Inc.</i> , 319 F.R.D. 269 (N.D. Cal. 2017).....	23
<i>Commc'ns Test Design Inc. v. Contec, LLC</i> , 952 F.3d 1356 (Fed. Cir. 2020).....	15, 19

	<u>Pages</u>
1 <i>Daewoo Elecs. Am. Inc. v. Opta Corp.</i> ,	
2 875 F.3d 1241 (9th Cir. 2017)	12
3 <i>Dainippon Screen Mfg. Co. v. CFMT, Inc.</i> ,	
4 142 F.3d 1266 (Fed. Cir. 1998)	8
5 <i>In re DoDots Licensing Sols. LLC</i> ,	
6 2023 WL 8642716 (Fed. Cir. Dec. 14, 2023)	21
7 <i>Elecs. For Imaging, Inc. v. Coyle</i> ,	
8 394 F.3d 1341 (Fed. Cir. 2025)	15, 17, 19
9 <i>Eminence Capital LLC v. Aspeon, Inc.</i> ,	
10 316 F.3d 1048 (9th Cir. 2003)	23
11 <i>Futurewei Techs., Inc. v. Acacia Rsch. Corp.</i> ,	
12 737 F.3d 704 (Fed. Cir. 2013)	14
13 <i>In re Genentech, Inc.</i> ,	
14 566 F.3d 1338 (Fed. Cir. 2009)	20
15 <i>Genentech, Inc. v. Eli Lilly & Co.</i> ,	
16 998 F.2d 931 (Fed. Cir. 1993), <i>abrogated on other grounds by Wilton v. Seven</i>	
17 <i>Falls Co.</i> , 515 U.S. 277 (1995)	17
18 <i>Glob. Equity Mgmt. (SA) Pty. Ltd. v. Ericsson, Inc.</i> ,	
19 No. 16-CV-618, D.I. 107, 2017 WL 365398 (E.D. Tex. Jan. 25, 2017)	19
20 <i>Golden Pisces, Inc. v. Fred Wahl Marine Const., Inc.</i> ,	
21 495 F.3d 1078 (9th Cir. 2007)	11
22 <i>In re Google LLC</i> ,	
23 58 F.4th 1379 (Fed. Cir. 2023)	21, 23, 24
24 <i>Google, Inc. v. Sonos, Inc.</i> ,	
25 No. 20-CV-6754, D.I. 36, 2020 WL 6822880 (N.D. Cal. Nov. 20, 2020)	19, 24
26 <i>Grocery Outlet, Inc. v. Naftali, Inc.</i> ,	
27 No. 23-CV-5254, D.I. 55, 2024 WL 4682311 (N.D. Cal. Nov. 5, 2024)	17
28 <i>Halo Elecs., Inc. v. Bel Fuse Inc.</i> ,	
No. 07-CV-6222, D.I. 89, 2008 WL 1991094 (N.D. Cal. May 5, 2008)	17
<i>Harbor Freight Tools USA, Inc. v. Champion Power Equip., Inc.</i> ,	
No. 24-CV-8722, D.I. 46, 2025 WL 819046 (C.D. Cal. Feb. 13, 2025)	19
<i>Hatch v. Reliance Ins. Co.</i> ,	
758 F.2d 409 (9th Cir. 1985)	20

	<u>Pages</u>
1 <i>Infineon Techs. AG v. Volterra Semiconductor Corp.</i> ,	
2 No. 11-CV-6239, D.I. 236, 2013 WL 1832558 (N.D. Cal. May 1, 2013).....	23
3 <i>Ironworks Pats. LLC v. Samsung Elecs. Co.</i> ,	
4 No. 17-CV-01958, D.I. 159, 2018 WL 1400440 (N.D. Cal. Mar. 20, 2018)	22
5 <i>MIS Scis. Corp. v. Rpost Commc'ns Ltd.</i> ,	
6 No. 14-CV-376, D.I. 70, 2016 WL 2931659 (N.D. Cal. May 19, 2016).....	22, 24
7 <i>Muhmoud v. City of San Jose</i> ,	
8 No. 20-CV-8808, D.I. 66, 2022 WL 1539783 (N.D. Cal. May 16, 2022).....	24
9 <i>N. Am. Cas. Ins. Co. v. Encompass Power Servs., Inc.</i> ,	
10 No. 05-CV-1587, D.I. 68, 2005 WL 3453947 (E.D. Cal. Dec. 16, 2005)	15
11 <i>Optoma Tech. Inc. v. Maxell Ltd.</i> ,	
12 No. 24-CV-8147, D.I. 58, 2025 WL 1148286 (N.D. Cal. Mar. 14, 2025)	14
13 <i>Pucs, Inc. v. Hulu, Inc.</i> ,	
14 No. 21-CV-2302, D.I. 43, 2021 WL 4780576 (C.D. Cal. Aug. 18, 2021)	11
15 <i>Ranza v. Nike, Inc.</i> ,	
16 793 F.3d 1059 (9th Cir. 2015)	20, 21
17 <i>Schwendimann v. Arkwright Advanced Coating, Inc.</i> ,	
18 959 F.3d 1065 (Fed. Cir. 2020).....	11
19 <i>Shower Enclosures Am., Inc. v. BBC Distribution Corp.</i> ,	
20 No. 15-CV-627, D.I. 20, 2016 WL 3031081 (N.D. Ind. May 27, 2016).....	10, 11
21 <i>Software Rts. Archive, LLC v. Google Inc.</i> ,	
22 No. 07-CV-511, D.I. 138, 2009 WL 901361 (E.D. Tex. Mar. 31, 2009)	14
23 <i>Special Happy, Ltd. v. Lincoln Imports, Ltd., Inc.</i> ,	
24 No. 8-CV-74, D.I. 74, 2011 WL 2650184 (C.D. Cal. July 6, 2011).....	10
25 <i>Speedplay, Inc. v. Bebop, Inc.</i> ,	
26 211 F.3d 1245 (Fed. Cir. 2000).....	11
27 <i>Sw. eFuel Network, L.L.C. v. Transaction Tracking Techs., Inc.</i> ,	
28 No. 07-CV-311, D.I. 113, 2009 WL 4730464 (E.D. Tex. Dec. 7, 2009)	11
<i>Sys. Div., Inc. v. Teknek Elecs., Ltd.</i> ,	
253 F. App'x 31 (Fed. Cir. 2007)	13
<i>TiVo, Inc. v. Digital CBT LLC</i> ,	
No. 12-CV-3866, D.I. 29, 2012 WL 12924981 (N.D. Cal. Oct. 29, 2012)	16
<i>U.S. Philips Corp. v. Iwasaki Elec. Co.</i> ,	
505 F.3d 1371 (Fed. Cir. 2007).....	9

	<u>Pages</u>
1 <i>Updateme Inc. v. Axel Springer SE</i> ,	
2 No. 17-CV-5054, D.I. 99, 2018 WL 1184797 (N.D. Cal. Mar. 7, 2018)	12
3 <i>Wallerstein v. Dole Fresh Vegetables, Inc.</i> ,	
4 967 F. Supp. 2d 1289 (N.D. Cal. 2013)	14
5 <i>XpertUniverse, Inc. v. Cisco Sys., Inc.</i> ,	
6 No. 17-CV-3848, D.I. 46, 2017 WL 4551519 (N.D. Cal. Oct. 11, 2017)	14
7 <i>Z-Line Designs, Inc. v. Bell'O Int'l LLC</i> ,	
8 218 F.R.D. 663 (N.D. Cal. 2003)	16, 19
9 Statutes	
10 28 U.S.C. § 1400(b)	3
11 28 U.S.C. § 1404(a)	19, 20
12 Cal. Civ. Code § 1636	10, 11
13 Other Authorities	
14 Fed. R. Civ. P. 15(a)(2)	23
15 Fed. R. Civ. P. 15(c)	17, 24
16 Fed. R. Civ. P. 45(c)(1)(A)	20
17 MPEP § 306	9
18 MPEP § 1309(II)	9
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	U.S. Patent No. 7,420,952
B	U.S. Patent No. 7,884,243
C	U.S. Patent No. 7,894,385
D	U.S. Patent No. 8,477,762
E	U.S. Patent No. 8,514,852
F	U.S. Patent No. 8,520,691
G	U.S. Patent No. 9,049,000
H	U.S. Patent No. 11,368,537
I	LinkedIn Profile of Bob Friday
J	Patent Assignment Agreement between Dynamic Mesh, Inc. d/b/a Meshdynamics and Chirp Networks, Inc., dated June 10, 2025
K	Google LLC v. Sonos, Inc., USNDCA, Case No. 3:20-cv-06754, Complaint for Declaratory Judgment of Non-Infringement, date September 28, 2020
L	Bill of Sale and Limited Assumption Agreement between Dynamic Mesh, Inc. d/b/a Meshdynamics and Chirp Networks, Inc., dated March 1, 2022
M	Webpage Capture - Patent Assignment Records of U.S. Patent No., 7,420,952, available at https://assignment.uspto.gov/patent/index.html#/patent/search/resultAbstract?id=10434948&type=applNum
N	Plaintiff Cisco Systems, Inc.'s Proposed Second Amended Complaint for Declaratory Judgment of Non-Infringement
O	Redline Comparison of Plaintiff Cisco Systems, Inc.'s Proposed Second Amended Complaint for Declaratory Judgment of Non-Infringement and Plaintiff Cisco Systems, Inc.'s First Amended Complaint for Declaratory Judgment of Non-Infringement
P	Email from Elizabeth Bernard to Michael Rhodes et al., regarding refusal of Venue Jurisdiction Discovery dated August 26, 2025
Q	Terminal Disclaimer to Obviate a Double Patenting Rejection Over a "Prior" Patent regarding U.S. Patent Application 17/027,381, filed on September 21, 2020
R	Email from Elizabeth Bernard to Tamir Packin et al., regarding Stipulation of Dismissal without Prejudice in the First Texas Action (2:25-CV-00472-RWS-

