

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

AMERANTH, INC.,

Plaintiff,

v.

DOORDASH, INC.,

Defendant.

C.A. No.: 2:22-cv-1776-WSH

**DEFENDANT’S MOTION TO DISMISS FOR IMPROPER VENUE, OR
ALTERNATIVELY, TO TRANSFER, AND FAILURE TO STATE A CLAIM**

Defendant DoorDash, Inc. (“DoorDash”) respectfully moves this Court for an Order dismissing this case for improper venue pursuant to Fed. R. Civ. P. 12(b)(3), or in the alternative, transferring to Delaware under 28 U.S.C. § 1406, where there can be no dispute that venue is proper. Further, DoorDash moves this Court for an Order dismissing this case for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) on all counts as the asserted patent is invalid for patent ineligibility under 35 U.S.C. § 101 and dismissing the count of willful infringement for failure to state a claim because DoorDash did not have the requisite pre-suit knowledge of the asserted patent or alleged infringement. DoorDash incorporates herein by reference its Brief in Support of Motion to Dismiss for Improper Venue, or Alternatively, to Transfer, and Failure to State a Claim as well as the Declaration of Kelsey Merrigan and exhibits thereto.

Counsel for DoorDash certifies that DoorDash has informed Plaintiff of this Motion and Plaintiff has indicated that they oppose the Motion and intend to file a response. Plaintiff filed its original Complaint on December 9, 2022. (Dkt. 1). The parties conferred via written correspondence and teleconference pursuant to this Court’s Order at Dkt. 5 and based on the grounds DoorDash raised, Plaintiff requested leave to amend the Complaint, which the Court

granted. (Dkts. 12, 13). As a result, Plaintiff filed its First Amended Complaint on March 31, 2023. (Dkt. 14). DoorDash informed Plaintiff via written correspondence that its First Amended Complaint was still deficient based on improper venue and patent ineligibility grounds. DoorDash also raised its grounds for failure to state a claim for willful infringement, a count that was asserted for the first time in Plaintiff's First Amended Complaint. The parties thereafter conferred via teleconference to see if Plaintiff could cure these deficiencies in the First Amended Complaint. However, the parties are now at an impasse on the issues raised in this Motion. Therefore, DoorDash, as the moving party, certifies that it has made good faith efforts to ensure that, if possible, any pleading defects could be cured prior to filing this Motion. *See* Dkt. 5.

WHEREFORE, Defendant DoorDash respectfully requests that this Court grant Defendant's Motion and dismiss this case for improper venue, or in the alternative, transfer to the District of Delaware, or, dismiss this case and Plaintiff's willful infringement claim for failure to state a claim upon which relief can be granted.

Dated: June 29, 2023

Respectfully submitted,

**BENESCH, FRIEDLANDER, COPLAN &
ARONOFF LLP**

/s/ Richard D. Kalson

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Western District of Pennsylvania by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Richard D. Kalson
Richard D. Kalson