NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

LARRY GOLDEN,
Plaintiff-Appellant

v.

APPLE INC.,
Defendant-Appellee

AT&T INC., BIG O DODGE CHRYSLER JEEP RAM, FCA US LLC, FAIRWAY FORD LINCOLN OF GREENVILLE, FORD GLOBAL TECHNOLOGIES, LLC, GENERAL MOTORS COMPANY, KEVIN WHITAKER CHEVROLET, LG ELECTRONICS USA INC, MOTOROLA SOLUTIONS, INC., PANASONIC CORPORATION, QUALCOMM, INC., SAMSUNG ELECTRONICS USA, SPRINT CORPORATION, T-MOBILE USA, INC., VERIZON CORPORATE SERVICES GROUP,
Defendants

2020-1508

Appeal from the United States District Court for the District of South Carolina in No. 6:19-cv-02557-DCC, Judge Donald C. Coggins Jr.

ON PETITION FOR REHEARING EN BANC

Before PROST, *Chief Judge*, NEWMAN, LOURIE, LINN*, DYK, MOORE, O'MALLEY, REYNA, TARANTO, CHEN, HUGHES, and STOLL, *Circuit Judges*[1].

PER CURIAM.

ORDER

Appellant Larry Golden filed a petition for rehearing en banc. The petition was first referred as a petition for rehearing to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue on October 14, 2020.

FOR THE COURT

October 7, 2020
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

* Circuit Judge Linn participated only in the decision on the petition for panel rehearing.

[1] Circuit Judges O'Malley and Wallach did not participate.

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

LARRY GOLDEN,
Plaintiff-Appellant

v.

APPLE INC.,
Defendant-Appellee

AT&T INC., BIG O DODGE CHRYSLER JEEP RAM, FCA US LLC, FAIRWAY FORD LINCOLN OF GREENVILLE, FORD GLOBAL TECHNOLOGIES, LLC, GENERAL MOTORS COMPANY, KEVIN WHITAKER CHEVROLET, LG ELECTRONICS USA INC, MOTOROLA SOLUTIONS, INC., PANASONIC CORPORATION, QUALCOMM, INC., SAMSUNG ELECTRONICS USA, SPRINT CORPORATION, T-MOBILE USA, INC., VERIZON CORPORATE SERVICES GROUP,
Defendants

2020-1508

Appeal from the United States District Court for the District of South Carolina in No. 6:19-cv-02557-DCC, Judge Donald C. Coggins Jr.

Decided: September 3, 2020

LARRY GOLDEN, Greenville, SC, pro se.

JOHN FRANKLIN MORROW, JR., Womble Bond Dickinson (US) LLP, Winston-Salem, NC, for defendant-appellee. Also represented by ANA FRIEDMAN.

Before PROST, *Chief Judge*, LINN and TARANTO, *Circuit Judges*.

PER CURIAM.

Larry Golden, pro se plaintiff-appellant, sued fifteen defendants in the District Court for the District of South Carolina, alleging patent infringement by the defendants' development and manufacturing of communicating, monitoring, detecting, and controlling ("CMDC") devices. Magistrate Judge Kevin F. McDonald issued an Order notifying Golden that his complaint was subject to summary dismissal for frivolousness. After Golden amended his complaint, the Magistrate Judge recommended dismissal without prejudice and without service of process because the case was duplicative of parallel proceedings Golden brought against the government in the Court of Federal Claims. Golden objected to the Magistrate Judge's Report and Recommendation, arguing that the present action was not duplicative but was instead a separate action against non-governmental entities for patent infringement. The district court reviewed the record and adopted the Magistrate Judge's recommendation. Golden appeals. For the reasons that follow, we affirm.

The district court concluded that because the present case and the earlier case against the government involved the same patents, that was enough to find the action duplicative. Golden argues on appeal that what the district

court failed to appreciate is that while the earlier action asserted unfair acts by the government, the present action allegedly involves the infringing acts of third parties unrelated to any activities of the government. Even if Golden is correct, however, in asserting that the present action is not duplicative and therefore should not have been dismissed on that ground, we "may affirm a judgment of a district court on any ground the law and the record will support so long as that ground would not expand the relief granted." *Glaxo Grp. Ltd. v. TorPharm, Inc.*, 153 F.3d 1366, 1371 (Fed. Cir. 1998). Indeed, we may dismiss a case for lack of jurisdiction where the complaint is "wholly insubstantial and frivolous." *First Data Corp. v. Inselberg*, 870 F.3d 1367, 1373 (Fed. Cir. 2017) (quoting *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 513 n.10 (2006)).

Allegations of direct infringement are subject to the pleading standards established by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Under this standard, a court must dismiss a complaint if it fails to allege "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. This "facial plausibility" standard requires "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555. Rather, it requires the plaintiff to allege facts that add up to "more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678; *see Twombly*, 550 U.S. at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level."). Although courts do not require "heightened fact pleading of specifics," *Twombly*, 550 U.S. at 570, a plaintiff must allege "'enough fact[s] to raise a reasonable expectation that discovery will reveal' that the defendant is liable for the misconduct alleged." *In re Bill of Lading Transmission & Processing Sys. Pat. Litig.*, 681 F.3d 1323, 1341 (Fed. Cir. 2012) (alteration in original) (quoting *Twombly*, 550 U.S. at 556).

Golden's amended complaint here, like his initial complaint, even if not duplicative of the earlier filed action against the government, "contains only conclusory formulaic recitations of the elements of patent infringement as to each defendant." Magistrate Judge Initial Order at 5, *Golden v. Apple Inc.*, No. 6:19-cv-02557 (D.S.C. Oct. 1, 2019), ECF No. 12. Count I of Golden's Amended Complaint, for example, merely states that "at least one of the defendants named in this complaint has infringed at least independent claim 4 & 5 of the '287 patent," Complaint at ¶ 156, *Golden v. Apple Inc.*, No. 6:19-cv-02557 (D.S.C. Oct. 15, 2019), ECF No. 16-1, followed by generalized statements of infringement by each defendant, *id.* at ¶¶ 157–204, and similar broad infringement allegations for each of Golden's other patents, *id.* at ¶¶ 205–384. The complaint itself offers only vague generalities and block quotes of statutes, cases and treatises, but nowhere points us to any nonfrivolous allegations of infringement of any claim by any actual product made, used, or sold by any defendant.

