

Appendix #3-3: Opinion & Decision by 3rd circuit,
employment case

21-1104

Aidong Chen
1105 Longspur Boulevard
Orion Township, MI 48360

**OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT TELEPHONE
21400 UNITED STATES COURTHOUSE
215-597-2995**

**601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov**

PATRICIA S. DODSZUWEIT November 8, 2021

CLERK

<< Seal >>

Mr. William T. Walsh

United States District Court for the District of New Jersey

Martin Luther King Jr. Federal Building & United States
Courthouse

50 Walnut Street

PO Box 999

Newark, NJ 07102

RE: Aidong Chen v. KPMG LLP, et al

Case Number: 21-1014

District Court Case Number: 2-18-cv-12650

Dear District Court Clerk,

Enclosed here with is the certified judgment together with copy of the opinion or certified the order in the above-captioned case(s). The certified judgment or order is issued in lieu formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified judge or order is also enclosed showing costs taxed, if any.

Very truly yours,

Patricia S. Dodszuweit, Clerk

By: s/Laurie
Case Manager
267-299-4936

cc: Aidong Chen
Peter O. Hughes
Eric L. Mackie

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 21-1014

AIDONG CHEN,

Appellant
v.
KPMG, LLP;

WILLIAM KOCH; DAVID HALIK; SIMON PHILLIPS

On Appeal from the United States District Court for the
District of New Jersey

(D.C. Civil Action No. 2-18-cv-12650)

District Judge: Honorable Madeline Cox Arleo

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 29, 2021
Before: CHAGARES, PHIPPS, and COWEN, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit LAR

34.1 (a) on September 29, 2021. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court entered November 24, 2020, be and the same is hereby affirmed. Costs taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

<< Seal>> s/ Patricia S. Dodszuweit

Clerk

Dated: September 29, 2021

Certified as a true copy and issued in lieu

Of a formal mandate on November 8, 2021

Teste: <<Signature>>of Patricia S. Dodszuweit

Clerk, U.S. Court of Appeals for the Third Circuit

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1014

Aidong Chen

Appellant
v.
KPMG, LLP.;

WILLIAM KOCH; DAVID HALIK; SIMON PHILLIPS

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2-18-cv-12650)
District Judge: Honorable Madeline Cox Arleo

Submitted Pursuant to Third Circuit LAR 34.1(a)

September 29, 2021

Before: CHAGARES, PHIPPS, and COWEN, Circuit I
(Opinion filed September 29, 2021)

Opinion*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Pro se appellant Aidong Chen appeals from the District Court's order granting defendant KPMG's motion for summary judgment. For the following reasons, we will affirm the District Court's judgment.

I.

As we write primarily for the parties, who are familiar with the facts and procedural history, we will discuss the details only as they are relevant to our analysis. Chen worked at KPMG from 2014 until he was terminated in 2017. He worked within Lighthouse Operations Technology, a specialized research and development group. Among other projects, Chen facilitated and developed an initiative involving the use of graphical processing units (GPUs) in artificial intelligence. Chen alleged that a group of his Lighthouse colleagues and supervisors, all Caucasian men, systematically undermined and harassed him in order to steal credit for his work and gain control of the GPU project, leading to his termination. He alleged that this treatment aligned with a broader pattern of discrimination within Lighthouse against non-Caucasian employees.

Chen filed this suit in 2018, naming KPMG and three individuals as defendants and bringing claims under Title VI of the Civil Rights Act of 1964 for race and national origin discrimination and retaliation. See 42 U.S.C. § 2000e-2(a). The District Court granted the individual

defendants' motion to dismiss the claims against them. The parties engaged in a tense discovery process, overseen by a Magistrate Judge.¹ In October 2019,

¹ During the discovery process, Chen raised a new claim for relief based on alleged intellectual property issues surrounding the GPU project. Chen never sought to amend his complaint to include this or any other claim in this action, but instead filed a separate

The case was reassigned to a new Magistrate Judge. This second Magistrate Judge rejected Chen's efforts to extend discovery and permitted KPMG to file a motion for summary judgment. The District Court granted that motion and terminated Chen's suit in an opinion and order entered on November 24, 2020. Chen appeals.²

II.

