No. _____

IN THE

United States Court of Appeals for the Federal Circuit

IN RE GOOGLE LLC,

Petitioner,

On Petition for a Writ of Mandamus to the
United States District Court for the Eastern District of Texas
Nos. 2:18-cv-00462, -00463 (consolidated)
Judge Rodney Gilstrap

PETITION FOR A WRIT OF MANDAMUS

Thomas P. Schmidt
HOGAN LOVELLS US LLP
390 Madison Ave.
New York, NY 10017
Tel.: (212) 918-5547
Fax: (212) 918-3100

Neal Kumar Katyal
Keith O'Doherty
HOGAN LOVELLS US LLP
555 Thirteenth St., N.W.
Washington, D.C. 20004
Tel.: (202) 637-5528
Fax: (202) 637-5190
neal.katyal@hoganlovells.com

Counsel for Petitioner Google LLC

September 17, 2019

CERTIFICATE OF INTEREST

Counsel for Petitioner Google LLC hereby certifies as follows:

1. The full name of every party represented by me is: **Google LLC.**

2. The real parties in interest are: **Google LLC.**

3. All parent corporations and any publicly held companies that own 10% or more of the stock of the parties I represent are as follows:

Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company. No publicly held company owns 10% or more of Alphabet Inc.'s stock.

4. The names of all law firms and the partners or associates that appeared for the parties now represented by me in the trial court or that are expected to appear in this court are:

Hogan Lovells US LLP: Neal Kumar Katyal, Thomas P. Schmidt, and Keith O'Doherty.

O'Melveny & Myers LLP: Darin W. Snyder, Luann L. Simmons, David S. Almeling, Mark Liang, Boris Mindzak, and Eric Su.

Mann Tindel Thompson: J. Mark Mann and G. Blake Thompson.

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal: **None.**

Dated: September 17, 2019

/s/ Neal Kumar Katyal
Neal Kumar Katyal

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES:

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

STATUTES:

TABLE OF AUTHORITIES—Continued

Page(s)

RELIEF SOUGHT

Petitioner Google LLC respectfully seeks a writ of mandamus directing the District Court for the Eastern District of Texas to dismiss the case pursuant to 28 U.S.C. § 1406(a).

QUESTION PRESENTED

Whether a defendant who keeps computer equipment in the facility of a third party in a judicial district has a "regular and established place of business" in that district under the patent venue statute. 28 U.S.C. § 1400(b).

STATEMENT OF JURISDICTION

This Court has jurisdiction to grant mandamus relief under the All Writs Act, 28 U.S.C. § 1651.

INTRODUCTION

In *TC Heartland LLC* v. *Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017), the Supreme Court corrected an overly broad reading of the patent venue statute that had severely distorted the geography of patent litigation in the United States. More than a third of all patent litigation was concentrated in the Eastern District of Texas, and nearly a quarter of it proceeded before a single district court.

Only a month after the Supreme Court's decision, however, that same district court issued an opinion broadly construing a different part of the patent venue statute than was at issue in *TC Heartland*. That other provision authorizes

venue where a defendant "has a regular and established place of business," 28 U.S.C. § 1400(b), and the court concluded that "a fixed physical location in the district is not a prerequisite to proper venue" under that provision. *Raytheon Co.* v. *Cray, Inc.*, 258 F. Supp. 3d 781, 797 (E.D. Tex. 2017). This Court swiftly granted a petition for mandamus, holding that "[t]his interpretation impermissibly expands the statute." *In re Cray Inc.*, 871 F.3d 1355, 1362 (Fed. Cir. 2017). "The statute requires a 'place,' *i.e.*, '[a] building or a part of a building set apart for any purpose' or 'quarters of any kind' from which business is conducted." *Id*. (quoting William Dwight Whitney, The Century Dictionary 732 (Benjamin E. Smith, ed. 1911)). It "cannot be read to refer merely to a virtual space." *Id*. Thus, this Court prevented the reintroduction of the pre-*TC Heartland* regime through a statutory backdoor.

After the decision in *Cray*, the same court yet again dramatically expanded the reach of Section 1400(b)—in direct conflict with another district court in its own district. It held that a computer owned by a defendant but kept in a facility belonging to someone else qualifies as a defendant's "regular and established place of business" in the district where that facility is located. *SEVEN Networks, LLC* v. *Google LLC*, 315 F. Supp. 3d 933 (E.D. Tex. 2018). Google petitioned for mandamus, asking this Court once again to correct an overbroad interpretation of the venue statute. But the Court declined to intervene at that juncture, opting

instead "to allow the issue to percolate" further. *In re Google LLC*, No. 2018-152, 2018 WL 5536478, at *3 (Fed. Cir. 2018) (per curiam). Judge Reyna noted in dissent, however, that "[t]he district court's current reading of § 1400(b) may be even more expansive than the district court's reading of the statute that [this Court] vacated in *Cray*." *Id*. at *5 (Reyna, J., dissenting). And then, in a dissent from denial of rehearing en banc (joined by Judges Newman and Lourie), Judge Reyna wrote: "The question is not if we will take this issue up, but when * * *." *In re Google LLC*, 914 F.3d 1377, 1382 (Fed. Cir. 2019) (Reyna, J., dissenting from denial of rehearing).

Now is the time to take this issue up. In the present case, the district court stuck to its increasingly aberrant interpretation of the venue statute, and this Court should grant mandamus to correct it. As a matter of both precedent and plain text, a "place of business" is (1) real property in which (2) some employee or other agent carries out the defendant's business. *Cray*, 871 F.3d at 1362. A computer stored in a third party's facility in a judicial district simply does not fit the bill. Moreover, in the year plus since Google filed its first mandamus petition, the issue has percolated apace. Two more district courts have weighed in, expressly and persuasively disagreeing with the interpretation of the venue statute adopted by the district court here. *See CUPP Cybersecurity LLC.* v. *Symantec Corp.*, No. 3:18-cv-01554-M, 2019 WL 1070869 (N.D. Tex. Jan. 16, 2019); *Rensselaer*

Polytechnic Inst. v. *Amazon.com, Inc.*, No. 1:18-cv-00549 (BKS/CFH), 2019 WL 3755446 (N.D.N.Y. Aug. 7, 2019). Moreover, both of those decisions occurred in the context of cases against other companies, proving that the legal issues presented by this petition are cross-cutting and not confined to Google or to any unique set of facts.

And the interpretation of the venue statute that the district court adhered to below is, once again, warping the distribution of patent cases. Since the district court's initial decision in *SEVEN*, Petitioner Google alone has been sued dozens of times for patent infringement in the Eastern District of Texas, with the vast majority of those suits coming after this Court denied mandamus. By contrast, in the entire year preceding the *SEVEN* decision, Google was not sued for patent infringement in that District once. Leaving this issue to percolate longer would mean colossal waste—throwing out not only a trial in this case, but proceedings in all those other cases, and in cases against other defendants too. *Cf. In re Google*, 914 F.3d at 1382 (Reyna, J., dissenting from denial of rehearing). Indeed, given the high volume of patent litigation concentrated before the district court below, the error in question will have major systemic effects on patent litigation.

This Court has frequently granted mandamus petitions "to correct a district court's answers to 'basic, undecided' legal questions * * * in the venue context." *In re Micron Tech., Inc.*, 875 F.3d 1091, 1095 (Fed. Cir. 2017) (citation omitted);

see In re BigCommerce, Inc., 890 F.3d 978 (Fed. Cir. 2018); *In re ZTE (USA) Inc.*, 890 F.3d 1008 (Fed. Cir. 2018); *Cray*, 871 F.3d 1355. Indeed, "when the writ of mandamus is sought from an appellate court to confine a trial court to a lawful exercise of its prescribed authority, the court should issue the writ almost as a matter of course." *United States* v. *Denson*, 603 F.2d 1143, 1145 (5th Cir. 1979) (en banc). The Court should grant the writ here.

FACTS RELEVANT TO THE ISSUES PRESENTED

1. Petitioner Google LLC uses a tiered network to deliver content to its users quickly and reliably. The core of the network is Google's data centers, which provide computation and backend storage. Appx41. There are a handful of data centers in the United States, but none is in Texas. Appx41, 45. The next tier of Google's network infrastructure is known as "Edge Points of Presence" ("PoPs"), which connect Google's network to the rest of the internet. Appx42. Google has no PoPs in the Eastern District of Texas. *Id.*

The last tier of the network is the "Google Global Cache" ("GGC") servers or "edge nodes." *Id.* GGC servers are off-the-shelf computers hosted in the facilities of a local ISP, almost always at the request of the ISP. *Id.* "If an ISP chooses to host a GGC server, then a copy of certain digital content that is popular with the ISP's subscribers"—say, a popular YouTube video—"can be temporarily stored or 'cached' on that GGC server." *Id.* As a result, an ISP does not need to

fetch the content from outside its network and use up medium or longhaul capacity to do so. *Id.* GGC servers, though, are not necessary for the delivery of Google content. *See id.* Indeed, several months after the district court decided *SEVEN*—and after Google had subsequently been sued more than thirty times in the Eastern District—Google took its GGC servers in the District out of service, so they are no longer serving traffic or cached content.[1]

GGC servers are made by third-party computer manufacturers. *Id.* If an ISP requests to participate in the program, Google verifies that the ISP is eligible, and then the ISP and Google enter into a service agreement that defines each party's role. *See* Appx42-43. The computer manufacturer ships the machines directly to the ISP's facility, and the ISP decides where to locate the computer within its facility. Appx42. The ISP unpacks and installs the server in its own facility, after which digital content popular with the ISP's subscriber base loads onto the machine. *Id.*

[1] The district court found that "[v]enue is assessed as of the time of filing of the complaint," *SEVEN*, 315 F. Supp. 3d at 941 n.7, so Google's subsequent removal of the GGC servers from service in the Eastern District of Texas does not impact venue in this case. And it goes without saying that the removal of the GGC servers from service does not lessen the need for this Court's intervention. First, the rule this Court adopts would apply nationally, and therefore to the rest of Google's network. But more importantly, the legal principles undergirding the district court's decision will affect numerous other companies and other forms of company-owned equipment.

2. Google does not own or lease any real property in the Eastern District of Texas. Appx44-45. Google has no employees who work at any office in the District. *Id*. Rather, respondent Super Interconnect Technologies LLC (SIT) relied below upon the fact that there are several third-party ISPs in the Eastern District of Texas that hosted GGC servers in their facilities. Appx1-2. But Google had never seen the servers; no Google employee ever visited the servers in the Eastern District; and Google does not even know precisely where the servers were installed. Appx42-43. Indeed, Google does not have rights to physically access the spaces in which the GGC servers are stored while the service agreements are in force. *Id.*

3. Respondent sued Google for patent infringement in the Eastern District of Texas. Appx20. The complaint alleges that Google's Pixel smartphones infringe claims of three patents. Appx22-25, 27-30, 32-35. In its complaint, SIT's sole basis for venue was Google's GGC servers in the Eastern District of Texas. Appx21.

4. The case was assigned to the same district court that, in a prior case, had found that Google's GGC servers constitute a "regular and established place of business" for venue purposes. *SEVEN*, 315 F. Supp. 3d 933. Google petitioned this Court for mandamus to review that prior decision, which a divided panel denied. *In re Google*, 2018 WL 5536478. The panel majority stated that the

district court's decision had "focused on many specific details of Google's arrangements," and that it was "not known if the district court's ruling involves * * * broad and fundamental legal questions." *Id*. at *2. The majority also maintained that it was "appropriate to allow the issue to percolate" further in district courts. *Id*. at *3.

Judge Reyna dissented. He wrote that "Google's petition presents fundamental issues concerning the application of § 1400(b) that have far reaching implications and on which district courts have disagreed." *Id*. at *4 (Reyna, J., dissenting). And he registered his skepticism of the District Court's ruling: "It seems to me that under *Cray*, Google's servers or the server racks on which the servers are kept may not constitute a 'regular and established place of business' for venue * * *." *Id*. at *5. Indeed, "[t]he district court's current reading of § 1400(b) may be even more expansive than the district court's reading of the statute that we vacated in *Cray*." *Id*.

Google filed a petition for rehearing en banc, which was denied. *In re Google*, 914 F.3d 1377. Judge Reyna dissented again, this time joined by Judges Newman and Lourie. They wrote that, "[f]or many companies, the reasoning of the district court's holding could essentially reestablish nationwide venue, in conflict with *TC Heartland*, by standing for the proposition that owning and controlling computer hardware involved in some aspect of company business (e.g.,

transmitting data) alone is sufficient." *Id*. at 1381 (Reyna, J., dissenting from denial of rehearing). And they concluded: "The question is not if we will take this issue up, but when, and how many judicial and party resources will have been needlessly wasted by the time we do." *Id*. at 1382.

5. The present case was filed four days after this Court denied Google's petition for mandamus in *SEVEN*, and it relied on the same flawed theory of venue that the Court declined to review. Appx21. Google moved to dismiss SIT's complaint under Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406(a) for improper venue. Dkt. 13. The District Court denied the motion. It "s[aw] no reason to depart from its prior decision and finds that venue in this case is proper for the same reasons outlined in *SEVEN*." Appx2. It acknowledged that its holding was in direct conflict to two other district courts: *Personal Audio, LLC* v. *Google, Inc.*, 280 F. Supp. 3d 922 (E.D. Tex. 2017), which was decided before *SEVEN*, and *CUPP*, which was decided after. But it "disagree[d] with the legal analysis in" those decisions. Appx2 n.2. The Court also "believe[d] it appropriate" to address, briefly, Judge Reyna's dissents in *SEVEN*. Appx2. In particular, the Court explained that, "[b]y its holding in *SEVEN*, [it] neither intends nor approves the view that venue is proper everywhere." Appx3.

This petition followed.

REASONS THE WRIT SHOULD ISSUE

A writ of mandamus is appropriate when (1) the right to issuance of the writ is "clear and indisputable"; (2) the party seeking the writ has "no other adequate means to attain the relief he desires"; and (3) the writ is "appropriate under the circumstances." *Cheney* v. *U.S. Dist. Court for D.C.*, 542 U.S. 367, 380-381 (2004) (internal quotation marks and citations omitted). As this Court has noted, "mandamus can be an appropriate means for the appellate court to correct a district court's answers to 'basic, undecided' legal questions," including "in the venue context." *Micron*, 875 F.3d at 1095 (quoting *Schlagenhauf* v. *Holder*, 379 U.S. 104, 110 (1964)). All the pertinent factors support mandamus here.

I. THE RIGHT TO THE WRIT IS CLEAR AND INDISPUTABLE.

A. Google Does Not Have A Regular And Established Place Of Business In the Eastern District Of Texas.

"[T]he Plaintiff bears the burden of establishing proper venue." *ZTE*, 890 F.3d at 1013. According to the district court, respondent satisfied its burden of showing that Google has a "regular and established place of business" in the Eastern District because several ISPs—none of them Google entities—host a handful of GGC servers there. That finding is flatly inconsistent with the text of the law, this Court's precedent, and a growing number of district court decisions. Mandamus is necessary to correct the district court's clear and recurring legal error, and to resolve the expanding confusion in district courts around the country.

1. Google Does Not Have A "Place Of Business" In The Eastern District Of Texas.

a. In order for venue to be proper in a patent infringement suit, the defendant must have a "regular and established place of business" in the relevant district. 28 U.S.C. § 1400(b). The phrase "place of business"—as a matter of precedent and as a matter of plain text—contains two different requirements. First, a place of business must be real property or must have the attributes of real property. As this Court has put it, "[t]he statute requires * * * '[a] building or a part of a building set apart for any purpose' or 'quarters of any kind' from which business is conducted." *Cray*, 871 F.3d at 1362 (quoting William Dwight Whitney, The Century Dictionary 732 (Benjamin E. Smith, ed. 1911)); *see also CUPP*, 2019 WL 1070869, at *3 (finding venue improper in part because "servers are not a building or a part of a building"). That gloss on the meaning of the phrase accords with common dictionary definitions. The Oxford English Dictionary, for instance, defines "place of business" as "a place where business is conducted, spec[ifically] a shop, office, or other commercial establishment." Oxford English Dictionary (online ed. 2019). In short, a "place of business" must be real estate—a "building" or "quarters" where business is carried out. *Cray*, 871 F.3d at 1362.