The complaint also references "claim charts" for each defendant and each patent. *E.g., id.*, ECF No. 16-14. These claim charts present a dizzying array of disorganized assertions over several hundred pages, disingenuously using the words of the claims to generally describe cryptically identified structures. Although Golden appeals pro se and is therefore entitled to a certain leeway in interpreting his complaint, we agree with the magistrate judge's conclusion that "the plaintiff's vague and conclusory allegations fail to state a claim for relief." Magistrate Judge Initial Order at 5.

For these reasons, we affirm the district court's dismissal without prejudice and without service of process, not on the basis of duplicity, but on the ground of frivolousness.

AFFIRMED

COSTS

No costs.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
717 MADISON PLACE, N.W.
WASHINGTON, D.C. 20439

PETER R. MARKSTEINER
CLERK OF COURT

CLERK'S OFFICE
202-275-8000

February 25, 2020

NOTICE OF DOCKETING

Federal Circuit Docket No.: 2020-1508

Federal Circuit Short Title: Golden v. Apple Inc.

Date of Docketing: February 25, 2020

Originating Tribunal: United States District Court for the District of South Carolina

Originating Case No.: 6:19-cv-02557-DCC

Appellant: Larry Golden

A notice of appeal has been filed and assigned the above Federal Circuit case number. The court's official caption is included as an attachment to this notice. Unless otherwise noted in the court's rules, the assigned docket number and official caption or short title must be included on all documents filed with this Court. It is the responsibility of all parties to review the Rules for critical due dates. The assigned deputy clerk is noted below and all case questions should be directed to the Case Management Team at (202) 275-8055.

The following documents are due within 14 days of this notice:

- Entry of Appearance. (Fed. Cir. R. 47.3.)
- Certificate of Interest. (Fed. Cir. R. 47.4.)
- Docketing Statement. Note: The Docketing Statement is due in 30 days if the United States or its officer or agency is a party in the appeal. (Fed. Cir. R. 33.1 and the Mediation Guidelines)
- Statement Concerning Discrimination in MSPB cases. (Fed. Cir. R. 15(c).)

PARTY FILING AND CONTACT INFORMATION: Each counsel representing a party must be a member of the court's bar and registered for the court's electronic filing

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Larry Golden, Plaintiff, v. Apple Inc., Samsung Electronics USA, LG Electronics USA Inc., Qualcomm Inc., Motorola Solutions Inc., Panasonic Corporation, AT&T Inc., Verizon Corporate Services Group, Sprint Corporation, T-Mobile USA Inc., Ford Global Technologies LLC, Fairway Ford Lincoln of Greenville, General Motors Company, Kevin Whitaker Chevrolet, FCA US LLC, Big O Dodge Chrysler Jeep Ram, Defendant.	Case No. 6:19-cv-02557-DCC **ORDER**

Plaintiff, proceeding pro se,[1] brings this action alleging claims for patent infringement against Defendants. ECF No. 16. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), this matter was referred to United States Magistrate Judge Kevin F. McDonald for pre-trial proceedings and a Report and Recommendation ("Report"). On January 9, 2019, the Magistrate Judge issued a Report recommending that this action be dismissed without prejudice and without issuance of service of process. ECF No. 27. Plaintiff filed objections to the Report. ECF No. 30.

[1] Plaintiff paid the filing fee. ECF No. 1.

LEGAL STANDARD

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." (citation omitted)).

ANALYSIS

The Magistrate Judge recommends dismissal of the present action as duplicative of another ongoing action in the Court of Federal Claims.[2] Plaintiff makes various objections, which the Court will address in turn.

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[2] As noted by the Magistrate Judge, Plaintiff is engaged in ongoing patent litigation in the Court of Federal Claims, the Court of Appeals for the Federal Circuit, and the United States Patent and Trademark Office. *See Golden v. United States*, C/A No. 1:19-cv-0104-EGB (Fed. Cl.), *appeal pending* C/A No. 19-2134 (Fed. Cir.); *Golden v. United States*, C/A No 1:13-cv-00307-SGB, *stayed pending patent review*, doc. 186 (Fed. Cl.) ("Case Number 1"); *In re Patent Number* RE 43,990, https://portal.uspto.gov/pair/PublicPair# (choose patent number, enter RE43990, and then click Image File Wrapper) (last visited January 22, 2020). The Court may take

The Magistrate Judge provides a thorough recitation of the facts and procedural history which the Court incorporates by reference.[3] Briefly summarizing the relevant facts, Plaintiff sues various corporations and business entities that he asserts have infringed on his patents, including: 10,163,287 ; 9,589,439; 9,096,189; RE43,990 RE43,891; and 7,385,497. ECF Nos. 16; 16-1; 16-3; 16-4; 16-5; 16-6; 16-7; 16-8. These patents are entitled "multi sensor detection and lock disabling system" and "multi sensor detection, stall to stop and lock disabling system." ECF Nos. 16; 16-1; 16-3; 16-4; 16-5; 16-6; 16-7; 16-8. The patents appear to involve technology that can be used to detect explosives/radiation and then disable vehicles or other apparatuses wherein the explosives/radiation are detected. Plaintiff seeks a declaratory judgment that Defendants have infringed on his patents, a permanent injunction enjoining the infringing activity by Defendants, and money damages. ECF No. 16-1 at 252.

Upon de novo review of the record, the applicable law, and the Report, the Court finds that this action should be dismissed as duplicative of Plaintiff's Case Number 1. That action involves the same patents and the alleged infringement is substantially identical.

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judicial notice of these other cases. *See Phillips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (courts "may properly take judicial notice of matters of public record."); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that '[t]he most frequent use of judicial notice . . . is in noticing the content of court records.'").

[3] The Court notes that Plaintiff's Amended Complaint is more than 250 pages in length and includes more than 700 pages of attachments. ECF No. 16.

Plaintiff contends that the purported infringement is not substantially identical. He states that he "is bringing this action because the Plaintiffs communication devices (does not include the communication devices use as 'detection devices' as claimed in Case Number 1) and stall, stop and vehicle slowdown systems (does not include the stopping of vehicles with the use of electromagnetic pulse as claimed in Case Number 1) are being manufactured, sold, used, and offered for sale by the alleged infringers as new and improved desktop computers, new and improved PDAs, PCs, laptops, cell phones, tablets, smartphones and smartwatches, and new and improved stall, stop, and vehicle slowdown systems etc." ECF No. 30 at 6.

