

AGIS specifically admits that ZTE argued, in ZTE's Motion to Dismiss for improper venue, that no Defendant has committed acts of infringement. Dkt. 57 at 3 (specifically, AGIS references "[ZTE's] **acts of infringement argument**" in ZTE's opening brief "that no Defendant has committed acts of infringement") (emphasis added). Indeed, AGIS specifically admits that ZTE argued this issue at least twice in ZTE's opening brief in the Motion to Dismiss (Dkt. 38), that is, (1) in ZTE's statement of issues and (2) in ZTE's introduction. Dkt. 57 at 2-3. Thus, AGIS's denial of this argument in their venue briefing remains uncorrected. For instance, instead of referencing ZTE's arguments (or providing applicable case law for ignoring them in their opening brief), AGIS erroneously argued that ZTA did not dispute the acts of infringement allegation. (Dkt. 46 at 15) (emphasis added); *see also* Dkt. 52 at 2. Thus, AGIS has maintained factually incorrect arguments, and when ZTE suggested a minor revision to correct AGIS's false allegations, AGIS refused. *See* Dkt. 54, Ex. A at 7-8. Therefore, a short sur-sur-reply to address this express, and heretofore uncorrected and unaddressed, misrepresentation is warranted here.

In its response brief to this motion for leave, AGIS now attempts to distance the discussion from ZTE's briefing by alleging "lack of adequate briefing" on the acts of infringement element of 1400(b). According to AGIS, arguing twice that the Defendants do not infringe is not sufficient. *See* Dkt. 57 at 2-3. However, this Court does not require excessive briefing for the "acts of infringement" element of 1400(b). *See In re Cordis Corp.*, 769 F.2d 733 at 737 (Fed. Cir. 1985) ("[T]he issue of infringement is not reached on the merits in considering venue requirements"); *Intellectual Ventures*, 2017 WL 5630023, at *8. Indeed, any more briefing by Defendants, as demanded by AGIS, would reach to the "merits" of the issue of infringement.

Accordingly, ZTE respectfully requests leave to file a sur-sur-reply in order to address/correct the uncorrected factual errors in the record from AGIS's sur-reply brief.

Dated: March 5, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies 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 per Local Rule CV-5(a)(3) on this 5th of March, 2018. All other counsel not deemed to have consented to service in such manner will be served via facsimile transmission and/or first class mail.

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