We have jurisdiction under 28 U.S.C. § 1291.³ We review the District Court's grant of a motion to dismiss de novo. Newark Cab Ass'n. v. City of Newark, 901 F.3d 146, 151 (3d Cir. 2018). "We review a district court's discovery orders for abuse of discretion, and will not disturb such an order absent a showing of actual and substantial prejudice."

Anderson v. Wachovia Mortg. Corp., 621 F.3d 261, 281 (3d Cir. 2010). We exercise plenary review over a grant of summary judgment, applying the same standard that the District Court applies. Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist.

(continued footnotes: this comment in parenthesis was added when adjust to booklet format)

lawsuit. See Complaint, Chen v. KPMG LLP, No. 2-20-cv-09314 (D.N.J. July 27, 2020), ECF No. 1. Chen appealed the District Court's eventual dismissal of that case. C.A.No. 21-1202.

² The Defendants move to dismiss Chen's appeal as untimely, citing the notice of appeal that Chen mailed to this Court on December 23, 2021, and that we received on December 31, 2021. While that document cannot serve as a timely notice of appeal in this case,

Chen had previously filed a document in the District Court (ECF No. 92) in which he clearly evinced his intent to appeal. We construe that document, filed on November 25,

2021, as his timely notice of appeal. See 3d Cir. L.A.R. 3.4; see also Smith v. Barry, 502 U.S. 244, 245 (1992) (explaining that an appellate brief may be construed as notice of appeal); Rountree v. Balicki, 640 F.3d 530, 536 (3d Cir. 2011) (construing a pro se motion for extension of time to file for a certificate of appealability as a notice of appeal).

³ In his brief, Chen raises an argument in passing regarding the District Court's March 2021 order granting KPMG's motion for taxation of costs. Appellant's Br. 18-19, 3d Cir. ECF No. 17. However, Chen did not appeal from that order, and we do not reach that issue

877 F.3d 136, 141 (3d Cir. 2017). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). We "must view the facts and evidence presented in the light

most favorable to the nonmoving party." Razak v. Uber Techs., Inc., 951 F.3d 137, 144 (3d Cir. 2020). But that party may not rely on speculation and conclusory allegations. Id."We may affirm a district court for any reason supported by the record." Brightwell v. Lehman, 637 F.3d 187, 191 (3d Cir. 2011).

II.

On appeal, Chen offers few arguments concerning the substantive merits of the District Court's dispositive decisions. Instead, he raises various procedural objections and baselessly alleges that the District Court and defendants conspired against him. We briefly address Chen's allegations before turning to the District Court's dismissal of the individual defendants and the grant of summary judgment as to KMPG.

Chen claims that discovery was unfairly curtailed after the defendants failed to cooperate with his requests.⁴ While "we tend to be flexible when applying procedural

⁴ Because the second Magistrate Judge assigned to the case did not rule in Chen's favor on discovery matters, Chen baselessly alleges judicial bias and speculates that KPMG corruptly triggered the reassignment. Chen's allegations are frivolous. Cf. Arrowpoint Cap. Corp. v. Arrowpoint Asset Mgmt., LLC, 793 F.3d 313, 330 (3d Cir. 2015) ("[A]dverse rulings- even if they are erroneous- are not in themselves proof of prejudice or bias.' .').

