UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SKULL SHAVER, LLC, Plaintiff, v. THE CUT BUDDY, Defendant.	Case No. 2:24-cv-10116 (SDW) (SDA) **REPORT & RECOMMENDATION** October 14, 2025

STACEY D. ADAMS, United States Magistrate Judge.

THIS MATTER comes before the Court on the Motion to Dismiss or Transfer filed by Defendant The Cut Buddy ("Defendant"). (ECF No. 17). Plaintiff Skull Shaver, LLC ("Plaintiff") opposes the Motion. (ECF No. 19). A reply was filed by Defendant. (ECF No. 20). The Honorable Susan D. Wigenton, U.S.D.J., referred this Motion to the undersigned for resolution. This Motion is decided without oral argument pursuant to Fed. R. Civ. P. 78. The undersigned, having reviewed the respective submissions of the parties, and for good cause shown, hereby recommends that the Motion to Transfer be **GRANTED** and that the Motion to Dismiss be **ADMINISTRATIVELY TERMINATED without prejudice**.[1]

BACKGROUND

Plaintiff filed its complaint in this Court on October 28, 2024 alleging patent infringement of U.S. Patent Nos. 8,726,528 (the "Utility Patent") and D672,504 (the "Design Patent"). (ECF

[1] The Motion is filed in the alternative as a motion either to transfer venue or to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Because the Court decides that transfer of venue is proper, it declines to address the motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). This decision is issued without prejudice to Defendant's right to re-file that motion to dismiss after the case is transferred.

No. 1 ¶ 9). These patents relate to Plaintiff's handheld electric shaving devices designed to shave curved parts of the body. (*Id.* ¶¶ 2-4).

Plaintiff is a New Jersey Limited Liability Corporation, with its principal place of business in New Jersey. (*Id.* ¶ 1). Defendant is incorporated in the state of Delaware with its principal and sole place of business in North Carolina. (Declaration of Joshua Esnard dated March 25, 2025, ECF No. 17-2 ("Esnard Decl."), ¶ 5).[2] Defendant asserts that it neither owns nor operates any place of business in New Jersey. (*Id.* ¶ 6). It does not have any employees in New Jersey. (*Id.* ¶ 8). Defendant claims it does not conduct business out of a physical location in New Jersey, nor does it store products or materials for distribution at any physical location in New Jersey. (*Id.* ¶¶ 8-9). Defendant concedes it sells its products on its website throughout the United States, including to New Jersey residents. (*Id.* ¶ 10). It also sells its products to third-party retailers such as Walmart and CVS, who then sell the products at their New Jersey stores. (*Id.*). For online sales, products are shipped directly out of Defendant's North Carolina location. (*Id.*). For any other sales, Defendant's products are sold at the third-party retailer's locations. (*Id.*).

Plaintiff does not contest the fact that Defendant is not incorporated in New Jersey or that its principal place of business is in North Carolina. Rather, Plaintiff argues that Defendant stores and sells its products at third-party stores located in New Jersey, and that this is enough to satisfy the venue requirement. (ECF No. 19, at 5-6).

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[2] Generally, "it is not necessary for the plaintiff to include allegations in his complaint showing that venue is proper." *Great W. Mining & Mineral Co. v. ADR Options, Inc.*, 434 F. App'x 83, 86-87 (3d Cir. 2011). Therefore, when deciding a motion to transfer venue, the Court may consider not only the complaint, but also evidence outside of the complaint, such as affidavits. *Bos. Sci. Corp. v. Cook Grp. Inc.*, 269 F. Supp. 3d 229, 234 (D. Del. 2017). The Court will accept any venue related allegations in the complaint as true, unless those allegations are contradicted by the defendant's affidavits or declarations. *See Bockman v. First Am. Mktg. Corp.*, 459 F. App'x 157, 158 n.1 (3d Cir. 2012) (relying on affidavit submitted by defendant to dismiss complaint due to improper venue).

Defendant filed the instant Motion on March 26, 2025 seeking, in relevant part, to transfer this action to the United States District Court for the Middle District of North Carolina. (*Id.* at 1-2).

LEGAL ANALYSIS

Venue in patent infringement cases is governed by Federal statute and is narrowly defined. 28 U.S.C. § 1400(b). Specifically, venue is proper only 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." *Id.* (emphasis added). "Whether venue is proper under § 1400(b) is an issue unique to patent law and is governed by Federal Circuit law." *Cutchins v. Bug Bite Thing, Inc.*, No. 22-CV-6885 (SDW) (LDW), 2023 WL 3580838, at *2 n.2 (D.N.J. May 22, 2023) (citing *In re ZTE (USA) Inc.*, 890 F.3d 1008, 1012 (Fed. Cir. 2018)); *see also Metuchen Pharms. LLC v. Empower Pharms. LLC*, No. 18-CV-11406 (JLL), 2018 WL 5669151, at *2 (D.N.J. Nov. 1, 2018) ("The law of the Federal Circuit, rather than that of the Third Circuit, governs the Court's patent venue analysis under § 1400(b)."). "[T]he [p]laintiff bears the burden of establishing proper venue." *In re ZTE*, 890 F.3d at 1013.