Second, a "place of business" must be a place where either employees or other agents of the company are present to carry out the business. This, again, follows from the plain meaning of the phrase. A structure is only a "place of

business" if business "is conducted" there. *Place of Business*, Oxford English Dictionary. And, as a general matter, business is conducted *by people*. One does not typically refer to a computer as "conducting a company's business," and it would be doubly anomalous to refer to a computer as both the "place" and the thing "conducting" business at the place.

The requirement of employees or agents is confirmed, beyond any doubt, by the patent service statute. The service statute and the venue statute were enacted side-by-side as a single provision on the same day. *See* 29 Stat. 695-696 (1897). Both are still on the books with non-substantive modifications (though they are now codified in separate sections). The service statute provides that "[i]n a patent infringement action commenced in a district where the defendant is not a resident but has a regular and established place of business, service of process, summons or subpoena upon such defendant *may be made upon his agent or agents conducting such business*." 28 U.S.C. § 1694 (emphasis added). "In other words, § 1694 presumes that a defendant with a 'place of business' in a district will also have 'agents conducting such business' in that district." *Peerless Network, Inc.* v. *Blitz Telecom Consulting, LLC*, No. 17-CV-1725 (JPO), 2018 WL 1478047, at *4 (S.D.N.Y. Mar. 26, 2018); *see also Rensselaer*, 2019 WL 3755446, at *11-12 (concluding that "Congress contemplated that a defendant would have agents in the district conducting the defendant's business" at the place of business); *CDx*

Diagnostic, Inc. v. *U.S. Endoscopy Grp., Inc.*, No. 13-CV-5669(NSR), 2018 WL 2388534, at *3 (S.D.N.Y. May 24, 2018) (storage units were not a "place of business" under Section 1400(b) because "no 'employee or agent of [Defendant actually] conduct[s] business at' the storage units" (alterations in original and citation omitted)).

Section 1694 thus definitively clears up any ambiguity about Section 1400(b): When Congress used the phrase "place of business," it understood that term to mean a place with "agents" of the defendant "conducting * * * business." 28 U.S.C. § 1694; *see Dep't of Revenue of Or.* v. *ACF Indus., Inc.*, 510 U.S. 332, 342 (1994) ("identical words used in different parts of the same act are intended to have the same meaning" (internal quotation marks and citations omitted)). The court in *SEVEN* was simply wrong to reject this reading as "extra-statutory." *SEVEN*, 315 F. Supp. 3d at 956. The proper interpretation flows ineluctably from the text of the service statute. *See Rensselaer*, 2019 WL 3755446, at *11; *Peerless*, 2018 WL 1478047, at *4.

Moreover, reading "place of business" in Section 1400(b) to require real property in which employees conduct business is consistent with the statute's purpose and legislative history. As this Court has explained, the venue "statute's 'main purpose' was to 'give original jurisdiction to the court where a permanent agency transacting the business is located.'" *Cray*, 871 F.3d at 1361 (quoting 29

Cong. Rec. 1900 (1897) (statement of Rep. Lacey)). And the examples of permanent business locations discussed in the legislative history shed light on what Congress had in mind as a "place of business": a "manufactory," or an "office where the goods are sold." 29 Cong. Rec. 1900 (1897) (statement of Rep. Lacey). Those examples confirm the need for real property, and for employees conducting the "business" from such locations.

b. With these principles in mind, it is clear that Google does not have a "place of business" in the Eastern District. Google does not own, rent, or lease any real property there. Appx44-45. And while several ISPs in the District hosted GGC servers, even the district court did not rely on a finding that a "room or building of the ISP" belongs to Google. *See SEVEN*, 315 F. Supp. 3d at 965 ("[T]he 'place' of the 'place of business' is not the room or building of the ISP but rather Google's server and the space wherein it is located."). Google does not lease an ISP's building or any space in it. Appx42. In the relevant "Service Agreements," the ISPs simply agree to provide "[r]ack space[,] * * * power, network interfaces and IP addresses" to the GGCs, as well as "[r]emote support." Appx43. The contract therefore deals primarily with the provision of services by the ISP, not real estate, and it gives Google no control over any physical space. Indeed, the agreement expressly puts the *ISP* in control of "physical access" to the equipment. *Id*. The only time at which it authorizes Google employees to even

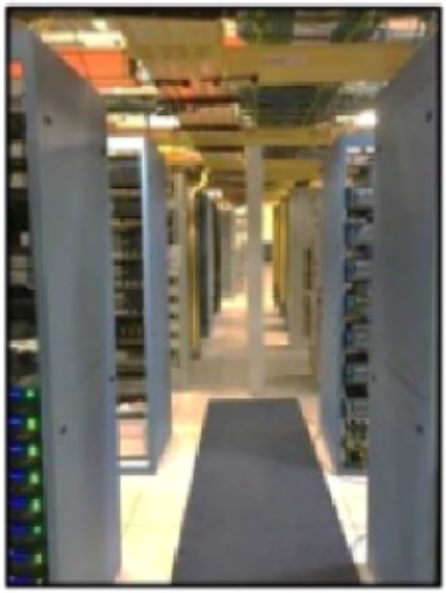
enter the premises where the GGC machines are located is if the agreement is terminated and the ISPs do not return the machines. *See* Appx42-43.

The uncontroverted evidence is that no agent or employee of Google *ever* visited the GGC servers located in the District, and Google employees certainly do not work from the "rack spaces" (*i.e.*, shelves) where the GGC servers are connected to the ISP's network. And Google has no employees who work at any Google office in the District. Appx44-45. In these circumstances, it is clear that Google does not have a "place of business" in the District.

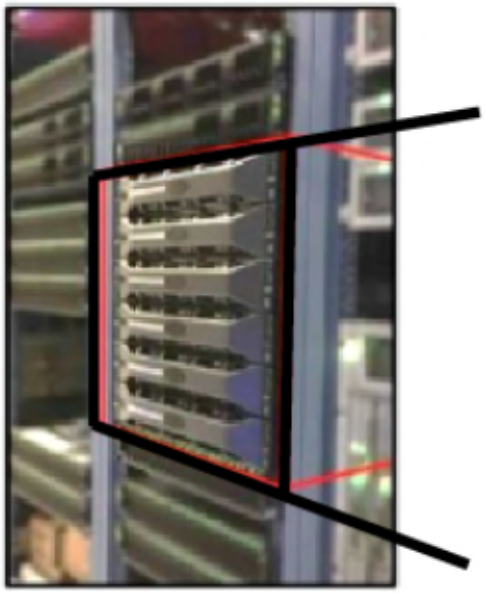
c. The district court concluded otherwise, finding that the GGC servers qualify as "places," and therefore satisfy the statute. Appx2-3; *SEVEN*, 315 F. Supp. 3d at 950-954. That finding contravenes the statutory text and basic English usage. The phrase "place of business," as this Court has explained, refers to a "building" or "quarters." *Cray*, 871 F.3d at 1362 (internal quotation marks omitted). It does not include a physical object simply because it occupies physical space. Indeed, such a definition would allow *any* "physical" object—such as a smartphone or computer owned or sold by a defendant —to qualify as a "regular and established place of business." That outcome is at odds with the plain meaning and intent of the venue statute. *See Personal Audio*, 280 F. Supp. 3d at 934.[2]

[2] *See also Automated Packaging Sys., Inc.* v. *Free-Flow Packaging Int'l, Inc.*, No. 5:14-cv-2022, 2018 WL 400326, at *9 (N.D. Ohio Jan. 12, 2018) ("machines at the customer's locations within th[e] district" supplied by the defendant for their

The district court in *SEVEN* also ruled that the "rack space" which holds a server could be a "place" under the statute. *SEVEN*, 315 F. Supp. 3d at 950-954, 965. But, as one court has put it, "whatever a 'place of business' is, it is not a shelf." *Peerless Network*, 2018 WL 1478047, at *4-5. The GGC servers are installed in a few shelves of a nondescript rack in a large room full of other rows of shelves. The servers are like a few books in a library:



Interior Rack Spaces



Google GGC Servers

In re Google LLC, 914 F.3d at 1378 (Reyna, J., dissenting from denial of rehearing). These particular shelves are not a "building," "quarters," "commercial

---

customers were not places of business of the defendant); *HomeBingo Network, Inc.* v. *Chayevsky*, 428 F. Supp. 2d 1232, 1250 (S.D. Ala. 2006) ("That an individual may be a part owner of a piece of equipment (in this case, a slot machine) located in a judicial district does not render the situs of that equipment his regular and established place of business for venue purposes.").

establishment," or any other accurate gloss on the meaning of a "regular and established place of business." *See supra* p. 6-7.

Once again, *any* physical object occupies some physical space, and to hold that any such space qualifies as a "place of business" would eviscerate the statutory limits on venue. Companies would potentially become subject to venue in any judicial district in the United States in which a physical object belonging to the company—a computer, cell phone tower, piece of railroad track, perhaps even a mailbox—were located. *See CUPP*, 2019 WL 1070869, at *3 ("to conclude that a company's business is being carried out by its servers[] 'would have far-reaching consequences that distort the scope of the statute'") (quoting *Personal Audio*, 280 F. Supp. 3d at 934). Indeed, under the district court's rule, *Cray* (which held that an employee's home office was not a defendant's place of business) might have come out differently if the employee happened to use a company-owned computer at home. *See In re Google LLC*, 2018 WL 5536478, at *5 (Reyna, J., dissenting). After all, that computer takes up some physical desk or shelf space.[3]

In the present case, the district court sought to downplay the implications of its expansive interpretation of the venue statute, stating that it "neither intends nor approves the view that venue is proper everywhere." Appx3. But the court failed

[3] The district court in *SEVEN* also likened the GGC servers to a warehouse, but the analogy boomerangs. *See* 315 F. Supp. 3d at 957-958. A warehouse has both of the necessary characteristics of a "place of business"—it is real property, and it is staffed by actual employees of the business. A computer has neither.

to explain how the legal principles it espoused could be cabined so as to avoid just that result for many companies. Indeed, the two key factors that the court pointed to show just how expansive its reading of the venue statute is. Specifically, it explained that its assertion of venue over Google "was grounded largely on the fact that (1) Google's business is delivering online content to users, and (2) the GGC servers are a part of Google's three-tiered network that conducts this very activity." *Id.* That would presumably be true also of a cable box to a cable company, or a cell tower to a cell phone provider. In short, "it takes little imagination to see how the district court's holding in this case could impact companies that, while conducting business, transmit data over a wide variety of equipment." *In re Google LLC*, 914 F.3d at 1380 (Reyna, J., dissenting from denial of rehearing).

d. The district court in *SEVEN* also relied on Section 18(c) of the America Invents Act, which provides that an ATM machine "shall not be deemed to be a regular and established place of business" for certain venue purposes. Leahy-Smith America Invents Act, Pub. L. No. 112-29, § 18(c), 125 Stat. 329, 331 (2011). According to the court, that provision implies that ATM machines otherwise *would* be places of business. *SEVEN*, 315 F. Supp. 3d at 962-963. But an equally "plausible construction of Congress' action in" 2011 is that it was merely "clarifying the original meaning of" the venue statute—and, as explained above, the "original meaning" of the statute is so clear that that is the only

"plausible construction." *Mackey* v. *Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 839 (1988). In any event, "the opinion of this later Congress as to the meaning of a law enacted [more than a century] earlier does not control the issue." *Id.*; *see also Rensselaer*, 2019 WL 3755446, at *12 (noting that "an ATM * * * must be regularly serviced by employees or agents").

2. Any Place Of Business In The District Is Not Regular And Established.

Furthermore, the district court wrongly concluded that GGC servers meet the requirement of a "regular and established" place of business. 28 U.S.C. § 1400(b). As this Court explained in *Cray*, the place in question must be "'settle[d] certainly, or fix[ed] permanently.'" *Cray*, 871 F.3d at 1363 (quoting Black's Law Dictionary (1st ed. 1891)). Here, the ISPs host the servers in question pursuant to a contract that permits the ISPs to move the servers to different locations without terminating the agreement. Beyond that, the contract also can be terminated "at any time" for the "convenience" of either party. The storage of personal property on the shelf of a third party pursuant to an agreement that can be terminated at any time for any reason is simply not enough to establish that Google's "place" in the Eastern District is "fix[ed] permanently." *Cray*, 871 F.3d at 1363; *see also Delta T, LLC* v. *Dan's Fan City, Inc.*, No. 8:18-cv-03858-PWG, 2019 WL 3220287, at *4 (D. Md. July 17, 2019) ("The terms of the oral agreement do not demonstrate that [defendant] exercises control over DFC Rockville because either party may

terminate the relationship upon notice to the other party, and because [defendant] does not require DFC Rockville to use its name or logo."). And the very use of the phrase "regular and established" reinforces that the focus of the venue provision is *real*, as opposed to personal, property. A building can be regular and established; it verges on gibberish to apply that phrase to, say, a car or a computer. *See CUPP*, 2019 WL 1070869, at *3.

3. Any Place Of Business In The Eastern District Is Not Google's.

Finally, the putative "place of business" is not "of the defendant" because it is not Google's. *Cray*, 871 F.3d at 1360. The "*defendant* must establish or ratify the place of business" in question. *Id*. at 1363 (emphasis added). "Relevant considerations include whether the defendant owns or leases the place, or exercises other attributes of possession or control over the place." *Id*. Here, while Google retains ownership of the computers in question, it is the ISPs that install, store, and maintain them. Appx42. Indeed, generally no Google employee even sees the GGC servers; they are shipped by a third-party straight to the ISP, who sets them up, figures out where they will be placed, and then supplies "power, network interfaces, and IP addresses." Appx42-43. Thus, notwithstanding Google's technical ownership of the computers, the ISP "exercises" the more significant "attributes of possession or control" over them. *Cray*, 871 F.3d at 1363; *see*

CUPP, 2019 WL 1070869 at *2-3 (finding venue improper despite the fact that the defendant owned servers housed by a third party).

Nor does Google own or lease the "rack space" within facilities of the ISPs where the servers are stored, any more than someone who loans a book to a friend has "leased" the space on the friend's bookshelf on which the book sits. The relevant agreements say only that an ISP will "provide" "rack space" for the equipment. Appx43. That rack space, in turn, is expressly located "'in *the Host*'s' facilities"—physical property locations owned or rented by the ISP. *Id.* (emphasis added). For an ISP merely to provide rack space for equipment—at a place of the ISP's choosing—does not in any meaningful sense give Google a "lease" or control over the space on which the servers sit. Google does not even have physical access to the rooms holding the servers and their racks. The racks are in the host's facilities, and Google does not have a key. *Id.* The contract only grants Google access *if* the agreement is terminated and *if* the ISP refuses to surrender the equipment back to Google. Then, and only then, may Google "enter any premises of Host where such equipment is located during normal working hours" in order to get it back. *Id.* That is a far cry from a "lease," and certainly does not convert the *ISP*'s place of business to *Google*'s for venue purposes.

This Court has also noted that "[p]otentially relevant inquiries" in determining whether a location is a "place of business" of the defendant "include

whether the defendant lists the alleged place of business on a website, or in a telephone or other directory; or places its name on a sign associated with or on the building itself." *Cray*, 871 F.3d at 1363-64. Google has done none of that. There is no Google "sign" or other indication on any of the buildings that contained the GGC servers at issue that the building is or was a place of business of Google. While Google has a map on a website that indicates—on a metro- and not address-specific level—where GGC servers are deployed around the world, that map charts the approximate location of many pieces of the worldwide infrastructure that delivers content to Google users. It does *not* show that Google is representing it has a "place of business" everywhere its equipment is located. *See id.* at 1363 (stating that the relevant question is whether the defendant has "represent[ed] that it has *a place of business* in the district," not just equipment (emphasis added)). Most of the "dots" on the map are merely based on the airport nearest to the location of the ISP hosting the servers.

"A further consideration" in assessing whether something qualifies as a "place of business" of a defendant "might be the nature and activity of the alleged place of business * * * *in comparison with* that of other places of business of the defendant in other venues." *Id.* at 1364. The GGC servers in the Eastern District of Texas were a tiny fraction of the GGC server network. They are not necessary for serving content. Appx42. And Google does not have a regular office or even a

data center in the District. *See* Appx44-45. In comparison with Google's offices and activities in other locations, then, any Google activity in the Eastern District of Texas is negligible. In fact, as of the end of November 2018, all of the GGC servers that were formerly in the District are no longer in service. That militates against a finding that Google somehow maintains a "place of business" there.

