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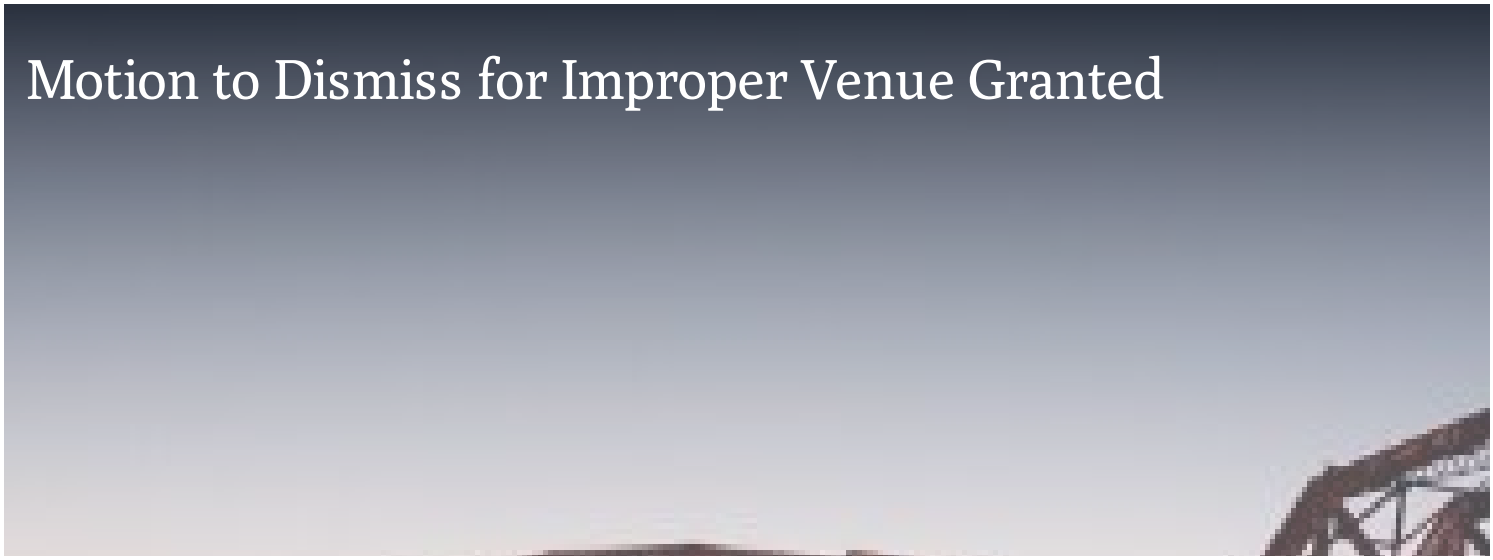
BLOG

Motion to Dismiss for Improper Venue Granted



OCTOBER 27, 2021

On October 6, 2021, Judge Albright granted Maplebear, Inc.'s motion to dismiss for improper venue in the case of *Greatgigz Solutions, LLC v. Maplebear, Inc.* and transferred the case to the Northern District of California.

28 U.S.C. § 1400(b) states that a claim for patent infringement must be brought: (1) "in the judicial district where the defendant resides," or (2) "where the defendant has committed acts of infringement and has a regular and established place of business." The case concerns Maplebear, Inc., the owner and operator of "Instacart" – a website that facilitates grocery delivery and pickup. Maplebear resides in the Northern District of California and is incorporated in the District of Delaware. GreatGigz alleges that Instacart's functionality violates four of their registered patents and thus, filed its claims in the Western District of Texas. Even though Maplebear neither resides nor is incorporated in Texas, GreatGigz argued that venue was nevertheless proper under prong 2 of § 1400(b) because Instacart "has continuous and systematic business contacts" within the state. In doing so, GreatGigz specifically alluded to Maplebear's WeWork membership, storage facility, and employee residence within the Western District. However, Judge Albright found such contacts insufficient to establish venue.

Citing *In re Cray Inc.*, 871 F.3d 1355 (Fed. Cir. 2017), Judge Albright explained that satisfying the second prong of § 1400(b) has three general requirements: (1) a physical place in the district; (2) that is a regular and established placed of business; and (3) that is the defendant's place. Although Maplebear's WeWork space and storage unit are undoubtedly physically located in the district, Judge Albright found it significant that neither space was regularly used by the company's employees. In fact, only five Instacart employees were authorized to access the WeWork office. And it had been more than two months since any employee had used it.

GreatGigz next asserted that because the homes of Instacart's employees were in the district, venue was proper. Judge Albright also found this argument unpersuasive. Citing *In re Cray* again, Judge Albright held that "residence in the district alone is not enough. . . . it must be a place *of the defendant*, not solely a place of the defendant's employees." And because Instacart does not exercise control over its employees' living arrangements such that their residences qualify as Instacart's place of business, the fact that said employees live in the district is not sufficient to meet prong 2 of § 1400(b).

Finally, GreatGigz argued that because Instacart utilized various retail outlets in Houston and Austin for employee training and supervision, prong 2 was nevertheless satisfied. Yet again, Judge Albright found GreatGigz's argument

unpersuasive for the same reasoning above: These stores were not owned by Maplebear. Therefore, they cannot be deemed “regular and established place of business” within the meaning of § 1400(b).

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