The Supreme Court had held that "a domestic corporation 'resides' only in its State of incorporation for purposes of the patent venue statute." *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 262 (2017). Here, it is undisputed that Defendant is incorporated in Delaware and thus "resides" in Delaware for purposes of § 1400(b). (Esnard Decl. ¶ 5). Thus, venue is not satisfied under the first prong of §1400(b).

Turning to the second prong of §1400(b), venue is proper in this District only if Defendant has (i) committed acts of infringement in New Jersey, *and* (ii) has a regular and established place of business in New Jersey. 28 U.S.C. § 1400(b). Both parts of the test must be satisfied. Here,

neither party specifically addresses the infringement requirement in their respective briefs. Plaintiff implies that this prong is satisfied because the purportedly infringing products are sold by third-party retailers in New Jersey. (ECF No. 19 at 5). Defendant suggests the infringement requirement is not met because the products sold do not infringe and because Defendant did not personally conduct any sales in New Jersey. Rather, the products either were sold online and shipped to New Jersey residents from its North Carolina facility or were sold by third-parties directly in New Jersey. (Esnard Decl. ¶ 10). Neither party addresses whether this conduct would rise to the level of "committing infringement" in this jurisdiction. For purposes of this motion only, the Court will assume that this is sufficient to satisfy the infringement portion of the venue test.

However, infringement in New Jersey alone is not sufficient. The statute also requires that Defendant have a "regular and established place of business" in New Jersey. 28 U.S.C. §1400(b). This is where Plaintiff's argument in favor of venue in the District of New Jersey fails.

There is a three part test for determining whether a defendant has a regular and established place of business within a district: "(1) there must be a physical place in the district; (2) it must be a regular and established place of business; and (3) it must be the place of the defendant." *In re Cray Inc.*, 871 F.3d 1355, 1360 (Fed. Cir. 2017); *see also Cutchins*, 2023 WL 3580838, at *2 (adopting the three-part test set forth in *Cray* in the District of New Jersey). The Federal Circuit has cautioned that courts should "be careful not to conflate showings that may be sufficient for other purposes, *e.g.*, personal jurisdiction or the general venue statute, with the necessary showing to establish proper venue in patent cases." *Cray*, 871 F.3d at 1361. The ability to serve a defendant in a particular jurisdiction based upon personal jurisdiction, alone, is not sufficient. *See id.* "While the 'place' need not be a 'fixed physical presence in the sense of a formal office or store' … there

must still be a physical, geographical location in the district from which the business of defendant is carried out." *Id.* at 1362 (internal citation omitted). The business must be "regular" in that "it operates in a "steady, uniform, orderly, and methodical manner" *Id.* (citation modified). Mere sporadic activity is insufficient. *Id.* Further, to be "established," there must be some element of permanency in the district. *Id.* at 1363. Finally, the place of business "must be a place *of the defendant.*" *Id.* (emphasis in original). It cannot solely be the place of defendant's employee or a third-party. *Id.*

Relevant considerations include whether the defendant: "(a) owns or leases the place or exercises other attributes of possession or control over the place; (b) has conditioned employment on an employee's continued residence in the district or the storing of materials at a place in the district so that they can be distributed or sold from that place; (c) markets or advertises to the extent it indicates that the defendant itself holds out a place for its business in the district; (d) represents that it has a place of business in the district; and (e) conducts similar activity at the place compared to the defendant's other places of business." *Loyal-T Sys. LLC v. Am. Express Co.*, No. 23-CV-2625 (ES) (LDW), 2024 WL 4381835, at *3 (D.N.J. Oct. 3, 2024) (citing *Cray*, 871 F.3d at 1363-64).

Here, Defendant has no office or physical location in New Jersey. (ECF No. 17-2 ¶¶ 5-6). It does not own, rent, or lease any real estate or facilities in New Jersey. (*Id.*). It has no employees or agents based in, or conducting business out of, a physical location in New Jersey. (*Id.* at ¶ 8). Defendant does not advertise or otherwise hold itself out as having a place of business in New Jersey. (*Id.* at ¶ 7).

