UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC., Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC. SAMSUNG SEMICONDUCTOR, INC., and AVNET, INC., Defendants.	Civil No. 2:25-cv-00557-JRG (Lead Case) **JURY TRIAL DEMANDED**
NETLIST, INC., Plaintiff, v. MICRON TECHNOLOGY, INC., MICRON SEMICONDUCTOR PRODUCTS, INC., MICRON TECHNOLOGY TEXAS LLC, and AVNET, INC., Defendants.	Civil No. 2:25-cv-00558-JRG (Member Case) **JURY TRIAL DEMANDED**

DEFENDANTS SAMSUNG SEMICONDUCTOR, INC. AND SAMSUNG ELECTRONICS AMERICA, INC.'S MOTION TO DISMISS FOR IMPROPER VENUE

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Pursuant to Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C § 1406(a), Defendants Samsung Semiconductor, Inc. ("SSI") and Samsung Electronics America, Inc. ("SEA") respectfully move to dismiss for improper venue the claims asserted against them in the second amended complaint (Dkt. 81).

I. INTRODUCTION

This is Netlist's third lawsuit filed against Samsung Electronics Co., Ltd. ("SEC"), SSI, and SEA (collectively, "Samsung") in this District in recent years. The present action commenced upon issuance of Netlist's then-latest patent, No. 12,308,087 ("'087 patent"), with Netlist filing its complaint seconds after the patent issued at midnight EDT on May 20, 2025. Dkt. 1. Several weeks later, Netlist filed the first amended complaint, Dkt. 14, adding infringement accusations for a second patent, No. 10,025,731 ("'731 patent"). On September 11, 2025, SSI and SEA moved to dismiss the first amended complaint for improper venue, Dkt. 65, and Samsung moved to dismiss certain of Netlist's infringement claims, Dkt. 66. After receiving extensions of time to respond to the motions to dismiss, Netlist filed a second amended complaint. *See* Dkt. 81. Netlist's second amended complaint merely repeats the same flawed and inaccurate assertions regarding venue as to SSI and SEA.[1]

Netlist's second amended complaint in this action fails to establish venue over SSI or SEA in this District, and its claims against both of these defendants should therefore be dismissed. Neither SSI nor SEA "resides" in this District as that term is used in 35 U.S.C. § 1400(b) because

[1] Shortly before filing its Second Amended Complaint, Netlist shifted its litigation strategy against Samsung by choosing to litigate its claims in the U.S. International Trade Commission ("ITC") over this District. On September 30, 2025, Netlist filed a complaint against Samsung at the ITC alleging infringement of the '087 and '731 patents and four additional Netlist patents. The ITC is expected to issue an institution decision in mid-December. Samsung can seek a mandatory stay of this action under 28 U.S.C. § 1659 after institution. To avoid burdening the Court with motions practice, Samsung sought an extension of time to respond to Netlist's SAC in this action. Netlist refused.

they are incorporated outside of Texas. Moreover, SSI does not have a regular and established place of business anywhere in this District, meaning that venue is not proper under section 1400(b) for any infringement lawsuit against SSI in the District. Venue over SEA is also improper for another reason: Netlist fails to plausibly allege that SEA has committed an act of infringement in this District, as required under section 1400(b) for out-of-state defendants.

None of Netlist's allegations regarding venue survives scrutiny. As to SSI, Netlist alleges only that a Plano, Texas facility serves as a regular and established place of business—an allegation SSI has repeatedly denied in the parties' prior litigations. The Plano facility is solely an SEA facility. SSI does not own, rent, lease, or otherwise occupy the Plano facility or any other office, facility, or other physical place in this District. As to SEA, Netlist's conclusory allegations regarding alleged infringement in the District are limited to rote recitations of statutory requirements. These conclusory allegations are insufficient, particularly considering SEA's evidence to the contrary. First and foremost, SEA is not in the business of making or selling high-bandwidth memory ("HBM") or dual in-line memory modules ("DIMMs"), which are the components that Netlist relies on for its infringement allegations. Moreover, the computer models sold by SEA in the United States have not included the accused memory components, and the Samsung-branded computers used by SEA's employees in Plano do not include them. The Court should therefore dismiss Netlist's claims against SSI and SEA for improper venue.

