No. 2023-139

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

IN RE: RINGCENTRAL, INC.,

Petitioner.

On Petition for a Writ of Mandamus from the United States District Court
for the Western District of Texas
Hon. Alan D. Albright
Civ. No. W-22-CV-00259-ADA

PETITION FOR REHEARING EN BANC

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UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number 2023-139

Short Case Caption In re: RingCentral, Inc.

Filing Party/Entity Petitioner RingCentral, Inc.

Instructions:

1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
3. In answering Sections 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance.
4. Please do not duplicate entries within Section 5.
5. Counsel must file an amended Certificate of Interest within seven days after any information on this form changes. Fed. Cir. R. 47.4(c).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: October 30, 2023

Signature: 

Name: Elizabeth G. "Heidi" Bloch

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	**2. Real Party in Interest.** Fed. Cir. R. 47.4(a)(2).	**3. Parent Corporations and Stockholders.** Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. ☐ None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. ☑ None/Not Applicable
RingCentral, Inc.	Marble VOIP Partners LLC	

☐ Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable ☐ Additional pages attached

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5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

☐ Yes (file separate notice; see below) ☑ No ☐ N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☑ None/Not Applicable ☐ Additional pages attached

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Statutes

RULE 35(B) STATEMENT

Based on my professional judgment, I believe the panel decision is contrary to the United States Supreme Court's decision in *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960), which held that under 28 U.S.C. § 1404, venue is determined by facts in existence when suit is brought. The analysis of where a patent suit "might have been brought" under § 1404(a) (change of venue) must be consistent with the analysis of where a patent suit "may be brought" under § 1400(b) (proper venue). Yet the panel held it is not a clear abuse of discretion to base venue under § 1400(b) on facts that come into existence only *after* suit was brought.

/s/ Elizabeth G. "Heidi" Bloch
Elizabeth G. "Heidi" Bloch

Based on my professional judgment, I believe this appeal requires an answer to the following precedent-setting question of exceptional importance: Under 28 U.S.C. § 1400(b), absent venue manipulation, must facts supporting venue exist when suit is brought? The panel decision suggests that facts arising *after* suit is brought can support venue even though venue was improper *when* suit was brought, as long as those new venue facts are eventually set forth in an amended complaint. This is the first time the Court has addressed this precise issue, and the panel decision

opens the door for improper venue to be rectified by new facts arising any time throughout litigation, effectively precluding appellate review.

/s/ Elizabeth G. "Heidi" Bloch
Elizabeth G. "Heidi" Bloch

ABBREVIATIONS

Term	Meaning
Amended Complaint	Amended Complaint for Patent Infringement filed by Marble on September 30, 2022
Complaint	Complaint for Patent Infringement filed by Marble on March 10, 2022
District Court	Honorable Alan Albright, Judge of the U.S. District Court for the Western District of Texas, Waco Division
Marble	Marble VOIP Partners LLC, Real Party in Interest, and Plaintiff in the district court
Mitel	Mitel US Holdings Inc., Mitel (Delaware), Inc., and Mitel Networks, Inc., collectively, dismissed defendant below
Motion	RingCentral's Motion To Dismiss Marble VOIP Partners LLC's Amended Complaint For Improper Venue Or, In The Alternative, To Transfer Venue To The Northern District Of California
NDCA	U.S. District Court for the Northern District of California
Panel Order	September 29, 2023 Order denying RingCentral's petition for writ of mandamus
RingCentral	RingCentral, Inc., Petitioner, and defendant in the district court
WDTX	U.S. District Court for the Western District of Texas

REASONS FOR GRANTING THE PETITION

This case raises important issues of statutory construction regarding proper venue under 28 U.S.C. §§ 1400(b) and 1404(a).[1] Venue was unquestionably improper in the WDTX when Marble filed its Complaint against RingCentral there in March 2022. The District Court relied on facts that came into existence *after* suit was brought— RingCentral's post-complaint office lease in the WDTX—to deny RingCentral's motion to dismiss, reasoning that venue was proper because Marble's Amended Complaint asserted this newly arisen fact.