In Plaintiff's Final Amended Complaint in Case Number 1, he asserts that the Government has infringed upon his patents related to communications devices. C/A No. 1:13-cv-00307-EGB (ECF No. 120 at 14–16). Moreover, Case Number 1 and the present action involve the same patents, as evidenced by Plaintiff's pleadings and claims charts.[4] Accordingly, this objection is overruled.

Plaintiff further objects to the dismissal of his case because he claims that he is barred from bringing a patent infringement case against a private party and the Government in the same court. This objection has no basis in the law and is overruled.[5]

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[4] Plaintiff contends that this litigation does not involve the same patents as Case Number 1. He has provided no support this argument and the evidence presented by Plaintiff contradicts this assertion.

[5] To the extent Plaintiff argues that the Defendants in the present action are immune from suit in the Court of Federal Claims, has not pointed to, and the Court has been unable to find, any authority to support a theory that these Defendants would be treated differently in this Court.

Plaintiff argues in his objections that the Defendants in the present action are not the same as the Defendant in Case Number 1. As noted by the Magistrate Judge, this action involves third parties as infringers rather than the Government; however, the filings make clear that the Defendants are third-party actors for the Government's alleged infringing actions. Accordingly, the Court finds this action should be dismissed as duplicative because Plaintiff is alleging that the Defendants are infringing on the same patents in the same manner as asserted in Case Number 1. *See Nexsen Pruet, LLC v. Westport Ins. Corp.*, C/A No. 3:10-cv-00895-JFA, 2010 WL 3169378, at *2 (D.S.C. Aug. 5, 2010) (generally, a case pending in federal court "may be dismissed for reasons of wise judicial administration whenever it is duplicative of a parallel action already pending in another federal court" (internal quotation marks omitted) (quoting *Motley Rice, LLC v. Baldwin & Baldwin, LLP*, 518 F. Supp. 2d 688, 697 (D.S.C. 2007))); *New Beckley Mining Corp. v. Int'l Union, United Mine Workers of Am.*, 946 F.2d 1072, 1073 (4th Cir. 1991) (suits are considered parallel if "substantially the same parties litigate substantially the same issues in different forums" (citing *LaDuke v. Burlington N. R.R.*, 879 F.2d 1556, 1559 (7th Cir. 1989))); *Byerson v. Equifax Info. Servs., LLC*, 467 F. Supp. 2d 627, 635 (E.D. Va. 2006) (noting that "[m]ost prominent among the elements of systemic integrity are judicial economy and the avoidance of inconsistent judgments.").

CONCLUSION

In light of the foregoing, this action is **DISMISSED**[6] without prejudice[7] and without issuance of service of process.

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.
United States District Judge

January 27, 2020
Spartanburg, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

[6] The Court finds Plaintiff should not be given a second opportunity to amend his complaint in the instant matter because any amendment would be futile in light of the pending duplicative litigation. *See Goode v. Cent. Virginia Legal Aid Soc'y, Inc.*, 807 F.3d 619, 623 (4th Cir. 2015); *see also In re PEC Solutions, Inc. Sec. Litig.*, 418 F. 3d 379, 391 (4th Cir. 2005) ("Leave to amend need not be given when amendment would be futile.").

[7] In his objections, Plaintiff states that his claims will time barred if he is not allowed to proceed in this action. He has provided no support for this conclusory statement.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Larry Golden, Plaintiff, v. Apple Inc., Samsung Electronics USA, LG Electronics USA Inc., Qualcomm Inc., Motorola Solutions Inc., Panasonic Corporation, AT&T Inc., Verizon Corporate Services Group, Sprint Corporation, T-Mobile USA Inc., Ford Global Technologies LLC, Fairway Ford Lincoln of Greenville, General Motors Company, Kevin Whitaker Chevrolet, FCA US LLC, Big O Dodge Chrysler Jeep Ram, Defendant.	Case No. 6:19-cv-02557-DCC A TRUE COPY ATTEST: ROBIN L. BLUME, CLERK BY: DEPUTY CLERK **ORDER**

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CONCLUSION

In light of the foregoing, this action is **DISMISSED**[6] without prejudice[7] and without issuance of service of process.

IT IS SO ORDERED.

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January 27, 2020
Spartanburg, South Carolina

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GREENVILLE DIVISION

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FORM 1. Notice of Appeal to the United States Court of Appeals for the Federal Circuit from a Judgment or Order of a UNITED STATES DISTRICT COURT

Form 1
Rev. 03/16

United States District Court

for the

District of South Carolina

Larry Golden , Plaintiff,

v. Case No. 6:19-cv-2557-DCC

Apple, Inc. et al , Defendant.

NOTICE OF APPEAL

Notice is hereby given that Larry Golden (name all parties * taking the appeal) in the above named case hereby appeal to the United States Court of Appeals for the Federal Circuit from the final judgement (from the final judgment) ((from an order) (describe the order)) entered in this action on January 27, 2020

Larry Golden
(Signature of appellant or attorney)

Larry Golden

740 Woodruff Road, #1102

Greenville, SC 29607

atpg-tech@charter.net

(Address of appellant or attorney and e-mail address)

Reset Fields

*See Fed. R. App. P. 3(c) for permissible ways of identifying appellants.

LEGAL STANDARD

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." (citation omitted)).

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[2] As noted by the Magistrate Judge, Plaintiff is engaged in ongoing patent litigation in the Court of Federal Claims, the Court of Appeals for the Federal Circuit, and the United States Patent and Trademark Office. *See Golden v. United States*, C/A No. 1:19-cv-0104-EGB (Fed. Cl.), *appeal pending* C/A No. 19-2134 (Fed. Cir.); *Golden v. United States*, C/A No 1:13-cv-00307-SGB, *stayed pending patent review*, doc. 186 (Fed. Cl.) ("Case Number 1"); *In re Patent Number* RE 43,990, https://portal.uspto.gov/pair/PublicPair# (choose patent number, enter RE43990, and then click Image File Wrapper) (last visited January 22, 2020). The Court may take

The Magistrate Judge provides a thorough recitation of the facts and procedural history which the Court incorporates by reference.[3] Briefly summarizing the relevant facts, Plaintiff sues various corporations and business entities that he asserts have infringed on his patents, including: 10,163,287 ; 9,589,439; 9,096,189; RE43,990 RE43,891; and 7,385,497. ECF Nos. 16; 16-1; 16-3; 16-4; 16-5; 16-6; 16-7; 16-8. These patents are entitled "multi sensor detection and lock disabling system" and "multi sensor detection, stall to stop and lock disabling system." ECF Nos. 16; 16-1; 16-3; 16-4; 16-5; 16-6; 16-7; 16-8. The patents appear to involve technology that can be used to detect explosives/radiation and then disable vehicles or other apparatuses wherein the explosives/radiation are detected. Plaintiff seeks a declaratory judgment that Defendants have infringed on his patents, a permanent injunction enjoining the infringing activity by Defendants, and money damages. ECF No. 16-1 at 252.