<u>Exhibit</u>	<u>Description</u>
	RSP), dated July 25, 2025
S	Email from Elizabeth Bernard to Michael Rhodes regarding Defendants Motion to Dismiss, dated August 22, 2025
T	Webpage Capture - Patent Assignment Records of U.S. Patent No., 11,368,537, available at https://assignment.uspto.gov/patent/index.html#/patent/search/resultAbstract?id=11368537&type=patNum
U	Prosecution History of U.S. Patent No., 11,368,537, filed on September 21, 2020
V	Webpage Capture - Santa Clara County Clerk-Recorder Fictitious Business Names reflecting Search Results for “Meshdynamics”, available at https://scccrosselfservice.org/web/search/DOCSEARCH184S2
W	MeshDynamics’ website at “Manuals, Guides, White papers, Briefings, Patents” webpage on the www.meshdynamics.com website as of August 9, 2022, available at https://web.archive.org/web/20220809052417/https://www.meshdynamics.com/mesh-network-presentations.html#ListOfPatentsNotPending
X	MeshDynamics’ website at the www.meshdynamics.com webpage as of April 15, 2024, available at https://web.archive.org/web/20240415015345/http://meshdynamics.com/index.html
Y	MeshDynamics’ website at “Manuals, Guides, Technical Publications, Patents” webpage on the www.meshdynamics.com website as of April 12, 2024, available at https://web.archive.org/web/20240412173304/https://www.meshdynamics.com/mesh-network-presentations.html .
Z	MeshDynamics’ website at “Terms of Use” webpage at the www.meshdynamics.com website as of April 12, 2024, available at https://web.archive.org/web/20240412183542/http://meshdynamics.com/terms.html
AA	Stipulation of Dismissal without Prejudice in the First Texas Action (2:25-CV-00472-RWS-RSP), DI-32
BB	Dynamic Mesh’s Notice of Voluntary Dismissal without Prejudice filed in the Second Texas Action (2:25-cv-00606-RWS-RSP), DI-22
CC	Order of Dismissal Without Prejudice in the First Texas Action (2:25-CV-00472-RWS-RSP), DI-33
DD	Order of Dismissal Without Prejudice in the Second Texas Action (2:25-cv-

<u>Exhibit</u>	<u>Description</u>
	00606-RWS-RSP), DI-23
EE	Dynamic Mesh's Unopposed Motion for Corrected Order Pursuant to Rule 60(a) in First Texas Action (2:25-CV-00472-RWS-RSP), DI-35
FF	Order Denying Dynamic Mesh's Unopposed Motion for Corrected Order Pursuant to Rule 60(a) in First Texas Action (2:25-CV-00472-RWS-RSP), DI-36
GG	Email thread between Dynamic Mesh's Counsel and Cisco's Counsel beginning August 22, 2025 through September 5, 2025
HH	Email thread between Dynamic Mesh's Counsel and Cisco's Counsel beginning August 22, 2025 through August 25, 2025
II	Email from Dynamic Mesh's Counsel to Cisco's Counsel sent July 30, 2025
JJ	California Secretary of State's webpage at the https://bizfileonline.sos.ca.gov/search/business website as of September 5, 2025, of a "Business Search" search result for "Dynamic Mesh Networks, Inc."
KK	California Secretary of State's webpage at the https://bizfileonline.sos.ca.gov/search/business website as of September 5, 2025, of a "Business Search" search result for "Chirp Networks, Inc."

INTRODUCTION

Contrary to Defendants’ unfounded accusations of “forum shopping,” Cisco’s decision about when and where to file this lawsuit was guided by two straightforward considerations.

First, Dynamic Mesh Networks Inc. d/b/a MeshDynamics (“Dynamic Mesh”) refused to disclose when it intended to sue Cisco again—declining even to clarify whether another lawsuit was days, weeks, or months away. Faced with that uncertainty, and confident that Defendants’ infringement allegations lack merit, Cisco filed this declaratory judgment action to resolve the dispute.

Second, Cisco filed suit in the only appropriate venue: the Northern District of California. Dynamic Mesh’s sole place of business is Mr. Francis daCosta’s residence in Santa Clara, California. Accordingly, the Eastern District of Texas was never a proper venue for this case.

The ties to this District are deep and undeniable. Cisco is headquartered in San Jose. Each of the asserted patents was developed here by local inventors. Defendants themselves allege that they met with Cisco multiple times in this District to discuss the relevant technology and that they sent a licensing letter from Santa Clara to San Jose. Each of the accused Cisco products has strong connections to this District, and even the assignment agreement Defendants rely upon is governed by California law. This District is not only proper—it is the most natural and relevant forum for this case.

There is no basis to set aside the first-to-file rule or dismiss this action in favor of later-filed cases in Texas—a forum with no meaningful connection to the parties or controversy. Defendants argue that Cisco lacked standing because Dynamic Mesh supposedly did not own the patents at the time of filing. In support, they rely on a newly revealed March 1, 2022 agreement (the “Chirp Assignment”; Ex. L) between Dynamic Mesh and another daCosta entity at the same address, Chirp Networks, Inc. (“Chirp”). But that argument fails for three independent reasons.

First, Mr. daCosta—not Dynamic Mesh—owned at least one of the patents-in-suit at the time of the alleged Chirp Assignment, and he continued to own it when Cisco filed this action. *Second*, the Chirp Assignment does not divest this Court of standing, as inclusion of the patents-in-suit was the product of mutual mistake. Indeed, contemporaneous and subsequent evidence of the parties’ conduct demonstrates that they never treated the Chirp Assignment as transferring the Patents from Dynamic

1 Mesh to Chirp, until after Cisco filed its Complaint in this action. *Third*, based on the limited
 2 information available, Dynamic Mesh and Chirp are Mr. daCosta's alter ego companies that both
 3 operate under the business pseudonym "MeshDynamics."

4 Defendants also contend that Cisco's complaint fails to allege sufficient non-infringement facts
 5 under Rule 12. That argument lacks merit because Cisco incorporated *Dynamic Mesh's* previously
 6 filed pleadings, which set forth Defendants' infringement theories. In any event, Cisco moves under
 7 Rule 15 for leave to amend its complaint to add further allegations addressing Defendants' concerns.
 8 The amendment is not futile, and granting it would moot Defendants' Rule 12 challenge.

9 **STATEMENT OF ISSUES TO BE DECIDED**

10 1. Whether the Court should dismiss Cisco's first-filed California complaint in favor of
 11 two later-filed Texas actions to decide a dispute between California companies and residents, over
 12 California patents, with California-based accused products.

13 2. Whether an assignment only purporting to cover seven of the eight Patents, based on a
 14 mutual mistake, and between two alter-ego parties, divests the Court of subject matter jurisdiction.

15 3. Whether the Court should set aside the general rule that first-filed cases should proceed.

16 4. Whether Cisco adequately pleads non-infringement by referencing Plaintiff's
 17 infringement theories and identifying specific limitations that are not infringed.

18 5. Whether Cisco should be granted leave to address any purported deficiencies in its
 19 Complaint given the early juncture of the case and lack of futility.

20 **STATEMENT OF RELEVANT FACTS**

21 **A. This Dispute Arises From The Northern District Of California, Not Texas**

22 The parties reside in this District. Plaintiff Cisco is a corporation "with a principal place of
 23 business at 170 West Tasman Drive, San Jose, California 95314." D.I. 1 ¶ 12. Defendant Dynamic
 24 Mesh "is a corporation organized and existing under the laws of California, with its principal place of
 25 business alleged to be at 3355 Benton Street, Santa Clara, CA 95051." D.I. 1 ¶ 30. Defendant Mr.
 26 DaCosta also resides "at 3355 Benton Street, Santa Clara, CA 95051." D.I. 1 ¶¶ 18, 21. Co-inventor
 27 Mr. Dayanandan resides within this District at "2272 Brandini Drive, Dublin, CA 94568." D.I. 13 at
 28

3; D.I. 1 ¶ 33. Chirp Networks, Inc.—Mr. daCosta’s other company that Defendants allege owned the patents—also resides at 3355 Benton Street, Santa Clara, CA 95051. *See* Ex. L at 1.

The parties’ dispute stems from California patents and technology. Dynamic Mesh accuses Cisco of infringing eight patents: U.S. Patent Nos. 7,420,952 (the “’952 Patent”), 7,885,243 (the “’243 Patent”), 7,894,385 (the “’385 Patent”), 8,520,691 (the “’691 Patent”), 11,368,537 (the “’537 Patent”), 8,477,762 (the “’762 Patent”), 8,514,852 (the “’852 Patent”), and 9,049,000 (the “’000 Patent”) (collectively, the “Patents”; Exs. A–H). “[T]he work leading to the Patents occurred in or around Santa Clara, CA and/or San Jose, CA.” D.I. 1 ¶ 25. Each of the Patents lists the same two inventors—Mr. daCosta and Mr. Dayanandan—who reside within this District. D.I. 1 ¶ 26, 32–33.

The purported pre-suit communications allegedly occurred in California. Dynamic Mesh alleges that it (through Mr. daCosta) “met (multiple times) with Cisco in or around 2009 to discuss a potential partnership for wireless mesh networking technology” in San Jose, California. D.I. 39 (“Mot.”) Ex. 1 ¶ 50; Mot. Ex. 2 ¶ 41; D.I. 1 ¶ 6. Dynamic Mesh further alleges that Defendants discussed one of the Patents—the ’952 Patent—at those meetings. *See* Mot. Ex. 1 ¶¶ 51–53. Next, Dynamic Mesh alleges that on June 22, 2022, Defendants sent Cisco a letter to discuss the Patents. *Id.* ¶¶ 54–58; Mot. Ex. 2 ¶¶ 44–48. Notably, that letter was addressed from Santa Clara, California, and addressed to San Jose, California. Mot. Ex. 25 at 1. The letter only names one meeting participant, Bob Friday, a third party located in this District. *See* Ex. I, Bob Friday LinkedIn.