RingCentral filed a petition in this Court requesting a writ of mandamus directing the District Court to vacate its order denying RingCentral's motion to dismiss for improper venue. In its Petition, RingCentral demonstrated that the key legal issue—can facts arising only after suit is brought support venue even though venue was improper when suit was brought?—is important to "proper judicial administration," and asked the Court to "correct a district court's answers to 'basic, undecided' legal questions" concerning judicial administration. *See In re Stingray IP Sols., LLC*, 56 F.4th 1379, 1382 (Fed. Cir. 2023). A party seeking mandamus

[1] Unless otherwise noted, all statutory citations are to the venue provisions of 28 U.S. Code.

relief under the "administration of justice" standard need not satisfy the three requirements set forth in *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367 (2004). *In re Stingray*, 56 F.4th at 1382.

The Panel Order denying RingCentral's petition for writ of mandamus indicates for the first time—and inconsistent with U.S. Supreme Court precedent—that proper venue under § 1400(b) may be based on facts that come into existence only after suit was brought, as long as an amended complaint (no matter when it's filed) asserts the new venue facts. The Panel Order effectively shields improper venue rulings from appellate review; if improper venue can be fixed by asserting new facts arising long after suit is brought, then an appeal of an adverse venue ruling after final judgment will fail. The Panel Order could maliciously influence business decisions, such as opening or closing an office in a particular district, based on how that choice might affect venue in an existing lawsuit rather than legitimate operational concerns.

The facts relevant to this important legal issue are straightforward and undisputed. The single venue fact the Panel Order relies on—RingCentral's temporary lease at a shared office space within the WDTX—came into existence only after Marble filed this suit. There is no alleged attempt, either

pre- or post-suit, to manipulate venue. There is no change in the parties.[2] There are no new substantive allegations, such as the inclusion of a new patent or new accused product.

A bright-line rule is necessary to ensure uniform application of the venue statutes in patent cases and prevent mischief. *See Gunn v. Minton*, 568 U.S. 251, 261-62 (2013). Absent venue manipulation (and perhaps excepting the "accrual rule," which is not at issue here[3]), proper venue under § 1400(b) must be determined by the facts in existence when suit is filed. Later-arising facts cannot make improper venue suddenly proper. *See NetSoc, LLC v. Chegg Inc.*, 2019 WL 4857340 *2 (S.D.N.Y. Oct. 2, 2019).

Venue facts do not change during a lawsuit with the passage of time. The Panel Order's concept of retroactive or relation-back venue determinations is anathema to the language of the patent venue statues, which must be strictly construed. This error of law on an important and (until the Panel Order) undecided legal question that significantly impacts judicial administration demands immediate correction by this Court.

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[2] Marble's dismissal of Mitel, an original defendant, does not affect the analysis.

[3] *See Trackthings LLC v. Netgear*, Inc., 2022 WL 2829906 *5 (S.D. N.Y. July 20, 2022) (discussing whether facts that existed when the cause of action accrued but no longer exist when suit commences can support venue if suit is brought within a reasonable time thereafter).

ARGUMENT

I. Under Supreme Court precedent, venue in patent cases is determined at the time suit is brought.

Venue in patent cases is governed by § 1400, which states that an action "may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." § 1400(b). Section 1400(b) must be narrowly construed, as Congress chose to enact a "standalone venue statute" to *limit* venue in patent infringement cases. *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 266 (2017).

A. It is undisputed that RingCentral had no regular and established place of business in the WDTX when Marble brought suit.