II. STATEMENT OF ISSUES

1. Whether Netlist's infringement claims against SSI should be dismissed for improper venue, where SSI "resides" outside of the Eastern District of Texas and maintains no "regular and established place of business" in this District.

2. Whether Netlist's infringement claims against SEA should be dismissed for improper venue, where SEA "resides" outside of the Eastern District of Texas and Netlist has not plausibly alleged that SEA has committed any acts of alleged infringement in this District.

III. FACTUAL BACKGROUND

Netlist alleges that Samsung infringes the '087 and '731 patents. Netlist accuses Samsung HBM products of infringing the '087 patent, namely Samsung HBM2, HBM2E, HBM3, HBM3E and HBM4 (collectively, "Accused HBM Products"). Dkt. 81 ¶¶ 35, 43. HBM is a type of high-speed computer memory used for high-performance computing systems that demand enormous computational power, such as data centers. Decl. of Danny Kim ("SSI Decl.") ¶ 7. HBM is not an end-user product used in typical home or office settings. *Id.*; Decl. of James Kiczek ("SEA Kiczek Decl.") ¶ 6.

Netlist accuses certain Samsung DIMM products of infringing the '731 patent. *See* Dkt. 81 ¶¶ 38, 56. Netlist's preliminary infringement contentions for the '731 patent allege infringement by Samsung DDR4 LRDIMMs and by Samsung DDR5 DIMMs in various form factors: EUDIMMs, MRDIMMs, RDIMMs, SODIMMs, SOEDIMMs, and UDIMMs (collectively, "Accused DIMM Products"). *See* Dkt. 65-5 (excerpts from Netlist's redacted preliminary infringement contentions).[2]

SEC, a South Korean corporation with a principal place of business in South Korea, is responsible for manufacturing the Accused HBM Products and Accused DIMM Products (collectively, the "Accused Products"). It does so only outside the United States. SSI Decl. ¶ 6.

[2] "EUDIMM" refers to "ECC unbuffered dual in-line memory module"; "LRDIMM" refers to "load reduced" DIMM; "MRDIMM" refers to "multiplexed rank" DIMM; "RDIMM" refers to "registered" DIMM; SODIMM refers to "small-outline" DIMM; "SOEDIMM" refers to "small outline ECC" DIMM; and "UDIMM" refers to "unbuffered" DIMM. *See* Dkt. 65-5.

SSI and SEA are two separate and distinct subsidiaries of SEC in the United States. SSI, a California corporation headquartered in San Jose, California, is responsible for marketing and facilitating sales of Samsung HBM and DIMM products in the United States. *Id.* ¶ 5. SSI does not have any facilities in this District. *Id.* ¶ 10.

SEA is a New York corporation headquartered in New Jersey, with offices throughout the United States, including in this District. Decl. of Shanna Blair ("SEA Blair Decl.") ¶ 5. SEA employees' work primarily focuses on commercializing Samsung end-user products, such as consumer electronics products and mobile devices. SEA Kiczek Decl. ¶ 5. HBM and DIMMs are stand-alone dynamic random access memory ("DRAM") components and are not end-user products sold by SEA. *Id.* ¶ 7. SEA has not designed, manufactured, marketed, offered for sale, sold, or imported into the United States stand-alone DRAM products, such as the Accused Products, since at least 2019, *id.*, meaning that SEA has not engaged in any such activities at any time during the six-year statute of limitations period for infringement claims. 35 U.S.C. § 286. SEA has sold Samsung-branded computers in the United States, consistent with its consumer electronics focus, but none of those computers has ever included the Accused Products. Decl. of Gijun Park ("SEC Decl.") ¶ 5. Moreover, SEA's servers in this District do not use the Accused Products, and SEA's employees in the District use computers that do not include the Accused Products. SEA Blair Decl. ¶¶ 6–8; SEC Decl. ¶ 6.

