

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

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

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

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

LEGAL STANDARD

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

ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

In light of the foregoing, this action is **DISMISSED**⁶ without prejudice⁷ and without issuance of service of process.

IT IS SO ORDERED.

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

January 27, 2020
Spartanburg, South Carolina

NOTICE OF RIGHT TO APPEAL

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

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

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

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

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

C/A No. 6:19-cv-02557-DCC-KFM

REPORT OF MAGISTRATE JUDGE

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

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

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

FACTS PRESENTED

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

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

STANDARD OF REVIEW

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

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

DISCUSSION

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

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

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

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

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

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

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

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

RECOMMENDATION

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

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

IT IS SO RECOMMENDED.

s/Kevin F. McDonald
United States Magistrate Judge

January 9, 2020
Greenville, South Carolina

Notice of Right to File Objections to Report and Recommendation

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

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

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

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