Upon de novo review of the record, the applicable law, and the Report, the Court finds that this action should be dismissed as duplicative of Plaintiff's Case Number 1. That action involves the same patents and the alleged infringement is substantially identical.

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judicial notice of these other cases. *See Phillips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (courts "may properly take judicial notice of matters of public record."); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that '[t]he most frequent use of judicial notice . . . is in noticing the content of court records.'").

[3] The Court notes that Plaintiff's Amended Complaint is more than 250 pages in length and includes more than 700 pages of attachments. ECF No. 16.

Plaintiff contends that the purported infringement is not substantially identical. He states that he "is bringing this action because the Plaintiffs communication devices (does not include the communication devices use as 'detection devices' as claimed in Case Number 1) and stall, stop and vehicle slowdown systems (does not include the stopping of vehicles with the use of electromagnetic pulse as claimed in Case Number 1) are being manufactured, sold, used, and offered for sale by the alleged infringers as new and improved desktop computers, new and improved PDAs, PCs, laptops, cell phones, tablets, smartphones and smartwatches, and new and improved stall, stop, and vehicle slowdown systems etc." ECF No. 30 at 6.

In Plaintiff's Final Amended Complaint in Case Number 1, he asserts that the Government has infringed upon his patents related to communications devices. C/A No. 1:13-cv-00307-EGB (ECF No. 120 at 14–16). Moreover, Case Number 1 and the present action involve the same patents, as evidenced by Plaintiff's pleadings and claims charts.[4] Accordingly, this objection is overruled.

Plaintiff further objects to the dismissal of his case because he claims that he is barred from bringing a patent infringement case against a private party and the Government in the same court. This objection has no basis in the law and is overruled.[5]

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[4] Plaintiff contends that this litigation does not involve the same patents as Case Number 1. He has provided no support this argument and the evidence presented by Plaintiff contradicts this assertion.

[5] To the extent Plaintiff argues that the Defendants in the present action are immune from suit in the Court of Federal Claims, has not pointed to, and the Court has been unable to find, any authority to support a theory that these Defendants would be treated differently in this Court.

Plaintiff argues in his objections that the Defendants in the present action are not the same as the Defendant in Case Number 1. As noted by the Magistrate Judge, this action involves third parties as infringers rather than the Government; however, the filings make clear that the Defendants are third-party actors for the Government's alleged infringing actions. Accordingly, the Court finds this action should be dismissed as duplicative because Plaintiff is alleging that the Defendants are infringing on the same patents in the same manner as asserted in Case Number 1. *See Nexsen Pruet, LLC v. Westport Ins. Corp.*, C/A No. 3:10-cv-00895-JFA, 2010 WL 3169378, at *2 (D.S.C. Aug. 5, 2010) (generally, a case pending in federal court "may be dismissed for reasons of wise judicial administration whenever it is duplicative of a parallel action already pending in another federal court" (internal quotation marks omitted) (quoting *Motley Rice, LLC v. Baldwin & Baldwin, LLP*, 518 F. Supp. 2d 688, 697 (D.S.C. 2007))); *New Beckley Mining Corp. v. Int'l Union, United Mine Workers of Am.*, 946 F.2d 1072, 1073 (4th Cir. 1991) (suits are considered parallel if "substantially the same parties litigate substantially the same issues in different forums" (citing *LaDuke v. Burlington N. R.R.*, 879 F.2d 1556, 1559 (7th Cir. 1989))); *Byerson v. Equifax Info. Servs., LLC*, 467 F. Supp. 2d 627, 635 (E.D. Va. 2006) (noting that "[m]ost prominent among the elements of systemic integrity are judicial economy and the avoidance of inconsistent judgments.").

CONCLUSION

In light of the foregoing, this action is **DISMISSED**[6] without prejudice[7] and without issuance of service of process.

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.
United States District Judge

January 27, 2020
Spartanburg, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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[6] The Court finds Plaintiff should not be given a second opportunity to amend his complaint in the instant matter because any amendment would be futile in light of the pending duplicative litigation. *See Goode v. Cent. Virginia Legal Aid Soc'y, Inc.*, 807 F.3d 619, 623 (4th Cir. 2015); *see also In re PEC Solutions, Inc. Sec. Litig.*, 418 F. 3d 379, 391 (4th Cir. 2005) ("Leave to amend need not be given when amendment would be futile.").

[7] In his objections, Plaintiff states that his claims will time barred if he is not allowed to proceed in this action. He has provided no support for this conclusory statement.

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Larry Golden
Plaintiff

v.

Apple Inc., Samsung Electronics USA, LG Electronics USA Inc., Qualcomm Inc., Motorola Solutions Inc., Panasonic Corporation, AT&T Inc., Verizon Corporate Services Group, Sprint Corporation, T-Mobile USA Inc., Ford Global Technologies LLC, Fairway Ford Lincoln of Greenville, General Motiors Company, Kevin Whitaker Chevrolet, FCA US LLC, Big O Dodge Chrysler Jeep Ram
Defendant

Civil Action No. 6:19-cv-2557-DCC

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

■ other: this action is dismissed without prejudice and without issuance of service of process.

This action was *(check one)*:

■ decided by the Honorable Donald C. Coggins, Jr.