Chen also repeatedly relies on misinterpretations of the record. For instance, defense counsel prepared a draft

discovery confidentiality order including a provision permitting a producing party to modify the confidentiality designation applied to rules to pro se litigants,"" they ultimately "cannot flout" such rules and "must abide by the same rules that apply to all other litigants." *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244-45 (3d Cir. 2013). Chen was repeatedly advised to conform his discovery requests and related motions to the Federal Rules of Civil Procedures, Local Civil Rules, and relevant procedural orders in the case. See Letter Order of November 19, 2018, ECF No. 21; Letter Order of January 28, 2019; ECF No. 28; Pretrial Scheduling Order, ECF No. 32; Order of July 17, 2019, CF No. 42; Text Order of December 4, 2019, ECF No. 56; Letter Order of March 6, 2020, ECF No. 62. The District Court considered and rejected Chen's repetitive discovery arguments. See Order of July 17, 2019, ECF No. 42; Letter Order of March 6, 2020, ECF No. 62; Text Order of June 16, 2020, ECF No. 78. After reviewing the record, we discern no error in these discovery rulings. Furthermore, Chen made no showing of actual prejudice because he has not explained how the discovery material. See ECF No. 25 at 30-31. Chen objected to this provision, mistakenly construing it as license to alter the discovery material itself, and Chen continues to cite this exchange as evidence of defense counsel's malfeasance. See, e.g. Appellant's Br. 9, 3d Cir. ECF No. 17. Similarly, Chen's account of a July 17, 2019 eleconference is not supported by the transcript in the record. See ECF No. 60 at 2-3. The Magistrate Judge, addressing recent letters filed by both Chen and defense counsel, warned both sides to refrain from "[m]aking scurrilous accusations" and expressed that he had no

interest in putting his education and legal training to use in dealing with such things (although he would if necessary). *Id.* Chen misunderstood this reference to the Magistrate Judge's legal education as a veiled reference to defense counsel's legal credentials and has repeatedly mischaracterized the exchange and the broader results of the teleconference. See, e.g., Letter, ECF No. 58 at 3.

Discovery sought would have resolved the specific evidentiary deficiencies identified by the District Court in granting KPMG's motion for summary judgment.⁵

The District Court correctly dismissed Chen's claims against the individual defendants because "individual employees are not liable under Title VI." *Emerson v. Thiel Coll.*, 296 F.3d 184, 190 (3d Cir. 2002) (per curiam). Chen's complaint identified only Title VI claims. Compl. 5, ECF No. 1. He could not bring such claims against the individual defendants, and he never sought to amend his complaint to add any other claims. Chen does not dispute (or indeed acknowledge) this analysis, but he notes that the District Court's order stated that he did not oppose the defendants' motion. Letter Order of May 6, 2019 at 1, ECF No. 35. Chen did oppose the motion, albeit in an untimely manner." But Chen's filings did not address the legal basis of the defendants' motion. While the District Court failed to note Chen's opposition, the District Court did not err in granting the individual defendants' motion to dismiss the claims against them.

The District Court granted KPMG's motion for summary judgment because Chen failed to provide evidence

necessary to establish a prima facie case for either his discrimination or retaliation claims, leaving no genuine issues of material fact. After

⁵ Similarly, Chen implies that he was harmed because the District Court improperly sealed certain filings. But sealed materials, while unavailable to the public, remain available to the courts. Chen was free to seek to submit under seal any confidential discovery materials to the court in opposing summary judgment. The defendants filed their motion on October 10, 2018. On October 29, the defendants noted that Chen had not filed a timely response pursuant to Local Civil Rule 7.1 (d)(2). Chen first opposed the motion as part of a collection of filings dated November 1. Opp., ECF No. 23 at 2-3.

Careful review of the record, we agree.⁹ On the summary judgment record, no reasonable jury could find that the circumstances in question supported an inference of unlawful discrimination based on race or national origin, as required for Chen's discrimination claim. See *In re Tribune Media Co.*, 902 F.3d 384, 402 (3d Cir. 2018). As to retaliation, Chen did not provide evidence that he engaged in applicable protected activity prior to any adverse action, let alone any causal connection between protected activity and adverse action. See *Moore v. City of Phila.*, 461 F.3d 331, 340-41 (3d Cir. 2006).

