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

TOUCHSTREAM TECHNOLOGIES, INC., *Plaintiff*, v. CHARTER COMMUNICATIONS, INC., et al., *Defendants*.	§ § § § § § § § § §	CASE NO. 2:23-cv-00059-JRG (Lead Case) [redacted]

TOUCHSTREAM TECHNOLOGIES, INC., *Plaintiff*, v. COMCAST CABLE COMMUNICATIONS, LLC d/b/a XFINITY, et al., *Defendants*.	§ § § § § § § § § §	CASE NO. 2:23-cv-00062-JRG (Member Case)

MEMORANDUM OPINION AND ORDER

Before the Court is Defendants' Motion to Dismiss the First Amended Complaint for Improper Venue Pursuant to FRCP 12(b)(3) and for Failure to State a Claim for Willful Infringement Under FRCP 12(b)(6) (the "Motion") filed by Defendants Charter Communications, Inc. ("CCI"), Charter Communications Operating, LLC ("CCO"), Time Warner Cable Enterprises LLC ("TWCE"), Spectrum Management Holding Company, LLC ("SMHC"), Spectrum Gulf Coast, LLC ("SGC"), and Charter Communications, LLC ("CCL") (collectively, "Charter"). (No.

2:23-cv-00060-JRG, Dkt. No. 82.[1]) Having considered the Motion, the briefing, and the accompanying exhibits, and for the reasons set forth herein, the Court is of the opinion that the Motion should be and hereby is **GRANTED-IN-PART and DENIED-IN-PART**.

I. BACKGROUND

On February 16, 2023, Plaintiff Touchstream Technologies, Inc. ("Plaintiff") filed a patent infringement complaint against Charter.[2] (Dkt. No. 1.) The complaint alleged infringement of a single patent: U.S. Patent No. 8,356,251 ("the '251 patent"). (*Id.* ¶¶ 40–44.) The case was subsequently consolidated with two others filed by Plaintiff for all pretrial issues. (Dkt. No. 12.)

After consolidation, Charter moved to dismiss the complaint under (1) Rule 12(b)(3) for improper venue as it relates to CCI and CCO, and (2) Rule 12(b)(6) for failure to state a claim for willful infringement against Charter. (No. 2:23-cv-00060-JRG, Dkt. No. 36.) The Parties agreed to a venue discovery protocol, and the Court entered a corresponding order. (*Id.*, Dkt. No. 49.) As part of that protocol, Charter agreed to produce venue discovery from a co-pending case in this Court: *Entropic Communications, LLC v. Charter Communications, Inc.*, No. 2:22-cv-00125 (E.D. Tex.) ("*Entropic*"). (*Id.*)

In the *Entropic* case, CCI filed Defendant Charter Communications, Inc.'s Motion to Dismiss the Second Amended Complaint for Improper Venue Pursuant to FRCP 12(b)(3) ("CCI's Motion"). *Entropic*, Dkt. No. 61 (Jan. 30, 2023). There, on May 3, 2023, the Court denied CCI's Motion. *Id.*, Dkt. No. 91 (May 3, 2023). The Court found that CCI committed acts of infringement and has a regular and established place of business in the Eastern District of Texas, relying on in-district Spectrum-branded stores operated by SGC. *See generally*, *id.* The Court rejected CCI's

[1] After Charter filed the Motion, this case was deconsolidated. (No. 2:23-cv-00060-JRG, Dkt. No. 158.) Unless otherwise indicated, all docket entries cited herein refer to those entered in Case No. 2:23-cv-00059-JRG.

[2] CCL was the only Charter entity not originally accused of infringement. Plaintiff added CCL as a co-defendant in the First Amended Complaint for Patent Infringement. (No. 2:23-cv-00060-JRG, Dkt. No. 53.)

argument that its business was not being carried out from those in-district locations, finding that CCI was "actually operating the business" and "engaged in the challenged conduct" as to the in-district stores. *Id*. at 5–6, 14. The Court also found that CCL's employees were acting as CCI's agents from those locations pursuant to management agreements that gave CCI material control over the in-district stores' operations. *Id*. at 10–12. The Court further found that CCI had ratified those stores as its own, explaining that CCI's nationwide website advertises the store locations and services and that CCI had negotiated and signed the lease agreements for the stores. *Id*. at 15–16. The Court further found that the in-district activities of CCL and SGC "may be properly imputed to" CCI, explaining that CCI "unabashedly holds itself out to the world as a single enterprise" and the lines between the different corporations were simply "legal formalities." *Id*. at 16–19.

Here, on May 25, 2023, Plaintiff filed a First Amended Complaint for Patent Infringement ("FAC").[3] (No. 2:23-cv-00060-JRG, Dkt. No. 53.) Most notably, the FAC included two new counts for infringement of U.S. Patent Nos. 11,048,751 and 11,086,934 (the "'751 patent" and the "'934 patent," respectively; the '251, '751, '934 patents are referred to collectively as "the Asserted Patents"). (*See id*. ¶¶ 52-61.)