The accused mesh products boast strong connection to this District, but only tenuous ties to Texas. Every U.S.-based employee working on the accused mesh features is in this District. Amiri Decl. ¶¶ 5–7. Contrary to Dynamic Mesh’s claim that relevant employees “are located in the Eastern District of Texas” (Mot. at 12), no Cisco Texas-based employees work on the research, design, or development of the accused mesh products, including the employees named in Ms. Bernard’s Declaration. *Compare* D.I. 40, Bernard Decl. ¶ 31 *with* Amiri Decl. ¶ 7.

Neither Defendant resides or has a principal place of business in Texas. D.I. 1 ¶¶ 17, 21. Thus, Cisco ***could not*** have brought suit in Texas. 28 U.S.C. § 1400(b) (“Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the

defendant has committed acts of infringement and has a regular and established place of business.”).

B. Mr. daCosta Never Assigned His Rights In The ’537 Patent To Dynamic Mesh

Defendants’ Motion refers to assignment agreements from Mr. daCosta to Dynamic Mesh. *See, e.g.*, Mot. Ex. 22. But Dynamic Mesh fails to adduce any assignment from Mr. daCosta for the ’537 Patent, Cisco cannot find any that are publicly recorded, and Defendants’ counsel confirmed that no other assignment agreements exist. Ex. HH, 9/4/2025 Email From E. Bernard To M. Rhodes. Thus, as of March 1, 2022—the date of the Chirp Assignment, discussed below—Mr. daCosta retained ownership of the ’537 Patent. *Id.*¹ Accordingly, Dynamic Mesh ***could not*** have transferred ownership of the ’537 Patent to Chirp because Dynamic Mesh did not own it at the time. *Abraxis Bioscience, Inc. v. Navinta LLC*, 672 F.3d 1239, 1241 (Fed. Cir. 2011) (“[I]t is not possible to transfer an interest in a patent unless one owns the patents at the time of the transfer”).

C. The March 1, 2022 Chirp Assignment Did Not Transfer Ownership Of Any Of The Patents From Dynamic Mesh to Its Alter Ego, Chirp

Mr. daCosta is the President, CEO, secretary, and chief financial officer, of both Dynamic Mesh and Chirp, and both are based out of his home at 3355 Benton Street in Santa Clara, California. Chirp Assignment at 5; D.I. 13 at 3; Bernard Decl. ¶ 11. Mr. daCosta executed both sides of the Chirp Assignment, using the same copied and pasted version of his signature. Chirp Assignment at 5.

Although Mr. daCosta shifts assets between his alter-ego companies as he pleases, the Chirp Assignment did not reflect his wishes. Instead, “Dynamic Mesh intended to transfer the ‘Chirp’ patent portfolio to Chirp Networks” but “the agreement ... inadvertently assigned all patents owned by Dynamic Mesh.” Mot. at 4. In other words, due to a mutual mistake, the agreement had a typographical error listing “[a]ll patent rights” instead of “[a]ll Chirp patent rights.” Chirp Assignment at 6. Notably, disputes arising out of this agreement are to be decided under California law. *Id.* at 5.

Defendants have refused to provide jurisdictional discovery surrounding the Chirp Assignment, which leaves open questions regarding the alter-ego issue. For example, Defendants

¹ To date, Dynamic Mesh has not provided jurisdictional discovery on patent ownership other than an unredacted version of the Chirp Assignment that Dynamic Mesh sent to Cisco yesterday (Ex. L, Unredacted Chirp Assignment), and public records at the Patent Office. *See* Packin Decl. ¶¶ 17–21.

1 have not provided any evidence that the Chirp Assignment was ratified by the companies' boards and
 2 shareholders, or that Mr. daCosta honors corporate formalities for these entities, such as holding
 3 annual shareholder and board meetings, keeping detailed minutes and records, maintaining separate
 4 finances, and ensuring the corporations are adequately capitalized. In fact, the only entity in Santa
 5 Clara county that was registered to do business under the fictitious name "MeshDynamics" was
 6 Advanced Cybernetics Group Inc., yet another of Mr. DaCosta's alter-ego companies. *See* Ex. V.

7
 8 **D. The Alter Ego Relationship Between Chirp, Dynamic Mesh And Mr. DaCosta
 Continued After The March 1, 2022 Chirp Assignment**

9 Even after March 1, 2022, although neither was ever registered to do so in Santa Clara County,
 10 it appears that both Dynamic Mesh and Chirp continued doing business as "MeshDynamics." For
 11 example, after the Chirp Assignment, MeshDynamics' website, www.meshdynamics.com, listed all
 12 19 of Mr. daCosta's patents at the time as "Meshdynamics Intellectual Property Portfolio"—including
 13 both the Patents, and the Chirp patents as belonging to "MeshDynamics." *See e.g.*, Ex. W (August
 14 2022). Similarly, on June 22, 2022, Mr. daCosta represented to Cisco that Dynamic Mesh owned the
 15 Patents, not Chirp. Specifically, Mr. daCosta sent Cisco a letter on Dynamic Mesh's (d/b/a
 16 MeshDynamics) letterhead, with the subject line "***Patents Owned by Dynamic Mesh Networks, Inc.,
 17 d/b/a/ MeshDynamics.***" Mot. Ex. 25 at 2. Mr. daCosta further attached Exhibit A, which Mr. daCosta
 18 stated were a list of "[MeshDynamics'] 19 patents and a pending application." *Id.* at 2, 4. Mr.
 19 daCosta's letter also repeatedly states that MeshDynamics' is purely serving his personal interests
 20 relating to his "family's charitable trust." *Id.* at 2, 3.²

21 After March 1, 2022, the MeshDynamics website listed all of Mr. daCosta's patents as
 22 "Intellectual Property," including patents for "Tree based dynamic topologies" and "Chirp protocols."
 23 *See* Ex. Y (2024). And MeshDynamics' website even added "Chirp Networks" as a listed registered
 24 trademark in the footer. *See e.g.*, Ex. X (2024). Indeed, the Terms of Use of MeshDynamics's website

25
 26
 27 ² Mr. daCosta even held out ***himself personally*** under the fictitious name MeshDynamics. *See* Ex. Q
 ('537 Patent Terminal Disclaimer listing "Francis daCosta ***dba MeshDynamics***").

1 indicated that “Chirp Networks”™ was a MeshDynamics trademark. *See e.g.*, Ex. Z (2024).

2 Further demonstrating that Chirp did not own all of Mr. daCosta’s patents even after the Chirp
3 Assignment, on June 10, 2025, Dynamic Mesh assigned four of Mr. daCosta’s patents to Chirp. Ex.
4 J. Had the Chirp Assignment actually transferred of all of Dynamic Mesh’s patents to Chirp, there
5 would have been no need for this additional assignment. Similarly, on August 11, 2025, *after* Cisco
6 filed this suit, Mr. daCosta quitclaimed his rights in the Patents. Mot. Ex. 18. If Mr. daCosta did not
7 own any rights in the Patents, there would have been no need for this additional quitclaim.

8 In May and June 2025, Defendant Dynamic Mesh publicly declared and represented to the
9 Eastern District of Texas that it—doing business as MeshDynamics—owned the Patents, specifically
10 stating that “MeshDynamics owns all rights, title, and interest in each of the Patents including the right
11 to recover for all past infringement.” Mot. Ex. 1 ¶ 24; Mot. Ex. 2 ¶ 26.³ Notably, neither Texas Action
12 made any mention of Chirp or the Chirp Assignment.

13
14 **E. In July 2025, Dynamic Mesh Said That It Would Dismiss Its Texas Lawsuits,
But It Did Not Say Why It Needed To Dismiss Or When It Would Refile**

15 On July 25, 2025, Dynamic Mesh informed Cisco that it intended to dismiss the First Texas
16 Action while curing a “possible standing deficiency.” Packin Decl. ¶ 5. On July 29, 2025, the parties
17 met and conferred. Packin Decl. ¶ 6. Cisco asked whether Dynamic Mesh intended to dismiss both
18 EDTX actions or only the First Action. *Id.* ¶ 6. Dynamic Mesh confirmed that it would dismiss both
19 actions. *Id.* ¶ 6. Cisco inquired regarding the “possible standing deficiency” and when Dynamic Mesh
20 intended to refile. *Id.* ¶ 6. Dynamic Mesh did not answer Cisco’s question. *Id.* ¶ 6. Cisco again asked
21 when Dynamic Mesh would potentially sue Cisco again and whether it could provide any general
22 timeframe such as whether it might occur within “days, weeks, or months.” *Id.* ¶ 6. Dynamic Mesh
23 again refused to answer, only commenting that it was continuing to work on resolving the issue. *Id.* ¶
24 6. Cisco stated that it would likely agree to Dynamic Mesh’s proposal for a stipulated dismissal under
25 Rule 41 and would confirm after conferring internally. *Id.* ¶ 7.

26
27 ³ In the First Texas Action, Dynamic Mesh asserted five of the eight Patents: the ’952, ’243, ’385,
28 ’691, and ’537 Patents. *See* Mot. Ex. 1. In the Second Texas Action, Dynamic Mesh asserted the
remaining three Patents: the ’852, ’000, and ’762 Patents. *See* Mot. Ex. 2.