* * *

The district court's impulse to update the venue statute for the digital age is understandable. The "world has changed" in the century-plus since Congress enacted the current patent venue law, particularly with the advent of computing. *Cray*, 871 F.3d at 1359. "But, notwithstanding these changes, in the wake of the Supreme Court's holding in *TC Heartland*, * * * [courts] must focus on the full and unchanged language of the statute * * *." *Id*. And that language is "specific and unambiguous," and should not, "in the interest of some overriding policy, * * * be given a liberal construction." *Schnell* v. *Peter Eckrich & Sons, Inc.*, 365 U.S. 260, 264 (1961) (internal quotation marks omitted). The district court did not heed that instruction.

II. THE OTHER MANDAMUS FACTORS ARE SATISFIED.

1. A mandamus petitioner generally must also demonstrate that it has "no other adequate means to attain the relief" desired. *Cheney*, 542 U.S. at 380-381 (internal quotation marks omitted). Google satisfies that factor because the relief it

seeks—being spared the burden of having to litigate dozens of cases in an inconvenient forum that is improper under federal law—cannot be secured on appeal. "[T]he harm * * * will already have been done by the time the case is tried and appealed, and the prejudice suffered cannot be put back in the bottle." *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 319 (5th Cir. 2008) (en banc). As this Court put it in a related context, "an appeal" after "final judgment * * * would be effectively pointless." *Bd. of Regents of the Univ. of Texas Sys.* v. *Bos. Sci. Corp.*, No. 2018-1700, 2019 WL 4196997, at *4-5 (Fed. Cir. 2019) (allowing immediate appeal of transfer order by sovereign entity under collateral order doctrine). Google is facing dozens of suits in the Eastern District of Texas premised on a flawed theory of venue, and absent mandamus relief its only recourse would be to litigate those cases fully through appeal. This is not an adequate means of relief from the district court's clear legal errors.

To be sure, the burden of litigating a case through trial will not suffice to entitle a petitioner to mandamus relief in every case. But this Court has made abundantly clear that mandamus may be warranted where "the district court misunderstood the scope and effect" of this Court's precedents on venue, and intervention is necessary to provide prompt guidance to lower courts overseeing patent cases. *Cray*, 871 F.3d at 1359; *see In re HTC Corp.*, 889 F.3d 1349, 1354 (Fed. Cir. 2018) (recognizing that "there may be circumstances in which" anything

other than mandamus review "is inadequate"). This proposition is not controversial: It has become "well established that mandamus is available to contest a patently erroneous error in an order denying transfer of venue." *In re EMC Corp.*, 677 F.3d 1351, 1354 (Fed. Cir. 2012). And the Court has routinely used its mandamus authority to review district court decisions denying motions to transfer on account of venue under Section 1406. *See BigCommerce*, 890 F.3d at 981; *ZTE*, 890 F.3d at 1011; *Cray*, 871 F.3d at 1357; *Micron*, 875 F.3d 1091; *see also In re Google LLC*, 2018 WL 5536478, at *2 ("We have * * * found mandamus to be available for asserted § 1400(b) violations in certain exceptional circumstances warranting immediate intervention to assure proper judicial administration."). The Court should do so again.

2. Finally, mandamus must also be "appropriate under the circumstances." *Cheney*, 542 U.S. at 381. Both this Court and the Supreme Court have held that mandamus is appropriate where a petition presents a "basic, undecided question" of law on a "substantial" issue, *Schlagenhauf*, 379 U.S. at 110, and where "deciding th[e] matter now * * * [is] important to 'proper judicial administration.'" *In re BP Lubricants USA Inc.*, 637 F.3d 1307, 1313 (Fed. Cir. 2011) (quoting *LaBuy* v. *Howes Leather Co.*, 352 U.S. 249, 259-260 (1957)); *see In re Queen's Univ. at Kingston*, 820 F.3d 1287, 1291 (Fed. Cir. 2016) ("Mandamus may thus be appropriate in certain cases to further supervisory or instructional goals where

issues are unsettled and important." (internal quotation marks omitted)). As noted, this is such a case: The questions decided by the district court are vitally important, recurring, and continue to split the lower courts, even courts within a single district. Resolving these threshold questions now is "important to 'proper judicial administration'" because it will ensure that patent suits are tried in appropriate forums, that district court judges do not overstep proper lines of authority, and that the growing divide among district courts does not create further forum shopping and waste. *See BP Lubricants USA*, 637 F.3d at 1313 (citation omitted); *see* Etsy, HP, Netflix, Ringcentral, Red Hat, Salesforce, SAP America, Twitter, and the High Tech Inventors Alliance Amici Br., *In re Google*, No. 18-152 (Fed. Cir. Aug. 29, 2018), ECF No. 19; Intel Amicus Br., *In re Google*, No. 18-152 (Fed. Cir. Sept. 11, 2018), ECF No. 34.

The questions addressed by the district court's ruling have become increasingly important after *TC Heartland*. In that case, the Supreme Court held that the phrase "judicial district where the defendant resides" in the patent venue statute means only the defendant's State of incorporation. 137 S. Ct. at 1516-17. The *TC Heartland* decision is a powerful reminder that courts "must focus on the full and unchanged language of the statute" because "patent venue is narrower than general venue—and intentionally so." *Cray*, 871 F.3d at 1359; *Peerless Network*, 2018 WL 1478047, at *2. Accordingly, courts should police venue to ensure that

patent suits are heard only in the fora Congress intended. This Court has repeatedly done just that, and it would be appropriate to do so here again. *See Micron*, 875 F.3d 1091.

Mandamus is particularly appropriate now, as an increasing number of "different district courts have come to different conclusions about" the question presented. *BigCommerce*, 890 F.3d at 981. When this Court denied mandamus a year ago, it chose to let the question "percolate in the district courts so as to more clearly define the importance, scope, and nature of the issue for us to review." *In re Google LLC*, 2018 WL 5536478, at *3. The subsequent year of percolation has deepened the division among district courts and confirmed the importance of the question presented.

First, in *CUPP*, the Northern District of Texas squarely confronted the question "whether the presence of Symantec's servers at a data center owned by a third party constitutes a regular and established place of business." 2019 WL 1070869, at *2. The court noted that other district courts (including the court below) had "come to conflicting conclusions" on this question. *Id*. at *3. And it firmly sided against the decision below. First, it held that "servers are not a building or a part of a building"; they are, rather, "the physical electronic equipment used to operate the internet." *Id*. (internal quotation marks omitted). They are therefore not a "place" within the meaning of the statute. Moreover,

"[t]he business conducted from Symantec servers involves 'electronic communications,' which the Federal Circuit specifically stated cannot constitute a place." *Id*. (quoting *Cray*, 871 F.3d at 1362). And, though Symantec might "direct traffic" through it servers, it does not "conduct[] its business" there within the meaning of the statute. *Id*.

Second, in *Rensselaer*, the Northern District of New York considered whether a "natural person" who is an agent or employee of the defendant "must conduct business at the location for it to be a 'place of business' under § 1400(b)." 2019 WL 3755446, at *11. The court noted a split among district courts on this question, and then agreed with Google's position here: "[T]he venue and service provisions must be read together given their common statutory history and structural connection." *Id*. And, so read, it is clear that "Congress assumed that a defendant with a place of business in a district will also have agents conducting such business in the district." *Id*. (internal quotation marks omitted). The recent reasoning of the courts in both *CUPP* and *Rensselaer*, then, fully supports Google's position that it should not be subject to venue solely on the basis of GGC servers. And the fact that those two cases presented the same basic legal questions as this petition, even though they arose in different factual circumstances, shows that the questions are the sort of "broad and fundamental legal questions" that

should be resolved through mandamus. *In re Google LLC*, 2018 WL 5536478, at *2.

And these new decisions only add to the confusion already reigning. Another Court in the Eastern District of Texas had already specifically found that Google's GGC servers were *not* a "regular and established place of business" for venue purposes. *Personal Audio*, 280 F. Supp. 3d at 933-935.[4] Other courts too have weighed in on whether telecommunications equipment or storage units more generally can qualify, and have reached holdings at odds with the court's decision below. *See Peerless Network*, 2018 WL 1478047, at *3-5 ("a shelf containing a piece of [the defendant's] telecommunications equipment" in the district was not a regular and established place of business); *CDx Diagnostic*, 2018 WL 2388534, at *3 (storage units in the district were not sufficient); Memorandum Opinion & Order at 4, *BMC Software, Inc.* v. *Cherwell Software, LLC*, No. 1:17-cv-01074-LO-TCB (E.D. Va. Dec. 21, 2017), ECF No. 55 (rental of a computer server in the district was not a regular and established place of business). And some of those decisions specifically found that, in order to qualify as a "place of business" for purposes of the venue statute, there must be employees or other agents of the defendant present at the putative "place" conducting the defendant's business.

[4] Given the volume of patent litigation in that District, and the high percentage of cases assigned to the lower court in this case, the intra-district conflict is reason enough for this Court "to adopt a uniform national rule" on "patent-specific venue." *ZTE*, 890 F.3d at 1013.

Peerless Network, 2018 WL 1478047, at *3-5; *CDx Diagnostic*, 2018 WL 2388534, at *3.

The district court below also suggested that its decision turned on "the *specific nature of Google's business* and the *particular facts of this case*," implying that this case presents primarily factual rather than legal questions. Appx3; *see also In re Google LLC*, 2018 WL 5536478, at *2 ("The district court's venue ruling rests on a variety of facts * * *."). But the district court's opinion refutes itself on that point: It explicitly "disagrees with the *legal analysis* in *CUPP*," which involved a company other than Google. Appx2 n.2 (emphasis added). The court would have nothing to "disagree with" if its opinion were simply an application of *Cray* to highly specific facts that were unique to Google. *Id*. And this mandamus petition seeks review of the district court's "legal analysis." *Id*. The core contention concerns the meaning of the venue statute: Specifically, the venue statute requires that a "place of business" be real property staffed by employees or other agents of the defendant. If Google is right about what the statute means, then the district court's opinion is wrong. And the "interpretation of a statute * * * is a question of law." *Lane* v. *Principi*, 339 F.3d 1331, 1339 (Fed. Cir. 2003). In sum, this petition presents an important and recurring question of law, not a fact-bound question about the application of *Cray*.

Further, after noting that other courts had disagreed with its conclusion, the district court consciously adhered to it despite the criticism. Appx2 & n.2. Thus, the present division in authority on the meaning of the venue statute will not resolve itself without this Court's intervention. And the district court's decision in *SEVEN* has already engendered significant forum shopping, waste, and unnecessary litigation. As noted above, Google alone was sued dozens of times in the Eastern District of Texas in the wake of *SEVEN*. Most of those cases came after this Court's denial of mandamus in favor of more percolation, and rely on the same flawed theory of venue as *SEVEN*. Google and other similarly situated defendants will be (and have been) forced to preserve and brief their venue objections in all of those cases, and then go through extensive discovery, *Markman* hearings, summary judgment briefing, and trial, all before courts that have no authority to hear the cases. A core function of mandamus is to ensure the lower courts remain "confine[d]" to the "lawful exercise of [their] prescribed" authority, and thus to prevent this kind of waste. *Schlagenhauf*, 379 U.S. at 109-110 (internal quotation marks omitted).

In short, the decision below—if left to stand—will compound (and has already compounded) the considerable confusion in the lower courts. It will reinforce a dramatic expansion of the patent venue statute, and subject numerous companies to suit or the threat of suit where they have no proper place of business.

The end result will be the kind of permissive venue regime that the Supreme Court, in *TC Heartland*, sought to rein in. If ever this Court's "supervisory [and] instructional" function were essential, it is now. *BigCommerce*, 890 F.3d at 981 (internal quotation marks omitted).

CONCLUSION

For the foregoing reasons, Google respectfully requests that this Court issue a writ of mandamus directing the Eastern District of Texas to dismiss this case for lack of proper venue.

Respectfully submitted,

/s/ Neal Kumar Katyal

September 17, 2019

Neal Kumar Katyal
Keith O'Doherty
HOGAN LOVELLS US LLP
555 Thirteenth St., N.W.
Washington, D.C. 20004
Tel.: (202) 637-5547
Fax: (202) 637-5910

Thomas P. Schmidt
HOGAN LOVELLS US LLP
390 Madison Avenue
New York, NY 10017
Tel.: (212) 918-5547
Fax: (212) 918-3100

Counsel for Petitioner Google LLC

CERTIFICATE OF COMPLIANCE

1. This petition complies with the type-volume limitations of Federal Rules of Appellate Procedure 21(d)(1) because it contains 7,785 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word in Times New Roman 14-point font.

/s/ Neal Kumar Katyal

CERTIFICATE OF SERVICE

I certify that on September 17, 2019, I served a copy of the foregoing document on the following counsel of record and district court judge by Federal Express and electronic mail at the following addresses:

Jeffrey R. Bragalone
T. William Kennedy Jr.
Jerry Tice, II
BRAGALONE CONROY P.C.
2200 Ross Ave.
Suite 4500W
Dallas, Texas 75201
Tel.: (214) 785-6670
Fax: (214) 785-6680
jbragalone@bcpc-law.com
bkennedy@bcpc-law.com
jtice@bcpc-law.com

Wesley Hill
Andrea Leigh Fair
WARD, SMITH & HILL, PLLC
P.O. Box 1231
Longview, Texas 75606
Tel.: (903) 757-6400
Fax: (903) 757-2323
wh@wsfirm.com
andrea@wsfirm.com

Counsel for Plaintiff-Respondent
Super Interconnect Technologies LLC

J. Mark Mann
G. Blake Thompson
MANN TINDEL & THOMPSON
300 W. Main
Henderson, TX 75652
Tel.: (903) 657-8540
Fax: (903) 657-6003
mark@themannfirm.com
blake@themannfirm.com

Kent E. Baldauf, Jr.
Bryan P. Clark
THE WEBB LAW FIRM
One Gateway Center, Ste. 1200
420 Ft. Duquesne Boulevard
Pittsburgh, PA 15222
Tel.: (412) 471-8815
Fax: (412) 471-4094
kbaldaufjr@webblaw.com
bclark@webblaw.com

Steven M. Geiszler
FUTUREWEI TECHNOLOGIES, INC.
5340 Legacy Drive, Suite 175
Plano, TX 75024
Tel.: (469) 277-5763
steven.geiszler@futurewei.com

Counsel for Defendants
Huawei Device Co. Ltd., Huawei Device USA, Inc.,
Huawei Device (Shenzhen) Co., Ltd. and Huawei Device
(Dongguan) Co., Ltd. in Consolidated Action 2:18-cv-00462

Hon. Rodney Gilstrap
U.S. District Court – Eastern District of Texas
Sam B. Hall, Jr. Federal Building and United States Courthouse
100 East Houston Street
Marshall, Texas 75670
Tel.: (903) 935-3868
Fax: (903) 935-2295

/s/ Neal Kumar Katyal

No. _____

IN THE

United States Court of Appeals for the Federal Circuit

IN RE GOOGLE LLC,

Petitioner,

On Petition for a Writ of Mandamus to the
United States District Court for the Eastern District of Texas
Nos. 2:18-cv-00462, -00463 (consolidated)
Judge Rodney Gilstrap

NON-CONFIDENTIAL APPENDIX IN SUPPORT OF PETITION FOR A WRIT OF MANDAMUS

Thomas P. Schmidt
HOGAN LOVELLS US LLP
390 Madison Ave.
New York, NY 10017
Tel.: (212) 918-5547
Fax: (212) 918-3100

Neal Kumar Katyal
Keith O'Doherty
HOGAN LOVELLS US LLP
555 Thirteenth St., N.W.
Washington, D.C. 20004
Tel.: (202) 637-5528
Fax: (202) 637-5190
neal.katyal@hoganlovells.com

Counsel for Petitioner Google LLC

September 17, 2019

TABLE OF CONTENTS

Page

CONFIDENTIAL MATERIAL OMITTED

The material omitted from this appendix includes confidential information relating to Petitioner's business practices and other commercially sensitive information. That material is subject to the District Court's protective order (No. 2:18-cv-00462, ECF 45), as well as the District Court's order granting Google's motion to file under seal its motion to dismiss (No. 2:18-cv-00463, ECF 30).