Turning back to the *Entropic* case, on June 16, 2023, CCI filed a petition for a writ of mandamus challenging this Court's venue decision and requesting the Federal Circuit to direct the Court to dismiss the *Entropic* case for improper venue. *In re: Charter Comms., Inc.*, No. 23-136, Dkt. No. 2-1 (Fed. Cir. Jun. 16, 2023) ("*In re: Charter*").

Here, on June 23, 2023, Charter filed the Motion. (No. 2:23-cv-00060-JRG, Dkt. No. 82.) In the Motion, Charter once again argues that the FAC should be dismissed (1) under Rule 12(b)(3)

[3] In view of the FAC, the Court denied Charter's initial motion to dismiss. (No. 2:23-cv-00060-JRG, Dkt. No. 128.)

for improper venue as it relates to CCI and CCO,[4] and (2) under Rule 12(b)(6) for failure to state a claim for willful infringement against Charter. (*Id*. at 1.) Soon after Charter filed the Motion, on July 6, 2023, the Parties filed the Joint Motion Regarding Extension of Time to Conduct Additional Venue Discovery and for Touchstream to Respond to Defendants' Motion to Dismiss. (*Id*., Dkt. No. 90.) In this filing, the Parties jointly acknowledged that the Federal Circuit's decision on the *Entropic* mandamus petition "may be relevant to the portion of the [Motion] as it relates to venue over CCI and CCO." (*Id*. at 3.) In view of the Federal Circuit's forthcoming decision, the Parties requested the Court to extend the time for venue discovery to "reduce the burden on all parties, and to streamline the issues for the Court." (*Id*.)

On July 7, 2023, in response to the Joint Motion, the Court issued an Order staying all venue discovery deadlines and corresponding deadlines for responses until five days after the Federal Circuit issued an order on the petition for writ of mandamus in the *Entropic* case. (*Id*., Dkt. No. 92.)

On September 5, 2023, the Federal Circuit denied CCI's petition for writ of mandamus in the *Entropic* case. *In re: Charter*, No. 23-136, 2023 WL 5688812 (Fed. Cir. Sept. 5, 2023). The Federal Circuit held that "[a]t most, CCI's arguments present a record-specific dispute: whether CCI exerts control sufficient to impute its subsidiaries' in-district operations to CCI under Fifth Circuit law," and CCI thus failed to raise a question that warrants mandamus review. *Id*. at *2.

Here, in view of the Federal Circuit's decision and after receiving the Parties' joint filing notifying the Court of the *Entropic* decision (No. 2:23-cv-00060-JRG, Dkt. No. 108), on October 18, 2023, the Court issued an Order allowing additional venue discovery and outlining the briefing timeline for the Motion. (No. 2:23-cv-00060-JRG, Dkt. No. 118.) The Court subsequently held a

[4] TWCE, SMHC, SGC, and CCL do not dispute that venue is proper. (No. 2:23-cv-00060-JRG, Dkt. No. 82 at 1 n.1.)

telephonic conference on March 4, 2024 and directed Plaintiff to file a response to the Motion by March 11, 2024 (*id*., Dkt. No. 155, the "Response"), and for Defendants to file a reply in support of the Motion by March 18, 2024 (Dkt. No. 17, the "Reply"). Plaintiff also filed a sur-reply on March 25, 2024. (Dkt. No. 20, the "Sur-Reply.)

II. LEGAL STANDARD

A. Rule 12(b)(3)

A party may move to dismiss an action for "improper venue." FED. R. CIV. P. 12(b)(3). "Once a defendant raises a 12(b)(3) motion to dismiss for improper venue, the burden of sustaining venue lies with the plaintiff." *ATEN Int'l Co., Ltd. v. Emine Tech. Co., Ltd.*, 261 F.R.D. 112, 120–21 (E.D. Tex. 2009) (citation omitted). A plaintiff may carry its burden by presenting facts, taken as true, that establish venue. *Id*. The Court "must accept as true all allegations in the complaint and resolve all conflicts in favor of the plaintiff." *Mayfield v. Sallyport Glob. Holdings, Inc.*, No. 6:13-cv-00459, 2014 WL 978685, at *1 (E.D. Tex. Mar. 5, 2014) (citing *Ambraco, Inc. v. Bossclip, B.V.*, 570 F.3d 233, 237–38 (5th Cir. 2009)). The Federal Circuit has emphasized that "each case depends on its own facts" and "no one fact is controlling." *In re Cray Inc.*, 871 F.3d 1355, 1362, 1366 (Fed. Cir. 2017). If venue is improper, the Court must dismiss the case, "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).

In an action for patent infringement, venue is controlled by 28 U.S.C. § 1400(b). Pursuant to 28 U.S.C. § 1400(b), "[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." Under the residency requirement, the Supreme Court has held that "a domestic corporation 'resides' only in its State of incorporation for purposes

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