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Federal Statutes

28 U.S.C. § 1400(b) *passim*

It seems inescapable that forum shopping led AGIS to this District.¹ In its opposition brief, AGIS seeks venue in this District over two ZTE entities, ZTE (TX) Inc. (“ZTX”) and ZTE (USA) Inc. (“ZTA”), neither of which are located here. ZTX is a California-based company with four offices in the US, including its principal place of business in Milpitas, California and an office in the Western District of Texas—nothing in this District. And, ZTA is a New Jersey company with its principal place of business located in the Northern District of Texas—again, nothing in this District. AGIS’s only argument that venue is proper for ZTX in this District is that ZTX is incorporated in Texas, but AGIS concedes that venue must be over both ZTX and ZTA and concedes that ZTA is not incorporated in Texas. As to ZTA, AGIS also argues that (1) a third-party vendor, iQor, establishes venue for ZTA (however, this is not so) and that (2) ZTA employees living in this District would establish venue for ZTA (but, again, this is also not so).²

If this case is not dismissed for improper venue, transfer is alternatively sought, but AGIS opposes transfer from this District to the more appropriate and convenient Northern District of California (NDCA). Yet, all private and public interest factors—access to evidence, convenience of parties and witnesses, compulsory process, court congestion, and local interest—favor transfer to the NDCA. AGIS points towards no material key witnesses located here, only speculates about possible third-party witnesses here, and cites only ephemeral ties here. Yet, source code and evidence as well as third parties pertinent to this matter are located in the NDCA. And, the

¹ A mere twenty days before bringing this action in this District, AGIS Software Development, LLC (“AGIS”) was formed and incorporated in Texas. And, two months prior to that, AGIS’s sister company (under the name “Advanced Ground Information Systems, Inc.”) was litigating in the Southern District of Florida with patents from the same family as asserted here. Once the Florida matter was resolved, in a loss (with non-infringement and attorneys’ fees awarded against them for almost \$750,000 due to litigating “an exceptionally weak case”), AGIS then sought this forum. *See* Ex. A (“While I stop short of finding of bad faith, continued assertion of these claims seemed designed to extract settlement not based upon the merits of the claim but on the high cost of litigation.”).

² *See Personal Audio, LLC v. Google, Inc.*, 1:15-cv-350 (Dkt. 103) (E.D. Tex. 2017); and *In re Cray*, 871 F.3d 1355, 1362, No. 2017-129 (Fed. Cir. Sept. 21, 2017).

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