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

SUPER INTERCONNECT TECHNOLOGIES LLC,	§	
	§	
	§	**CIVIL ACTION NO. 2:18-CV-00463-JRG**
***Plaintiff*,**	§	**(MEMBER CASE)**
	§	
v.	§	
	§	**CIVIL ACTION NO. 2:18-CV-00462-JRG**
GOOGLE LLC,	§	**(LEAD CASE)**
	§	
***Defendant*.**	§	

MEMORANDUM OPINION AND ORDER

On November 2, 2018, Plaintiff Super Interconnect Technologies, LLC ("SIT") sued Defendant Google, LLC ("Google") for patent infringement in this District. (Dkt. No. 1.)[1] Google moves to dismiss the complaint for improper venue under Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406 (the "Motion"). (Dkt. No. 13.) Having considered the Motion, briefing, and relevant authorities, the Court **DENIES** the Motion for the reasons discussed herein.

"Any civil action for patent infringement may be brought in any judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400(b). SIT alleges that venue is proper under the second prong of § 1400(b):

> 5. Venue is proper in this judicial district under 28 U.S.C. § 1400(b) because Google has committed acts of infringement in the District and has a regular and established place of business in this District. On information and belief, multiple ISPs host Google Global Cache servers in this District, which cache Google's products and deliver them to residents of this District. These Google Global Cache servers cache content that includes video advertising, apps, and digital content from the Google Play store, among other things. Google generates revenue by providing

[1] Unless otherwise noted, all docket citations are to *Super Interconnect Technologies, LLC v. Google, LLC*, No. 2:18-cv-00463 (E.D. Tex.).

> these services to residents of this District. Both the server itself and the place of the Google Global Cache server, independently and together, constitute a "physical place" and a "regular and established place of business" of Google. The Federal Circuit very recently denied mandamus to Google where it challenged this Court's ruling that venue was proper over it under 28 U.S.C. § 1400(b). *See In re Google LLC*, No. 2018-152, 2018 WL 5536478 (Fed. Cir. Oct. 29, 2018).

(Dkt. No. 1 ¶ 5.)

Google argues that its Google Global Cache ("GGC") servers do not qualify as a "regular and established place of business" under the Federal Circuit's three-part test in *In re Cray*, 871 F.3d 1355, 1360 (Fed. Cir. 2017). (Dkt. No. 13 at 6–10.) Google acknowledges that this Court previously found venue under identical facts in *SEVEN Networks, LLC v. Google LLC*, 315 F. Supp. 3d 933 (E.D. Tex. 2018). (*Id.* at 1.) Google does not dispute any of these underlying facts, but instead urges the same legal arguments that this Court denied in *SEVEN*. (*Id.* at 4 (noting that the facts before the Court in *SEVEN* have remained unchanged and are still undisputed).) The Court sees no reason to depart from its prior decision and finds that venue in this case is proper for the same reasons outlined in *SEVEN*. Accordingly, Google's Motion to Dismiss for Improper Venue Under Rule 12(b)(3) and 28 U.S.C. § 1406 (Dkt. No. 13) is denied.[2]

In addressing Google's Motion, the Court believes it appropriate to briefly discuss certain aspects of its holding in *SEVEN*, particularly its future implications, as raised in Judge Reyna's dissent in *In re Google*, No. 2018-152, 2018 WL 5536478 (Oct. 29, 2018). His dissent opines that

[2] Google explains that in *Personal Audio, LLC v. Google, Inc.*, 280 F. Supp. 3d 922, 934 (E.D. Tex. 2017), Judge Clark held that Google's GGC servers are not a "regular and established place of business" under § 1400(b). (Dkt. No. 13 at 1–2.) Google argues that "[a]fter this Court's decision in *SEVEN* and the Federal Circuit's subsequent mandamus decision, the Northern District of Texas noted the conflict in this District between *SEVEN* and *Personal Audio* and agreed with Judge Clark." (*Id.* at 2 (citing *CUPP Cybersecurity, LLC, v. Symantec Corp.*, No. 3:18-cv-01554, Dkt. No. 53 at 6 (N.D. Tex. Dec. 21, 2018).) The Court disagrees with the legal analysis in *CUPP* for the same reasons it declined to follow *Personal Audio* in *SEVEN*. *See SEVEN*, 315 F. Supp.3d at 950–54, 956, 965–66.

the Court's "current reading of § 1400(b) suggests that merely owning and controlling computer hardware (i.e., servers) that is involved in some company business is sufficient" to confer venue. *Google*, 2018 WL 5536478, at *5. He also read this Court's decision as implying that "a company could potentially become subject to venue in any judicial district in which a physical object belonging to the company was located." *Id.* at *6.

By its holding in *SEVEN*, the Court neither intends nor approves the view that venue is proper everywhere. As the Federal Circuit noted in *Cray* and as this Court reiterated in *SEVEN*, the venue analysis under § 1400(b) must hew closely to the language of the statute. *Cray*, 871 F.3d at 1362; *SEVEN*, 315 F. Supp. 3d at 939. The Federal Circuit also explained that whether venue is proper will depend on the unique facts of each case, in which "no precise rule has been laid down." *Cray*, 871 F. 3d at 1362. In *SEVEN*, the Court's venue analysis was grounded largely on the fact that (1) Google's business is delivering online content to users, and (2) the GGC servers are a part of Google's three-tiered network that conducts this very activity. *SEVEN*, 315 F. Supp. 3d at 947. (*See* Dkt. No. 13-6 (Declaration of Keith McCallion on behalf of Google).) That is, it is the *specific nature of Google's business* and the *particular facts of this case* that lead the Court to conclude that the GGC servers are a "regular and established place *of* business" of Google. By holding such, the Court does not intend that venue is proper in any judicial district where a defendant owns, controls, or otherwise has a connection to a piece of property, real or personal, that is related to the defendant's business. Rather, the specific and fact-based nature, extent, and type of business will inform whether a particular place in a district qualifies as a "regular and established place of business" of the defendant. *See Cray*, 871 F. 3d at 1364 ("A further consideration for this requirement might be the nature and activity of the alleged place of business of the defendant in the district in comparison with that of other places of business of the defendant

in other venues. Such a comparison might reveal that the alleged place of business is not really a place of business at all."). It was with a careful view toward the discovery-based evidentiary facts in that particular situation, coupled with the specific parameters of *Cray* in mind, that the Court reached its conclusions in *SEVEN*. Given the present case, which is on all fours with the facts in *SEVEN*, the Court denies the Motion.

So Ordered this
Aug 7, 2019

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

JRG2,JURY,LEAD,PATENT/TRADEMARK,PROTECTIVE-ORDER

U.S. District Court
Eastern District of TEXAS [LIVE] (Marshall)
CIVIL DOCKET FOR CASE #: 2:18-cv-00462-JRG

Super Interconnect Technologies LLC v. Huawei Device Co. Ltd. et al
Assigned to: District Judge Rodney Gilstrap
Related Case: 2:18-cv-00463-JRG
Cause: 35:271 Patent Infringement

Date Filed: 11/02/2018
Jury Demand: Both
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Mediator

Francis McGovern
Room 4182
210 Science Drive
Box 90362
Durham, NC 27708
mcgovern@law.duke.edu

Technical Advisor

David Keyzer
5170 Golden Foothill Parkway
El Dorado Hills, CA 95762
916-243-5259

Plaintiff

Super Interconnect Technologies LLC represented by **Jeffrey Ray Bragalone**
Bragalone Conroy PC
2200 Ross Avenue
Suite 4500W
Dallas, TX 75201
(214) 785-6671
Fax: 214-785-6680
Email: jbragalone@bcpc-law.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Andrea Leigh Fair
Ward, Smith & Hill, PLLC
1507 Bill Owens Parkway
Longview, TX 75604
903-757-6400
Fax: 903-757-2323
Email: andrea@wsfirm.com
ATTORNEY TO BE NOTICED

Brian Paul Herrmann
Nelson Bumgardner Albritton PC - Fort Worth
3131 West 7th Street, Suite 300

Ft Worth, TX 76107
817-377-9111
Email: brian@nbafirm.com
TERMINATED: 08/22/2019

Jerry Tice , II
Bragalone Conroy PC
2200 Ross Avenue
Suite 4500W
Dallas, TX 75201
214-785-6693
Fax: 214-785-6680
Email: jtice@bcpc-law.com
ATTORNEY TO BE NOTICED

Thomas William Kennedy , Jr
Bragalone Conroy PC
2200 Ross Avenue
Suite 4500W
Dallas, TX 75201
214-785-6670
Fax: 214-785-6680
Email: bkennedy@bcpc-law.com
ATTORNEY TO BE NOTICED

Jack Wesley Hill
Ward, Smith & Hill, PLLC
1507 Bill Owens Parkway
Longview, TX 75604
903-757-6400
Fax: 903-757-2323
Email: wh@wsfirm.com
ATTORNEY TO BE NOTICED

V.

Defendant

Huawei Device Co. Ltd. represented by **James Mark Mann**
Mann Tindel & Thompson
300 W. Main
Henderson, TX 75652
903/657-8540
Fax: 9036576003
Email: mark@themannfirm.com
ATTORNEY TO BE NOTICED

Defendant

Huawei Device (Hong Kong) Co., Ltd. represented by **James Mark Mann**
TERMINATED: 11/16/2018 (See above for address)
ATTORNEY TO BE NOTICED

Defendant

Huawei Device USA, Inc. represented by **Bryan P Clark**

The Webb Law Firm
One Gateway Center, Ste. 1200
420 Ft. Duquesne Boulevard
Pittsburgh, PA 15222
412/471-8815
Fax: 412/471-4094
Email: bclark@webblaw.com
ATTORNEY TO BE NOTICED

Gregory Blake Thompson
Mann Tindel & Thompson
300 W. Main
Henderson, TX 75652
903/657-8540
Fax: 903-657-6003
Email: blake@themannfirm.com
ATTORNEY TO BE NOTICED

James Mark Mann
(See above for address)
ATTORNEY TO BE NOTICED

Kent E Baldauf , Jr.
The Webb Law Firm
One Gateway Center, Ste. 1200
420 Ft. Duquesne Boulevard
Pittsburgh, PA 15222
412/471-8815
Fax: 412/471-4094
Email: kbaldaufjr@webblaw.com
ATTORNEY TO BE NOTICED

Steven Mark Geiszler
Futurewei Technologies, Inc
5340 Legacy Drive, Suite 175
Plano, TX 75024
469-277-5763
Email: steven.geiszler@futurewei.com
ATTORNEY TO BE NOTICED

Defendant

Huawei Device (Shenzhen) Co., Ltd.
formerly known as
Huawei Device Co., Ltd.

represented by **Bryan P Clark**
(See above for address)
ATTORNEY TO BE NOTICED

Gregory Blake Thompson
(See above for address)
ATTORNEY TO BE NOTICED

James Mark Mann
(See above for address)
ATTORNEY TO BE NOTICED

Kent E Baldauf , Jr.

(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Huawei Device (Dongguan) Co., Ltd. represented by **Bryan P Clark**
(See above for address)
ATTORNEY TO BE NOTICED

Gregory Blake Thompson
(See above for address)
ATTORNEY TO BE NOTICED

James Mark Mann
(See above for address)
ATTORNEY TO BE NOTICED

Kent E Baldauf , Jr.
(See above for address)
ATTORNEY TO BE NOTICED

V.

Consol Defendant

Google LLC represented by **Darin W Snyder**
Consolidated Civil Action 2:18cv463
O'Melveny & Myers - San Francisco
Two Embarcadero Center
28th Floor
San Francisco, CA 94111
415-984-8700
Fax: 415-984-8701
Email: dsnyder@omm.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

David S Almeling
O'Melveny & Myers LLP - San Francisco
Two Embarcadero Center
28th Floor
San Francisco, CA 94111
415-984-8700
Fax: 415-984-8701
Email: dalmeling@omm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Luann Loraine Simmons
O'Melveny & Myers - San Francisco
Two Embarcadero Center
28th Floor
San Francisco, CA 94111
415-984-8700
Fax: 415-984-8701

Email: lsimmons@omm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Blake Bradford Thompson
Dunn Nutter & Morgan
3601 Richmond Road
Texarkana, TX 75503
870/773-5651
Email: bbthompson@dnmlawfirm.com
ATTORNEY TO BE NOTICED

Boris Mindzak
O'Melveny & Myers LLP - LA
400 South Hope Street
Los Angeles, Ca 90071
213-430-6000
Fax: 213-430-6407
Email: bmindzak@omm.com
ATTORNEY TO BE NOTICED

Eric Y. Su
O'Melveny & Myers LLP - LA
400 South Hope Street
Los Angeles, Ca 90071
213-430-6000
Fax: 213-430-6407
Email: esu@omm.com
ATTORNEY TO BE NOTICED

James Mark Mann
(See above for address)
ATTORNEY TO BE NOTICED

Mark Liang
O'Melveny & Myers - San Francisco
Two Embarcadero Center
28th Floor
San Francisco, CA 94111
415-984-8700
Fax: 415-984-8701
Email: mliang@omm.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/02/2018	1	COMPLAINT against Huawei Device Co. Ltd., Huawei Device (Hong Kong) Co., Ltd., and Huawei Device USA, Inc. (Filing fee $ 400 receipt number 0540-7010222.), filed by Super Interconnect Technologies LLC. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A - U.S. Patent No. 7,627,044, # 3 Exhibit B - U.S. Patent No. 6,463,092, # 4 Exhibit C - U.S. Patent No. 7,158,593)(Hill, Jack) (Entered: 11/02/2018)
11/02/2018	2	Notice of Filing of Patent/Trademark Form (AO 120). AO 120 mailed to the Director of the U.S. Patent and Trademark Office. (Hill, Jack) (Entered: 11/02/2018)

11/02/2018	3	DEMAND for Trial by Jury by Super Interconnect Technologies LLC. (Hill, Jack) (Entered: 11/02/2018)
11/02/2018	4	CORPORATE DISCLOSURE STATEMENT filed by Super Interconnect Technologies LLC identifying Corporate Parent Acacia Research Corporation, Corporate Parent Acacia Research Group LLC for Super Interconnect Technologies LLC. (Hill, Jack) (Entered: 11/02/2018)
11/05/2018		Case Assigned to District Judge Rodney Gilstrap. (nkl,) (Entered: 11/05/2018)
11/05/2018		In accordance with the provisions of 28 USC Section 636(c), you are hereby notified that a U.S. Magistrate Judge of this district court is available to conduct any or all proceedings in this case including a jury or non-jury trial and to order the entry of a final judgment. The form Consent to Proceed Before Magistrate Judge is available on our website. All signed consent forms, excluding pro se parties, should be filed electronically using the event *Notice Regarding Consent to Proceed Before Magistrate Judge*. (nkl,) (Entered: 11/05/2018)
11/05/2018	5	NOTICE of Attorney Appearance by Jeffrey Ray Bragalone on behalf of Super Interconnect Technologies LLC (Bragalone, Jeffrey) (Entered: 11/05/2018)
11/05/2018	6	NOTICE of Attorney Appearance by Thomas William Kennedy, Jr on behalf of Super Interconnect Technologies LLC (Kennedy, Thomas) (Entered: 11/05/2018)
11/05/2018	7	NOTICE of Attorney Appearance by Brian Paul Herrmann on behalf of Super Interconnect Technologies LLC (Herrmann, Brian) (Entered: 11/05/2018)
11/14/2018	8	NOTICE of Voluntary Dismissal by Super Interconnect Technologies LLC (Attachments: # 1 Text of Proposed Order)(Hill, Jack) (Entered: 11/14/2018)
11/14/2018	9	AMENDED COMPLAINT against Huawei Device USA, Inc., Huawei Device (Shenzhen) Co., Ltd., Huawei Device (Dongguan) Co., Ltd., filed by Super Interconnect Technologies LLC. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Hill, Jack) (Entered: 11/14/2018)
11/16/2018	10	ORDER re 8 Notice of Voluntary Dismissal filed by Super Interconnect Technologies LLC, Huawei Device (Hong Kong) Co., Ltd. terminated. Signed by District Judge Rodney Gilstrap on 11/15/2018. (nkl,) (Entered: 11/16/2018)
11/27/2018	11	WAIVER OF SERVICE Returned Executed by Super Interconnect Technologies LLC. Huawei Device USA, Inc. waiver sent on 11/6/2018, answer due 1/7/2019. (Bragalone, Jeffrey) (Entered: 11/27/2018)
11/27/2018	12	WAIVER OF SERVICE Returned Executed by Super Interconnect Technologies LLC. Huawei Device (Shenzhen) Co., Ltd. waiver sent on 11/6/2018, answer due 2/4/2019. (Bragalone, Jeffrey) (Entered: 11/27/2018)
11/27/2018	13	WAIVER OF SERVICE Returned Executed by Super Interconnect Technologies LLC. Huawei Device (Dongguan) Co., Ltd. waiver sent on 11/6/2018, answer due 2/4/2019. (Bragalone, Jeffrey) (Entered: 11/27/2018)
11/29/2018	14	Unopposed MOTION for Extension of Time to File Answer *until February 4, 2019* by Huawei Device USA, Inc.. (Attachments: # 1 Text of Proposed Order)(Geiszler, Steven) (Entered: 11/29/2018)
12/04/2018	15	ORDER granting 14 Motion for Extension of Time to Answer re 9 Amended Complaint. Signed by District Judge Rodney Gilstrap on 12/3/2018. (nkl,) (Entered: 12/04/2018)
02/04/2019	16	MOTION for Extension of Time to File Answer re 9 Amended Complaint, by Huawei