IV

Accordingly, we will affirm the judge of the district court ⁹

⁷ Beyond seeking reversal of the District Court's order, Chen provides no substantive arguments concerning summary judgment on appeal and so forfeits any more detailed challenge. See M.S. ex rel. Hall v. Susquehanna Twp. Sch. Dist., 969 F.3d 120, 124 n.3 (3d Cir. 2020).

⁸ In his complaint and opposition to the defendants' motion for summary judgment, Chen alleged that Lighthouse favored Caucasians and described Lighthouse's treatment of several other non-Caucasian employees. The District Court treated these allegations as attempted "comparator evidence" and faulted Chen for failing to show that these other individuals were similarly situated. While a plaintiff can attempt to establish discrimination by showing that "the employer has treated more favorably similarly situated persons not within the protected class," Chen's allegations concerning the treatment of other non-Caucasian employees are better understood as attempts to show that "the employer has discriminated against other persons within the plaintiff's protected class or another protected class." Simpson v. Kay Jewelers, Div. of Sterling, Inc., 142

F.3d 639, 645 (3d Cir. 1998). In any case, Chen failed to submit any testimony or other evidence concerning these allegations. And even if Chen established a prima facie case, he did not provide sufficient evidence to prove that KPMG's explanation for his termination was pretextual. See *In re Tribune*, 902 F.3d at 402. For the reasons given above, the defendants' motion to dismiss the appeal is denied. 3rd Cir. ECF No. 12. We also deny the requests for sanctions, reassignment of the case, and direct relief

against the defendants that Chen made in his brief.
Appellant's Br. 9, 3d Cir.

ECF No. 17.

Appendix # 3-4: Opinion & Decision by 3rd circuit, IP Case

OFFICE OF THE CLERK
PATRICIA S. DODSZUWEIT TELEPHONE
CLERK 215-597-2995
<< SEAL>>
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

November 8, 2021

Mr. William T. Walsh
United States District Court for the District of New Jersey
Martin Luther King Jr. Federal Building & United States
Courthouse
50 Walnut Street
PO Box 999
Newark, NJ 07102

RE: Aidong Chen v. KPMG LLP, et al
Case Number: 21-1202
District Court Case Number: 2-20-cv-09314

Dear District Court Clerk,

Enclosed herewith is the certified judgment together with copy of the opinion or certified copy of the order in the above-captioned case(s). The certified judgment or order is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified judgment or order is also enclosed showing costs taxed, if any.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/Laurie
Case Manager
267-299-4936

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1202

Aidong Chen,
Appellant

v.

KPMG LLP; KEVIN MARTELLI, KPMG Lighthouse
Principal; WILLIAM KOCH, KPMG Lighthouse Director;
DAVID HALIK, KPMG Linux Administrator; BRAD
FISHER; STEPHEN CHASE; CLIFF JUSTICE; CARL
CARANDE; TANDRA JACKSON; DARREN BURTON;
LISA MADDEN; CLAUDIA SARAN; WILLIAM
WILLIAMS; VINODH SWAMINATHAN; DEMETRIOS D
MAHARAMAS

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2-20-cv-09314)
District Judge: Honorable Madeline Cox Arleo

Submitted Pursuant to Third Circuit LAR 34.1(a)
October 1, 2021

Before: CHAGARES, PHIPPS, and COWEN, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit LAR 1.1 (a) on October 1, 2021. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court entered January 7, 2021, be and the same is hereby affirmed. Costs taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST:
s/ Patricia S. Dodszuweit
Clerk

Dated: October 4, 2021

<< Seal>>

Certified as a true copy and issued in lieu
of a formal mandate on November 8, 2021

Teste: <<Signature>> Patricia S. Dodszuweit
Clerk, U.S. Court of Appeals for the Third Circuit

NOT PERCEDENTIAL**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 21-1202

**Aidong Chen.
Appellant**

v.

