

Hari P. Kunamneni
10375 Heney Creek Place
Cupertino, CA 95014
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hkunamneni@hotmail.com

FILED
MAR 10 PM 12:58
ROBERT W. WILKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HARI P. KUNAMNENI,)	
Plaintiff,)	No. C 08-5154 PJH
)	Response to MOTION
)	FOR ADMINISTRATIVE
v.)	RELIEF UNDER CIVIL
)	LOCAL RULE 7-11 TO
US Department of Commerce)	CONTINUE CASE
CARLOS M. GUTIERREZ, Secretary)	MANAGEMENT
Defendant(s))	CONFERENCE
-----)	MARCH 9, 2009

INTRODUCTION

On March 6, 2009, defendant's counsel filed a motion to continue the Case Management Conference (CMC), because the continuance will enable him to evaluate factual and administrative procedure, will enable him to file responsive pleading before CMC and time to evaluate legal and factual basis for venue.

However, defendant was served on Dec. 5, 2008 with the complaint, defendant still has about two weeks to prepare for CMC, defendant has evaluated the factual basis for 12 months in its own administrative and investigative process, and furthermore, CMC contemplates that it might take place before filing of responsive pleading, there by it (CMC) asks, if there are any venue motions planned (note if answer is filed, then venue issues are waived). As Mr. Kunamneni's demonstrated, *infra*, venue is proper in this district. Due to above reasons defendant's motion for CMC continuation must be denied.

DISPUTE AS TO FACTUAL BACKGROUND STATEMENTS

MADE BY DEFENDANT

On page 2, line 12, defendant counsel claims, that he was served with complaint on Feb. 5, 2009, however he was served the complaint on Dec. 4, 2008 (Attachment I) and has at least complete knowledge of the complaint on Dec. 19, 2008 (Attachment II). Furthermore, defendant's counsel was served again on Jan. 26, 2009 by US marshal's office (Attachment III). Therefore, defendant's answer is due on March 27, 2009.

On page 2, lines 13-14, defendant states, "..., describing a history from 2006-2007 of employment activities and subsequent administrative proceedings.", is misleading and deceptive. The complaint sets out factual statements as to Mr. Kunamneni's disability items 15 and 18, his qualifications, item 27 and defendant's discriminatory acts consisting of denial of several reasonable accommodation requests, item 31 on page 7 of complaint, and creation of hostile/harassment work environment by defendant as described in item 35 of the complaint, none of which are describing Mr. Kunamneni's employment activities as a patent examiner. Furthermore, there is one exhibit consisting of one page establishing jurisdictional basis for bringing civil action in a district court.

ARGUMENT

With almost two weeks of time and with defendant's vast resources (defendant is federal government) defendant can easily prepare for a joint CMC for an employment discrimination complaint that has gone through 12 months of defendant's own administrative process.

Since most discovery is done during administrative process, Mr. Kunamneni is ready to go to trial after receiving the following information from the defendant:

1. The electronic log's Mr. Kunamneni's entry and exit of OCR office building during April 20, 2007 - May 15, 2007.
2. If there is a software application to manage reasonable accommodation requests, identify and provide manual for use of such reasonable accommodation request management software application.
3. Provide the last known name, address, and phone number of Mr. Paul Sewell.
4. Names of all probationary employees that have requested reasonable accommodations during their probationary period from Jan. 2002 – to date, length of their probationary period, and their current status, if terminated, their date of termination.

Since, Mr. Kunamneni is ready to go to trial without further discovery and defendant is in control of all the evidence, there is no need for meet and confer regarding a discovery plan.