Date: January 27, 2020

CLERK OF COURT

s/Angela Lewis, Deputy Clerk
Signature of Clerk or Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION

Larry Golden, Plaintiff, vs. Apple Inc., Samsung Electronics USA, LG Electronics USA Inc., Qualcomm Inc., Motorola Solutions Inc., Panasonic Corporation, AT&T Inc., Verizon Corporate Services Group, Sprint Corporation, T-Mobile USA Inc., Ford Global Technologies LLC, Fairway Ford Lincoln of Greenville, General Motors Company, Kevin Whitaker Chevrolet, FCA US LLC, Big O Dodge Chrysler Jeep Ram, Defendants.	C/A No. 6:19-2557-DCC-KFM **ORDER**

The plaintiff, a non-prisoner proceeding *pro se*, brings this action asserting patent infringement against the defendants (doc. 1). Pursuant to the provisions of 28 U.S.C. § 636(b), and Local Civil Rule 73.02(B)(2) (D.S.C.), this magistrate judge is authorized to review all pretrial matters in this case and submit findings and recommendations to the district court.

The plaintiff's complaint was entered on the docket on September 11, 2019 (doc. 1). The case is in proper form for judicial screening. Nevertheless, as presented, the plaintiff's complaint is subject to summary dismissal.

BACKGROUND

In the instant action, the plaintiff has sued various corporations and business entities that he asserts have infringed on his patents (doc. 1). Specifically, the plaintiff asserts that the defendants have infringed on the following patents: 10,163,287 ('287

APPENDIX G

patent); 9,589,439 ('439 patent); 9,096,189 ('189 patent); RE43,990 ('990 patent)[1]; RE43,891 ('891 patent); and 7,385,497 ('497 patent) (docs. 1; 1-3; 1-4; 1-5; 1-6; 1-7; 1-8). These patents are entitled "multi sensor detection and lock disabling system" and "multi sensor detection, stall to stop and lock disabling system" (docs. 1; 1-3; 1-4; 1-5; 1-6; 1-7; 1-8). The patents appear to involve technology that can be used to detect explosives/radiation and then disable vehicles or other apparatuses wherein the explosives/radiation are detected. The plaintiff's complaint, consisting of 157 pages (in addition to the court's standard form) alleges infringement of each patent by each defendant in formulaic recitations of the elements of patent infringement (docs. 1; 1-1). For relief, the plaintiff seeks a declaratory judgment that the defendants have infringed on his patents, a permanent injunction enjoining the infringing activity by the defendants, as well as money damages (doc. 1-1 at 156–57).

STANDARD OF REVIEW

As a *pro se* litigant, the plaintiff's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. *See Erickson v. Pardus*, 551 U.S. 89 (2007) (*per curiam*). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

"The Federal Rules of Civil Procedure recognize that courts must have the authority to control litigation before them." *Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989) (citing Fed. R. Civ. P. 41(b)). Federal courts are courts of limited jurisdiction, "constrained to exercise only the authority conferred by Article III of the Constitution and

[1] The plaintiff's authority to enforce the '990 patent appears to be at issue already in light of the petition pending before the United States Patent and Trademark Office. *In re Patent Number* RE 43,990, https://portal.uspto.gov/pair/PublicPair# (choose patent number, enter RE43990, and then click Image File Wrapper) (last visited September 27, 2019).

affirmatively granted by federal statute." *In re Bulldog Trucking, Inc.*, 147 F.3d 347, 352 (4th Cir. 1998). Since federal courts have limited subject matter jurisdiction, there is no presumption that the court has jurisdiction. *Pinkley, Inc. v. City of Frederick*, 191 F.3d 394, 399 (4th Cir. 1999) (citing *Lehigh Mining & Mfg. Co. v. Kelly*, 160 U.S. 337 (1895)). Accordingly, a federal court is required, *sua sponte*, to determine if a valid basis for its jurisdiction exists, "and to dismiss the action if no such ground appears." *Bulldog Trucking*, 147 F.3d at 352; *see also* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

DISCUSSION

As an initial matter, the court takes judicial notice of the plaintiff's currently pending patent litigation in the Court of Federal Claims, the Court of Appeals for the Federal Circuit, and before the United States Patent and Trademark Office.[2] *See Golden v. United States*, C/A No. 1:19-cv-00104-EGB (Fed. Cl.), *appeal pending* C/A No. 19-2134 (Fed. Cir.); *Golden v. United States*, C/A No 1:13-cv-00307-SGB, *stayed pending patent review*, doc. 186 (Fed. Cl.); *In re Patent Number* RE 43,990, https://portal.uspto.gov/pair/PublicPair# (choose patent number, enter RE43990, and then click Image File Wrapper) (last visited September 27, 2019). For the reasons that follow, as presented, the instant matter is subject to summary dismissal because the claims appear patently frivolous.[3]

Failure to State a Claim

Under established local procedure in this judicial district, a careful review has been made of the *pro se* pleadings. This court possesses the inherent authority to review

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[2] *Phillips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (courts "may properly take judicial notice of matters of public record."); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that '[t]he most frequent use of judicial notice . . . is in noticing the content of court records.'").

[3] It is also unclear whether the instant action is barred or precluded in part by the action currently pending in the Federal Circuit Court of Claims. Though the alleged infringers herein are separate entities, it appears that the same patents and possibly the same infringing actions are at issue in both cases.

the *pro se* complaint to ensure that subject matter jurisdiction exists and that a case is not frivolous, even if the pleading is not subject to the pre-screening provisions of 28 U.S.C. § 1915.[4] *See Mallard v. U.S. Dist. Court*, 490 U.S. 296, 307–08 (1989) ("Section 1915(d) . . . authorizes courts to dismiss a 'frivolous or malicious' action, but there is little doubt they would have power to do so even in the absence of this statutory provision."); *Ross v. Baron*, 493 F. App'x 405, 406 (4th Cir. 2012) (unpublished) (finding that "frivolous complaints are subject to dismissal pursuant to the inherent authority of the court, even when the filing fee has been paid . . . [and] because a court lacks subject matter jurisdiction over an obviously frivolous complaint, dismissal prior to service of process is permitted." (citations omitted)); *see also Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 364 (2d Cir. 2000) (finding that "district courts may dismiss a frivolous complaint *sua sponte* even when the plaintiff has paid the required filing fee"). Accordingly, "[t]he present Complaint is subject to review pursuant to the inherent authority of this Court to ensure that subject matter jurisdiction exists and that the case is not frivolous." *Trawick v. Med. Univ. of S.C.*, C/A No. 2:16-730-DCN-MGB, 2016 WL 8650132, at *4 (D.S.C. June 28, 2016), *Report and Recommendation adopted by* 2016 WL 8650131 (D.S.C. July 7, 2016), *aff'd* 671 F. App'x 85 (4th Cir. 2016) (mem).