F. On July 31, 2025, Dynamic Mesh Dismissed Its Texas Cases, And Cisco Filed Declaratory Judgment Actions Naming All Publicly Listed Former Assignees

On July 31, 2025, Dynamic Mesh dismissed the First and Second Texas Actions. Packin Decl. ¶ 9. That same day, Cisco filed this Action, so the Court could resolve the threat of a future lawsuit from Dynamic Mesh. *Id.* ¶ 10. Dynamic Mesh’s counsel quickly became aware of this Action. Mot. Ex. 12. Yet, Dynamic Mesh did not inform Cisco that it believed Chirp should be added to this lawsuit. Nor did it publicly record any assignment with Chirp at the Patent Office until after Cisco filed this action. Instead, Dynamic Mesh kept the existence of the Chirp Assignment a secret from Cisco.

On August 8, 2025, Dynamic Mesh moved to correct the order dismissing the First Texas Action. *Id.* ¶ 12. But on August 11, 2025, the Texas court denied Dynamic Mesh’s Motion, and it pronounced that “*the case in this Court has been resolved*. If the Plaintiff wishes to reopen the case, it may amend its motion to so move.” *Id.* ¶ 13. Plaintiff did not seek to reopen the First Texas Action.

G. Two Weeks Later, On August 12, 2025, Dynamic Mesh Refiled Its Texas Actions, With Complaints That Make No Mention Of Chirp

On August 12, 2025—two weeks after Cisco filed this Action—Dynamic Mesh filed the Third and Fourth Texas Actions. Packin Decl. ¶ 14. Dynamic Mesh’s complaints in those Actions make no mention of Chirp or the Chirp Assignment. *Id.* Instead, consistent with Dynamic Mesh’s first two complaints, Patent Office public assignments, letters to Cisco, and other representations, the Third and Fourth Texas Actions claim that “MeshDynamics owns all rights, title, and interest in each of the Patents including the right to recover for all past infringement.” *Id.*

H. Dynamic Mesh Filed Its Motion To Dismiss But Has Refused To Provide Necessary Jurisdictional Discovery On Its Patent Ownership Theories

On August 20, 2025 counsel for the parties met and conferred to discuss Defendants’ grounds for dismissal. For the first time, Dynamic Mesh disclosed to Cisco that it believed Chirp was a prior owner of the Patents. On August 22, 2025, Defendants filed the present Motion, which included a heavily redacted version of the Chirp Assignment. *See* Chirp Assignment. The next business day, Cisco requested “an unredacted copy of [the Chirp Assignment] and a half-day deposition of Mr.

Francis DaCosta” to assess Dynamic Mesh’s ownership claims. Packin Decl. ¶ 17. Just yesterday evening, Defendants produced an unredacted version of the Chirp Assignment, but continued to refuse to provide further jurisdictional discovery. *Id.* ¶ 21.

ARGUMENT

I. THIS COURT HAS SUBJECT MATTER JURISDICTION AS A CONTROVERSY EXISTS BETWEEN CISCO, DYNAMIC MESH, AND FRANCIS DACOSTA

The Court has always had subject matter jurisdiction. *First*, Mr. daCosta, as an inventor, owned the ’537 Patent when Cisco filed suit. *Second*, Dynamic Mesh owned the remaining Patents—either as a matter of contract law and/or because Dynamic Mesh and unintentional assignee Chirp, both doing business as “MeshDynamics,” are alter egos. Each circumstance independently conferred this Action with subject matter jurisdiction when Cisco filed suit.

A. Mr. daCosta Has Always Owned The ’537 Patent

An actual controversy exists between Cisco and Mr. daCosta because Mr. daCosta invented the ’537 Patent, never assigned his rights away before Cisco filed suit, and threatened Cisco. Specifically, Mr. daCosta alleges that he discussed his Patents with Cisco before filing suit, and he sent a letter threatening Cisco. *See Fact Sections A, D.* Critically, Mr. daCosta is behind Mesh Dynamics, which sued Cisco *four times* on the Patents in Texas. Therefore, the Court has subject matter jurisdiction to hear this case at least because Cisco and Mr. daCosta have always had an actual controversy. *See, e.g., Dainippon Screen Mfg. Co. v. CFMT, Inc.*, 142 F.3d 1266, 1270, 1273 (Fed. Cir. 1998) (finding “the litigation threats and [] various licensing negotiations” of a subsidiary created a case and controversy between accused infringer and both a subsidiary and its parent corporation).

There is *no* publicly recorded assignment of the ’537 Patent. *See* Ex. T; Ex. U. Thus, as an inventor, Mr. daCosta still had rights in the ’537 Patent when Cisco filed suit. *Bd. of Trs. of Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.*, 563 U.S. 776, 785 (2011) (“Our precedents confirm the general rule that rights in an invention belong to the inventor.”).

Dynamic Mesh identified assignment agreements for seven of the Patents, but none for the ’537 Patent. *See* Mot. Ex. 22; Bernard Decl. ¶ 28. Tellingly, Dynamic Mesh’s counsel, admits as

much and confirmed no further assignments existed. *See* Bernard Decl. ¶ 28 (“Mr. daCosta and Mr. Dayanandan signed an assignment of their rights for each patent-in-suit to Mesh Dynamics, Inc. (*except the ’537 which was issued directly to Dynamic Mesh Networks, Inc.*.”); Ex. HH (“There are no ‘unproduced assignment agreements.’ The agreements Dynamic Mesh and Mr. daCosta have are attached to the motion to dismiss.”). Dynamic Mesh focuses on the fact that the ’537 Patent purportedly issued to Dynamic Mesh but simply printing Dynamic Mesh’s name as the purported assignee does not strip Mr. daCosta of his inherent rights as an inventor. MPEP § 1309(II) (“The Office does not look to the assignment record to determine the name of the assignee to be printed on the front of the patent”); *see also U.S. Philips Corp. v. Iwasaki Elec. Co.*, 505 F.3d 1371, 1375 (Fed. Cir. 2007) (“assignment printed on the face of a patent is not a conclusive indication of the patent’s current ownership”). Here, the prosecuting attorney appears to have simply wrote Dynamic Mesh’s name as the purported assignee based on the issue fee transmittal, without any assignment records.

Thus, Mr. daCosta’s ownership of at least the ’537 Patent when Cisco filed suit independently confers the Court with subject matter jurisdiction. *See Barnes & Noble, Inc. v. LSI Corp.*, 823 F. Supp. 2d 980, 985 (N.D. Cal. 2011) (“*Since at least one of the patents . . . was owned by LSI . . . , the Court had subject matter jurisdiction* over the action since its inception, and the amendment merely added certain claims and parties and deleted certain claims, as Plaintiffs were permitted to do under Rule 15(a).”) (finding subject matter jurisdiction where only one of ten patents-in-suit were owned by the declaratory defendant when the suit was commenced).⁴

In addition, none of the older assignments of family members to the ’537 Patent could have assigned away Mr. daCosta’s ownership rights. Critically, the ’537 Patent is a *continuation-in-part (“CIP”)*, which includes new subject matter beyond its parent application and requires a new assignment agreement. MPEP § 306 (“In the case of a substitute or continuation-in-part application, a prior assignment of the original application is not applied (effective) to the substitute or continuation-in-part application because the assignment recorded against the original application gives the assignee

⁴ Here, Defendants only dispute jurisdiction *as of filing of Cisco’s complaint* and have not sought to dismiss Mr. daCosta based on his post-filing quitclaim deed. If they did, an entirely different body of case law would be implicated, but this Court would still retain subject matter jurisdiction.

rights to only the subject matter common to both applications.”); *see also Alpha One Transporter, Inc. v. Perkins Motor Transport, Inc.*, No. 13-CV-2662, D.I. 64, 2014 WL 4537012, at *3 (S.D. Cal. Sep. 11, 2014) (CIP applications contain new matter and therefore patents issuing from such applications are “not the same ‘invention’ that was” originally assigned).

Thus, since the start of this Action, an actual controversy has existed between, at minimum, Cisco and Mr. daCosta. This controversy alone conferred the Court with subject matter jurisdiction.

B. Dynamic Mesh Was The Proper Assignee Of The Remaining Patents When Cisco Filed Its Declaratory Judgement Complaint

Neither Dynamic Mesh nor Chirp ever intended to assign the Patents to Chirp. Dynamic Mesh admits that it never “intended” to “inadvertently” transfer the Patents, and after its outside counsel discovered the “issue” they worked “every day” to correct it. Bernard Decl ¶ 14; Mot. at 4. Because the objective intent of the parties was for Dynamic Mesh to retain the Patents after execution of the Chirp Assignment, both California law and equity require giving effect to this unambiguous intention.

First, under California law, “[a] contract must be so interpreted as to **give effect to the mutual intention of the parties** as it existed at the time of contracting, so far as the same is ascertainable and lawful.” Cal. Civ. Code § 1636 (emphasis added). “That intention is evaluated using an objective standard.” *Shower Enclosures Am., Inc. v. BBC Distribution Corp.*, No. 15-CV-627, D.I. 20, 2016 WL 3031081, at *2 (N.D. Ind. May 27, 2016) (citation omitted); *see also Special Happy, Ltd. v. Lincoln Imports, Ltd., Inc.*, No. 8-CV-74, D.I. 74, 2011 WL 2650184, at *5 (C.D. Cal. July 6, 2011) (finding contemporaneous objective evidence indicated true intention of agreement).

Dynamic Mesh agrees that the mutual intention of the two daCosta companies—Dynamic Mesh and Chirp—was to “transfer the ‘*Chirp*’ patent portfolio to Chirp Networks,” not the Patents. Mot. at 4. That mistake is further evidenced by objective contemporaneous evidence. As explained above, on June 10, 2025, Dynamic Mesh assigned four other daCosta patents to Chirp, confirming the Chirp Assignment did not cover all daCosta patents. *See Fact Section D supra*. Mr. daCosta also sent a letter to Cisco alleging that *Dynamic Mesh*, not Chirp, owned the Patents. *Id.* And Dynamic Mesh even continued to publicly hold itself out as the assignee of the Patents on its public website.