IV. LEGAL STANDARD FOR VENUE

Venue in a patent infringement case is governed by 28 U.S.C. § 1400(b), which provides that "[a]ny civil action for patent infringement may be brought in the judicial district where [1] the defendant resides, or [2] where the defendant has committed acts of infringement and has a regular and established place of business." *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 261 (2017) (quoting 28 U.S.C. § 1400(b)). "[A] domestic corporation 'resides' only in its

State of incorporation for purposes of the patent venue statute." *In re Google LLC*, 949 F.3d 1338, 1340 (Fed. Cir. 2020) (quoting *TC Heartland*, 581 U.S. at 262). To satisfy the regular and established place of business requirement, "(1) there must be a physical place in the district; (2) it must be a regular and established place of business; and (3) it must be the place of the defendant." *In re Volkswagen Grp. of Am., Inc.*, 28 F.4th 1203, 1208 (Fed. Cir. 2022) (quoting *In re Cray Inc.*, 871 F.3d 1355, 1360 (Fed. Cir. 2017)). "If any [of these] statutory requirement[s] [are] not satisfied, venue is improper under § 1400(b)." *Id.* at 1208 (quoting *Cray*, 871 F.3d at 1360) (alterations original).

If a defendant does not reside in the District, venue is improper under § 1400(b) unless the defendant "has committed acts of infringement" in the district. Under 35 U.S.C. § 271, an "act of infringement" includes making, using, offering to sell, selling, or importing the accused products, or inducing such conduct. When considering allegations in the complaint that a defendant has committed acts of infringement within the judicial district, courts "accept well-pleaded facts only to the extent that such facts are uncontroverted by a defendant's affidavit." *AML IP, LLC v. Bath & Body Works Direct, Inc.*, 2024 WL 3825242, at *3 n.2 (E.D. Tex. Aug. 13, 2024) (cleaned up). When a defendant challenges allegations that it has committed acts of infringement in the district, "aided by an affidavit, … the Court will demand proof" from the plaintiff. *EMA Electromechanics, Inc. v. Siemens Corp.*, 2022 WL 1241967, at *7–*8 (W.D. Tex. Apr. 26, 2022) (holding that this approach is "consonant with the Fifth and Federal Circuit[s'] approaches to resolving 12(b)(2) motions" and citing *Nuance Commc'ns, Inc. v. Abbyy Software House*, 626 F.3d 1222, 1231 (Fed. Cir. 2010) and *Patterson v. Aker Sols. Inc.*, 826 F.3d 231, 233 (5th Cir. 2016)).

"[U]pon motion by the Defendant challenging venue in a patent case, the Plaintiff bears the burden of establishing proper venue." *In re ZTE (USA), Inc.*, 890 F.3d 1008, 1013 (Fed. Cir.

2018); *see also Uniloc 2017 LLC v. Riot Games, Inc.*, 2020 WL 1158611, at *2 (E.D. Tex. Mar. 10, 2020) ("[T]he Plaintiff bears the burden of establishing proper venue."). "[W]hen confronted with a motion to dismiss for improper venue, the Court may consider both the complaint and evidence outside the complaint." *Am. GNC Corp. v. ZTE Corp.*, 2017 WL 5163605, at *2 (E.D. Tex. Oct. 4, 2017).

V. ARGUMENT

Venue is improper in the Eastern District of Texas as to SSI and SEA. Netlist offers only conclusory venue allegations, which, under well-established law, are insufficient to establish venue. Further, the attached declarations from employees of SSI, SEA, and SEC rebut Netlist's unsupported allegations. Accordingly, this Court should dismiss Netlist's claims against SSI and SEA.