RingCentral does not "reside" in the WDTX, so venue hinges on the second prong—whether RingCentral "has a regular and established place of business" in the WDTX. *See* Appx005-6. It is undisputed that RingCentral had no regular and established place of business in March 2022 when Marble brought suit. *See, e.g., Zilkr Cloud Techs., LLC v. RingCentral, Inc.*, 2022 WL 1102863, at *1 (N.D. Tex. Apr. 12, 2022) (granting RingCentral's motion to dismiss or transfer to the NDCA); *see also* Appx002-3; Appx005-6; Appx199-203; and Appx253-58. RingCentral is incorporated in Delaware and has been based in Belmont, California, since 1999. Appx030, 081.

In August 2022, almost six months after Marble brought suit, RingCentral entered a temporary lease at a shared office space for meeting rooms within the WDTX. Appx191-219; Appx029-59. RingCentral disclosed this new fact during jurisdictional discovery. Appx199-203. This prompted Marble to filed both a *new* patent-infringement suit in the WDTX, making the same allegations as in the current suit but asserting for the first time that "RingCentral maintains an office in the State of Texas," and an Amended Complaint in this suit, adding the same new venue facts as alleged in the second suit. Appx279-80; Appx139-70. Marble later voluntarily dismissed its second suit. Appx308-110.

B. Under Supreme Court precedent, venue in patent cases is determined at the time the suit is brought.

In *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960), the Supreme Court held that a defendant's post-suit conduct could not be used to control venue because where suit "might have been brought" under a § 1404(a) transfer motion is governed by "the situation which existed when suit was instituted." The Court made its ruling clear: "[W]e do not see how the conduct of a defendant after suit has been instituted can add to the forums where 'it might have been brought.'" *Id.* at 343 (quoting *Paramount Pictures, Inc. v. Rodney*, 186 F2d 111, 119 (3rd Cir. 1950), Hastie, J. and McLaughlin, J., dissenting).

Where a case "may be brought" under § 1400(b) must be read consistently with the Supreme Court's determination of where a case "might have been brought" under § 1404(a). In both instances, proper venue must be based on facts that exist when the initial complaint is filed because that is when suit is "brought." A patent suit can only have *been* brought in a different venue under § 1404(a) if § 1400(b) would have allowed it to *be* brought there in the first instance. *See Van Dusen v. Barrack*, 376 U.S. 612, 624 (1964) (where a case "might have been brought" under § 1404(a) reflects federal venue statutes, including § 1400(b)).

It ineluctably follows that, because post-suit facts cannot add to the forums where suit "might have been brought," post-suit facts cannot add to the forums where suit "may be brought." RingCentral's post-suit lease in Texas therefore cannot add the WDTX as a proper forum. Under § 1400(b), suit may only "be brought" (present tense) where the defendant (1) "resides" (present tense) or (2) "has committed acts of infringement" (past tense) *and* "has a regular and established place of business" (present tense). When filed, Marble's suit could not "be brought" in the WDTX, and no later-arising facts can fix that fatal venue defect.

C. The Panel Order erroneously allows facts alleged in an amended complaint to support venue even though those facts did not exist when suit was brought.

The Panel Order recognizes that RingCentral's "in-district office space was leased after the date of the original complaint." Panel Order at 2. But the Panel wrongly concluded that it was not an abuse of discretion for the District Court to "rest[] its venue determination on the in-district leased office space identified in Marble's amended complaint despite the lease not existing at the time of the original complaint." *Id.* In support, the Panel Order cites to the following cases focusing on allegations in an amended complaint, none of which address the precise issue here:

> *Prasco, LLC v. Medicis Pharm. Corp.*, 537 F.3d 1329, 1337 (Fed. Cir. 2008) (explaining that "the proper focus" is generally on "the facts existing at the time the complaint *under consideration* was filed" (citations omitted)); *In re Samsung Elecs. Co., Ltd.*, 2 F.4th 1371, 1376 (Fed. Cir. 2021) ("We are unaware of any instance, and none has been called to our attention, in which a court has denied transfer based on the original complaint despite an amended complaint establishing proper venue."); *see also Mathews v. Diaz*, 426 U.S. 67, 75 (1976) (indicating that even jurisdictional defects can be cured through post-complaint pleadings); *Cortés-Ramos v. Martin-Morales*, 956 F.3d 36, 44 (1st Cir. 2020) (same); *Woods v. Ind. Univ. Purdue Univ. at Indianapolis*, 996 F.2d 880, 884 (7th Cir. 1993) (noting that corrected pleadings under Rule 15 have been uniformly applied to allow parties to "cure defective statements of jurisdiction or venue.").