1 *Id.* Also, there is no public record of Dynamic Mesh recording the Chirp Assignment with the Patent
 2 Office. *Cf.* Ex. J (assigning alleged “Chirp patent portfolio” patents from Dynamic Mesh to Chirp);
 3 *with* Ex. M (no recorded assignment between Dynamic Mesh and Chirp). To avoid doubt, Dynamic
 4 Mesh sued Cisco on May 5, 2025 and June 6, 2025, declaring itself as the rightful owner of every
 5 Patent. *See Fact Section D supra.* Given the clear, objective, and contemporaneous evidence of the
 6 mistaken assignment, Cal. Civ. Code § 1636 requires giving the parties’ true intention effect by
 7 voiding or fixing the mistake. *See Shower Enclosures*, 2016 WL 3031081, at *3 (applying California
 8 law) (“typographical errors in assignments will not negate standing where the intent of the parties is
 9 clear”) (collecting cases); *Golden Pisces, Inc. v. Fred Wahl Marine Const., Inc.*, 495 F.3d 1078, 1081
 10 (9th Cir. 2007) (“When ‘there is no effective manifestation of assent[, there is] no contract at all.’ . . .
 11 Without mutual assent, the parties’ written contract was therefore void.”) (quoting Restatement
 12 (Second) of Contracts § 163 cmt. a (1979) *and* Restatement (Second) of Contracts § 7 cmt. A (1981)).

13 ***Second***, the equities weigh towards finding standing. Courts regularly find that a mistaken
 14 assignment should not defeat standing. *See Pucs, Inc. v. Hulu, Inc.*, No. 21-CV-2302, D.I. 43, 2021
 15 WL 4780576, at *3 (C.D. Cal. Aug. 18, 2021) (“Plaintiff does not lack standing simply because of a
 16 scrivener’s error.”); *Schwendimann v. Arkwright Advanced Coating, Inc.*, 959 F.3d 1065, 1074 (Fed.
 17 Cir. 2020) (applying Minnesota law similar to California law, and holding that “a good-faith mistake
 18 does not deprive the assignment of its force and the standing it conveys”) (citation omitted); *Speedplay,*
 19 *Inc. v. Bebop, Inc.*, 211 F.3d 1245, 1250 (Fed. Cir. 2000) (finding standing despite “scrivener’s error”
 20 in agreement identifying wrong patent, where other contemporaneous evidence supported intent).

21 In such circumstances, courts have also found the correction to be retroactive, fixing standing
 22 ***at the time of filing*** as opposed to when the court issues its correction. *Schwendimann v. Arkwright*
 23 *Advanced Coating, Inc.*, 959 F.3d 1065, 1074 (Fed. Cir. 2020) (fixing a mistaken contract to confer
 24 standing “as of the date that the handwritten instrument was submitted to the USPTO”). Where there
 25 is contemporaneous objective evidence of the mistake, the risks precluding retroactive correction of
 26 an assignment to cure standing are not applicable. *See Sw. eFuel Network, L.L.C. v. Transaction*
 27 *Tracking Techs., Inc.*, No. 07-CV-311, D.I. 113, 2009 WL 4730464, at *4 (E.D. Tex. Dec. 7, 2009)

(recognizing that even cases refusing to retroactively cure standing “implied that a different outcome would be appropriate where a party reveals sound reasoning for straying from the general rule”). Because Dynamic Mesh was not deprived of standing by the mistake in the Chirp Assignment, Dynamic Mesh had (and asserted) exclusionary rights by the time Cisco filed this litigation. Thus, Cisco properly pleads an “affirmative act” to support declaratory judgment subject matter jurisdiction.

C. Alternatively, Dynamic Mesh Owned The Patents As The Alter-Ego Of Chirp

Because Mr. daCosta—president and founder of both Dynamic Mesh and Chirp—treated the two corporations as the same and failed to respect the corporate form, these two corporations are alter egos and Chirp’s purported patent ownership would not defeat subject matter jurisdiction. “To prove an alter ego relationship exists, a plaintiff must show: (1) that there is such unity of interest and ownership that the separate personalities of the two entities no longer exist and (2) that failure to disregard their separate identities would result in fraud or injustice.” *Updateme Inc. v. Axel Springer SE*, No. 17-CV-5054, D.I. 99, 2018 WL 1184797, at *9 (N.D. Cal. Mar. 7, 2018) (citation omitted).

1. Dynamic Mesh And Chirp Have Unity Of Interest And Ownership

Mr. daCosta failed to respect the corporate formalities between his two corporations, Dynamic Mesh and Chirp, and accordingly there is a unity of interest and ownership between the two. Courts consider a non-exhaustive list of factors when determining whether there is unity of ownership and interest. *City & Cnty. of San Francisco v. Purdue Pharma L.P.*, 491 F. Supp. 3d 610, 635 (N.D. Cal. 2020) (a non-exhaustive list of factors courts consider include “(1) inadequate capitalization, (2) commingling of funds and other assets, (3) disregard of corporate formalities and failure to maintain an arm’s length relationship, (4) holding out by one entity that is liable to the debts of the other, (5) identical equitable ownership, (6) use of the same offices and employees, (7) lack of segregation of corporate records, (8) manipulating assets between entities so as to concentrate the assets in one and the liabilities in another, and (9) identical directors and officers.”) (citing *Daewoo Elecs. Am. Inc. v. Opta Corp.*, 875 F. 3d 1241, 1250 (9th Cir. 2017)). Here, factors 2–3, 5–7, 9 all weigh in favor of finding a unity of interest and ownership. Accordingly, the weight of the evidence indicates unity between Dynamic Mesh and Chirp, confirming subject matter jurisdiction here.

1 **First**, Mr. daCosta is the founder, CEO, president, secretary, and CFO, of Dynamic Mesh **and**
 2 Chirp. *See Fact Section C supra*. Both corporations share the same registered agent (Mr. daCosta)
 3 and have the same address—Mr. daCosta’s personal residence. *See Ex. JJ; Ex. KK*. Factors 5, 6, and
 4 9 therefore weigh in favor of finding a unity of interest and ownership.

5 **Second**, property and other assets were freely transferred between the corporations through
 6 agreements which Mr. daCosta signed on behalf of both parties. *See Fact Sections C, D supra*.
 7 Tellingly, the Chirp Assignment gave Chirp Power of Attorney for Dynamic Mesh. Ex. L ¶ 7. And
 8 after the Chirp Assignment, Dynamic Mesh still repeatedly held itself out as the owner of all Patents,
 9 including through recorded assignments, its website, letters to Cisco, and even lawsuits, as well as the
 10 owner of all trademarks and the www.meshdynamics.com domain name. *See Fact Section D supra*.
 11 Even privately, Mr. daCosta re-assigned alleged “Chirp patent portfolio” patents between his
 12 companies for **a dollar**, again signing on behalf of both companies. Mot. Ex. 15. These public and
 13 private actions confirm unity and meet factors 2 and 3. *See Sys. Div., Inc. v. Teknek Elecs., Ltd.*, 253
 14 F. App’x 31, 35 (Fed. Cir. 2007) (affirming that “timing of the transfers [of assets], [owner’s] control
 15 of all three companies and ownership interests in the same percentages ..., and [the owner’s] personal
 16 actions in effecting the transfers” weighed in favor of determining a unity of ownership and interest).

17 In addition, Dynamic Mesh intermingled corporate records with Chirp by [REDACTED]
 18 [REDACTED]—e.g. factor 7. Chirp
 19 Assignment at 3. Because Dynamic Mesh has refused to provide further discovery surrounding the
 20 terms of this agreement, to the extent the Court needs more evidence to find Dynamic Mesh and Chirp
 21 are alter egos, Cisco respectfully requests jurisdictional discovery on this issue.

22 **2. It Would Be Inequitable For Mr. daCosta To Avoid Liability Here**

23 Allowing Mr. daCosta to disregard the corporate form, yet have Dynamic Mesh escape this
 24 Action on an assignment technicality—particularly when it subsequently had title “corrected”—would
 25 be unjust. Dynamic Mesh held itself out as the proper owner of the Patents for years following the
 26 Chirp Assignment, including in alleged correspondence to Cisco, by suing Cisco, and by stating in its
 27 complaint that it “owns all rights, title, and interest in each of the Patents including the right to recover
 28

for all past infringement.” *See Fact Section D supra*. But at the same time, Dynamic Mesh [REDACTED] [REDACTED]. *See Ex. L* at 3. It would be inequitable for Dynamic Mesh to now “hide behind the corporate fiction” to avoid liability here. *Software Rts. Archive, LLC v. Google Inc.*, No. 07-CV-511, D.I. 138, 2009 WL 901361, at *6 (E.D. Tex. Mar. 31, 2009) (finding “the corporate distinction between [two alter ego corporations] should be disregarded for the purposes of vesting title to the patents-in-issue” where one “corporation which represented it owned the patent and could convey title” where other alter ego corporation had title).

II. THIS ACTION IS THE FIRST-FILED ACTION

This Action was filed first. *See Mot.* at 10–11. “Application of the first-to-file rule is generally a matter for a district court’s discretion, exercised within governing legal constraints.” *Futurewei Techs., Inc. v. Acacia Rsch. Corp.*, 737 F.3d 704, 708 (Fed. Cir. 2013). “Courts in the Ninth Circuit look to three factors to [sic] when to applying the first-to-file rule: (1) the chronology of the actions; (2) the similarity of the parties; and (3) the similarity of the issues.” *Optoma Tech. Inc. v. Maxell Ltd.*, No. 24-CV-8147, D.I. 58, 2025 WL 1148286, *2 (N.D. Cal. Mar. 14, 2025) (citation omitted).

