

Judge Albright Dismisses for Improper Venue Based on Declarations Showing Alleged Location in District Was Closed Prior To Suit Being Filed

MARCH 29, 2023

Judge Albright adopted a report and recommendation from Magistrate Judge Gilliland to dismiss Fare Technologies, LLC's suit against Uber Technologies, Inc. for improper venue, despite allegations in the complaint that Uber had a regular and established place of business in the district.

Fare Technologies filed a patent infringement suit against Uber in the Western District, alleging that Uber had a regular and established place of business in Austin. Uber moved to dismiss for improper venue under Rule 12(b)(3) and attached declarations showing that Uber no longer had the alleged location in Austin when Fare Technologies filed suit.

Judge Gilliland noted that although courts must generally accept the plaintiff's allegations as true when considering a motion to dismiss, it need not accept jurisdictional allegations supported by nothing other than hearsay (such as third-party online job postings) as true when a defendant's sworn declarations directly contradict them.

Given Fare Technology's access to jurisdictional discovery and its inability to controvert Uber's declarations in any meaningful way, Judge Gilliland held that amendment would be futile and recommended dismissing the complaint without leave to amend. Judge Albright adopted that recommendation and granted Uber's motion to dismiss without providing Future Technology an opportunity to amend the complaint.

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[Barry K. Shelton](#)

[Danielle Williams](#)

[William Logan](#)

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