Panel Order at 3-4 (emphasis in original).

Of the cases relied on by the Panel, three—*Prasco*, *Mathews*, and *Cortés-Ramos*—all address whether a supplemental or amended complaint filed under Federal Rule of Civil Procedure 15 can cure a jurisdictional defect by alleging facts that establish jurisdiction. A fourth case, *Woods*, also addresses Rule 15 but in the context of whether an amended complaint naming new defendants relates back for purposes of the statute of limitations. Those are vastly different inquiries than determining where a patent suit "may be brought" under the venue statutes.

Finally, the Panel relies on *In re Samsung Elecs. Co. Ltd.*, 2 F.2d 1371 (Fed. Cir. 2021), *cert. denied sub nom. Ikorongo Texas LLC v. Samsung Elecs. Co.*, 142 S. Ct. 1445 (2022). But *Samsung* also did not involve the question here—whether facts that come into existence after suit is filed can establish venue under § 1400(b) and thus defeat a motion to dismiss under § 1406(a). Instead, *Samsung* holds that a plaintiff cannot manipulate venue by a pre-suit assignment of claims. *Id.* at 1377 (the district court's denial of transfer was in error because it "disregarded the pre-litigation acts by [plaintiffs] aimed at manipulating venue").

Samsung does not change the "fundamental and unwavering rule" that "the relevant time for any venue analysis is the time of filing of the complaint." *GreatGigz Sols., LLC v. ZipRecruiter, Inc.*, 2022 WL 432558, at

*3 (W.D. Tex. Feb. 11, 2022); *C.R. Bard, Inc. v. AngioDynamics, Inc.*, 2020 WL 6710423, at *7 (D. Utah Nov. 16, 2020) ("Venue should be analyzed based on the facts at the time of filing"). This case does not involve an attempt by either party to manipulate venue; it simply involves a plaintiff's attempt to hold venue in a chosen forum that, as a matter of law, was improper when it brought suit.

This is also not a case where a party was allowed to amend a complaint to plead venue facts that were in existence, though not yet known, when it filed suit. *See Dun v. Transamerica Premier Life Ins. Co.*, 2019 WL 78998, at *5 (D. Mont. Jan. 2, 2019) (plaintiff's "understandable lack of knowledge" regarding relevant jurisdictional facts when he filed his original complaint "had no effect on the 'situation which existed at the time this suit was instituted'"). Here, the Panel Order allows Marble to base venue on new facts alleged in an Amended Complaint that indisputably did not exist when the original Complaint was filed. That error of law demands correction from this en banc Court.

II. Correcting this error is important to proper judicial administration.

In *In re Stingray IP Solutions, LLC*, 56 F.4th 1379 (Fed. Cir. 2023), this Court discussed the narrow and exceptional circumstances that would justify mandamus relief to correct a district court's denial of a motion to

dismiss for improper venue, which would otherwise be reviewable on appeal after final judgment. As this Court noted:

> we have also held that "[m]andamus may be used in narrow circumstances where doing so is important to 'proper judicial administration,'" such as when an appellate court "correct[s] a district court's answers to 'basic, undecided' legal questions" concerning judicial administration matters.

Id. at 1382 (citing *In re Micron Tech., Inc.*, 875 F.3d 1091, 1095 (Fed. Cir. 2017), *La Buy v. Howes Leather Co.*, 352 U.S. 249, 259–60 (1957), and *Schlagenhauf v. Holder*, 379 U.S. 104, 110 (1964)).