In reviewing a complaint for frivolousness or malice, the Court looks to see whether the Complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. *Harley v. United States*, 349 F. Supp. 2d 980, 981 (M.D.N.C. 2004) (citing *Neitzke v. Williams*, 490 U.S. 319 (1989)).[5] Moreover, as recognized by the Federal Circuit Court of Appeals, federal

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[4] The plaintiff paid the full filing fee; thus, this case is not subject to the pre-screening provisions of 28 U.S.C. § 1915.

[5] On December 2, 2015, the pleading standard for some patent infringement claims changed, i.e. claims filed on or after December 1, 2015, are governed by the *Iqbal/Twombly* plausibility standard. *Artrip v. Ball Corp.*, 735 F. App'x 708 (Fed. Cir. 2018).

patent jurisdiction "cannot lie based on allegations that are frivolous or insubstantial." *First Data Corp. v. Inselberg*, 870 F.3d 1367, 1373 (Fed. Cir. 2017) (internal citation and emphasis omitted).

Here, the plaintiff's vague and conclusory allegations fail to state a claim for relief. Indeed, the complaint contains no factual allegations beyond the identities of the defendants—the alleged infringers—and contains only conclusory formulaic recitations of the elements of patent infringement as to each defendant (as to each patent). Further, correspondence from the plaintiff, cited by the United States Court of Federal Claims, indicates that the instant action may be violative of Federal Rule of Civil Procedure 11 because it has been filed in order to:

> force Apple, Samsung, and LG to decide between one or two choices: (1) In an effort to avoid any responsibility for infringement or liability of paying hundreds of billions of dollars in damages, the companies cho[o]se to throw the Government under the bus by presenting evidence that they were under contract to develop and manufacture devices that infringes my communication/monitoring device. If they cho[o]se this option it makes them a witness for me in my current case (*Larry Golden v. The United States*; Case # 13–307 C). (2) Deny the allegations of infringement. In this case I will present evidence to support the fact that the companies were under contract with the Government to develop and manufacture devices that infringe[ ] my communication / monitoring device, but that the companies decided to continue to develop and manufacture my communication / monitoring device beyond the specifications agreed upon with the Government, even after I notified the companies in 2010 to stop their manufacturing. If they chos[o]e this option it opens the companies up to willful infringement and the possibility of a temporary injunction to stop the manufacturing and development of my communication / monitoring device. If you were Apple, Samsung, and LG which option would you cho[o]se?

Golden v. United States, 137 Fed. Cl. 155, 168 (alterations in original). Accordingly, in light of the vague conclusory allegations in the complaint, and in light of this correspondence by the plaintiff in the Court of Federal Claims, as presented, the Court lacks jurisdiction over the instant matter because it is frivolous. *See Huang v. Huawei Technologies, Co.*, 735 F. App'x 715, 722 (Fed. Cir. 2018) (noting that the plaintiff engaged in frivolous lawsuit where

there was no evidence of pre-suit investigation, but there was evidence that the plaintiff's "intent from the outset of the litigation was to force Huawei to incur legal fees in hopes that it would quickly settle"); *see also Fitzgerald*, 221 F.3d at 364 (providing for dismissal of frivolous actions *sua sponte* even when a plaintiff pays the filing fee).

Improper Joinder

The undersigned further notes that the instant matter, as presented, is also subject to summary dismissal based upon improper joinder. Joinder in patent infringement cases is governed by 35 U.S.C. § 299, which allows joinder of infringement claims only when:

> (1) any right to relief is asserted against the parties jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing in the Untied States, offering for sale, or selling of the same accused product or process; and
>
> (2) questions of fact common to all defendants or counterclaim defendants will arise in the action

28 U.S.C. § 299(b). Further, the statute specifically notes that "accused infringers may not be joined in one action as defendants or counterclaim defendants, or have their actions consolidated for trial, based solely on allegations that they each have infringed the patent or patents in suit." 28 U.S.C. § 299(b). While this provision is waiveable, the undersigned finds that the complex disparities between the alleged infringing products, technology, and manufacturing make joinder of all the defendants herein improper. For example, although the alleged infringed patents cover technology used in various devices, the undersigned finds no questions of fact common to the construction of an iPhone in comparison to the construction of a Samsung phone. Moreover, the technology and manufacturing of a phone carries no common questions of fact with retailers of vehicles, such as Big O Dodge or wireless service providers such as Verizon. Indeed, the plaintiff has not plausibly alleged factual allegations evincing a concerted effort amongst these defendants in infringing on

his patents. As such, in its current state, the instant matter is also subject to summary dismissal based upon improper joinder.

NOTICE CONCERNING AMENDMENT

Accordingly, based upon the foregoing, the plaintiff's complaint is subject to dismissal because, as presented, it is frivolous and fails to state a claim upon which relief may be granted. The plaintiff may attempt to correct the defects in his complaint identified above by filing an amended complaint within 14 days of this order, along with any appropriate service documents. The plaintiff is reminded that an amended complaint replaces the original complaint and should be complete in itself. *See Young v. City of Mount Ranier*, 238 F.3d 567, 572 (4th Cir. 2001) ("As a general rule, an amended pleading ordinarily supersedes the original and renders it of no legal effect." (citation and internal quotation marks omitted)); *see also* 6 Charles Alan Wright et al., *Federal Practice and Procedure* § 1476 (3d ed. 2017) ("A pleading that has been amended under Rule 15(a) supersedes the pleading it modifies and remains in effect throughout the action unless it subsequently is modified. Once an amended pleading is interposed, the original pleading no longer performs any function in the case . . ." (footnotes omitted)). If the plaintiff files an amended complaint, the undersigned will conduct screening of the amended complaint pursuant to 28 U.S.C. §§ 1915, 1915A. If the plaintiff fails to file an amended complaint or fails to cure the deficiencies identified above, the undersigned will recommend to the district court that the claims be dismissed with prejudice and without leave for further amendment.

s/Kevin F. McDonald
United States Magistrate Judge

October 1, 2019
Greenville, South Carolina

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF SOUTH CAROLINA - GREENVILLE

LARRY GOLDEN,

Plaintiff,

V.