First, the chronology of the actions confirms this Action is first-filed. Prior to this Action, Dynamic Mesh voluntarily dismissed the First and Second Texas Actions pursuant to Rule 41(a)(1) and those actions “are therefore moot for the purposes of the first-to-file rule.” *Wallerstein v. Dole Fresh Vegetables, Inc.*, 967 F. Supp. 2d 1289, 1294 (N.D. Cal. 2013); *see also Com. Space Mgmt. Co. v. Boeing Co.*, 193 F.3d 1074, 1078 (9th Cir. 1999) (“[I]t is beyond debate that a dismissal under Rule 41(a)(1) is effective on filing, no court order is required”). Indeed, the Texas court confirmed that the First and Second Texas Actions were “closed” and “resolved.” Packin Decl. ¶ 13. On July 31, 2025, Cisco filed this Action. Later, on August 12, 2025, Dynamic Mesh filed the Third and Fourth Texas Actions. *Mot. Exs.* 19–20. Thus, this Action was filed first. Dynamic Mesh’s reliance on *XpertUniverse* is misplaced. *XpertUniverse, Inc. v. Cisco Sys., Inc.*, No. 17-CV-3848, D.I. 46, 2017 WL 4551519, at *3 (N.D. Cal. Oct. 11, 2017). In *XpertUniverse*, “as a technical matter” the California case was “first filed,” but Cisco asked to relate back to an older litigation that was closed in Delaware. *Id.* at *3–*4. The court declined to find any exception to the first-filed rule, and it kept the first-filed

1 California action—exactly what Cisco now requests. *Id.*

2 **Second**, the parties are the same. This Action involves plaintiff, Cisco, and Defendants,
3 Dynamic Mesh and Mr. daCosta. *See* D.I. 1; D.I. 37; D.I. 38. The Third and Fourth Texas Actions
4 name Dynamic Mesh as plaintiff and Cisco as defendant. *See, e.g., N. Am. Cas. Ins. Co. v. Encompass*
5 *Power Servs., Inc.*, No. 05-CV-1587, D.I. 68, 2005 WL 3453947, at *3 (E.D. Cal. Dec. 16, 2005)
6 (finding similarity of parties where both suits named the same parties but the declaratory judgment
7 action named additional parties). Mr. daCosta invented each of the Patents.

8 **Third**, the issues are the same. This Action seeks declaratory judgment of non-infringement
9 of the same eight Patents in the Third and Fourth Texas Actions. Because the same eight Patents are
10 at issue in both sets of actions, the same technologies and products are at issue. *See, e.g., Centocor,*
11 *Inc. v. MedImmune, Inc.*, No. 02-CV-03252, D.I. 49, 2002 WL 31465299, at *3 (N.D. Cal. Oct. 22,
12 2002) (“[C]ourts generally do not require identical issues or parties so long as the actions involve
13 closely related questions or common subject matter.”). Thus, this Action is the first-filed action.

14 **III. THE COURT SHOULD NOT DEPART FROM FIRST-TO-FILE PRINCIPLES**

15 Rather than disputing that this Action is first-filed, Dynamic Mesh asks the Court to depart
16 from “the general rule favoring the forum of the first-filed case,” and find **three** exceptions. *Elecs.*
17 *For Imaging, Inc. v. Coyle*, 394 F.3d 1341, 1347 (Fed. Cir. 2025); Mot. at 8–14 (citing *Commc’ns Test*
18 *Design Inc. v. Contec, LLC*, 952 F.3d 1356, 1362 (Fed. Cir. 2020)). **First**, Dynamic Mesh asks the
19 Court to decline to hear the present Action on the basis that it contravenes the public policy behind the
20 Declaratory Judgment Act. Mot. at 9. **Second**, it asks the Court to replace this first-filed Action with
21 Dynamic Mesh’s second-filed actions in Texas (the Third and Fourth Texas Actions) under the relation
22 back doctrine. *Id.* at 10–11. **Third**, Dynamic Mesh asks the Court to apply an exception to the first-
23 to-file rule and find this Action is anticipatory and contrary to the convenience factors. *Id.* at 11–14.
24 These exceptions should be rejected as departure from “the general rule favoring the forum of the first-
25 file case” requires a “sound reason that would make it unjust or inefficient to continue the first-filed
26 action” and no such “sound reason” exists here. *Elecs. For Imaging, Inc.*, 394 F.3d at 1347.

27 **A. This First-Filed Action Squarely Falls Under The Declaratory Judgment Act**

As “[t]here must be well-founded reasons for declining to entertain a declaratory judgment action,” Dynamic Mesh tries to paint Cisco’s declaratory judgment filing as a “race to the courthouse” “to ‘deprive [Dynamic Mesh] of [its] conventional choice of forum[.]’” *Capo, Inc. v. Dioptics Med. Prods.*, 387 F.3d 1352, 1355 (Fed. Cir. 2004); Mot. at 9 (quoting *Z-Line Designs, Inc. v. Bell’O Int’l LLC*, 218 F.R.D. 663, 665 (N.D. Cal. 2003)). To do so, Dynamic Mesh alleges that “[t]here was no uncertainty as to whether Dynamic Mesh’s allegations would be asserted in court” because “Dynamic Mesh informed Cisco that it would refile in the Eastern District of Texas after resolving any standing deficiencies.” Mot. at 9. But those facts do not demonstrate that Cisco was “made aware of an imminent suit.” *Id.* To the contrary, during the parties’ July 29, 2025 meet and confer, Cisco asked when Dynamic Mesh intended to cure the “possible standing deficiency” referenced in Dynamic Mesh’s July 25, 2025 email and **when** Dynamic Mesh intended to refile. Packin Decl. ¶ 6; Bernard Decl. ¶ 14. Dynamic Mesh refused to provide any timeframe. Packin Decl. ¶ 6. Cisco asked **again** whether Dynamic Mesh could provide even a general timeframe, of when Dynamic Mesh intends to refile, such as within “days, weeks, or months.” *Id.* Dynamic Mesh again refused to answer, only commenting that it was continuing to work on resolving the issue. *Id.*

These circumstances sharply contrast with Dynamic Mesh’s cited *TiVo* case. Mot. at 9. In *TiVo*, Digital CBT informed declaratory judgment plaintiff TiVo of a specific standing issue that had already been cured, that **it intended to imminently refile**, and asked if TiVo would oppose. But, rather than responding, TiVo filed a declaratory judgment action (while the original action was still pending). *TiVo, Inc. v. Digital CBT LLC*, No. 12-CV-3866, D.I. 29, 2012 WL 12924981, at *1, *3–4 (N.D. Cal. Oct. 29, 2012). Under these facts, TiVo “was not in a position of uncertainty as to whether [Digital] CBT would bring suit against it to clarify the parties’ respective rights to the ’173 patent.” *Id.* at *3. But here, Dynamic Mesh knew what the standing issue was, how it could be cured, and when it intended to refile—and it just refused to tell Cisco and eliminate Cisco’s uncertainty.

But not all standing deficiencies **can** be cured. And even if a deficiency can be cured, the party may elect not to cure, not to refile, or to refile weeks or months later. Cisco was told that Dynamic Mesh was working on it, but Cisco was uncertain **when** Dynamic Mesh would refile. Packin Decl. ¶

6. And Dynamic Mesh refused to allay that uncertainty. *Id.* Providing relief from uncertainty and delay is the precise purpose of the Declaratory Judgment Act. “[T]he purpose of the Declaratory Judgment Act . . . in patent cases is to provide the allegedly infringing party relief from uncertainty and delay regarding its legal rights.” *Elecs. for Imaging, Inc.*, 394 F.3d at 1346. “When there is an actual controversy and a declaratory judgment would settle the legal relations in dispute and afford relief from uncertainty or insecurity, in the usual circumstance the declaratory action is **not** subject to dismissal.” *Genentech, Inc. v. Eli Lilly & Co.*, 998 F.2d 931, 937 (Fed. Cir. 1993), *abrogated on other grounds by Wilton v. Seven Falls Co.*, 515 U.S. 277, 288-89 (1995). Cisco’s declaratory judgment Action to settle this infringement suit squarely meets this purpose. *See Grocery Outlet, Inc. v. Naftali, Inc.*, No. 23-CV-5254, D.I. 55, 2024 WL 4682311, at *2 (N.D. Cal. Nov. 5, 2024) (“Declaratory relief is designed to resolve uncertainties or disputes that may result in future litigation.”).

B. There Is No Basis To Relate Back To The Later-Filed Texas Actions

Dynamic Mesh asks this Court to consider “a technically second-filed case to be the first-filed case based on the existence of a previous lawsuit,” and it cites to cases applying the relation back doctrine. Mot. at 10. The relation back doctrine derives from Fed. R. Civ. P. 15(c), which allows amended pleadings to relate back to the date of the original pleading, and thus act as if it is first-filed, under certain circumstances. Fed. R. Civ. P. 15(c); *Halo Elecs., Inc. v. Bel Fuse Inc.*, No. 07-CV-6222, D.I. 89, 2008 WL 1991094, at *2 (N.D. Cal. May 5, 2008). Dynamic Mesh incorrectly relies upon *Activision* and *Adobe* to urge the Court to find its second-filed cases in the Eastern District of Texas (the Third and Fourth Texas Actions) to be first-filed under the relation back doctrine.