The precise issue here—whether later-arising facts can support venue in a forum that was not proper when suit was brought—is an important and basic legal question concerning judicial administration. Prior to the Panel Order, this Court does not appear to have decided the issue in the context of a § 1406(b) motion to dismiss for improper venue under § 1400(b). *See NetSoc,* WL 4857340, at *2 ("The Court has not identified any Federal Circuit decision addressing the point in time in which venue is to be analyzed under § 1400(b)"); C.*R. Bard, Inc.* 2020 WL 6710423 at *8 (same).

It is critical for proper judicial administration for the en banc Court to address this important question of law, particularly since it conflicts with district courts throughout the country holding that post-suit facts cannot affect venue. The "bright line rule" has been that "Courts are to look at the

facts as they existed at the time the lawsuit was filed." *Virginia Innovation Scis., Inc. v. Amazon.com, Inc.*, 2019 WL 3082314, at *9 (E.D. Tex. July 15, 2019); *see also NetSoc, LLC v. Chegg Inc.*, 2019 WL 4857340 (S.D. N.Y. Oct. 2, 2019); *Int'l Techs. & Sys. Corp. v. Samsung Elecs. Co. Ltd*, 2018 WL 4963129 (C.D. Cal. June 22, 2018); *Personal Audio, LLC v. Google, Inc.,* 280 F.Supp.3d 922, 925 (E.D. Tex. 2017) ("[a]pplying strict statutory construction, venue … should be analyzed based on the facts and circumstance that exist on the date suit is filed"); *Galderma Lab'ys, L.P. v. Teva Pharms. USA, Inc.*, 290 F.Supp.3d 599, 612 (N.D. Tex. 2017) (dismissing amended complaint based on "the facts as they existed at time the Plaintiffs' Original Complaint was filed."); *Proler Steel Corp. v. Luria Bros. & Co.,* 225 F.Supp. 412, 413 (S.D. Tex. 1964) (venue determined by facts existing at time action is filed); *Louwers v. Knight-Ridder Newspapers, Inc.,* 570 F.Supp. 1211, 1212 (E.D. Mich. 1983) ("Venue is determined as of the date in which the action was filed."); *Technograph Printed Circuits, Ltd. v. Packard Bell Electronics Corp.,* 290 F.Supp. 308, 326 (C.D. Cal. 1968) (venue determined as of time of filing of actions).

The Panel Opinion implicitly overrules, or at least casts into doubt, all these cases—some more than 50 years old and predating the creation of this Court. The split created by the Panel Order runs counter to this Court's

mandate to ensure nationwide uniformity in patent cases. *Gunn v. Minton*, 568 U.S. 251, 261-62 (2013); *Bonito Boats v. Thunder Craft Boats*, 489 U.S. 141, 162 (1989).

Exceptional and unusual circumstances exist warranting mandamus relief to correct the District Court's and the Panel's legal error on this basic and important venue issue. Correction is particularly important because under the current ruling, facts that come into existence long after suit is filed—even on the eve of or during trial—could be used to justify venue in a forum that was not proper to begin with under § 1400(b), eviscerating the intent of the venue statutes and potentially precluding effective appellate review.

CONCLUSION

Proper construction and uniform application of the patent venue statues is critical to the administration of justice and to ensuring efficient expenditure of judicial and party resources. Where a case "might have been brought," which the Supreme Court has held is determined at the time suit *is* brought, must be construed the same as where suit "may be brought" in the first instance. Absent overt venue manipulation, which is not present here, the language of § 1400(b) compels only one construction: facts supporting venue must exist when suit is brought. Later arising facts cannot

make improper venue suddenly proper. The Panel's reliance on an amended complaint is misplaced and will create confusion, potentially shield erroneous venue rulings from review, provide opportunities for mischief, and erode Congress' intent as expressed in the venue statutes.

RingCentral requests that this Court grant en banc rehearing, vacate the Panel Order, and enforce § 1400(b) as it is written by ordering the District Court to grant RingCentral's motion to dismiss for improper venue.