**KPMG LLP; KEVIN MARTELLI, KPMG Lighthouse
Principal; WILLIAM KOCH, KPMG Lighthouse Director;
DAVID HALIK, KPMG Linux Administrator; BRAD
FISHER; STEPHEN CHASE; CLIFF JUSTICE; CARL
CARANDE; TANDRA JACKSON; DARREN BURTON;
LISA MADDEN; CLAUDIA SARAN; WILLIAM
WILLIAMS; VINODH SWAMINATHAN; DEMETRIOS D
MAHARAMAS**

**On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2-20-cv-09314)
District Judge: Honorable Madeline Cox Arleo**

Submitted Pursuant to Third Circuit LAR 34.1(a)

October 1, 2021

Before: CHAGARES, PHIPPS, and COWEN, Circuit Judges
(Opinion filed October 4, 2021)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Pro se appellant Aidong Chen appeals from the District Court's order granting defendant KPMG's motion to dismiss. For the following reasons, we will affirm the District Court's judgment.

I.

As we write primarily for the parties, who are familiar with the facts and procedural history, we will discuss the details only as they are relevant to our analysis. Chen worked at KPMG from 2014 until he was terminated in 2017. He worked within Lighthouse Operations Technology, a specialized research and development group. Among other projects, Chen facilitated and developed an initiative involving the use of graphical processing units (GPUs) in artificial intelligence.

In 2018, Chen filed an initial lawsuit relating to his experience at KPMG, naming KPMG and three individuals as defendants and bringing claims under Title VII of the

Civil Rights Act of 1964 for race and national origin discrimination and retaliation, see 42 U.S.C. § 2000e-2(a). Complaint, Chen v. KPMG, LLP., 2-18-cv-12650 (D.N.J. Aug. 10, 2018).¹ Chen alleged that a group of his Lighthouse colleagues and supervisors, all Caucasian men, systematically undermined and harassed him in order to steal credit for his work and gain control of the GPU project, leading to his termination. He also alleged that this treatment aligned with a broader pattern of discrimination within Lighthouse against non-Caucasian employees.

¹ Chen appealed the District Court's eventual judgment in that matter. C.A.No. 21-1014.

During discovery proceedings, Chen raised a new claim for relief based on alleged misappropriation of intellectual property related to the GPU project. But Chen did not seek to amend his complaint.

In July 2020, while KPMG's motion for summary judgment was pending in the first case, Chen filed his complaint in this second case. He named KPMG, the three individual defendants from the first suit, and eleven new KPMG employees as defendants. He primarily claimed that KPMG had used his work on the GPU project without appropriately compensating him, presenting this as an intellectual property claim. Referring to Title VI and his earlier complaint, he also called for his former supervisors to be disciplined or criminally charged for framing him or ganging up and bullying him. The District Court granted KPMG's motion to dismiss the complaint.² Chen appeals.

II.

We have jurisdiction under 28 U.S.C. § 1291.³ We review the District Court's grant of a motion to dismiss *de novo*. Newark Cab Ass'n. v. City of Newark, 901 F.3d

² The District Court incorrectly attributed the motion to dismiss to all defendants. Chen attempted to serve the defendants through defense counsel. Defense counsel indicated, in filings with the District Court, that he represented all defendants but disputed the adequacy of service on behalf of the individual defendants. Defense counsel filed an appearance with the District Court and the motion to dismiss only on behalf of KPMG, although counsel explicitly made arguments on KPMG's behalf for dismissal of the claims against most of the individual defendants, see, e.g., Br. in Supp. of Mot. To Dismiss 23-26, CF No. 12-1, and sought dismissal of the entire complaint, see *id.* at 26. On appeal, defense counsel appeared and filed a brief on behalf of all defendants.

³ As the bases of federal question jurisdiction, Chen cited his intellectual property claim, his allegations of bullying, and the Title VII claims brought in his first action. Compl. ECF No. 1. While the District Court construed Chen's intellectual property claim as a common law claim for misappropriation of an idea, Chen attempted to invoke federal intellectual property law and employment law in his indistinct claims. In these circumstances, the District Court had federal question jurisdiction under 28 U.S.C. § 1331 and supplemental jurisdiction under 28 U.S.C. § 1337.