A. Neither SSI nor SEA "Resides" in Texas.

As a threshold issue, SSI and SEA are not Texas corporations and therefore do not "reside" in the State. *Google*, 949 F.3d at 1340 ("[A] domestic corporation 'resides' only in its State of incorporation."). Netlist acknowledges SSI's and SEA's non-resident status in its amended complaint. Dkt. 81, ¶ 5 ("SSI is a corporation organized and existing under the laws of the State of California."); *id.* ¶ 4 ("SEA is a corporation organized and existing under the laws of the State of New York."). Under section 1400(b), venue is therefore proper in this District only if each defendant "has committed acts of infringement *and* has a regular and established place of business." *TC Heartland*, 581 U.S. at 261 (quoting 28 U.S.C. § 1400(b)) (emphasis added).

B. SSI Has No Regular and Established Place of Business in this District.

SSI maintains no physical presence in the Eastern District of Texas. SSI Decl. ¶¶ 8–10. Netlist cannot therefore meet its burden of establishing that SSI maintains a regular and established place of business in the District. *See ZTE*, 890 F.3d at 1013 ("[T]he Plaintiff bears the burden.").

The claims against SSI should therefore be dismissed for improper venue. *See Westech Aerosol Corp. v. 3M Co.*, 927 F.3d 1378, 1382 (Fed. Cir. 2019) (venue is proper only "when the facts show that the defendant has a regular and established place of business physically located within the judicial district").

Netlist makes few venue-specific allegations related to SSI, *see* Dkt. 81, ¶¶ 11, 14, and the allegations Netlist does provide are factually incorrect. Netlist alleges that SSI "maintains a regular and established place of business in this judicial district at 6625 Excellence Way, Plano, Texas 75023." *Id.* ¶ 11. That is wrong. The facility in Plano is an SEA facility, and not an SSI facility. SEA Blair Decl. ¶ 9; SSI Decl. ¶ 12. The Plano facility is not associated with SSI in any way. SEA Blair Decl. ¶ 9; SSI Decl. ¶ 12. Indeed, SSI does not own, rent, lease, or otherwise occupy any offices, facilities, or other physical place in this District, *see* SSI Decl. ¶ 10, as required to establish patent venue over non-resident defendants, *Volkswagen*, 28 F.4th at 1208.

Samsung put Netlist on notice of these facts in the parties' two earlier cases in this Court. In both cases, Netlist alleged that SSI maintained a regular and established business at 6625 Excellence Way in Plano. Samsung repeatedly denied that allegation. *Netlist, Inc. v. Samsung Elecs. Co. Ltd.*, No. 2:21-cv-463, Dkt. 25, ¶ 12 (E.D. Tex.) ("*Netlist I*") ("Samsung admits that SEA maintains an office at 6625 Excellence Way, Plano, Texas 75023. . . . Samsung denies any remaining allegations in Paragraph 12."); *Netlist, Inc. v. Samsung Elecs. Co. Ltd.*, No. 2:21-cv-293, Dkt. 29, ¶ 11 (E.D. Tex.) ("*Netlist II*") (similar). Samsung also put Netlist on notice that SSI does not maintain a regular and established place of business in this District in its first motion to dismiss for lack of venue. *See* Dkt. 65. Nevertheless, Netlist repeated its inaccurate allegations regarding venue and SSI in the operative second amended complaint. Netlist's factually incorrect

allegation, controverted by declaration, therefore cannot support venue as to SSI in this District. *See EMA Electromechanics*, 2022 WL 1241967, at *7–*8; SEA Blair Decl. ¶ 9; SSI Decl. ¶ 12.