In *Activision*, Acceleration Bay filed patent infringement actions against Activision, Electronic Arts, and Take-Two in Delaware in 2015. *Activision Blizzard Inc. v. Acceleration Bay LLC*, No. 16-CV-3378, D.I. 28, 2016 WL 4548985, at *1 (N.D. Cal. Sept. 1, 2016). The three actions were related for discovery, claim construction, and pre-trial activities and the parties engaged in extensive discovery and held multiple hearings over the course of **14 months**. *Id.* at *2. Defendant Activision identified a standing defect following production of a “Patent Purchase Agreement” and moved to dismiss and to stay the Delaware action. *Id.* at *2. The Delaware court indicated the motion would

1 be granted unless the standing issue was cured within 14 days. After Acceleration Bay cured the
 2 standing defect, Activision filed a declaratory judgment action in the Northern District of California.
 3 *Id.* at *2, *6. Acceleration Bay filed new suits in Delaware the following day and the Delaware court
 4 subsequently dismissed the 2015 actions. *Id.* at *4. The court found that the relation back doctrine
 5 applied because Acceleration Bay filed new suits in Delaware within the 14-day period and those new
 6 suits “functionally amended the co-pending 2015 Delaware complaints, and the amendments
 7 effectively relate back to the original pleadings, such that [Acceleration Bay’s] current Delaware
 8 actions were first-filed.” *Id.* at *5. In contrast, the First and Second Texas Actions just began; Cisco
 9 was unaware of the Chirp Assignment or when Dynamic Mesh would refile; and the First and Second
 10 Texas Actions were dismissed under Rule 41 *before* Cisco filed of the present Action. Dynamic Mesh
 11 later filed the Third and Fourth Texas Actions, which are assigned to a different District Court Judge.

12 Similarly, in *Adobe*, declaratory judgment plaintiff and accused infringer Bargain Software
 13 was aware of the technical procedural ground (improper joinder) causing the Court to dismiss the
 14 original case without prejudice and when, post-dismissal, the parties’ informal negotiations broke
 15 down and Bargain Software filed its declaratory judgment action. *Adobe Sys. Inc. v. Bargain Software*
 16 *Shop LLC*, No. 14-CV-3721, D.I. 38, 2014 WL 6982515, at *2 (N.D. Cal. Dec. 8, 2014). The Court
 17 found that “sound judicial administration” warranted finding Adobe’s second-filed action the first-
 18 filed action based on “unique procedural facts” of the case—(1) the nature of the dismissal of the
 19 original *Adobe* suit, (2) that Adobe continued to pursue its dispute with the accused infringer post-
 20 dismissal, and (3) that “[the] Court has formally related [that] case to the [original *Adobe*] action.” *See*
 21 *id.* Most importantly, the Court found that a dismissal without prejudice in the original *Adobe* case
 22 was distinguishable from a voluntary dismissal or dismissal based on lack of jurisdiction. *See id.*
 23 Thus, according to the *Adobe* Court, Dynamic Mesh’s voluntary dismissal is not the same.

24 C. No Exceptions To The First-To-File Rule Preclude Its Application

25 Dynamic Mesh asserts that it qualifies for an “exception” to the first-to-file rule, arguing that
 26 this Action is anticipatory and that this District is not the convenient forum. However, Dynamic Mesh
 27 *refused* to tell Cisco when it planned on returning to the courthouse, and Dynamic Mesh’s claim that
 28

Cisco forum shopped to this District disregards the undeniable fact that this was the *only* forum Cisco could have brought this action given the parties’ substantial and legitimate ties to this District.

1. This Action Is Not Anticipatory

This Action is not anticipatory because Cisco did not receive “specific, concrete indications that a suit by defendant was imminent” or engage in “forum shopping.” *Z-Line Designs*, 218 F.R.D. at 665. Even if it were anticipatory—it is not—that would be “merely one factor in the analysis” of many other factors, not a sole basis to dismiss. *Elecs. for Imaging, Inc.*, 394 F.3d at 1347–48.

As discussed in **Section III.A**, Cisco did not have “specific, concrete indications that a suit ... was imminent” because Dynamic Mesh refused to provide them. This contrasts with Dynamic Mesh’s cited cases. *See Google, Inc. v. Sonos, Inc.*, No. 20-CV-6754, D.I. 36, 2020 WL 6822880, at *2 (N.D. Cal. Nov. 20, 2020) (filing declaratory action after being shared “a courtesy copy of the complaint”); *Comm’cns Test Design, Inc. v. Contec, LLC*, 952 F.3d 1356, 1363 (similar); *Activision Blizzard Inc.*, 2016 WL 4548985, at *2, *6 (declaratory action filed before court deadline to cure and refile).

Further, this Action “does not constitute bad faith anticipatory litigation or forum shopping that would warrant deviation from the first-to-file rule.” *Harbor Freight Tools USA, Inc. v. Champion Power Equip., Inc.*, No. 24-CV-8722, D.I. 46, 2025 WL 819046, at *4 (C.D. Cal. Feb. 13, 2025). Rather, Cisco filed this Action in the *only* forum it legally could. *Id.* at *2 (“[C]ourts disfavor anticipatory suits because parties often use them as a way of forum shopping . . . Plaintiff’s decision to sue in its home forum of California doesn’t amount to impermissible forum shopping.”).

Finally, anticipatory filing is “merely one factor in the analysis” of many other factors, not a sole basis to dismiss, as Dynamic Mesh seems to contend. Mot. at 11. The other factors include “the convenience and availability of witnesses, or absence of jurisdiction over all necessary or desirable parties, or the possibility of consolidation with related litigation, or considerations relating to the real party in interest,” which are analyzed below. *Elecs. for Imaging, Inc.*, 394 F.3d at 1347–48. Those factors are addressed along with the other § 1404 factors in the section below.

2. The Northern District Of California Is The Most Convenient Forum

In a first-to-file analysis, judicial and litigant economy factors are the same as the § 1404(a)

convenience factors. *Glob. Equity Mgmt. (SA) Pty. Ltd. v. Ericsson, Inc.*, No. 16-CV-618, D.I. 107, 2017 WL 365398, at *9 (E.D. Tex. Jan. 25, 2017) (“[A] court can consider the convenience factors under 28 U.S.C. § 1404(a) in determining which case to try first.”). This District is not only the most convenient forum—but it is also the **only** forum where this Action could have been brought.

First, Dynamic Mesh does not move to transfer this Action to Texas because it cannot. Analysis under 28 U.S.C. § 1404(a) begins with the threshold question of “whether an action might have been brought in [the transferee] district.” *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414 (9th Cir. 1985) (citation omitted). Cisco could not have brought this Action in the Eastern District of Texas because neither Mr. daCosta nor Dynamic Mesh resides in Texas. Both Defendants reside in this District and Cisco’s principal places of business in this District. Thus, **all** of the named parties in this Action have ties to the Northern District of California. See D.I. 1 ¶¶ 18, 21, 30, 33; D.I. 13 at 3. As the § 1404(a) analysis fails at the first step, that should end the inquiry. See *In re Bozic*, 888 F.3d 1048, 1054 (9th Cir. 2018) (holding that “the first-to-file rule” did not “negate[] § 1404(a)’s requirement that an action may be transferred only to a district where it ‘might have been brought’” and motion to transfer was granted in error for failing to meet § 1404(a)’s threshold requirement).

Second, the private interest factors—“(1) relative ease of access to sources of proof; (2) the availability of compulsory process for attendance of hostile witnesses, and cost of obtaining attendance of willing witnesses; (3) possibility of viewing subject premises; [and] (4) all other factors that render trial of the case expeditious and inexpensive”—favor the Northern District of California. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1078 (9th Cir. 2015) (citation omitted).

In particular, most witnesses reside here. See *In re Genentech, Inc.*, 566 F.3d 1338, 1343 (Fed. Cir. 2009) (“convenience of the witnesses is probably the single most important factor in a transfer analysis.”) (citation omitted). Dynamic Mesh concedes it “is a company founded and owned by Mr. daCosta, with no additional employees that could be relevant witnesses.” Mot. at 12. Third-party Mr. Dayanandan co-invented the Patents and resides here. See D.I. 1 ¶¶ 18, 21, 30, 33; D.I. 13 at 3. Mr. Friday—named by Dynamic Mesh’s pre-suit letter—is located in this District. The Eastern District of Texas cannot compel attendance of those third-party witnesses. Fed. R. Civ. P. 45(c)(1)(A).

Cisco's most relevant potential witnesses and teams are predominantly located in either San Jose, California, San Francisco, California, or internationally. Amiri Decl. ¶ 5. These teams are responsible for the design, development, and maintenance of the accused mesh products. *Id.* ¶ 4. Contrary to Dynamic Mesh's allegations, Cisco employees located in the Richardson facility referenced in its Motion have no substantive connection to the accused products in the case, including those identified in Ms. Bernard's Declaration. *Id.* ¶ 7; see *In re DoDots Licensing Sols. LLC*, 2023 WL 8642716, at *1 (Fed. Cir. Dec. 14, 2023) ("employees [with] limited or no knowledge of the accused functionality" do not outweigh employees with "relevant and material information").

Third, the public interest factors—"(1) administrative difficulties flowing from court congestion; (2) imposition of jury duty on the people of a community that has no relation to the litigation; (3) local interest in having localized controversies decided at home; (3) the interest in having a diversity case tried in a forum familiar with the law that governs the action; [and] (5) the avoidance of unnecessary problems in conflicts of law"—also weigh in favor of retaining this Action in the Northern District of California. *Ranza*, 793 F.3d at 1078 (citation omitted).

Because the parties, technologies, and patents all come from California, California has strong local interests in resolving the issues. See *In re Google LLC*, 58 F.4th 1379, 1384 (Fed. Cir. 2023) ("no meaningful presence in the Western District of Texas that should be given significant, let alone, comparable weight to the facts tying the litigation to the California forum, where both the patented and accused technology were developed."). Further, this case implicates contracts subject to California state law. See **Sections I.A-B** *supra*. The remaining factors are neutral.

In sum, no exception exists to warrant deviating from the first-to-file rule. See, e.g., *Apple Inc. v. Fundamental Innovation Sys. Intl. LLC*, No. 19-CV-638, D.I. 36, 2019 WL 1923106, at *2–6 (N.D. Cal. Apr. 30, 2019) (denying motion to dismiss or transfer where private and public interest transfer factors favored the first-filed forum and anticipatory suit exception did not apply the first-to-file rule).