The Court should deny this request for a 45 day continuance of the CMC, because of following additional reasons:

- Continuation will not allow court to determine the venue, unless defendant files a pre-answer motion or challenges venue along with answer by setting forth proper factual basis. The CMC contemplates the possibility conducting one without an answer. Therefore it asks if there will be venue challenge. If answer is filed, venue challenge will be waived.
- Furthermore, Venue is proper in the Northern District Court of California because, but for the unlawful practice of the defendant, plaintiff would have

worked in that judicial district. An action under Title VII of the Civil Right Act of 1964 or the Rehabilitation Act of 1973 may be brought “in ... or [3] *in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice*, [4] but if the respondent is not found ... his principal office.” (42 USC 2000e-5(f)(3), emphasis added). Mr. Kunamneni was a resident of Santa Clara County, (located in the Northern District of California) from Dec. 1989 – Sept. 2006. He worked for the Patent and Trade Office in Alexandria, Virginia from September 2006 – September 2007 but intended to move back to Cupertino, CA to work remotely under the Patents Hotelling Program (PHP) offered by the Patent and Trademark Office. That program, referred to in complaint Exhibit 23 (see attachment IV), allows patent examiners to work from remote locations. If not for alleged discriminatory act by the defendant, Mr. Kunamneni would have worked remotely from Cupertino, CA, which is in Santa Clara County. Santa Clara County is part of United States District Court for Northern California. Therefore, US district court for the Northern District of California is proper venue under [3 of] 42 USC 2000e-5(f)(3).

- The continuance of forty five days will delay justice for plaintiff and justice delayed is justice denied.

Due to above defendant’s motion for continuation of CMC should be denied.

Hari P. Kunamneni
Hari P. Kunamneni

Hari P. Kunamneni

Cc: JONATHAN U. LEE, Assistant United States Attorney, jonathan.lee@usdoj.gov



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 2008 DEC 18 2:41
 UNITED STATES DISTRICT COURT
 for the
 NORTHERN DISTRICT OF CALIFORNIA
ROBERT W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

Hari P. Kunamneni)
 10375 Heney Creek Place)
 Cupertino, CA 95014)
 (408) 417-0783)
 Plaintiff)
 v.)
 Carlos M. Gutierrez, Secretary)
 US Department of Commerce)
 Defendant)

Civil Action No. 03:08-CV-05154-PJH

Proof of Service

I declare under penalty of perjury that I served

1. Notice of Lawsuit and Request for waiver of service of summons
2. complaint in this case on 08-CV- 5154 -PJH,
3. Request for permission to file papers VIA ECF
4. Order setting initial case management conference and ADR deadlines
5. Order requiring joint case management statement and appearance at case management conference
6. Dispute Resolution procedures in the Northern District of California
7. ECF Registration Information Handout
8. Notice of Availability of Magistrate Judge To exercise jurisdiction
9. Declination to proceed before a magistrate judge and request for assignment to a United States District judge
10. Application to proceed in Forma pauperies

[REDACTED]

By US Flatt Rate Priority Mail with certificate of mailing to:

(1) United States Attorney's Office (Certified mail #: 7008 1140 0004 3892 3242)

450 Golden Gate Avenue, 11th Floor

San Francisco, CA 94102

(2) Attorney General (Certified mail #: 7008 1140 0004 3892 3259)

U.S. Department of Justice

950 Pennsylvania Avenue, NW

Washington, DC 20530-0001

(3) US department of Commerce (Certified mail #: 7008 1140 0004 3892 3266)

Office of General Counsel

Herbert C. Hoover Building

14th & Constitution Avenue, NW

Mall Stop 5875 HCHB

Washington, DC. 20230

Date : 12/4/2008
Server's signature : *Sudhakar Rad Kunammeni*
Printed name : SUDHAKARA RAD KUNAMMENI
Server's address : 4504, TUSCANY RD
NORMAN, OK 73072



U.S. Department of Justice

*United States Attorney
Northern District of California*

450 Golden Gate Avenue, Ninth Floor
San Francisco, California 94102

(415) 436-6909
FAX: (415) 436-6748

December 19, 2008

Hari P. Kunamneni
10375 Heney Creek Place
Cupertino, CA 95014

Re: *Hari P. Kunamneni v. Carlos M. Gutierrez,*
Secretary of the United States Department of Commerce
Civil Action No. C 08-5154 PJH

Dear Mr. Kunamneni:

I am the Assistant U.S. Attorney assigned to defend the captioned matter. As an initial matter, the Court has no jurisdiction over this action because there has been no effective service of process of the summons and complaint. Federal Rule of Civil Procedure 4 governs service on the United States or its agencies or employees and provides in pertinent part:

(i) Serving the United States, Its Agencies, Corporations, Officers or Employees.