146, 151 (3d Cir. 2018). In doing so, we accept all Chen's factual allegations in his complaint as true and construe those facts in the light most favorable to him. See *id.* "To survive a motion to dismiss, a complaint must contain sufficient factual allegations, taken as true, to state a claim to relief that is plausible on its face." *Fleisher v. Standard Ins.*, 679 F.3d 116, 120 (3d Cir. 2012) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "We may affirm a district court for any reason supported by the record." *Brightwell v. Lehman*, 637 F.3d 187, 191 (3d Cir. 2011).

III.

The District Court properly dismissed Chen's intellectual property claim to the extent that Chen presented a claim for misappropriation of an idea. To establish such a claim under New Jersey law, a plaintiff must show that "(1) the idea was novel; (2) it was made in confidence [to the defendant]; and (3) it was adopted and made use of [by the defendant in connection with his own activities]." *Baer v. Chase*, 392 F.3d 609, 627 (3d Cir. 2004) (quoting *Flemming v. Ronson Corp.*, 258 A.2d 153, 156-57 (N.J. Super. Ct. Law Div. 1969)). While courts have not clearly articulated a test for novelty, materials in the public domain, or mere combinations and adaptations of such material, are not novel. *Id.* at 627-29.

We agree with the District Court that Chen failed to adequately allege that the GPU project involved a novel idea. It is apparent from Chen's allegations that the concept of using GPs in advancing artificial intelligence projects

was already in the public domain by the start of the project and was actively promoted by a GPU vendor. Chen did not allege any novel innovation he introduced in the GPU project that rose above combining and adapting existing ideas. On appeal, he emphasizes that the project was a new and unique initiative within KPMG, but a misappropriation claim requires novelty with respect to the broader market and public domain, See Flemming, 258 A.2d at 157 (explaining that an idea may be new to the plaintiff without being novel).⁴

Chen's references to patents are insufficient to establish novelty for the purposes of misappropriation or to otherwise state a claim. As the District Court noted, Chen did not allege that he is the owner of a valid patent and so cannot state a claim for patent infringement. See 35 U.S.C. § 271; Hall v. Bed Bath & Beyond, Inc., 705 F.3d 1357, 1362 (Fed. Cir. 2013). In his complaint, Chen alleged that KPMG applied for at least one patent based on the use of GPUs in artificial intelligence, but he did not identify the patent or allege that he was responsible for the specific innovation in any patent. See Compl., ECF No. 1 at 9.5 On appeal, Chen cites one specific KPMG patent, but fails to

⁴ A misappropriation of ideas claim involves an implied contractual or fiduciary relationship. Flemming, 258 A.2d at 156. Chen and KPMG had an actual contractual relationship, and the parties argued several points regarding the applicable contractual provisions. As Chen failed to state a misappropriation claim and did not raise a

contractual claim, we do not reach these arguments. ⁵ Chen thus did not raise an inventorship claim under 35 U.S.C. § 256.

Explain how the patent specifically reflects his contributions. In any case, we cannot consider these new allegations. See *In re Capital Cities/ABC, Inc.'s Application for Access to Sealed Transcripts*, 913 F.2d 89, 96 (3d Cir. 1990) ("This Court has said on numerous occasions that it cannot consider material on appeal that is outside of the district court record."). Chen does not provide any alternative legal framework to misappropriation of an idea or patent infringement for interpreting his intellectual property claims and forfeits any such argument. See *M.S. ex rel. Hall v. Susquehanna*

Twp. Sch. Dist., 969 F.3d 120, 124 n.3 (3d Cir. 2020); *N.J. Dep't of Env't Prot. V. Am. Thermoplastics Corp.*, 974 F.3d 486, 492 n.2 (3d Cir. 2020).