IV. CISCO SUFFICIENTLY PLEADS NONINFRINGEMENT

A. The Detail In Cisco's Pleadings Satisfies The Pleading Standards

Cisco sufficiently pleads noninfringement because it denied Dynamic Mesh's pled theories of

1 infringement: “[n]umerous California district courts have found general denials of infringement
 2 sufficient to sustain declaratory judgment claims for patent non-infringement at the pleading stage.”
 3 *Ironworks Pats. LLC v. Samsung Elecs. Co.*, No. 17-CV-01958, D.I. 159, 2018 WL 1400440, at *2
 4 (N.D. Cal. Mar. 20, 2018). Moreover, Cisco’s complaint sufficiently pleads noninfringement by
 5 putting Dynamic Mesh on notice of the accused products and which claim limitations Cisco disputes.
 6 Specifically, Cisco’s pleadings identify both (1) the products at issue, to the same level of detail
 7 provided by Dynamic Mesh in its Texas complaints; as well as (2) the specific claim limitations those
 8 products do not infringe, based Dynamic Mesh’s previously pled infringement theories.

9 **First**, Cisco provided Dynamic Mesh with equal notice of which products are at issue as
 10 Dynamic Mesh provided Cisco. For example, Cisco defines the “472 Litigation Accused Products”
 11 and “606 Litigation Accused Products” using the *same* definitions Dynamic Mesh included in its
 12 complaints. *Compare* D.I. 1 ¶¶ 3, 5 *with* Mot. Ex. 1 ¶ 9 *and* Mot. Ex. 2 ¶ 13. Accordingly, Cisco
 13 adequately pleads its theories. *See MIS Scis. Corp. v. Rpost Commc’ns Ltd.*, No. 14-CV-376, D.I. 70,
 14 2016 WL 2931659, at *1 (N.D. Cal. May 19, 2016) (denying motion to dismiss declaratory judgment
 15 claim identifying products matching accuser-defendant’s “pre-suit allegations that [plaintiff] was
 16 infringing, either directly or indirectly, [defendant]’s parents.”); *Ironworks Pats. LLC*, 2018 WL
 17 1400440, at *2 (permitting claim that “denied all theories stated in Plaintiff’s complaint”).

18 **Second**, Cisco adequately pleads why these products do not meet the claims of the Patents by
 19 identifying exemplary noninfringed limitations. For example, with respect to the ’243 Patent, Cisco
 20 alleges that the “472 Litigation Accused Products,” do not infringe exemplary claim 12. D.I. 1 ¶ 51.
 21 Cisco then pleads several exemplary limitations which—based on Dynamic Mesh’s theories in its
 22 contentions and Texas complaints—Cisco’s products do not meet. *Id.* ¶ 52. Cisco’s identification of
 23 specific limitations that do not infringe meets its pleading requirements. *See, e.g., Ironworks*, 2018
 24 WL 1400440, at *2 (finding declaratory judgment counterclaim that “denied all theories stated in
 25 Plaintiff’s complaint” sufficient where the complaint “reference[d] the accused products, their
 26 components, and the corresponding patent claims.”); *Infineon Techs. AG v. Volterra Semiconductor*
 27 *Corp.*, No. 11-CV-6239, D.I. 236, 2013 WL 1832558, at *1 (N.D. Cal. May 1, 2013) (“First, Volterra,
 28

1 in the AAC, now identifies a general category of non-infringing products for each of Infineon’s patents
 2 and identifies at least one specified exemplar of a non-infringing product in each category . . .”).

3 Neither of Dynamic Mesh’s cited cases (Mot. at 14) counsel otherwise, because neither dealt
 4 with the situation here: where a declaratory judgment plaintiff denies infringement by referencing
 5 infringement charts and contentions. For example, in *Comcast*, there were no prior infringement
 6 contentions or theories explaining the alleged infringement on a limitation-by-limitation basis, and
 7 thus the declaratory judgment complaint could not rely on the specificity of such allegations. *Comcast*
 8 *Cable Commc’ns, LLC v. OpenTV, Inc.*, 319 F.R.D. 269, 272 (N.D. Cal. 2017). In contrast, Cisco’s
 9 complaint responds to the limitation-by-limitation theories that Dynamic Mesh itself thought were
 10 adequate—for both pleading purposes and infringement contentions. And in *Google*, the complaint
 11 simply stated that Google did not infringe the *entirety* of a patent claim, (Ex. K, *Google Complaint*, ¶
 12 24), unlike here, where Cisco has identified specific limitations for which it disputes Dynamic Mesh’s
 13 infringement allegations. D.I. 1 ¶¶ 51–52. Even then, rather than dismiss the complaint, the *Google*
 14 court stayed the litigation and granted leave to amend. *Google LLC*, 2020 WL 6822880, at *4.

15 **B. Alternatively, Cisco Should Be Granted Leave To Amend**

16 If the Court believes that Cisco’s complaint is deficient—it is not—then Cisco requests that
 17 the Court grant Cisco leave to amend its complaint, to the version attached as Ex. N (redlines of
 18 amendments shown in in Ex. O). “The court should freely give leave” to amend a complaint “when
 19 justice so requires.” F.R.C.P. 15(a)(2); *see also Eminence Capital LLC v. Aspeon, Inc.*, 316 F.3d 1048,
 20 1052 (9th Cir. 2003) (“Absent prejudice, or a strong showing of any of the remaining *Foman* factors,
 21 there exists a presumption under Rule 15(a) in favor of granting leave to amend.”) (granting leave to
 22 amend complaint in response to a motion to dismiss). For this reason, even in Dynamic Mesh’s cases,
 23 leave to amend *was not denied*. *See* Mot. at 14–16 (citing *Google LLC*, 2020 WL 6822880, at *3
 24 (“Google *shall* amend its complaint”); *Bot M8 LLC v. Sony Corp. of Am.*, No. 19-CV-7027, D.I. 91,
 25 2020 WL 418938, at *6 (N.D. Cal. Jan. 27, 2020), *aff’d in part, rev’d in part and remanded*, 4 F.4th
 26 1342 (Fed. Cir. 2021) (explaining that “should patent owner wish to file yet another amended
 27 complaint, it may do so.”); *Comcast Cable Commc’ns, LLC*, 319 F.R.D. at 277 (same)).

1 Here, Cisco's proposed amendment is not futile and would not prejudice Defendants.

2 With respect to futility, Cisco's proposed amended complaint includes specific examples of
3 why Cisco's accused products do not infringe multiple limitations of every Patent. *See, e.g.*, Ex. O ¶¶
4 51–53. These explanations far exceed Cisco's pleading requirements. *MIS Scis. Corp.*, 2016 WL
5 2931659, at *1 (finding pleading of facts to place the defendant on notice of the general category of
6 accused products or conduct to be sufficient). Additionally, both parties agree that Dynamic Mesh
7 **currently** own the Patents, so Cisco's Amended Complaint names the correct parties for subject matter
8 jurisdiction. *See, e.g.*, Mot. at 5. And the Court can and should relate Cisco's amendment back to the
9 filing date of the original complaint despite the purported case of mistaken identity. *See Barnes &*
10 *Noble, Inc. v. LSI Corp.*, 823 F. Supp. 2d 980, 989 (N.D. Cal. 2011) ("If Plaintiffs were required to
11 show relation back, Plaintiffs' [first amended complaint] would relate back in the instant case. As the
12 Supreme Court recently affirmed, the relation back doctrine under Rule 15(c) is appropriate **in a case**
13 **of mistaken identity.**") (relating back amended pleading to original pleading that named party which
14 only owned one of ten patents-in-suit). During the meet and confer, Dynamic Mesh said it opposed
15 Cisco's amendment only because Cisco's amendment suffers from the same faults as the *Sonos*
16 complaint. Not so. Cisco's amendment offers far more than "a *word-for-word* recitation of the claim
17 language." *Google LLC*, 2020 WL 6822880, at *3 (emphasis in original); *see* Ex. O.

18 With respect to prejudice, there is none. Defendants have yet to answer Cisco's complaint,
19 and this case is in its infancy. In such circumstances, amendment will not prejudice Defendants. *See*
20 *Muhmoud v. City of San Jose*, No. 20-CV-8808, D.I. 66, 2022 WL 1539783, at *2 (N.D. Cal. May 16,
21 2022). Moreover, Defendants cannot feign surprise at Cisco's suit when they have previously
22 threatened and sued Cisco. *See Fact Section D supra*. Defendants only purported prejudice appears
23 to be that this case would be heard in California instead of Texas. *See* Mot. at 9. But this is a dispute
24 between California companies, regarding California patents, over California accused products. *See*
25 **Fact Section A supra**. Thus, if necessary, the Court should freely grant Cisco's proposed amendment.

26 ***

27 In sum, the Court should deny Dynamic Mesh's Motion.
28

1 Dated: September 5, 2025

By: /s/ Michael R. Rhodes
Michael R. Rhodes (CA SBN 31432)
Emily Weber (CA SBN 348798)
DESMARAIS LLP
101 California Street , Suite 3000
San Francisco, CA 94111
Tel: 415-573-1900
Fax: 415-573-1901
mrhodes@desmaraisllp.com
eweber@desmaraisllp.com

7 Tamir Packin (CA SBN 317249)
Lindsey E. Miller (*pro hac vice*)
Ryan G. Thorne (*pro hac vice*)
Amy I. Wann (*pro hac vice*)
DESMARAIS LLP
230 Park Avenue
New York, NY 10169
T: 212-351-3400
F: 212-351-3401
tpackin@desmaraisllp.com
lmiller@desmaraisllp.com
rthorne@desmaraisllp.com
awann@desmaraisllp.com

14 Ha Huynh (*pro hac vice*)
DESMARAIS LLP
1899 Pennsylvania Avenue
Washington, D.C. 20006
T: 202-451-4900
F: 202-451-4901
hhuynh@desmaraisllp.com

18 *Counsel for Plaintiff Cisco Systems, Inc.*