Respectfully submitted,

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By: */s/ Elizabeth G. "Heidi" Bloch*[4]

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 21(d)(1). This brief contains 2,817 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B). Microsoft Word was used to calculate the word count.

2. The brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5), (6) and the type style requirements of Federal Cir. R. 32. This brief has been prepared in a proportionally-spaced typeface using Microsoft Word in 14-point Georgia type style.

/s/ Elizabeth G. "Heidi" Bloch
Elizabeth G. "Heidi" Bloch

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Petition for En Banc Review, including any and all attachments, was served on counsel of record by using the Court's e-filing system on the 30th day of October, 2023, addressed as follows:

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Additionally, a copy of this Petition for Rehearing En Banc Review, including any and all attachments, was delivered via Federal Express Next Business Day Delivery to the Honorable Alan D. Albright, United States District Court for the Western District of Texas, Waco Division, on the 30th day of October, 2023.

/s/ Elizabeth G. "Heidi" Bloch
Elizabeth G. "Heidi" Bloch

APPENDIX A

Order Denying Petition for Writ of Mandamus

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

In re: RINGCENTRAL, INC.,
Petitioner

2023-139

On Petition for Writ of Mandamus to the United States District Court for the Western District of Texas in No. 6:22-cv-00259-ADA, Judge Alan D. Albright.

ON PETITION

Before DYK, CUNNINGHAM, and STARK, *Circuit Judges*.

CUNNINGHAM, *Circuit Judge*.

O R D E R

RingCentral, Inc. petitions this court for a writ of mandamus directing the United States District Court for the Western District of Texas to either dismiss this case for improper venue or transfer this case to the United States District Court for the Northern District of California. Marble VOIP Partners LLC opposes the petition. For the following reasons, we deny the petition.

I.

Marble filed its complaint alleging patent infringement against RingCentral in the Western District of Texas. RingCentral moved to dismiss for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3) or alternatively to transfer to the Northern District of California for convenience pursuant to 28 U.S.C. § 1404(a). Following venue discovery, Marble filed an amended complaint alleging for the first time that venue was proper based on an in-district office leased by RingCentral, and RingCentral renewed its motion to dismiss or alternatively transfer.

The district court denied RingCentral's motion. In concluding that venue was proper, the district court acknowledged that the in-district office space was leased after the date of the original complaint; the initial term was only for six months; and it was "not listed on RingCentral's website, in a telephone directory, or identified by a RingCentral sign at the location." App. 6–12. However, the district court concluded that the space nevertheless constituted RingCentral's "regular and established place of business" in the district, 28 U.S.C. § 1400(b), reasoning "the agreement leases a particular office suite for RingCentral's use;" the lease "continues indefinitely until" terminated by a party; RingCentral "has control over whether the office space continues to be leased;" and RingCentral "uses the office space to engage in its business." App. 9, 11–12.

In denying RingCentral's request to transfer for convenience, the district court considered various factors bearing on the analysis. *See* App. 12–27. It held that RingCentral had failed to demonstrate that the Northern District of California was clearly more convenient than the Western District of Texas. App. 27. RingCentral then filed this petition. We have jurisdiction under 28 U.S.C. § 1651(a) and 28 U.S.C. § 1295(a)(1).

II.

For RingCentral to establish entitlement to the "extraordinary remedy" of a writ of mandamus, it must show that: (1) it has "no other adequate means to attain the relief [it] desires;" (2) the right to the writ is "clear and indisputable;" and (3) "the writ is appropriate under the circumstances." *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004) (citations omitted). RingCentral's petition has not met that demanding standard.

A.