Chen's remaining allegations failed to state any plausible claim to relief." He identifies no legal basis other than Title VI for his bullying claim against KPMG and his

⁶ As the District Court did not resolve the individual defendants' service objections, the District Court's arguably dismissed the claims against those defendants *sua sponte*. In narrow circumstances, courts have upheld a district court's authority to *sua sponte* dismiss a complaint against a non-moving defendant where it is clear the plaintiff cannot succeed, if the plaintiff has notice and an opportunity to respond to the moving defendant's relevant arguments. See *Martinez-Rivera v. Sanchez Ramos*, 498

F.3d 3, 7 (1st Cir. 2007) (describing limited circumstances in which *sua sponte* dismissals under Rule 12 (b) (6) are appropriate); *Aequia, Inc. v. Prudential Ins. Co. of Am.*, 226 F.3d 798, 807 (7th Cir. 2000) (stating "where one defendant succeeds in winning summary judgment on a ground common to several defendants, the district court may also grant judgment to the non-moving defendants, if the plaintiff had an adequate opportunity to argue in opposition"); see also *Wachtler v. Cnty. of Herkimer*, 35 F.3d 77, 82 (2d Cir. 1994); *Bonny v. Soc'y of Lloyd's*, 3 F.3d 156, 162 (7th Cir. 1993); cf. *Oatess v. Sobolevitch*, 914 F.2d 428, 430 n.5 (3d Cir. 1990) (noting, in a different context, that a district court may *sua sponte* raise the deficiency of a complaint so long as the plaintiff is given an opportunity to respond. Here, the non-moving defendants were represented by the same counsel as the moving defendant and are participating in this appeal. Chen had notice and an opportunity to respond to the motion to dismiss. We will affirm the District Court's dismissal of the individual defendants under the particular circumstance of this case.

Three supervisors but develops no allegations of racial or national origin discrimination in this complain in this case.

He also seeks inappropriate relief. For instance, Chen seeks criminal charges against some of the defendants, but civil plaintiffs cannot obtain such relief. See *Linda R S v. Richard D*, 410 U.S. 614, 619 (1973) ("[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another."). To the extent that Chen wished to import the Title VII claims from his first lawsuit into his new complaint, he was not permitted to do so. Ct,

Walton v. Eaton Corp., 563 F.2d 66, 70 (3d Cir. 1977) (en bane) ("[I]t is clear that [the plaintiff] had no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant.").

Many of Chen's arguments on appeal are procedural complaints about both of his lawsuits. These arguments are unavailing. Chen's baselessly alleged judicial bias based on unfavorable rulings. Cf. Arrowpoint Cap. Corp. V. Arrowpoint Asset Mgmt., LIC, 793 F.3d 313, 330 (3d Cir. 2015) ("[A]dverse rulings- even if they are erroneous—are not in themselves proof of prejudice or bias."). Chen also complains that the case did not proceed to discovery and a jury trial. But Federal Rule of Civil Procedure 12(b)(6) "authorizes a court to dismiss a claim on the basis of a dispositive of law" in order to "Streamline[] litigation by dispensing with needless discovery and fact finding." Neitzke Court's dismissal of the individual defendants under the particular circumstances of this case. v. Williams, 490 U.S. 319, 326-27 (1990). We have considered his remaining arguments, but they are either immaterial or unsupported by the record.

IV.

Accordingly, we will affirm the judgment of the District Court.⁷

⁷ We deny the request for reassignment of the case and direct relief against the defendants that Chen made in his brief, as well as the motion for a conference included in his reply brief. Appellant's Br. 6, 3rd Cir. ECF No 8; Appiant's Reply Br., 3rd Cir. ECF No. 16 at 1,11

Appendix #3 ---5: Denial of Rehearing

(There are serious mistakes from Judge COWEN here, he just copied everything from the other case, mixed the district court's case number and defendants)

21-1014

Aidong Chen

1105 Longspur Boulevard, Orion Township, MI 48360

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1014

AIDONG CHEN
Appellant

v.