		Device (Dongguan) Co., Ltd., Huawei Device (Shenzhen) Co., Ltd., Huawei Device USA, Inc.. (Attachments: # 1 Text of Proposed Order)(Baldauf, Kent) (Entered: 02/04/2019)
02/07/2019	17	ORDER granting 16 Motion for Extension of Time to Answer. Signed by District Judge Rodney Gilstrap on 02/07/2019. (klc,) (Entered: 02/07/2019)
02/11/2019	18	ANSWER to 9 Amended Complaint, by Huawei Device (Dongguan) Co., Ltd., Huawei Device (Shenzhen) Co., Ltd., Huawei Device USA, Inc..(Baldauf, Kent) (Entered: 02/11/2019)
02/11/2019	19	NOTICE of Readiness for Scheduling Conference by Super Interconnect Technologies LLC (Hill, Jack) (Entered: 02/11/2019)
02/14/2019	20	NOTICE of Attorney Appearance by James Mark Mann on behalf of Huawei Device (Dongguan) Co., Ltd., Huawei Device (Shenzhen) Co., Ltd., Huawei Device USA, Inc. (Mann, James) (Entered: 02/14/2019)
02/18/2019	21	NOTICE of Attorney Appearance by Gregory Blake Thompson on behalf of Huawei Device (Dongguan) Co., Ltd., Huawei Device (Shenzhen) Co., Ltd., Huawei Device USA, Inc. (Thompson, Gregory) (Entered: 02/18/2019)
02/21/2019	22	CONSOLIDATION ORDER - The above-captioned cases are hereby ORDERED to be CONSOLIDATED for all pretrial issues with the LEAD CASE, Cause No. 2:18-cv-00462. All parties are instructed to file any future filings in the LEAD CASE. Individual cases remain active for trial.. Signed by District Judge Rodney Gilstrap on 2/21/2019. (nkl,) (Entered: 02/21/2019)
02/26/2019	23	ORDER - Scheduling Conference set for 3/18/2019 02:30 PM before District Judge Rodney Gilstrap. Signed by District Judge Rodney Gilstrap on 2/25/2019. (nkl,) (Entered: 02/26/2019)
02/27/2019	24	NOTICE of Attorney Appearance by David S Almeling on behalf of Google LLC (Almeling, David) (Entered: 02/27/2019)
02/27/2019	25	NOTICE of Attorney Appearance by Luann Loraine Simmons on behalf of Google LLC (Simmons, Luann) (Entered: 02/27/2019)
02/27/2019	26	NOTICE of Attorney Appearance by Mark Liang on behalf of Google LLC (Liang, Mark) (Entered: 02/27/2019)
02/27/2019	27	NOTICE of Attorney Appearance by Boris Mindzak on behalf of Google LLC (Mindzak, Boris) (Entered: 02/27/2019)
02/27/2019	28	NOTICE of Attorney Appearance by Eric Y. Su on behalf of Google LLC (Su, Eric) (Entered: 02/27/2019)
03/04/2019	29	NOTICE of Discovery Disclosure by Super Interconnect Technologies LLC *of P.R. 3-1 and 3-2 Disclosures* (Bragalone, Jeffrey) (Entered: 03/04/2019)
03/15/2019	30	NOTICE of Attorney Appearance by Bryan P Clark on behalf of Huawei Device (Dongguan) Co., Ltd., Huawei Device (Shenzhen) Co., Ltd., Huawei Device USA, Inc. (Clark, Bryan) (Entered: 03/15/2019)
03/18/2019	31	NOTICE of Attorney Appearance by Andrea Leigh Fair on behalf of Super Interconnect Technologies LLC (Fair, Andrea) (Entered: 03/18/2019)
03/18/2019		Minute Entry for proceedings held before Judge Rodney Gilstrap: Scheduling Conference held on 3/18/2019. Counsel for the parties appeared and were asked if they consented to a trial before the United States Magistrate Judge. The Court then gave Markman and Jury Selection dates; deadlines for submitting Mediator names (3 days); and deadlines for

		submitting Agreed Scheduling and Discovery Orders (14 days). (Court Reporter Shelly Holmes, CSR-TCRR.)(jml) (Entered: 03/19/2019)
03/21/2019	32	Joint MOTION for Extension of Time to File *Notice of Mediator* by Super Interconnect Technologies LLC. (Attachments: # 1 Text of Proposed Order Proposed Order)(Bragalone, Jeffrey) (Entered: 03/21/2019)
03/26/2019	33	ORDER denying 32 Motion for Extension of Time to File Notice of Mediator. It is ORDERED that Francis E. McGovern is hereby APPOINTED AS MEDIATOR in the above referenced case and its member cases. Signed by District Judge Rodney Gilstrap on 3/25/2019. (nkl,) (Entered: 03/26/2019)
04/01/2019	34	Joint MOTION *(Agreed) for Entry of Docket Control Order* by Super Interconnect Technologies LLC. (Attachments: # 1 Exhibit Ex A)(Bragalone, Jeffrey) (Entered: 04/01/2019)
04/01/2019	35	Joint MOTION *(Agreed) For Entry of Discovery Order* by Super Interconnect Technologies LLC. (Attachments: # 1 Exhibit Ex A)(Bragalone, Jeffrey) (Entered: 04/01/2019)
04/03/2019	36	DOCKET CONTROL ORDER re 34 Joint MOTION *(Agreed) for Entry of Docket Control Order* filed by Super Interconnect Technologies LLC.,Pretrial Conference set for 4/27/2020 09:00 AM before District Judge Rodney Gilstrap., Amended Pleadings due by 8/28/2019., Jury Selection set for 6/1/2020 09:00AM before District Judge Rodney Gilstrap., Mediation Completion due by 12/11/2019., Markman Hearing set for 11/13/2019 01:30 PM before District Judge Rodney Gilstrap., Motions in Limine due by 4/6/2020., Proposed Pretrial Order due by 4/20/2020. Signed by District Judge Rodney Gilstrap on 4/2/2019. (nkl,) (Entered: 04/03/2019)
04/03/2019	37	JOINT DISCOVERY ORDER granting 35 Motion (Agreed) For Entry of Discovery Order. Signed by District Judge Rodney Gilstrap on 4/2/2019. (nkl,) (Entered: 04/03/2019)
04/05/2019	38	Joint MOTION for Protective Order by Google LLC, Huawei Device (Dongguan) Co., Ltd., Huawei Device (Shenzhen) Co., Ltd., Huawei Device USA, Inc.. (Attachments: # 1 Exhibit A - Proposed Stipulated Protective Order)(Mann, James) (Entered: 04/05/2019)
04/09/2019	39	STIPULATED PROTECTIVE ORDER. Signed by District Judge Rodney Gilstrap on 4/8/2019. (nkl,) (Entered: 04/09/2019)
04/16/2019	40	NOTICE of Attorney Appearance by Jerry Tice, II on behalf of Super Interconnect Technologies LLC (Tice, Jerry) (Entered: 04/16/2019)
04/24/2019	41	ORDER- Markman Hearing set for 11/18/2019 at 01:30 before Chief Judge Rodney Gilstrap and Chief Judge Barbara Lynn.. Signed by District Judge Rodney Gilstrap on 04/24/2019. (klc,) (Entered: 04/24/2019)
05/14/2019	42	NOTICE by Google LLC, Huawei Device (Dongguan) Co., Ltd., Huawei Device (Shenzhen) Co., Ltd., Huawei Device USA, Inc. *Notice of Compliance re: P.R. 3-3 and P.R. 3-4* (Mann, James) (Entered: 05/14/2019)
05/31/2019	43	NOTICE by Google LLC, Super Interconnect Technologies LLC re 33 Order on Motion for Extension of Time to File, 41 Order, Set Deadlines/Hearings *The Parties' Joint Notice on Markman Briefing* (Bragalone, Jeffrey) (Entered: 05/31/2019)
07/15/2019	44	Unopposed MOTION to Amend/Correct *Protective Order* by Google LLC, Huawei Device (Hong Kong) Co., Ltd., Huawei Device Co. Ltd., Huawei Device USA, Inc.. (Attachments: # 1 First Amended Protective Order)(Mann, James) (Entered: 07/15/2019)

07/17/2019	45	FIRST AMENDED PROTECTIVE ORDER granting 44 Motion to Amend/Correct. Signed by District Judge Rodney Gilstrap on 7/17/2019. (nkl,) (Entered: 07/17/2019)
07/24/2019	46	ORDER resetting Markman Hearing set for 11/22/2019 01:30 PM before before Chief Judge Lynn and Chief Judge Gilstrap. Signed by District Judge Rodney Gilstrap on 7/23/2019. (nkl,) (Entered: 07/24/2019)
08/14/2019	47	Joint Claim Construction and Prehearing Statement by Super Interconnect Technologies LLC. (Attachments: # 1 Errata A - Parties' Proposed Claim Constructions)(Kennedy, Thomas) (Entered: 08/14/2019)
08/20/2019	48	Unopposed MOTION to Withdraw as Attorney *for Brian P. Herrmann* by Super Interconnect Technologies LLC. (Attachments: # 1 Text of Proposed Order Proposed Order)(Kennedy, Thomas) (Entered: 08/20/2019)
08/21/2019	49	ANSWER to Complaint *Google LLC's Answer to Super Interconnect TechnologiesLLC's Complaint* by Google LLC.(Liang, Mark) (Entered: 08/21/2019)
08/22/2019	50	ORDER granting 48 Motion to Withdraw as Attorney. Attorney Brian Paul Herrmann terminated. Signed by District Judge Rodney Gilstrap on 8/21/2019. (nkl,) (Entered: 08/22/2019)
08/23/2019	51	ORDER resetting Markman Hearing set for 12/18/2019 01:30 PM before District Judge Rodney Gilstrap. Signed by District Judge Rodney Gilstrap on 8/22/2019. (nkl,) (Entered: 08/23/2019)
08/27/2019	52	ORDER - The Court issues this Order sua sponte re 51 Order. Signed by District Judge Rodney Gilstrap on 8/27/2019. (nkl,) (Entered: 08/27/2019)
08/28/2019	53	AMENDED COMPLAINT *FOR PATENT INFRINGEMENT AGAINST GOOGLE* against Google LLC, filed by Super Interconnect Technologies LLC.(Kennedy, Thomas) (Entered: 08/28/2019)
09/04/2019	54	ANSWER to 53 Amended Complaint by Google LLC. (Attachments: # 1 Exhibit A) (Mann, James) (Entered: 09/04/2019)
09/10/2019	55	Joint MOTION to Amend/Correct *(Agreed) Docket Control Order* by Google LLC, Huawei Device (Dongguan) Co., Ltd., Huawei Device (Shenzhen) Co., Ltd., Huawei Device USA, Inc.. (Attachments: # 1 Text of Proposed Order First Amended Docket Control Order)(Mann, James) (Entered: 09/10/2019)
09/11/2019	56	FIRST AMENDED DOCKET CONTROL ORDER granting 55 Joint MOTION to Amend/Correct *(Agreed) Docket Control Order. Pretrial Conference set for 5/1/2020 09:00 AM before District Judge Rodney Gilstrap., Jury Selection set for 6/1/2020 09:00AM before District Judge Rodney Gilstrap., Mediation Completion due by 2/18/2020., Markman Hearing set for 12/18/2019 01:30 PM before District Judge Rodney Gilstrap., Motions due by 4/20/2020., Proposed Pretrial Order due by 4/27/2020. Signed by District Judge Rodney Gilstrap on 9/11/2019. (ch,) (Entered: 09/12/2019)*

CONSOL,JRG2,JURY,PATENT/TRADEMARK

U.S. District Court
Eastern District of TEXAS [LIVE] (Marshall)
CIVIL DOCKET FOR CASE #: 2:18-cv-00463-JRG

Super Interconnect Technologies LLC v. Google LLC
Assigned to: District Judge Rodney Gilstrap
Lead case: 2:18-cv-00462-JRG
Member case: (View Member Case)
Related Case: 2:18-cv-00462-JRG
Cause: 35:271 Patent Infringement

Date Filed: 11/02/2018
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff

Super Interconnect Technologies LLC represented by **Jeffrey Ray Bragalone**
Bragalone Conroy PC
2200 Ross Avenue
Suite 4500W
Dallas, TX 75201
(214) 785-6671
Fax: 214-785-6680
Email: jbragalone@bcpc-law.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brian Paul Herrmann
Nelson Bumgardner Albritton PC - Fort Worth
3131 West 7th Street, Suite 300
Ft Worth, TX 76107
817-377-9111
Email: brian@nbafirm.com
TERMINATED: 08/22/2019

Jerry Tice , II
Bragalone Conroy PC
2200 Ross Avenue
Suite 4500W
Dallas, TX 75201
214-785-6693
Fax: 214-785-6680
Email: jtice@bcpc-law.com
ATTORNEY TO BE NOTICED

Thomas William Kennedy , Jr
Bragalone Conroy PC
2200 Ross Avenue
Suite 4500W
Dallas, TX 75201
214-785-6670
Fax: 214-785-6680
Email: bkennedy@bcpc-law.com

ATTORNEY TO BE NOTICED

Jack Wesley Hill
Ward, Smith & Hill, PLLC
1507 Bill Owens Parkway
Longview, TX 75604
903-757-6400
Fax: 903-757-2323
Email: wh@wsfirm.com
ATTORNEY TO BE NOTICED

V.