RingCentral primarily challenges the venue ruling, but RingCentral has another adequate, alternative means to raise this challenge. It can seek to overturn the venue ruling on appeal after final judgment. *See In re Monolithic Power Sys., Inc.* 50 F.4th 157, 159 (Fed. Cir. 2022) ("[O]rdinarily, mandamus relief is not available for" these types of rulings "because post-judgment appeal is often an adequate alternative means for attaining relief." (citation omitted)). RingCentral does not point to irreparable harm that will go unaddressed if we do not grant mandamus or some important need for judicial administration that might warrant the extraordinary step of immediate review here. *See In re Canon Inc.*, No. 2022-130, 2022 WL 1197337, at *2 (Fed. Cir. Apr. 22, 2022) ("At most, [petitioner's] arguments suggest that the district court's decision is an outlier capable of postjudgment review.").

Nor has RingCentral's petition shown a clear and indisputable right to dismissal. In particular, RingCentral has not shown that the district court clearly abused its discretion in resting its venue determination on the in-district leased office space identified in Marble's amended complaint despite the lease not existing at the time of the original complaint. *See* Fed. R. Civ. P. 15(a), (d); *Prasco, LLC v. Medicis Pharm. Corp.*, 537 F.3d 1329, 1337 (Fed. Cir. 2008) (explaining that "the proper focus" is generally on "the facts existing at the time the complaint *under*

consideration was filed" (citations omitted)); *In re Samsung Elecs. Co., Ltd.*, 2 F.4th 1371, 1376 (Fed. Cir. 2021) ("We are unaware of any instance, and none has been called to our attention, in which a court has denied transfer based on the original complaint despite an amended complaint establishing proper venue."); *see also Mathews v. Diaz*, 426 U.S. 67, 75 (1976) (indicating that even jurisdictional defects can be cured through post-complaint pleadings); *Cortés-Ramos v. Martin-Morales*, 956 F.3d 36, 44 (1st Cir. 2020) (same); *Woods v. Ind. Univ.-Purdue Univ. at Indianapolis*, 996 F.2d 880, 884 (7th Cir. 1993) (noting that corrected pleadings under Rule 15 have been uniformly applied to allow parties to "cure defective statements of jurisdiction or venue.").

RingCentral relies primarily on the Supreme Court's decision in *Hoffman v. Blaski*, 363 U.S. 335 (1960). But unlike here, *Hoffman* concerned forum manipulation from a defendant's unilateral, post-suit consent to suit elsewhere. *Id.* at 344. Moreover, *Hoffman* "did not involve or address the filing of an amended complaint." *Samsung*, 2 F.4th at 1376. For these reasons, we deny mandamus based on RingCentral's main argument. We will also not grant mandamus based on RingCentral's other argument that the leased space does not constitute a "regular and established" place of business within the meaning of § 1400(b).

B.

RingCentral also challenges the district court's decision to deny transfer under § 1404(a), which we review under regional circuit law, here the United States Court of Appeals for the Fifth Circuit. *Samsung*, 2 F.4th at 1375 (citation omitted). We review such denial of transfer rulings on mandamus only to see if there was such a clear abuse of discretion that refusing transfer amounted to a patently erroneous result. *See id.* (citation omitted)*; In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008)

(citation omitted). We cannot say that such a clear abuse of discretion occurred here.

The district court weighed the relevant factors based on the record and concluded that RingCentral had not shown that the transferee venue was clearly more convenient. *See* App. 12–27. It explained, among other things, that more RingCentral employees residing in the Western District of Texas have relevant and material information compared to the transferee venue; that the Western District of Texas has subpoena power over at least one third-party potential witness (the president of RingCentral's distributor); and that judicial economy considerations weighed at least slightly in favor of keeping this case in the Western District of Texas because of related pending litigation. *See id.* We are not prepared based on the arguments raised in the papers here to say that the district court's conclusion that the transferee venue is not clearly more convenient is "so unreasonable" as to warrant mandamus relief. *In re Vistaprint Ltd.*, 628 F.3d 1342, 1347 (Fed. Cir. 2010).

Accordingly,

IT IS ORDERED THAT:

The petition is denied.

FOR THE COURT

September 29, 2023
Date

/s/ Jarrett B. Perlow
Jarrett B. Perlow
Clerk of Court