Plaintiff nevertheless argues that venue is proper because Defendant's products are sold by third-parties, such as Walmart or CVS, in New Jersey stores. (ECF No. 19, at 5). According to

Plaintiff, merely having a "shelf in a supermarket" is enough to establish a physical geographical location in the state. *Id.* (quoting *Uni-Systems, LLC v. U.S. Tennis Ass'n Nat'l Tennis Ctr. Inc.*, No. 17-CV-147 (KAM) (CLP), 2020 WL 1694490, at *8 (E.D.N.Y. Apr. 7, 2020)). Plaintiff argues that Defendant is effectively storing its products on the shelves of Walmart and CVS stores in New Jersey. (*Id.*).

This alone is insufficient to establish venue under the second prong of §1400(b). The Federal Circuit has made it clear that the only way that shelf space can serve as a "regular and established place of business" under the patent venue statute is if the defendant has actually leased such shelf space *and* has an employee or agent regularly conducting business at the location. *In re Google LLC*, 949 F.3d 1338, 1344-45, 1347 (Fed. Cir. 2020) (holding that venue was improper in a state where Google entered into a contract with internet service providers to host its servers, because Google did not have an employee or agent regularly conducting business at the location); *see also Koss Corp. v. Bose Corp.*, No. 20-CV-661, 2021 WL 7541417, at *3 (W.D. Tex. June 22, 2021) ("Leased shelf space can serve as a 'regular and established place of business' under the patent venue statute *if* the defendant also has an employee or agent conducting business in that district.") (emphasis added); *cf. Tinnus Enters., LLC v. Telebrands Corp.*, No. 17-CV-170 (RWS), 2018 WL 4560742, at *4 (E.D. Tex. Mar. 9, 2018) (finding shelf/display space to be a physical place of the defendant where company specifically leased premium shelf space from a third-party retailer and exercised control over that space); *Peerless Network, Inc. v. Blitz Telecom Consulting, LLC*, No. 17-CV-1725 (JPO), 2018 WL 1478047, at *3 (S.D.N.Y. Mar. 26, 2018)

("[A]ssuming that [defendant] rents the shelf on which its equipment rests, the Court is satisfied that the shelf is 'a place *of the defendant*.'" (emphasis in original)).

Thus, it is not enough to merely occupy the shelf space of a third-party business. Defendant must lease such shelf space and have an employee or agent regularly conducting business out of that location. Neither is present here. Defendant does not lease shelf space from Walmart, CVS, or any other third-party retailer in New Jersey. (Esnard Decl. ¶ 10). Nor does it have any employee or agent working or conducting business out of these third-party locations. (*Id.* ¶ 8).

Further, the non-leased shelves at these third-party retailers are not the place *of the defendant.* To the contrary, they are the places of business of Walmart, CVS, and other third-party retailers. "To be a place of business, 'the defendant must actually engage in business from that location.'" *Peerless*, 2018 WL 1478047, at *4 (quoting *Cray*, 871 F.3d at 1364). "It is a location where, for example, products are made, customers are served, or business decisions are made." *Id.* Walmart and CVS sell Defendant's products at their New Jersey stores. These are not Defendant's stores. Defendant is not directly involved in making the sales, Defendant does not serve clients from these locations, and Defendant does not engage in business from these locations.

Accordingly, 28 U.S.C. § 1400(b) is not satisfied in the instant case under either prong. Therefore, venue in the District of New Jersey is improper. When venue is improper, the Court must either "dismiss, or if it be in the interest of justice, transfer [the] case to any district … in which it could have been brought." 28 U.S.C. § 1406(a). Here, Defendant resides in the Middle District of North Carolina, and thus venue would be proper in that district. *See* 28 U.S.C. § 1400(b). The Court finds the best course of action is to transfer this matter to the Middle District of North Carolina. Because the Court is transferring this matter, it declines to address Defendant's

motion to dismiss for failure to state a claim under Rule 12(b)(6) and therefore administratively terminates that portion of Defendant's motion without prejudice to refile after this matter is transferred to the new district.

CONCLUSION

For the reasons set forth above, and for good cause shown:

IT IS, **THEREFORE**, on this **14th** day of **October, 2025**:

1. **RECOMMENDED** that Defendant's Motion to Transfer Venue to the Middle District of North Carolina be **GRANTED**; and it is further
2. **RECOMMENDED** that Defendant's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) be **ADMINISTRATIVELY TERMINATED without prejudice**; and it is further
3. **ORDERED** that the parties shall have fourteen days to file and serve any objections to this Report and Recommendation. 28 U.S.C. § 636; L. Civ. R. 72.1(c)(2).
4. **ORDERED** that the Clerk of the Court shall **TERMINATE** the Motion pending at Docket Entry Number 17 and activate this Report and Recommendation for the District Court's review.

/s/ Stacey D. Adams
STACEY D. ADAMS, U.S.M.J.

Orig: Clerk
cc: Parties
Susan D. Wigenton, U.S.D.J.