(1) APPLE INC.
(2) SAMSUNG ELECTRONICS, USA
(3) LG ELECTRONICS, USA, INC.
(4) QUALCOMM INC.
(5) MOTOROLA SOLUTIONS INC.
(6) PANASONIC CORPORATION
(7) AT&T INC.
(8) VERIZON CORPORATE SERVICES GROUP
(9) SPRINT CORPORATION
(10) T-MOBILE USA, INC.
(11) FORD GLOBAL TECHNOLOGIES, LLC
(12) FAIRWAY FORD LINCOLN OF GREENVILLE
(13) GENERAL MOTORS COMPANY
(14) KEVIN WHITAKER CHEVROLET
(15) FCA US LLC
(16) BIG O DODGE CHRYSLER JEEP RAM

Defendants.

CASE NO: 6:19-cv-2557-DCC-KFM

JURY TRIAL DEMANDED

October 14, 2019

AMENDED **COMPLAINT FOR PATENT INFRINGEMENT**

This is an action of patent infringement in which plaintiff, Larry Golden ("Golden"), complains against defendants, Apple Inc. ("Apple"), Samsung Electronics, USA ("Samsung"), LG Electronics, USA, Inc. ("LG"), Qualcomm

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION

Larry Golden, Plaintiff, vs. Apple Inc., Samsung Electronics USA, LG Electronics USA Inc., Qualcomm Inc., Motorola Solutions Inc., Panasonic Corporation, AT&T Inc., Verizon Corporate Services Group, Sprint Corporation, T-Mobile USA Inc., Ford Global Technologies LLC, Fairway Ford Lincoln of Greenville, General Motors Company, Kevin Whitaker Chevrolet, FCA US LLC, Big O Dodge Chrysler Jeep Ram, Defendants.	C/A No. 6:19-cv-02557-DCC-KFM **REPORT OF MAGISTRATE JUDGE**

The plaintiff, a non-prisoner proceeding *pro se*, brings this action asserting patent infringement against the defendants. Pursuant to the provisions of 28 U.S.C. § 636(b), and Local Civil Rule 73.02(B)(2) (D.S.C.), this magistrate judge is authorized to review all pretrial matters in this case and submit findings and recommendations to the district court.

The plaintiff's complaint was entered on the docket on September 11, 2019 (doc. 1). By order filed October 1, 2019, the plaintiff was informed that his complaint was subject to summary dismissal because it failed to state a claim upon which relief may be granted, and that he could attempt to cure the defects identified in his complaint by filing an amended complaint within fourteen days (doc. 12). The plaintiff was informed that if he failed to file an amended complaint or otherwise cure the deficiencies outlined in the order, the undersigned would recommend that his case be dismissed (*id.* at 7). On October 15,

2019, the plaintiff's amended complaint was entered on the docket (doc. 16). However, the undersigned recommends dismissal of the case because the amended complaint makes clear that the instant action is duplicative of pending litigation in the Court of Federal Claims.

FACTS PRESENTED

In the instant action, the plaintiff has sued various corporations and business entities that he asserts have infringed on his patents (docs. 16; 16-1). Specifically, the plaintiff asserts that the defendants have infringed on the following patents: 10,163,287 ('287 patent); 9,589,439 ('439 patent); 9,096,189 ('189 patent); RE43,990 ('990 patent)[1]; RE43,891 ('891 patent); and 7,385,497 ('497 patent) (docs. 16; 16-1; 16-3; 16-4; 16-5; 16-6; 16-7; 16-8). These patents are entitled "multi sensor detection and lock disabling system" and "multi sensor detection, stall to stop and lock disabling system" (docs.16; 16-1; 16-3; 16-4; 16-5; 16-6; 16-7; 16-8). The patents appear to involve technology that can be used to detect explosives/radiation and then disable vehicles or other apparatuses wherein the explosives/radiation are detected. The plaintiff's complaint, consisting of 253 pages (in addition to the court's standard form) alleges infringement of each patent by each defendant in formulaic recitations of the elements of patent infringement (docs. 16; 16-1). Attached to the complaint in addition to the amended complaint and patents are more than seven hundred pages of exhibits and claim charts (docs. 16-9; 16-10; 16-11; 16-12; 16-13; 16-14; 16-15; 16-16; 16-17; 16-18; 16-19; 16-20; 16-21; 16-22; 16-23; 16-24; 16-25; 16-26; 16-27). For relief, the plaintiff seeks a declaratory judgment that the defendants have infringed on his patents, a permanent injunction enjoining the infringing activity by the defendants, as well as money damages (doc. 16-1 at 252).

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[1] The plaintiff's authority to enforce the '990 patent appears to be at issue already in light of the petition pending before the United States Patent and Trademark Office. *In re Patent Number* RE 43,990, https://portal.uspto.gov/pair/PublicPair# (choose patent number, enter RE43990, and then click Image File Wrapper) (last visited January 8, 2020).

STANDARD OF REVIEW

As a *pro se* litigant, the plaintiff's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. *See Erickson v. Pardus*, 551 U.S. 89 (2007) (*per curiam*). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

"The Federal Rules of Civil Procedure recognize that courts must have the authority to control litigation before them." *Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989) (citing Fed. R. Civ. P. 41(b)). Federal courts are courts of limited jurisdiction, "constrained to exercise only the authority conferred by Article III of the Constitution and affirmatively granted by federal statute." *In re Bulldog Trucking, Inc.*, 147 F.3d 347, 352 (4th Cir. 1998). Since federal courts have limited subject matter jurisdiction, there is no presumption that the court has jurisdiction. *Pinkley, Inc. v. City of Frederick*, 191 F.3d 394, 399 (4th Cir. 1999) (citing *Lehigh Mining & Mfg. Co. v. Kelly*, 160 U.S. 337 (1895)). Accordingly, a federal court is required, *sua sponte*, to determine if a valid basis for its jurisdiction exists, "and to dismiss the action if no such ground appears." *Bulldog Trucking*, 147 F.3d at 352; *see also* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

DISCUSSION

As an initial matter, the court takes judicial notice of the plaintiff's currently pending patent litigation in the Court of Federal Claims, the Court of Appeals for the Federal Circuit, and before the United States Patent and Trademark Office.[2] *See Golden v. United*

[2] *Phillips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (courts "may properly take judicial notice of matters of public record."); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that '[t]he most frequent use of judicial notice . . . is in noticing the content of court records.'").

