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APPENDIX A

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

No. 24-5417

**ANDREW MAGDY KAMAL,
PLAINTIFF-PETITIONER**

v.

**FEMTOSENSE, INC.; and SAM FOK
DEFENDANTS-RESPONDENTS**

Filed: December 18, 2024

No. 24-5417 On Appeal from the United States
District Court for the Central District of California
No. 5:24-cv-00967-KK-DTB – Kenly Kiya Kato,
United States District Judge

ORDER

Before: S.R. THOMAS, SILVERMAN, and
TALLMAN,
Circuit Judges.

The motion to dismiss this appeal for lack of jurisdiction (Docket Entry No. 7) is granted. Appellant's alternative request for transfer (included in Docket Entry No. 8) is denied. See 28 U.S.C. § 1295(a)(1) (Federal Circuit has exclusive jurisdiction over an appeal from the district court's final decision in an action arising under the patent laws); Clark v. Busey, 959 F.2d 808, 812 (9th Cir. 1992) (explaining requirements for transfer of an appeal under 28 U.S.C. § 1631).

DISMISSED.

3a

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 5:24-cv-00967-KK-DTB

ANDREW MAGDY KAMAL,
PLAINTIFF-PETITIONER

v.

FEMTOSENSE, INC.; and SAM FOK
DEFENDANTS-RESPONDENTS

Filed: July 30, 2024

No. 5:24-cv-00967-KK-DTB – Kenly Kiya Kato,
United States District Judge

**ORDER GRANTING DEFENDANTS' MOTION
TO DISMISS**

Before: KENLY KIYA KATO,
United States District Judge.

INTRODUCTION

On May 6, 2024, plaintiff Andrew Kamal ("Plaintiff"), proceeding pro se, filed the operative Complaint alleging claims of patent infringement against defendants Femtosense, Inc. and Sam Fok ("Defendants"). ECF Docket No. ("Dkt.") 1. On June 26, 2024, Defendants filed a Motion to Dismiss. Dkt. 14.

The Court finds this matter appropriate for resolution without oral argument. See FED. R. CIV. P. 78(b);

L.R. 7-15. For the reasons set forth below, Defendants' Motion to Dismiss is GRANTED.

BACKGROUND

On May 6, 2024, Plaintiff filed the operative Complaint against Defendants. Dkt. 1. Plaintiff alleges he is the owner of United States Patent No. US10965315B2 ("Patent") issued by the United States Patent and Trademark Office in 2018. Id. ¶ 6. Plaintiff further alleges defendant Femtosense is a "for profit California Corporation at all times relevant to the facts and claims set forth within this Complaint." Id. ¶ 2. Defendant Sam Fok "performs work in the State of California." Id.

Plaintiff alleges Defendants "have been and are currently infringing the Patent by making, using, selling, and/or offering for sale products and/or methods that embody or practice the invention claimed in the Patent." Id. ¶ 8. Plaintiff further alleges "[v]enue is proper in the Central District of California as the Defendants reside in San Bruno[,] California and this matter is brought under the patent laws of the United States[.]" Id. ¶ 5. In addition to damages and an injunction, Plaintiff seeks a "finding" that Defendants have "directly infringed," "induced infringement," and "have contributed to infringement of the Patent." Id. at 2-3.

On June 26, 2024, Defendants filed a Motion to Dismiss arguing the Complaint should be dismissed (1) for improper venue under Federal Rule of Civil Procedure 12(b)(3) because defendant Femtosense

resides in Delaware, its state of incorporation, and defendant Fok resides in San Leandro, California; and (2) for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) because no facts are alleged to state a claim against either defendant Femtosense or defendant Fok. Dkt. 14.

On July 9, 2024, Plaintiff filed a “Response to Improper Venue,” which appears to be an Opposition to Defendants’ Motion to Dismiss. Dkt. 26. Plaintiff argues venue “in the State of California is appropriate given [Defendants’] business address, and the fact that they got a start in StartX, the Stanford University accelerator.” *Id.* at 2. Plaintiff additionally appears to argue he has no objection to transferring the case to the State of Delaware or Northern District of California. *Id.*

Defendants have not filed a Reply. This matter, thus stands, submitted.

LEGAL STANDARD

On a motion to dismiss for improper venue, the plaintiff bears the burden of showing venue is proper. See *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979). “[T]he pleadings need not be accepted as true, and the court may consider facts outside of the pleadings.” *Murphy v. Schneider National, Inc.*, 362 F.3d 1133, 1137 (9th Cir. 2004) (internal citations omitted).

For cases of patent infringement under 28 U.S.C. § 1400(b) (“Section 1400(b)”), such cases “may be

brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.” If the defendant is a domestic corporation, “residence in § 1400(b) refers only to the State of incorporation.” *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 270 (2017) (internal brackets and quotation marks omitted).

Under 28 U.S.C. § 1406(a), “[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” Similarly, Federal Rule of Civil Procedure 12(b)(3) allows a party to move to dismiss a case for “improper venue.” Venue is “generally governed” by 28 U.S.C. § 1391 (“Section 1391”) “that is, in cases where a more specific venue provision does not apply.” *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas*, 571 U.S. 49, 56 n.2 (2013).

**THE ACTION IS SUBJECT TO DISMISSAL
BECAUSE VENUE IS IMPROPER**

Here, Plaintiff fails to meet his burden of showing venue is proper in the Central District of California. As alleged in the Complaint, Plaintiff’s sole cause of action against Defendants is for patent infringement, and thus, Section 1400(b) applies. 28 U.S.C. § 1400(b) (“Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of

GRANTED. See *Kantharia v. USCIS*, 672 F. Supp. 3d 1030, 1035 (C.D. Cal. 2023) (exercising discretion to dismiss case as opposed to transferring because the parties' briefing is unclear as to where venue is proper and "no unfair prejudice . . . apparently would result from dismissal over transfer").

CONCLUSION

For the reasons set forth above, Defendants' Motion to Dismiss is GRANTED without prejudice. (JS-6).

IT IS SO ORDERED.