Defendant

Google LLC represented by **Darin W Snyder**
O'Melveny & Myers - San Francisco
Two Embarcadero Center
28th Floor
San Francisco, CA 94111
415-984-8700
Fax: 415-984-8701
Email: dsnyder@omm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David S Almeling
O'Melveny & Myers LLP - San Francisco
Two Embarcadero Center
28th Floor
San Francisco, CA 94111
415-984-8700
Fax: 415-984-8701
Email: dalmeling@omm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Luann Loraine Simmons
O'Melveny & Myers - San Francisco
Two Embarcadero Center
28th Floor
San Francisco, CA 94111
415-984-8700
Fax: 415-984-8701
Email: lsimmons@omm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Boris Mindzak
O'Melveny & Myers LLP - LA
400 South Hope Street
Los Angeles, Ca 90071
213-430-6000
Fax: 213-430-6407

Email: bmindzak@omm.com
ATTORNEY TO BE NOTICED

Eric Y. Su
O'Melveny & Myers LLP - LA
400 South Hope Street
Los Angeles, Ca 90071
213-430-6000
Fax: 213-430-6407
Email: esu@omm.com
ATTORNEY TO BE NOTICED

Gregory Blake Thompson
Mann Tindel & Thompson
300 W. Main
Henderson, TX 75652
903/657-8540
Fax: 903-657-6003
Email: blake@themannfirm.com
ATTORNEY TO BE NOTICED

James Mark Mann
Mann Tindel & Thompson
300 W. Main
Henderson, TX 75652
903/657-8540
Fax: 9036576003
Email: mark@themannfirm.com
ATTORNEY TO BE NOTICED

Mark Liang
O'Melveny & Myers - San Francisco
Two Embarcadero Center
28th Floor
San Francisco, CA 94111
415-984-8700
Fax: 415-984-8701
Email: mliang@omm.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/02/2018	1	COMPLAINT against Google LLC (Filing fee $ 400 receipt number 0540-7010246.), filed by Super Interconnect Technologies LLC. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A - U.S. Patent No. 7,627,044, # 3 Exhibit B - U.S. Patent No. 6,463,092, # 4 Exhibit C - U.S. Patent No. 7,158,593)(Hill, Jack) (Entered: 11/02/2018)
11/02/2018	2	Notice of Filing of Patent/Trademark Form (AO 120). AO 120 mailed to the Director of the U.S. Patent and Trademark Office. (Hill, Jack) (Entered: 11/02/2018)
11/02/2018	3	DEMAND for Trial by Jury by Super Interconnect Technologies LLC. (Hill, Jack) (Entered: 11/02/2018)
11/02/2018	4	CORPORATE DISCLOSURE STATEMENT filed by Super Interconnect Technologies

		LLC identifying Corporate Parent Acacia Research Corporation, Corporate Parent Acacia Research Group LLC for Super Interconnect Technologies LLC. (Hill, Jack) (Entered: 11/02/2018)
11/05/2018		Case assigned to District Judge Rodney Gilstrap. (ch,) (Entered: 11/05/2018)
11/05/2018		In accordance with the provisions of 28 USC Section 636(c), you are hereby notified that a U.S. Magistrate Judge of this district court is available to conduct any or all proceedings in this case including a jury or non-jury trial and to order the entry of a final judgment. The form Consent to Proceed Before Magistrate Judge is available on our website. All signed consent forms, excluding pro se parties, should be filed electronically using the event *Notice Regarding Consent to Proceed Before Magistrate Judge*. (ch,) (Entered: 11/05/2018)
11/05/2018	5	NOTICE of Attorney Appearance by Jeffrey Ray Bragalone on behalf of Super Interconnect Technologies LLC (Bragalone, Jeffrey) (Entered: 11/05/2018)
11/05/2018	6	NOTICE of Attorney Appearance by Thomas William Kennedy, Jr on behalf of Super Interconnect Technologies LLC (Kennedy, Thomas) (Entered: 11/05/2018)
11/05/2018	7	NOTICE of Attorney Appearance by Brian Paul Herrmann on behalf of Super Interconnect Technologies LLC (Herrmann, Brian) (Entered: 11/05/2018)
11/29/2018	8	NOTICE of Attorney Appearance by James Mark Mann on behalf of Google LLC (Mann, James) (Entered: 11/29/2018)
11/29/2018	9	WAIVER OF SERVICE Returned Executed by Google LLC. Google LLC waiver sent on 11/6/2018, answer due 1/7/2019. (Mann, James) (Entered: 11/29/2018)
12/04/2018	10	NOTICE of Attorney Appearance by Gregory Blake Thompson on behalf of Google LLC (Thompson, Gregory) (Entered: 12/04/2018)
12/19/2018	11	Defendant's Unopposed First Application for Extension of Time to Answer Complaint re Google LLC.(Mann, James) (Entered: 12/19/2018)
12/20/2018		Defendant's Unopposed FIRST Application for Extension of Time to Answer Complaint is granted pursuant to Local Rule CV-12 for Google LLC to 2/4/2019. 30 Days Granted for Deadline Extension.(ch,) (Entered: 12/20/2018)
02/04/2019	12	Unopposed MOTION to Seal *Motion to Dismiss Under Rule 12(B)(3) and 28 U.S.C. § 1406* by Google LLC. (Attachments: # 1 Text of Proposed Order)(Mann, James) (Entered: 02/04/2019)
02/04/2019	13	SEALED PATENT MOTION *to Dismiss for Improper Venue Under Rule 12(B)(3) and 28 U.S.C. § 1406* by Google LLC. (Attachments: # 1 Declaration of Mark Liang, # 2 Exhibit A, # 3 Exhibit B, # 4 Declaration of of Jamie Durbin, # 5 Declaration of Sallie Lim, # 6 Declaration of Keith McCallion, # 7 Text of Proposed Order)(Mann, James) (Entered: 02/04/2019)
02/04/2019	14	CORPORATE DISCLOSURE STATEMENT filed by Google LLC identifying Corporate Parent Alphabet Inc. for Google LLC. (Mann, James) (Entered: 02/04/2019)
02/05/2019	15	NOTICE of Attorney Appearance - Pro Hac Vice by Luann Loraine Simmons on behalf of Google LLC. Filing fee $ 100, receipt number 0540-7126161. (Simmons, Luann) (Entered: 02/05/2019)
02/05/2019	16	NOTICE of Attorney Appearance - Pro Hac Vice by Darin W Snyder on behalf of Google LLC. Filing fee $ 100, receipt number 0540-7126173. (Snyder, Darin) (Entered: 02/05/2019)

02/05/2019	17	NOTICE of Attorney Appearance - Pro Hac Vice by David S Almeling on behalf of Google LLC. Filing fee $ 100, receipt number 0540-7126180. (Almeling, David) (Entered: 02/05/2019)
02/05/2019	18	NOTICE of Attorney Appearance - Pro Hac Vice by Mark Liang on behalf of Google LLC. Filing fee $ 100, receipt number 0540-7126186. (Liang, Mark) (Entered: 02/05/2019)
02/05/2019	19	NOTICE of Attorney Appearance - Pro Hac Vice by Boris Mindzak on behalf of Google LLC. Filing fee $ 100, receipt number 0540-7126190. (Mindzak, Boris) (Entered: 02/05/2019)
02/05/2019	20	NOTICE of Attorney Appearance - Pro Hac Vice by Eric Y. Su on behalf of Google LLC. Filing fee $ 100, receipt number 0540-7126196. (Su, Eric) (Entered: 02/05/2019)
02/06/2019	21	REDACTION to 13 SEALED PATENT MOTION *to Dismiss for Improper Venue Under Rule 12(B)(3) and 28 U.S.C. § 1406* by Google LLC. (Attachments: # 1 Declaration of Mark Liang, # 2 Exhibit A, # 3 Exhibit B, # 4 Declaration of Jamie Durbin, # 5 Declaration of Sallie Lim, # 6 Declaration of Keith McCallion, # 7 Text of Proposed Order)(Mann, James) (Entered: 02/06/2019)
02/11/2019	22	NOTICE of Readiness for Scheduling Conference by Super Interconnect Technologies LLC (Hill, Jack) (Entered: 02/11/2019)
02/19/2019	23	RESPONSE in Opposition re 13 SEALED PATENT MOTION *to Dismiss for Improper Venue Under Rule 12(B)(3) and 28 U.S.C. § 1406 filed by Super Interconnect Technologies LLC*. (Attachments: # 1 Text of Proposed Order)(Bragalone, Jeffrey) (Entered: 02/19/2019)
02/21/2019	24	CONSOLIDATION ORDER - The above-captioned cases are hereby ORDERED to be CONSOLIDATED for all pretrial issues with the LEAD CASE, Cause No. 2:18-cv-00462. All parties are instructed to file any future filings in the LEAD CASE. Individual cases remain active for trial., Cases associated.. Signed by District Judge Rodney Gilstrap on 2/21/2019. (nkl,) (Entered: 02/21/2019)
02/26/2019	25	REPLY to Response to Motion re 13 SEALED PATENT MOTION *to Dismiss for Improper Venue Under Rule 12(B)(3) and 28 U.S.C. § 1406 filed by Google LLC*. (Mann, James) (Entered: 02/26/2019)
03/05/2019	26	SUR-REPLY to Reply to Response to Motion re 13 SEALED PATENT MOTION *to Dismiss for Improper Venue Under Rule 12(B)(3) and 28 U.S.C. § 1406 filed by Super Interconnect Technologies LLC*. (Bragalone, Jeffrey) (Entered: 03/05/2019)
04/01/2019	27	**FILED IN ERROR PER ATTORNEY** Joint MOTION *(Agreed) for Entry of Docket Control Order* by Super Interconnect Technologies LLC. (Attachments: # 1 Exhibit)(Bragalone, Jeffrey) Modified on 4/1/2019 (nkl,). (Entered: 04/01/2019)
04/01/2019	28	**FILED IN ERROR PER ATTORNEY** Joint MOTION *(Agreed) For Entry of Discovery Order* by Super Interconnect Technologies LLC. (Attachments: # 1 Exhibit Ex A)(Bragalone, Jeffrey) Modified on 4/1/2019 (nkl,). (Entered: 04/01/2019)
04/01/2019		*****FILED IN ERROR PER ATTORNEY. Document # 27 and 28, Joint MOTION (Agreed) for Entry of Docket Control Order and Joint MOTION (Agreed) For Entry of Discovery Order. PLEASE IGNORE.*****

		(nkl,) (Entered: 04/01/2019)
08/07/2019	29	MEMORANDUM OPINION AND ORDER - denying 13 Motion to Dismiss for Improper Venue. Signed by District Judge Rodney Gilstrap on 8/7/2019. (ch,) (Entered: 08/07/2019)
08/19/2019	30	ORDER granting 12 Unopposed MOTION to Seal Motion to Dismiss Under Rule 12(B)(3) and 28 U.S.C. § 1406. Signed by District Judge Rodney Gilstrap on 8/19/2019. (ch,) (Entered: 08/19/2019)
08/22/2019	31	ORDER - Attorney Brian Paul Herrmann terminated.. Signed by District Judge Rodney Gilstrap on 8/21/2019. (nkl,) (Entered: 08/22/2019)

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

SUPER INTERCONNECT TECHNOLOGIES LLC,	§	
	§	
	§	**JURY TRIAL DEMANDED**
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 2:18cv463**
	§	
GOOGLE LLC,	§	
	§	
Defendant.	§	
	§	

PLAINTIFF'S ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Super Interconnect Technologies LLC ("Super Interconnect") files this Original Complaint against Google LLC ("Google") for infringement of U.S. Patent No. 7,627,044 ("the '044 patent"), U.S. Patent No. 6,463,092 ("the '092 patent"), and U.S. Patent No. 7,158,593 ("the '593 patent").

THE PARTIES

1. Super Interconnect Technologies LLC is a Texas limited liability company, located at 1701 Directors Blvd., Suite 300, Austin, Texas 78744.

2. On information and belief, Google LLC is a wholly-owned subsidiary of Alphabet, Inc. On information and belief, Google LLC is a limited liability company formed under the laws of the State of Delaware that has its principal place of business located at located at 1600 Amphitheatre Parkway, Mountain View, CA 94043. Google may be served with process through its registered agent, The Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808. Google does business in the State of Texas and in this District.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this judicial district under 28 U.S.C. § 1400(b) because Google has committed acts of infringement in the District and has a regular and established place of business in this District. On information and belief, multiple ISPs host Google Global Cache servers in this District, which cache Google's products and deliver them to residents of this District. These Google Global Cache servers cache content that includes video advertising, apps, and digital content from the Google Play store, among other things. Google generates revenue by providing these services to residents of this District. Both the server itself and the place of the Google Global Cache server, independently and together, constitute a "physical place" and a "regular and established place of business" of Google. The Federal Circuit very recently denied mandamus to Google where it challenged this Court's ruling that venue was proper over it under 28 U.S.C. § 1400(b). *See In re Google LLC*, No. 2018-152, 2018 WL 5536478 (Fed. Cir. Oct. 29, 2018).

6. Google is subject to personal jurisdiction pursuant to due process due at least to its substantial business in this State, including: (A) at least part of its infringing activities alleged herein; and (B) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods sold and services provided to Texas residents. Google has conducted and regularly conducts business within the United States and this District. Google has purposefully availed itself of the privileges of conducting business in the United States, and more

specifically in Texas and this District. Google has sought protection and benefit from the laws of the State of Texas by placing infringing products into the stream of commerce through an established distribution channel with the awareness and/or intent that they will be purchased by consumers in this District.

7. On information and belief, Google has significant ties to, and presence in, this District, making venue in this judicial district both proper and convenient for this action.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 7,627,044)

8. Super Interconnect incorporates paragraphs 1 through 7 herein by reference.

9. Super Interconnect is the assignee of the ’044 patent, entitled “Clock-Edge Modulated Serial Link with DC-Balance Control,” with ownership of all substantial rights in the ’044 patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringement. A true and correct copy of the ’044 patent is attached as Exhibit A.

10. The ’044 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code. The ’044 patent issued from U.S. Patent Application No. 11/264,303.

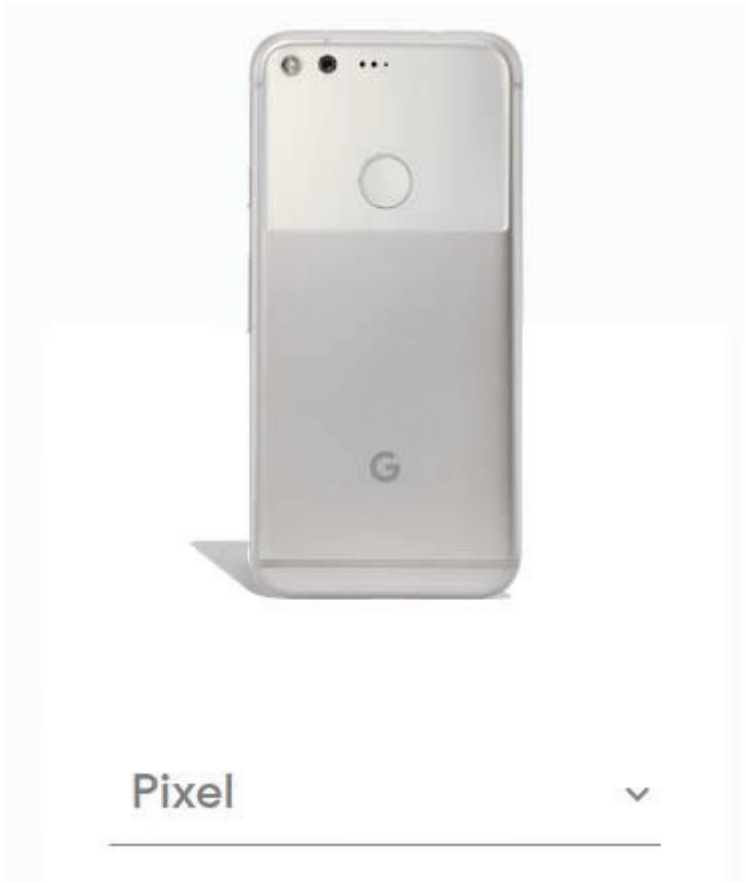
11. To the extent any marking or notice was required by 35 U.S.C. § 287, Super Interconnect and all predecessors-in-interest to the ’044 patent have complied with the requirements of that statute by providing actual or constructive notice to Google of its alleged infringement.

12. Google has and continues to directly and/or indirectly infringe (by inducing infringement and/or contributing to infringement) one or more claims of the ’044 patent in this judicial district and elsewhere in the United States, including at least claims 1, 2, 8, 9, 10, 11, 12, 13, 14, 15 and 19, by, among other things, making, having made, using, offering for sale, selling,

and/or importing electronic devices with Universal Flash Storage (UFS) that incorporate the fundamental technologies covered by the ’044 patent. These products are referred to as the “’044 Accused Products.” Examples of the ’044 Accused Products include, but are not limited to, the Google Pixel and Google Pixel XL smartphones.

13. For example, the Google Pixel directly infringes claim 1 of the ’044 patent, as shown in the below paragraphs.

14. An example of the Google Pixel is shown in the image below.



https://store.google.com/us/product/pixel_compare

15. Google incorporates UFS 2.0 storage in its Pixel family of products, as shown in the image below.

> What makes the Pixel phones interesting, to me, is the relative lack of technical compromise. They have a fast processor. A fast camera (with improved and quicker HDR+). Fast storage (UFS 2.0). A fast fingerprint scanner. Fast software (they really are blazing-quick). Fast charging. Fast updates (seamless updates). A fast GPU (for VR). There is little about these phones you can point to and say Google cheaped out on. And isn't that what so many of us have been demanding for years? A Google phone that could be positioned against the iPhone as legitimate competition (even if the iPhone does have its advantages - and disadvantages).

http://www.androidpolice.com/2016/10/04/google-pixel-and-pixel-xl-hands-on-google-takes-on-the-iphone-by-becoming-the-iphone/

16. The images below show that the Google Pixel's UFS storage uses the MIPI M-PHY protocol for physical layer communication between the UFS host and the UFS device.

UFS Implementation Detail

In the diagram below, the implementation of a UFS host or device is simplified to the M-PHY, digital (UniPro) core and the interface to either the Soc or the NAND Flash memory. We will examine each of these in detail.