States, C/A No. 1:19-cv-00104-EGB (Fed. Cl.), *appeal pending* C/A No. 19-2134 (Fed. Cir.) ("Case Number 1"); *Golden v. United States*, C/A No 1:13-cv-00307-SGB, *stayed pending patent review*, doc. 186 (Fed. Cl.); *In re Patent Number* RE 43,990, https://portal.uspto.gov/pair/PublicPair# (choose patent number, enter RE43990, and then click Image File Wrapper) (last visited September 27, 2019). For the reasons that follow, as presented, the instant matter is subject to summary dismissal because as evidenced in the plaintiff's amended complaint (and exhibits), the instant action is duplicative of the action pending in the Court of Federal Claims.

Efficient judicial administration generally requires the federal courts to avoid duplicative federal litigation. *See Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). Generally, a case pending in federal court "may be dismissed for reasons of wise judicial administration whenever it is duplicative of a parallel action already pending in another federal court." *Nexsen Pruet, LLC v. Westport Ins. Corp.*, C/A No. 3:10-cv-00895-JFA, 2010 WL 3169378, at *2 (D.S.C. Aug. 5, 2010) (internal quotation marks omitted) (*quoting Motley Rice, LLC v. Baldwin & Baldwin, LLP*, 518 F. Supp. 2d 688, 697 (D.S.C. 2007)). Suits are considered parallel if "substantially the same parties litigate substantially the same issues in different forums." *New Beckley Mining Corp. v. Int'l Union, United Mine Workers of Am.*, 946 F.2d 1072, 1073 (4th Cir. 1991) (*citing LaDuke v. Burlington N. R.R.*, 879 F.2d 1556, 1559 (7th Cir. 1989)). In Case Number 1, extensive discovery and briefing on dismissal orders has occurred. *See Golden v. United States*, C/A No 1:13-cv-00307-SGB. Additionally, although currently stayed while the plaintiff re-opens the '990 patent, it appears that the claims construction process has begun. *Id.* at doc. 186. As outlined above, here, the defendants' alleged patent infringement is substantially identical to that asserted in Case Number 1, with the exception that the instant matter involves third parties as infringers instead of the government. Indeed, the claims construction charts provided by the plaintiff appear to be identical to those presented in

Case Number 1. *Compare Golden v. United States*, C/A No 1:13-cv-00307-SGB at doc. 121 *with* docs. 16-14; 16-15; 16-16; 16-17; 16-18; 16-19; 16-20; 16-21; 16-22; 16-23; 16-24; 16-25; 16-26; 16-27). Indeed, although the instant matter involves different defendants than Case Number 1, the plaintiff's filings make clear that they are third party actors for the government's infringing actions, which is the basis for Case Number 1. For example, correspondence from the plaintiff (included in an order entered in Case Number 1) indicates that Case Number 1 and the instant matter involve the same infringing actions, indicating that the plaintiff would file a separate action in order to

> force Apple, Samsung, and LG to decide between one or two choices: (1) In an effort to avoid any responsibility for infringement or liability of paying hundreds of billions of dollars in damages, the companies cho[o]se to throw the Government under the bus by presenting evidence that they were under contract to develop and manufacture devices that infringes my communication/monitoring device. If they cho[o]se this option it makes them a witness for me in my current case (*Larry Golden v. The United States*; Case # 13–307 C). (2) Deny the allegations of infringement. In this case I will present evidence to support the fact that the companies were under contract with the Government to develop and manufacture devices that infringe[ ] my communication / monitoring device, but that the companies decided to continue to develop and manufacture my communication / monitoring device beyond the specifications agreed upon with the Government, even after I notified the companies in 2010 to stop their manufacturing. If they cho[o]se this option it opens the companies up to willful infringement and the possibility of a temporary injunction to stop the manufacturing and development of my communication / monitoring device. If you were Apple, Samsung, and LG which option would you cho[o]se?

Golden v. United States, 137 Fed. Cl. 155, 168 (alterations in original). As such, the instant action is duplicative of Case Number 1: the plaintiff asserts that the defendants are infringing on the same patents in the same manner as asserted in Case Number 1. As such, the interests of justice weigh heavily in favor of dismissing this action in light of Case Number 1, which remains pending in the Court of Federal Claims (although it is currently stayed pending litigation before the patent board concerning the '990 patent). *See Golden v. United States*, C/A No 1:13-cv-00307-SGB (Fed. Cl.); *see also Byerson v. Equifax Info.*

Servs., LLC, 467 F. Supp. 2d 627, 635 (E.D. Va. 2006) (noting that "[m]ost prominent among the elements of systemic integrity are judicial economy and the avoidance of inconsistent judgments."). As such, the undersigned finds that dismissal of the instant action is necessary to "prevent the waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Van Dusen v. Barrack*, 376 U.S. 612, 615 (1964) (internal quotation marks and citation omitted).

RECOMMENDATION

By order issued October 1, 2019, the undersigned gave the plaintiff an opportunity to correct the defects identified in his complaint and further warned the plaintiff that if he failed to file an amended complaint or failed to cure the identified deficiencies, the undersigned would recommend to the district court that the action be dismissed *with prejudice* and without leave for further amendment. Upon review of the amended complaint filed by the plaintiff, it is clear that the instant matter is duplicative of Case Number 1. Therefore, the undersigned recommends that the district court dismiss this action without prejudice and without issuance and service of process. However, the undersigned also recommends that the plaintiff not be provided with additional opportunities to amend his complaint in the instant matter—as any amendment would be futile in light of the pending duplicative litigation. *See Workman v. Morrison Healthcare*, 724 F. App'x 280, 281 (4th Cir. 2018) (in a case where the district court had already afforded the plaintiff an opportunity to amend, the district court was directed on remand to "in its discretion, either afford [the plaintiff] another opportunity to file an amended complaint or dismiss the complaint with prejudice, thereby rendering the dismissal order a final, appealable order") (citing *Goode*

v. Cent. Va. Legal Aid Soc'y, Inc., 807 F.3d 619, 630 (4th Cir. 2015)). **The plaintiff's attention is directed to the important notice on the next page.**

IT IS SO RECOMMENDED.

s/Kevin F. McDonald
United States Magistrate Judge

January 9, 2020
Greenville, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).