Netlist also alleges that venue is proper because "Defendants have not contested venue in this District." Dkt. 81 ¶ 14 (citing *Arbor Global Strategies LLC v. Samsung Elecs. Co., Ltd.*, No. 2:19-cv-333, Dkt. 43 (E.D. Tex. Apr. 27, 2020) ("*Arbor* Action") and *Acorn Semi, LLC v. Samsung Elecs. Co., Ltd.*, No. 2:19-cv-347, Dkt. 14 (E.D. Tex. Feb. 12, 2020) ("*Acorn* Action")). Netlist adds that "Defendants [have not] contested venue in any of the prior actions between the parties in this district." *Id.* (citing *Netlist I* and *Netlist II*). Netlist omits, however, that SSI consented to venue in those cases solely for the purposes of those actions. *Arbor* Action, Dkt. 43 ¶ 10 ("The Samsung Defendants, however, do not contest, *solely for purposes of the present action*, whether venue over them properly lies in this District.") (emphasis added); *Acorn* Action, Dkt. 14 ¶ 29 (similar). Further, while SSI did not move to dismiss for improper venue in the parties' earlier cases in this District, Samsung denied in its answers that venue was proper as to at least SSI. *See Netlist I*, Dkt. 25, ¶ 12 ("Samsung denies that venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and/or 1400(b)."); *Netlist II*, Dkt. 29, ¶ 11 ("Samsung US Defendants deny that venue is proper in this Court and reserve the right to challenge venue in this case."). In addition, Netlist ignores that SSI previously challenged venue in the present action. *See* Dkt. 65.

Netlist's reliance on Samsung's answers in prior cases is deficient. Section 1400(b) lists only two possibilities for proper venue in patent cases: (1) "where the defendant resides," or (2) "where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400(b). There is no additional basis for venue just because a defendant consented to venue in a district in an earlier case. SSI's decision to not contest venue by motion in one case therefore cannot serve as a basis for proper venue in another litigation, particularly where

SSI denied that venue was proper in the earlier case and SSI previously filed a motion challenging venue in the present action. *See Symbology Innovations, LLC v. Valve Corp.*, 2025 WL 364075, at *7–*8 (E.D. Tex. Jan. 31, 2025) (rejecting plaintiff's contention "that venue is proper … because [the defendant] consented to jurisdiction in this District in prior cases"); *cf. V&A Collection, LLC v. Guzzini Props. Ltd.*, 46 F.4th 127, 132 (2d Cir. 2022) ("[A] party's consent to jurisdiction in one case extends to that case alone. It in no way opens that party up to other lawsuits in the same jurisdiction in which consent was given." (cleaned up)).

Netlist has therefore failed to allege plausible facts establishing that venue is proper under section 1400(b), namely, that SSI has a regular and established place of business in this District. Moreover, SSI has rebutted Netlist's allegations by declaration. SEA Blair Decl. ¶ 9; SSI Decl. ¶ 12. This Court should dismiss Netlist's claims against SSI for improper venue.

C. Netlist Fails to Plausibly Allege an Act of Infringement by SEA in this District.

Netlist fails to plausibly allege that SEA has committed an act of alleged infringement in this District. *See* Dkt. 81 ¶ 11; *ZTE*, 890 F.3d at 1013. Further, the attached declarations by employees of SEA and SEC rebut Netlist's conclusory venue allegations. Thus, venue is improper as to SEA, and the Court should dismiss Netlist's claims against it.

Netlist alleges in conclusory fashion that venue is proper as to SEA because SEA "has committed acts of infringement in this judicial district" and maintains a place of business in the District. Dkt. 81 ¶ 11. But Netlist nowhere identifies any single act of alleged infringement by SEA in this District or elsewhere, and its other infringement allegations lump SEA together with other defendants, again without identifying any specific act in this District. *Id.* ¶ 43 (accusing "Defendants" of various acts of alleged infringement of the '087 patent "within this District and elsewhere in the United States"); *id.* ¶ 56 (same as to '731 patent). Netlist's allegations are rote reproductions of the statutory requirements in section 1400(b) and section 271, which is

insufficient to establish venue. *See Westech*, 927 F.3d at 1382 (holding that a patentee's "recitation of § 1400(b) is insufficient to survive a motion to dismiss for improper venue"); *see also Gilmour, Trustee for Grantor Trusts v. Blue Cross & Blue Shield of Al.*, 2019 WL 2147580, at *5 (W.D. Tex. Mar. 6, 2019) ("[T]he court is not obligated to credit conclusory [venue] allegations, even if uncontroverted.") (quoting *Breathwit Marine Contractors, Ltd. v. Deloach Marine Servs., LLC*, 994 F. Supp. 2d 845, 848 (S.D. Tex. 2014)).