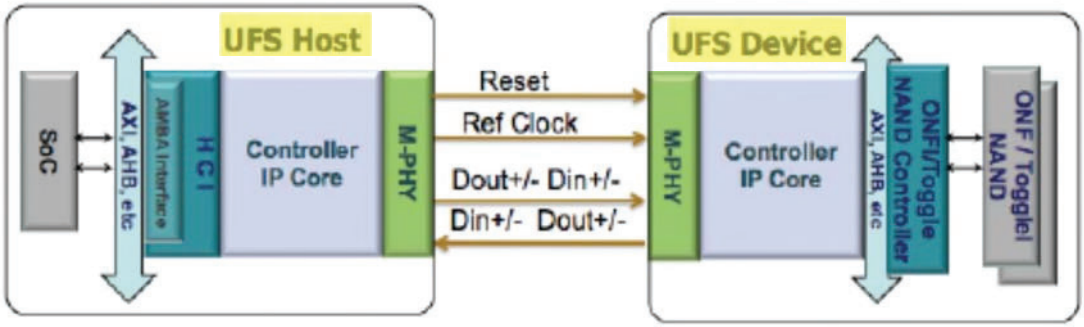
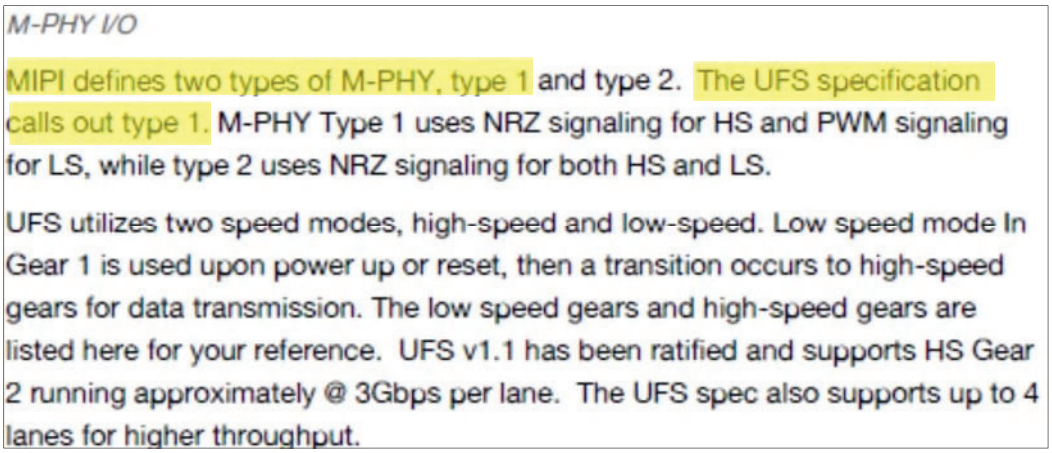


Figure 2. UFS to UFS Interface

Arasan Chip Systems Inc. White Paper, "Universal Flash Storage: Mobilize Your Data" at 6 (Oct. 2012).



M-PHY I/O

MIPI defines two types of M-PHY, type 1 and type 2. The UFS specification calls out type 1. M-PHY Type 1 uses NRZ signaling for HS and PWM signaling for LS, while type 2 uses NRZ signaling for both HS and LS.

UFS utilizes two speed modes, high-speed and low-speed. Low speed mode In Gear 1 is used upon power up or reset, then a transition occurs to high-speed gears for data transmission. The low speed gears and high-speed gears are listed here for your reference. UFS v1.1 has been ratified and supports HS Gear 2 running approximately @ 3Gbps per lane. The UFS spec also supports up to 4 lanes for higher throughput.

Id.

17. UFS hosts and devices, which are included in the ’044 Accused Products, contain signal transmitters. These signal transmitters drive a DC-balanced differential signal for a communications channel. This signal is comprised of a pair of data signals: a positive (true) data signal and a negative (complement) data signal. These transmitters multiplex a pulse-width modulated clock signal, a data signal, and control signals to apply them to the communications channel.

18. The ’044 Accused Products thus include each and every limitation of claim 1 of the ’044 patent; accordingly, they literally infringe this claim. Google directly infringes the ’044 patent by making, using, offering to sell, selling, and/or importing the ’044 Accused Products. Google is thereby liable for direct infringement.

19. During discovery and development of its infringement contentions, Plaintiff may provide additional theories under which Google infringes the ’044 patent besides the example provided above, including for the same product and using the same components identified above, and nothing in the example above is meant to limit the infringement allegations of Plaintiff or limit the interpretations of the claims or their terms.

20. At a minimum, Google has known that the '044 Accused Products infringe the '044 patent at least as early as the service date of this Original Complaint.

21. Upon information and belief, since at least the above-mentioned date when Google was on notice of its infringement, Google has actively induced, under U.S.C. § 271(b), third-party manufacturers, distributors, importers and/or consumers that purchase or sell the '044 Accused Products that include all of the limitations of one or more claims of the '044 patent to directly infringe one or more claims of the '044 patent by making, having made, using, offering for sale, selling, and/or importing the '044 Accused Products. Since at least the notice provided on the above-mentioned date, Google does so with knowledge, or with willful blindness of the fact, that the induced acts constitute infringement of the '044 patent. Upon information and belief, Google intends to cause, and has taken affirmative steps to induce, infringement by these third-party manufacturers, distributors, importers, and/or consumers by, inter alia, creating advertisements that promote the infringing use of the '044 Accused Products, creating established distribution channels for the '044 Accused Products into and within the United States, manufacturing the '044 Accused Products in conformity with U.S. laws and regulations, distributing or making available instructions or manuals for these products to purchasers and prospective buyers, and/or providing technical support, replacement parts, or services for these products to these purchasers in the United States. For example, Google provides technical support for the Pixel on its own website at the following web address: https://support.google.com/pixelphone#topic=9153446.

22. Super Interconnect has been damaged as a result of Google's infringing conduct described in this Count. Google is, thus, liable to Super Interconnect in an amount that adequately compensates Super Interconnect for Google's infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 6,463,092)

23. Super Interconnect incorporates paragraphs 1 through 22 herein by reference.

24. Super Interconnect is the assignee of the '092 patent, entitled "System and Method for Sending and Receiving Data Signals Over A Clock Signal Line," with ownership of all substantial rights in the '092 patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringement. A true and correct copy of the '092 patent is attached as Exhibit B.

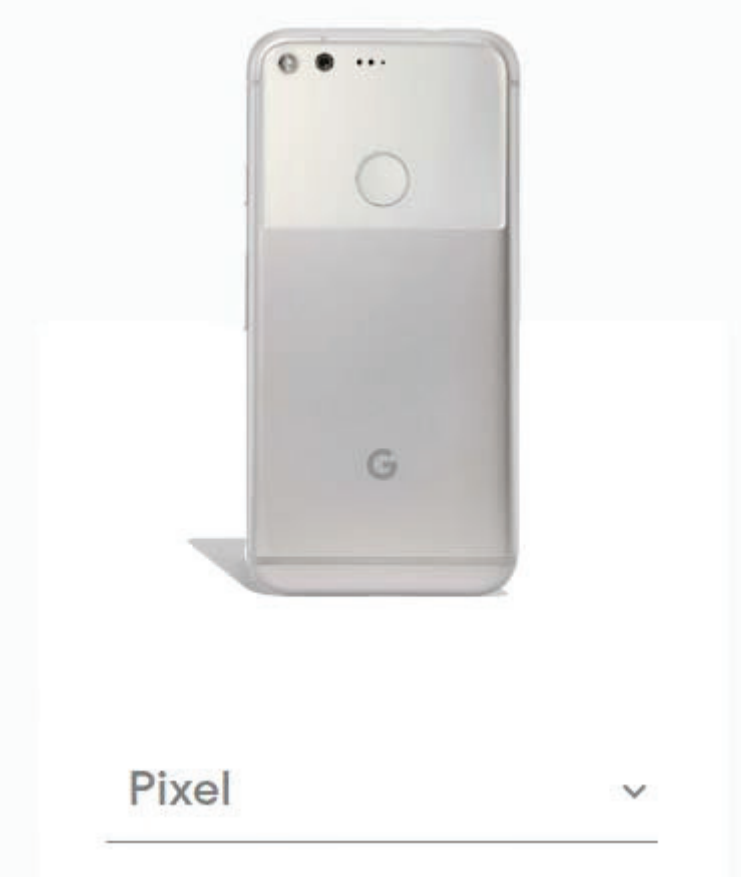
25. The '092 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code. The '092 patent issued from U.S. Patent Application No. 09/393,235.

26. To the extent any marking or notice was required by 35 U.S.C. § 287, Super Interconnect and all predecessors-in-interest to the '092 patent have complied with the requirements of that statute by providing actual or constructive notice to Google of its alleged infringement.

27. Google has and continues to directly and/or indirectly infringe (by inducing infringement and/or contributing to infringement) one or more claims of the '092 patent in this judicial district and elsewhere in the United States, including at least claims 1, 2, 5, 10, and 11 by, among other things, making, having made, using, offering for sale, selling, and/or importing electronic devices with Universal Flash Storage (UFS) that incorporate the fundamental technologies covered by the '092 patent. These products are referred to as the "'092 Accused Products." Examples of the '092 Accused Products include, but are not limited to, the Google Pixel and Google Pixel XL smartphones.

28. For example, the Google Pixel directly infringes claim 1 of the ’029 patent, as shown in the below paragraphs.

29. An example of the Google Pixel is shown in the image below.



https://store.google.com/us/product/pixel_compare

30. Google incorporates UFS 2.0 storage in its Pixel family of products, as shown in the image below.

> What makes the Pixel phones interesting, to me, is the relative lack of technical compromise. They have a fast processor. A fast camera (with improved and quicker HDR+). Fast storage (UFS 2.0). A fast fingerprint scanner. Fast software (they really are blazing-quick). Fast charging. Fast updates (seamless updates). A fast GPU (for VR). There is little about these phones you can point to and say Google cheaped out on. And isn't that what so many of us have been demanding for years? A Google phone that could be positioned against the iPhone as legitimate competition (even if the iPhone does have its advantages - and disadvantages).

http://www.androidpolice.com/2016/10/04/google-pixel-and-pixel-xl-hands-on-google-takes-on-the-iphone-by-becoming-the-iphone/

31. The images below show that the Google Pixel's UFS storage uses the MIPI M-PHY protocol for physical layer communication between the UFS host and the UFS device.

UFS Implementation Detail

In the diagram below, the implementation of a UFS host or device is simplified to the M-PHY, digital (UniPro) core and the interface to either the Soc or the NAND Flash memory. We will examine each of these in detail.

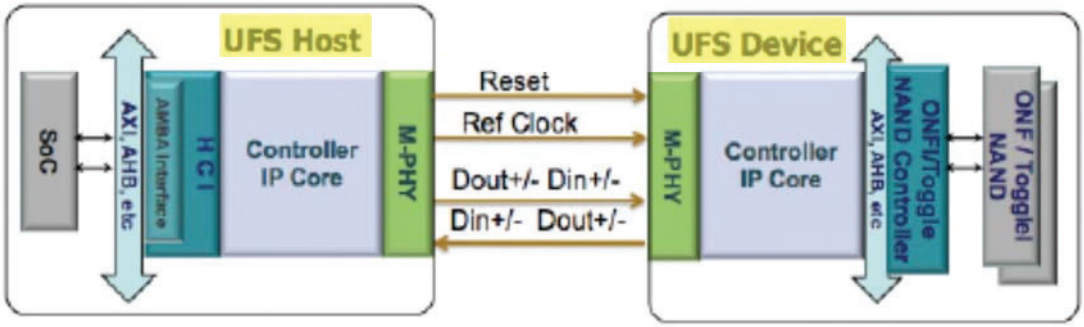


Figure 2. UFS to UFS Interface

Arasan Chip Systems Inc. White Paper, "Universal Flash Storage: Mobilize Your Data" at 6 (Oct. 2012).

M-PHY I/O

MIPI defines two types of M-PHY, type 1 and type 2. The UFS specification calls out type 1. M-PHY Type 1 uses NRZ signaling for HS and PWM signaling for LS, while type 2 uses NRZ signaling for both HS and LS.

UFS utilizes two speed modes, high-speed and low-speed. Low speed mode In Gear 1 is used upon power up or reset, then a transition occurs to high-speed gears for data transmission. The low speed gears and high-speed gears are listed here for your reference. UFS v1.1 has been ratified and supports HS Gear 2 running approximately @ 3Gbps per lane. The UFS spec also supports up to 4 lanes for higher throughput.

Id.

32. UFS hosts and devices, which are included in the '092 Accused Products, multiplex clock and data signals for transmission over a single communications channel. This clock signal

is modulated based on the data to be transmitted before being combined with the output data stream.

33. The ’092 Accused Products thus include each and every limitation of claim 1 of the ’092 patent; accordingly, they literally infringe this claim. Google directly infringes the ’092 patent by making, using, offering to sell, selling, and/or importing the ’092 Accused Products. Google is thereby liable for direct infringement.

34. During discovery and development of its infringement contentions, Plaintiff may provide additional theories under which Google infringes the ’092 patent besides the example provided above, including for the same product and using the same components identified above, and nothing in the example above is meant to limit the infringement allegations of Plaintiff or limit the interpretations of the claims or their terms.

35. At a minimum, Google has known that the ’092 Accused Products infringe the ’092 patent at least as early as the service date of this Original Complaint.

36. Upon information and belief, since at least the above-mentioned date when Google was on notice of its infringement, Google has actively induced, under U.S.C. § 271(b), third-party manufacturers, distributors, importers and/or consumers that purchase or sell the ’092 Accused Products that include all of the limitations of one or more claims of the ’092 patent to directly infringe one or more claims of the ’092 patent by making, having made, using, offering for sale, selling, and/or importing the ’092 Accused Products. Since at least the notice provided on the above-mentioned date, Google does so with knowledge, or with willful blindness of the fact, that the induced acts constitute infringement of the ’092 patent. Upon information and belief, Google intends to cause, and has taken affirmative steps to induce, infringement by these third-party manufacturers, distributors, importers, and/or consumers by, inter alia, creating advertisements

that promote the infringing use of the '092 Accused Products, creating established distribution channels for the '092 Accused Products into and within the United States, manufacturing the '092 Accused Products in conformity with U.S. laws and regulations, distributing or making available instructions or manuals for these products to purchasers and prospective buyers, and/or providing technical support, replacement parts, or services for these products to these purchasers in the United States. For example, Google provides technical support for the Pixel on its own website at the following web address: https://support.google.com/pixelphone#topic=9153446.

37. Super Interconnect has been damaged as a result of Google's infringing conduct described in this Count. Google is, thus, liable to Super Interconnect in an amount that adequately compensates Super Interconnect for Google's infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT III
(INFRINGEMENT OF U.S. PATENT NO. 7,158,593)

38. Super Interconnect incorporates paragraphs 1 through 37 herein by reference.

39. Super Interconnect is the assignee of the '593 patent, entitled "Combining a Clock Signal and a Data Signal," with ownership of all substantial rights in the '593 patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringement. A true and correct copy of the '593 patent is attached as Exhibit C.

40. The '593 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code. The '593 patent issued from U.S. Patent Application No. 10/099,533.

41. To the extent any marking or notice was required by 35 U.S.C. § 287, Super Interconnect and all predecessors-in-interest to the '593 patent have complied with the

requirements of that statute by providing actual or constructive notice to Google of its alleged infringement.

42. Google has and continues to directly and/or indirectly infringe (by inducing infringement and/or contributing to infringement) one or more claims of the '593 patent in this judicial district and elsewhere in the United States, including at least claims 34 and 35, by, among other things, making, having made, using, offering for sale, selling, and/or importing electronic devices with Universal Flash Storage (UFS) that incorporate the fundamental technologies covered by the '593 patent. These products are referred to as the "'593 Accused Products." Examples of the '593 Accused Products include, but are not limited to, the Google Pixel and Pixel XL smartphones.

