

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

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff

v.

HMD GLOBAL OY and  
HMD AMERICA, INC.

Defendants.

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Case No. 2:22-cv-00443-JRG  
(Lead Case)

**MOTION TO DISMISS THE CASE  
AGAINST HMD AMERICA INC. FOR IMPROPER VENUE**

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## **I. INTRODUCTION**

Plaintiff AGIS Software Development LLC (“AGIS”) filed this case against Defendants HMD America, Inc. (“HMD America”) and HMD Global Oy (collectively, “HMD”) on November 18, 2022.<sup>1</sup> HMD moves this Court under Rule 12(b)(3) to dismiss the case against HMD America for improper venue or transfer that case to the Southern District of Florida.<sup>2</sup>

HMD America is incorporated in Florida, so it does not “reside” in this district under 28 U.S.C. § 1400(b). HMD America also does not maintain a regular and established place of business in this District under § 1400(b), because it is a Florida company with its headquarters in Miami that has no physical offices or facilities in this District. HMD America has only a handful of remote employees working from home in Texas, none relevant to the venue analysis. AGIS pleads no legally relevant facts in its venue allegations, instead stating in a conclusory way that Defendants “have regular and established places of business in this Judicial District,” without supporting facts. AGIS’s case against HMD America cannot be maintained in the Eastern District of Texas, so this case should be dismissed under Rule 12(b)(3) and 28 U.S.C. § 1406(a). Alternatively, the case should be transferred to the Southern District of Florida, where HMD America resides.

## **II. STATEMENT OF DISPOSITIVE ISSUE TO BE DECIDED (L.R. CV-7(A)(1))**

Should this case be dismissed or transferred under Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406(a) for improper venue over HMD America, Inc. in this District?

## **III. LEGAL STANDARD**

28 U.S.C. § 1400(b) is the “sole and exclusive provision controlling venue in patent infringement actions.” *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514,

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<sup>1</sup> AGIS also named a third entity in their complaint, “HMD Global.” This entity does not exist.

<sup>2</sup> HMD and AGIS have jointly moved to stay all deadlines and have notified the Court of a settlement in principle that resolves all claims against HMD. Dkt. 39. HMD nevertheless files this response to the Complaint because the Court has yet to enter an order on the parties’ motion.

1519 (2017) (quoting *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 229 (1957)); see also *Uniloc 2017 LLC v. Riot Games, Inc.*, 2020 WL 1158611 at \*2 (E.D. Tex. Mar. 10, 2020).

Section 1400(b) provides that venue is proper only (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). Under the first prong of § 1400(b), a domestic corporation resides in its state of incorporation only. *TC Heartland*, 137 S. Ct. at 1521. Under the second prong, “(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 Cray Inc.*, 871 F.3d 1355, 1360 (Fed. Cir. 2017). “If any statutory requirement is not satisfied, venue is improper under § 1400(b).” *Id.* Simply stating that a defendant “has a regular and established place of business within the judicial district, without more, amounts to a mere legal conclusion that the court is not bound to accept as true.” *Westech Aerosol Corp. v. 3M Co.*, 927 F.3d 1378, 1382 (Fed. Cir. 2019).

“[I]n an action involving multiple defendants[,] venue and jurisdiction requirements must be met as to each defendant.” *Magnacoustics, Inc. v. Resonance Tech. Co.*, No. 97–1247, 1997 WL 592863, at \*1 (Fed. Cir. Sept. 25, 1997); *Blue Spike, LLC v. Nook Digital, LLC*, 2017 WL 3263871 at \*3 (E.D. Tex. July 28, 2017), report and recommendation adopted sub nom. *Blue Spike, LLC v. Caterpillar, Inc.*, 2017 WL 4129321 (E.D. Tex. Sept. 19, 2017). Where venue is improper, a court “shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” 28 U.S.C. § 1406(a) (emphasis added). “[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).

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