KPMG LLP; KEVIN MARTELLI, KPMG Lighthouse
Principal; WILLIAM KOCH, KPMG Lighthouse Director;
DAVID HALIK, KPMG Linux Administrator;

BRAD FISHER; STEPHEN CHASE; CLIFF JUSTICE;
CARL CARANDE; TANDRA JACKSON; DARREN
BURTON; LISA MADDEN; CLAUDIA SARAN; WILLIAM
WILLIAMS; VINODH SWAMINATHAN; DEMETRIOS D
MAHARAMAS

ON Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2-20-cv-09314)
District Judge: Honorable Madeline Cox Arleo

SUR PETITION FOR REHEARING

BEFORE: SMITH, Chief Judge, and MCKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, Jr. SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, and COWEN, Circuit Judges

The petition for rehearing filed by appellant, Aidong Chen, in the above captioned matter having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the Court in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service who are not disqualified not having voted for rehearing by the Court en banc, the petition for rehearing by the panel and the Court en banc is denied. Judge Cowan's vote is limited to denying rehearing before the original panel.

Appendix #3-6

By the Court:

s/ Robert E. Cowen

Circuit Judge

DATED: October 29, 2021

Lmr/cc: Aidong Chen

Peter O. Hughes

Eric L Mackie

Appendix #3 --6 : Denial of Rehearing

21-1202

Aidong Chen

1105 Longspur Boulevard

Orion Township, MI 48360

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1202

AIDONG CHEN
Appellant

v.

KPMG LLP; KEVIN MARTELLI, KPMG Lighthouse
Principal; WILLIAM KOCH, KPMG Lighthouse Director;
DAVID HALIK, KPMG Linux Administrator;

BRAD FISHER; STEPHEN CHASE; CLIFF JUSTICE;
CARL CARANDE; TANDRA JACKSON; DARREN
BURTON; LISA MADDEN; CLAUDIA SARAN; WILLIAM
WILLIAMS; VINODH SWAMINATHAN; DEMETRIOS D
MAHARAMAS

ON Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2:20-cv-09314)
District Judge: Honorable Madeline Cox Arleo

SUR PETITION FOR REHEARING

BEFORE: SMITH, Chief Judge, and MCKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, Jr. SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, and COWEN, Circuit Judges

The petition for rehearing filed by appellant, Aidong Chen, in the above captioned matter having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the Court in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service who are not disqualified not having voted for rehearing by the Court en banc, the petition for rehearing by the panel and the Court en banc is denied. Judge Cowan's vote is limited to denying rehearing before the original panel.

By the Court:

s/ Robert E. Cowen
Circiut Judge

DATED: October 29, 2021

Lmr/cc: Aidong Chen

Peter O. Hughes

Eric L Mackie

Addr:

Aidong Chen email: chen.aidong@gmail.com
1105 Longspur blvd, cell: 862-485-1956
Orion Township, MI, 48360

Purpose: Certificate of Compliance: filing has 5134 words, within limit.

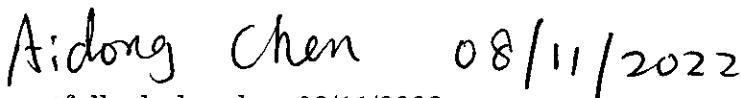
Dear Supreme Court,

This is Aidong Chen, plaintiff Pro Se on the "PETITION FOR AN APPLICATION OF A WRIT OF CERTIORARI. The related cases are New Jersey Newark District case#: 2:18-cv-12650-MCA-SCM, 2:20-cv-09314-MCA-JAD, 3rd circuit cases 21-1014 and 21-1202.

Here is the declaration of the compliance. The filing, excluding cover page and appendix, has 5134 words, which is less than 9000 words, so it is within the words limit. The adjusted filing is to correct the previous one, which was commented & replied by Supreme Court on Jun 9th, 2022. This certificate of compliance is filed based on the feedback from the US Supreme Court on Aug 11th, 2022.

Plaintiff makes a firm oath here that everything stated in the booklet are true and is willing to go through deposition if deemed necessary.

Aidong Chen

 08/11/2022
Respectfully declared on 08/11/2022