43. The Google Pixel directly infringes claim 34 of the '593 patent, as shown in the below paragraphs.

44. An example of the Google Pixel is shown in the image below.

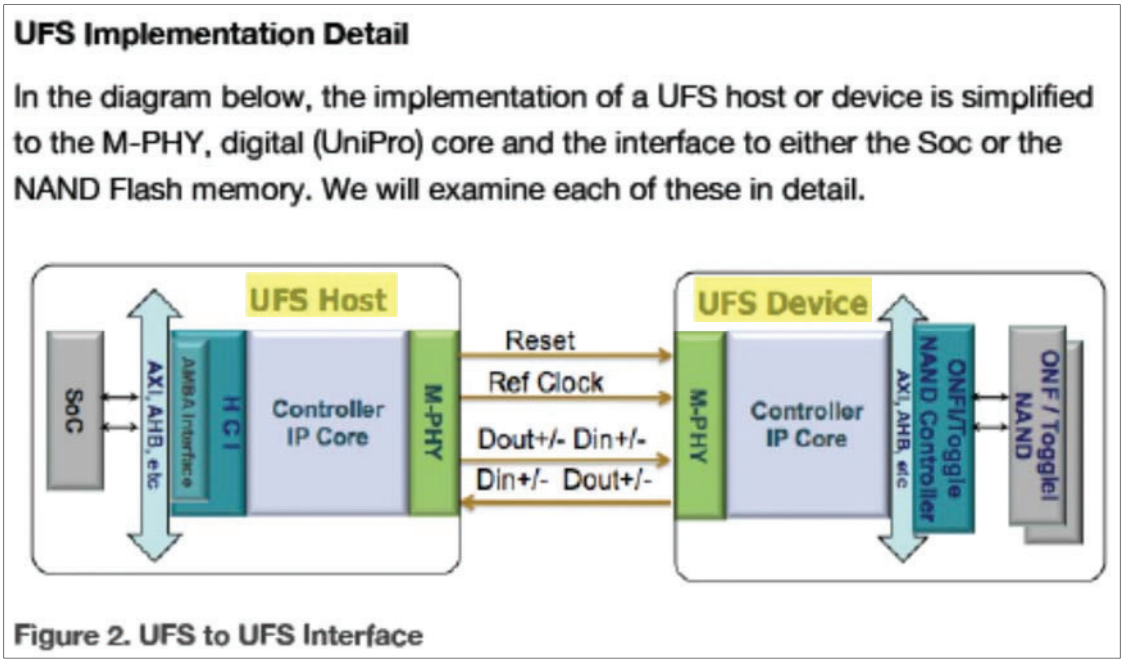
https://store.google.com/us/product/pixel_compare

45. Google incorporates UFS 2.0 storage in its Pixel family of products, as shown in the image below.

> What makes the Pixel phones interesting, to me, is the relative lack of technical compromise. They have a fast processor. A fast camera (with improved and quicker HDR+). Fast storage (UFS 2.0). A fast fingerprint scanner. Fast software (they really are blazing-quick). Fast charging. Fast updates (seamless updates). A fast GPU (for VR). There is little about these phones you can point to and say Google cheaped out on. And isn't that what so many of us have been demanding for years? A Google phone that could be positioned against the iPhone as legitimate competition (even if the iPhone does have its advantages - and disadvantages).

http://www.androidpolice.com/2016/10/04/google-pixel-and-pixel-xl-hands-on-google-takes-on-the-iphone-by-becoming-the-iphone/

46. The images below show that the Google Pixel's UFS storage uses the MIPI M-PHY protocol for physical layer communication between the UFS host and the UFS device.



Arasan Chip Systems Inc. White Paper, "Universal Flash Storage: Mobilize Your Data" at 6 (Oct. 2012).

M-PHY I/O

MIPI defines two types of M-PHY, type 1 and type 2. The UFS specification calls out type 1. M-PHY Type 1 uses NRZ signaling for HS and PWM signaling for LS, while type 2 uses NRZ signaling for both HS and LS.

UFS utilizes two speed modes, high-speed and low-speed. Low speed mode In Gear 1 is used upon power up or reset, then a transition occurs to high-speed gears for data transmission. The low speed gears and high-speed gears are listed here for your reference. UFS v1.1 has been ratified and supports HS Gear 2 running approximately @ 3Gbps per lane. The UFS spec also supports up to 4 lanes for higher throughput.

Id.

47. UFS hosts and devices, which are included in the '593 Accused Products, contain signal transmitters. These transmitters encode the data to be transmitted and further multiplex a pulse-width modulated clock signal, an encoded data signal, and control signals to apply them to the communications channel. This encoding scheme shifts an energy spectrum of the combined clock and encoded data signal away from an effective loop bandwidth of a clock recovery block.

48. The ’593 Accused Products thus include each and every limitation of claim 34 of the ’593 patent; accordingly, they literally infringe this claim. Google directly infringes the ’593 patent by making, using, offering to sell, selling, and/or importing the ’593 Accused Products. Google is thereby liable for direct infringement.

49. During discovery and development of its infringement contentions, Plaintiff may provide additional theories under which Google infringes the ’593 patent besides the example provided above, including for the same product and using the same components identified above, and nothing in the example above is meant to limit the infringement allegations of Plaintiff or limit the interpretations of the claims or their terms.

50. At a minimum, Google has known that the ’593 Accused Products infringe the ’593 patent at least as early as the service date of this Original Complaint.

51. Upon information and belief, since at least the above-mentioned date when Google was on notice of its infringement, Google has actively induced, under U.S.C. § 271(b), third-party manufacturers, distributors, importers and/or consumers that purchase or sell the ’593 Accused Products that include all of the limitations of one or more claims of the ’593 patent to directly infringe one or more claims of the ’593 patent by making, having made, using, offering for sale, selling, and/or importing the ’593 Accused Products. Since at least the notice provided on the above-mentioned date, Google does so with knowledge, or with willful blindness of the fact, that the induced acts constitute infringement of the ’593 patent. Upon information and belief, Google intends to cause, and has taken affirmative steps to induce, infringement by these third-party manufacturers, distributors, importers, and/or consumers by, *inter alia*, creating advertisements that promote the infringing use of the ’593 Accused Products, creating established distribution channels for the ’593 Accused Products into and within the United States, manufacturing the ’593

Accused Products in conformity with U.S. laws and regulations, distributing or making available instructions or manuals for these products to purchasers and prospective buyers, and/or providing technical support, replacement parts, or services for these products to these purchasers in the United States. For example, Google provides technical support for the Pixel on its own website at the following web address: https://support.google.com/pixelphone#topic=9153446.

52. Super Interconnect has been damaged as a result of Google's infringing conduct described in this Count. Google is, thus, liable to Super Interconnect in an amount that adequately compensates Super Interconnect for Google's infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

Super Interconnect hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Super Interconnect requests that the Court find in its favor and against Google, and that the Court grant Google the following relief:

a. Judgment that one or more claims of the '044, '092, and '593 patents have been infringed, either literally and/or under the doctrine of equivalents, by Google and/or by others whose infringement has been induced by Google;

b. Judgment that Google account for and pay to Super Interconnect all damages to and costs incurred by Super Interconnect because of Google's infringing activities and other conduct complained of herein;

c. Judgment that Google account for and pay to Super Interconnect a reasonable, ongoing, post-judgment royalty because of Google's infringing activities and other conduct complained of herein;

d. Judgment that Google's conduct warrants that the Court award treble damages pursuant to 35 U.S.C. § 284;

e. Judgement that Super Interconnect be granted pre-judgment and post-judgment

interest on the damages caused by Google's infringing activities and other conduct complained of herein;

f. Judgment and an order finding this to be an exceptional case and requiring Google to pay the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285; and

g. That Super Interconnect be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: November 2, 2018

Respectfully submitted,

/s/ Jeffrey R. Bragalone w/permission Wesley Hill

Jeffrey R. Bragalone
Texas Bar No. 02855775
LEAD ATTORNEY
T. William Kennedy Jr.
Texas Bar No. 24055771
Brian P. Herrmann
Texas Bar No. 24083174

Bragalone Conroy PC
2200 Ross Avenue
Suite 4500W
Dallas, TX 75201
Tel: (214) 785-6670
Fax: (214) 785-6680
jbragalone@bcpc-law.com
bkennedy@bcpc-law.com
bherrmann@bcpc-law.com

OF COUNSEL:

Wesley Hill
State Bar No. 24032294
Ward, Smith & Hill, PLLC
PO Box 1231
Longview, Texas 75606-1231
(903) 757-6400 (telephone)
(903) 757-2323 (facsimile)
wh@wsfirm.com

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

SUPER INTERCONNECT TECHNOLOGIES LLC, Plaintiff, v. GOOGLE LLC, Defendant.	Civil Action No. 2:18-cv-00463-JRG

DECLARATION OF JAMIE DURBIN IN SUPPORT OF GOOGLE LLC'S MOTION TO DISMISS FOR IMPROPER VENUE UNDER RULE 12(B)(3) AND 28 U.S.C. § 1406

I, Jamie Durbin, declare and state as follows:

1. I am a People Analytics Manager in the People Operations group at Google LLC ("Google"). I have been a Google employee since 2007, including in the following locations: Mountain View, California; London, England; Nashville, Tennessee; and now in Boulder, Colorado.

2. I provide this declaration in support of Google LLC's Motion To Dismiss For Improper Venue Under Rule 12(b)(3) And 28 U.S.C. § 1406 ("Motion"), which seeks to dismiss the above-captioned action filed by Super Interconnect Technologies LLC ("SIT") on November 2, 2018. I submit this declaration based on my personal knowledge of the corporate structure of Google and my investigation into the location of Google operations, staff, and physical presences.

[redacted]

CONFIDENTIAL MATERIAL OMITTED

3. As a People Analytics Manager, I am responsible for analytics and research on topics including employee selection, employee retention, and organizational design. As a member of Google's People Operations department, I have access to and am familiar with relevant data regarding Google's operations, staff, and physical presences.

4. Google has been headquartered in the Northern District of California since its founding in 1998. It has been headquartered in Mountain View, California, in the Northern District of California, since at least 2004.

5. Google Inc. was incorporated in Delaware in 2002. Google has since converted to an LLC, but remains registered in Delaware.

[redacted]

I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct. Executed on 1/31, 2019, in Boulder, Colorado.

Jamie Durbin

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

SUPER INTERCONNECT TECHNOLOGIES LLC, Plaintiff, v. GOOGLE LLC, Defendant.	Civil Action No. 2:18-cv-00463-JRG

DECLARATION OF KEITH MCCALLION IN SUPPORT OF GOOGLE LLC'S MOTION TO DISMISS FOR IMPROPER VENUE UNDER RULE 12(B)(3) AND 28 U.S.C. § 1406

I, Keith McCallion, declare and state as follows:

1. I am a Director in the Network Operations group at Google LLC ("Google"). I work at Google's offices in Sunnyvale, California. I have been a Google employee since June 20, 2011.

2. I provide this declaration in support of Google LLC's Motion To Dismiss For Improper Venue Under Rule 12(b)(3) And 28 U.S.C. § 1406 ("Motion"), which seeks to dismiss the above-captioned action filed by Super Interconnect Technologies LLC ("SIT") on November 2, 2018. I submit this declaration based on my personal knowledge and current understanding of the facts discussed herein, as informed by my experience in Google's Network Operations group.

3. Google Global Cache ("GGC") servers are part of a tiered network that Google developed to deliver content to Internet users. The core of this tiered network is Google's data centers, which provide computation and backend storage. Google has a handful of data centers in the United States, none of which are in Texas.

4. The next tier of Google's network infrastructure is known as Edge Points of Presence ("PoPs"), which connect Google's network to the rest of the Internet and cache certain Google content. Google has no PoPs in the Eastern District of Texas.

5. The last tier of the network are the GGC servers, which are also sometimes referred to as "edge nodes." GGC servers are used to temporarily cache static content, such as portions of YouTube videos. GGC servers cannot operate independently of a Google data center and GGC servers are not necessary for the delivery of Google content.

6. GGC servers are standard servers manufactured by a third party, which are hosted by Internet Service Providers ("ISPs") in physical locations owned by the ISPs, not by Google. If an ISP chooses to host a GGC server, then a copy of certain digital content that is popular with the ISP's subscribers can be temporarily stored or "cached" on that GGC server. This allows that content to be provided to the ISP's subscribers without the need to fetch the content from outside the ISP's network and use up medium or long-haul network capacity to do so.

7. I am not aware of any Google employees installing, physically maintaining or accessing GGC servers that were in the Eastern District of Texas at any point.

8. Google's standard process for GGC servers is that the ISPs have control over where to locate the GGC servers, and the ISPs are responsible for physically installing them. GGC servers are off-the-shelf computers that are manufactured by third party computer manufacturers and are also typically shipped to the ISPs by third parties. After receiving the GGC servers, the ISP unpacks, locates, installs, and hosts them in its own facility.

9. Google does not own, lease or control the space where the GGC servers are kept. Google does not have rights to physically access the spaces in which the GGC servers are stored

CONFIDENTIAL MATERIAL OMITTED

while its service agreements with the ISPs are in force. No Google employee has ever seen or visited the servers in the Eastern District of Texas.

10. [redacted]

11. [redacted]

I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct. Executed on February 1, 2019, in Sunnyvale, California.

KEITH MCCALLION

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

SUPER INTERCONNECT TECHNOLOGIES LLC, Plaintiff, v. GOOGLE LLC, Defendant.	Civil Action No. 2:18-cv-00463-JRG

DECLARATION OF SALLIE LIM IN SUPPORT OF GOOGLE LLC'S MOTION TO DISMISS FOR IMPROPER VENUE UNDER RULE 12(B)(3) AND 28 U.S.C. § 1406

I, Sallie Lim, declare and state as follows:

1. I am a Director in the Legal department at Google LLC ("Google"). I work at Google's offices in Mountain View, California. I have been a Google employee since May 2006.

2. I provide this declaration in support of Google LLC's Motion To Dismiss For Improper Venue Under Rule 12(b)(3) And 28 U.S.C. § 1406 ("Motion"), which seeks to dismiss the above-captioned action filed by Super Interconnect Technologies LLC ("SIT") on November 2, 2018. I submit this declaration based on my personal knowledge of the corporate structure of Google and review of relevant company records.

3. Based on my review of company records, as of November 2, 2018, Google did not own or lease any office space, retail space, or other real property in the Eastern District of Texas, which I understand includes the counties identified on the Court's website

(http://www.txed.uscourts.gov/court-locator). And Google still does not own or lease any office space, retail space, or other real property in the Eastern District of Texas today.

4. As of November 2, 2018 and continuing to today, Google's only Texas offices were located in Austin, San Antonio and Dallas (Google's Dallas office is located in Addison, Texas), cities outside this District.

5. As of November 2, 2018 and continuing to today, Google has no data centers in the Eastern District of Texas.

I declare under penalty of perjury that the foregoing is true and correct. Executed on FEB 1, 2019, in Mountain View, California.

Sallie Lim

CERTIFICATE OF SERVICE

I certify that on September 17, 2019, I served a copy of the foregoing document on the following counsel of record and district court judge by Federal Express at the following addresses:

Jeffrey R. Bragalone
T. William Kennedy Jr.
Jerry Tice, II
BRAGALONE CONROY P.C.
2200 Ross Ave.
Suite 4500W
Dallas, Texas 75201
Tel.: (214) 785-6670
Fax: (214) 785-6680
jbragalone@bcpc-law.com
bkennedy@bcpc-law.com
jtice@bcpc-law.com

Wesley Hill
Andrea Leigh Fair
WARD, SMITH & HILL, PLLC
P.O. Box 1231
Longview, Texas 75606
Tel.: (903) 757-6400
Fax: (903) 757-2323
wh@wsfirm.com
andrea@wsfirm.com

Counsel for Plaintiff-Respondent
Super Interconnect Technologies LLC

J. Mark Mann
G. Blake Thompson
MANN TINDEL & THOMPSON
300 W. Main
Henderson, TX 75652
Tel.: (903) 657-8540
Fax: (903) 657-6003
mark@themannfirm.com
blake@themannfirm.com

Kent E. Baldauf, Jr.
Bryan P. Clark
THE WEBB LAW FIRM
One Gateway Center, Ste. 1200
420 Ft. Duquesne Boulevard
Pittsburgh, PA 15222
Tel.: (412) 471-8815
Fax: (412) 471-4094
kbaldaufjr@webblaw.com
bclark@webblaw.com

Steven M. Geiszler
FUTUREWEI TECHNOLOGIES, INC.
5340 Legacy Drive, Suite 175
Plano, TX 75024
Tel.: (469) 277-5763
steven.geiszler@futurewei.com

Counsel for Defendants
Huawei Device Co. Ltd., Huawei Device USA, Inc.,
Huawei Device (Shenzhen) Co., Ltd. and Huawei Device
(Dongguan) Co., Ltd. in Consolidated Action 2:18-cv-00462

Hon. Rodney Gilstrap
U.S. District Court – Eastern District of Texas
Sam B. Hall, Jr. Federal Building and United States Courthouse
100 East Houston Street
Marshall, Texas 75670
Tel.: (903) 935-3868
Fax: (903) 935-2295

/s/ Neal Kumar Katyal