Even if Netlist's conclusory allegations could be considered factual assertions (which they are not), they cannot withstand scrutiny in light of the declarations submitted by employees of SEA and SEC. As explained by SEA's declarant James Kiczek, SEA's employees' work primarily focuses on commercializing Samsung end-user products, such as consumer electronics products and mobile devices. SEA Kiczek Decl. ¶ 5. But the Accused Products are different. They are not consumer end-products sold by SEA. *Id.* ¶ 7. Instead, the Accused Products are memory components. They are dynamic random access memory products, either Samsung HBM (accused of infringing the '087 patent) or certain Samsung DDR4 or DDR5 dual in-line memory modules (accused of infringing the '731 patent). *See id.* SEA has not designed, manufactured, marketed, offered for sale, or sold stand-alone DRAM products or imported them into the United States since at least 2019. *Id.* Moreover, SEA does not design, manufacture, market, offer for sale, sell, or import into the United States, products containing HBM, nor has it ever done so. *Id.*

SEA's lack of involvement in the memory component business vastly narrows the possible range of allegedly infringing acts in this District. And SEA's actual business—selling consumer end-products—also fails to provide any support for Netlist's venue theory. SEA has sold Samsung-branded computers in the United States, but none of those computers has ever included the Accused Products. SEC Decl. ¶ 5. And while servers might contain HBM or DIMMs, SEA is not

in the server business. It does not sell, and has not sold, servers. SEA Kiczek Decl. ¶ 5. Netlist's operative complaint does not contend otherwise—even though Netlist had the opportunity to bolster its complaint with additional allegations when Netlist amended the complaint in response to SEA's first motion to dismiss for lack of venue. *See* Dkt. 65. Once again, Netlist's complaint does not identify any product purportedly sold or offered for sale by SEA that contains allegedly infringing HBM or DIMM memory components. *See generally* Dkt. 81.

Finally, Netlist has not plausibly alleged use of the Accused Products by SEA in this District. SEA's own servers in this District do not use Samsung-branded memory. SEA Blair Decl. ¶ 6. Thus, the servers did not contain Accused Products at the time of the operative complaint, and the team at SEA that is familiar with the servers has no recollection of those servers ever using the Accused Products. *Id.* None of the Samsung-branded computers that are used by SEA's employees in Plano contain the Accused Products. SEA Blair Decl. ¶ 8, SEC Decl. ¶ 6. The second amended complaint does not identify any supposedly infringing product used by SEA in this District or articulate any plausible theory for such use having occurred. *See generally* Dkt. 81.

When "unsubstantiated allegations are controverted by affidavit or declaration, the affidavit or declaration trumps the allegation." *Walker v. Inter-Americas Ins. Corp.*, 2004 WL 1620790, at *1 (N.D. Tex. July 19, 2004). Here, the declarations described above rebut the legally insufficient and conclusory allegations in Netlist's amended complaint. Thus, Netlist has failed to plausibly allege an act of infringement by SEA in the District, and its claims against SEA should be dismissed for improper venue. *See Charles v. SBC Disability Income Plan*, 2005 WL 8159403, at *2 (N.D. Tex. Sept. 19, 2005) ("[O]nce a defendant challenges venue, conclusory allegations, speculation, and unsubstantiated assertions cannot be used to establish proper venue because the plaintiff has the burden of proving venue.").

VI. CONCLUSION

For the foregoing reasons, the Court should dismiss Netlist's claims against SSI and SEA for improper venue.

Date: November 24, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on November 24, 2025.

/s/ Melissa R. Smith
Melissa R. Smith