

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**AGIS SOFTWARE DEVELOPMENT,
LLC,**

Plaintiff,

v.

ZTE CORPORATION, ET AL.,

Defendants.

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Case No. 2:17-cv-00517-JRG

JURY TRIAL DEMANDED

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT, LLC'S SUPPLEMENTAL BRIEF
IN SUPPORT OF ITS OPPOSITION TO DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT FOR IMPROPER VENUE OR, IN THE
ALTERNATIVE, TO TRANSFER (DKT. 38)**

On May 15, 2018, the Federal Circuit issued a precedential decision in *In re Bigcommerce Inc.*, Nos. 2018-120, 2018-122, 890 F.3d 978 (Fed. Cir. 2018) (“*In re Bigcommerce*”) addressing the unsettled law regarding which judicial district a domestic corporation “resides” for purposes of venue under 28 U.S.C. 1400(b) when it is incorporated in a state having multiple judicial districts. Shortly thereafter, Plaintiff AGIS Software Development, LLC (“AGIS”) filed an Unopposed Motion for Leave to File A Supplemental Brief in Support of its Opposition to Defendants’ Motion to Dismiss Plaintiff’s Amended Complaint for Improper Venue or, in the Alternative, to Transfer to address the effect *In re Bigcommerce, Inc.* has on venue as to Defendant ZTE (TX), Inc. (“ZTX”). Dkt. 65. This Court granted AGIS’s request on June 4, 2018. Dkt. 67. In accordance with Your Honor’s Order, AGIS, by and through its undersigned counsel hereby submits this Supplemental Brief in support of its Opposition to Defendants’ Motion to Dismiss Plaintiff’s Amended Complaint for Improper Venue or, in the Alternative, to Transfer.

I. VENUE IS PROPER AS TO DEFENDANT ZTX BASED ON *IN RE BIGCOMMERCE*

Venue is proper over Defendant ZTX pursuant to the Federal Circuit’s recent, precedential decision in *In re Bigcommerce*. Venue for domestic defendants in patent infringement cases is governed by 28 U.S.C. § 1400(b). *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514, 1517 (2017). Section 1400(b) provides that “[a]ny civil action for patent infringement may be brought [1] in the judicial district where the defendant resides, or [2] where the defendant has committed acts of infringement a patent infringement case may be brought against a domestic defendant in the judicial district where the defendant resides. With respect to the first test, in *TC Heartland*, the U.S. Supreme Court held that a domestic defendant corporation “resides” in its state of incorporation. *TC Heartland*, 137 S. Ct.

at 1517. In *In re Bigcommerce*, the Federal Circuit held that “for purposes of determining venue under § 1400(b) in a state having multiple judicial districts, a corporate defendant shall be considered to ‘reside’ only in the single judicial district within that state where it maintains a principal place of business, or failing that, the judicial district in which its registered office is located.” *In re Bigcommerce*, 890 F.3d at 986. Until the decision in *In re Bigcommerce* was rendered, this question remained “undecided” and “unsettled.” *Id.* at 981.

Pursuant to *In re Bigcommerce*, venue is proper as to ZTX because ZTX “resides” in this District. The new law set forth by the Federal Circuit applies to the instant case because ZTX is incorporated in Texas (Dkt. 38-1 ¶ 14 (“ZTX is incorporated in Texas in 2013); Dkt. 38 at 3) and Texas is a state having multiple judicial districts (Ex. 12 at 4 (official U.S. Courts website showing that Texas has four judicial districts). Since ZTX concedes that its principal place of business is in California, not Texas (Dkt. 38-1 ¶ 13 (“ZTX’s principal place of business is located in Milpitas, California”); Dkt. 38 at 3), venue is proper over ZTX “in the judicial district in which its registered office is located.” Pursuant to the Texas Comptroller of Public Accounts website, ZTX’s registered office is located at 2500 Dallas Parkway, Suite 600, Plano, Texas 75093, which is in this District. Ex. 13; *see also* Dkt. 38-1 ¶ 14; Dkt. 38 at 4. Accordingly, based on the new, precedential law set forth by the Federal Circuit, venue is proper as to ZTX in this District.

II. CONCLUSION

For the foregoing reasons, AGIS respectfully requests that the Court deny Defendants’ Motion to Dismiss, or in the Alternative, Transfer.

Dated: June 8, 2018

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF, AGIS
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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 June 8, 2018.

/s/ Alfred R. Fabricant

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