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the United States Attorney for the district in which the action is brought or to an Assistant United States Attorney or clerical employee designated by the United States Attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States Attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.

[REDACTED]

Letter to H. Kunamneni
December 19, 2008

(2)(A) Service upon an agency or corporation of the United States, or an officer or employee of the United States sued only in an official capacity, is effected by serving the United States in the manner prescribed by Rule 4(i)(1) and by also sending a copy of the summons and complaint by registered or certified mail to the officer, employee, agency, or corporation.

(B) Service on an officer or employee of the United States sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States – whether or not the officer or employee is sued also in an official capacity – is effected by serving the United States in the manner prescribed by Rule 4(i)(1) and by serving the officer or employee in the manner prescribed by Rule 4(e), (f), or (g).

(3) The court shall allow a reasonable time to serve process under Rule 4(i) for the purpose of curing the failure to serve:

(A) all persons required to be served in an action governed by Rule 4(i)(2)(A), if the plaintiff has served either the United States Attorney or the Attorney General of the United States, or

(B) the United States in an action governed by Rule 4(i)(2)(B), if the plaintiff has served an officer or employee of the United States sued in an individual capacity.

To complete service of process of a complaint against the United States government, or an Agency of the United States government, a plaintiff *must* complete specific, simultaneous acts of service upon the concerned Agency head, the United States Attorney General's office in Washington, D.C., and the local United States Attorney's Office. Whale v. United States, 792 F.2d 951, 953-54 (9th Cir. 1986) (affirming dismissal, held counsel's belief that service on local U.S. Attorney's Office was sufficient inadequate to show good cause or justifiable excuse; Rule 4's requirements must be followed). The rules of service must be followed; actual notice is insufficient. Take v. United States, 76 F.3d 155, 156 (7th Cir. 1996).

Under Rule 4(m), if service of the complaint and summons is not made within 120 days after filing the complaint, a motion to dismiss lies against the complaint. Where the validity of service is contested by a Rule 12 motion, the burden is on the plaintiff to establish the validity of service. See Norlock v. City of Garland, 768 F.2d 654, 656 (5th Cir. 1985); Grand Entertainment Group, Ltd. v. Star Media Sales, Inc., 988 F.2d 476, 488 (3d Cir. 1993).


There has been no service of a summons and complaint in this case; effective service requires service of a summons and complaint. Therefore, the time for a response to the complaint will not commence to run until after the complaint is properly served.



Letter to H. Kunamneni
December 19, 2008

Thank you for your attention to this matter.

Very truly yours,
JOSEPH P. RUSSONIELLO
United States Attorney



JONATHAN U. LEE
Assistant United States Attorney



USM-285 is a 5-part form. Fill out the form and print 5 copies. Sign as needed and route as specified below.

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN
See "Instructions for Service of Process by U.S. Marshal"

PLAINTIFF Hari P. Kunamneni	COURT CASE NUMBER CV-08-5154 PJH
DEFENDANT Carlos M. Gutierrez	TYPE OF PROCESS Summons, Order and Complaint
SERVE AT { NAME OF INDIVIDUAL, COMPANY, CORPORATION ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN U.S. Attorney ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 450 Golden Gate Avenue, Box 36055, San Francisco, CA 94102	

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW Hari P. Kunamneni 10375 Heney Creek Place Cupertino, CA 95014	Number of process to be served with this Form 285 4
	Number of parties to be served in this case 3
	Check for service on U.S.A.

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service):

Fold

Fold

Signature of Attorney or Other Original Requesting Service (Print Name) <i>[Signature]</i> Felicia Releba	<input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER 415-522-2000	DATE 1/12/09
--	---	----------------------------------	-----------------

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY-- DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated (Sign only for USM 285 if more than one USM 285 is submitted)	Total Process 1	District of Origin No. 11	District to Serve No. 11	Signature of Authorized USMS Deputy or Clerk <i>[Signature]</i>	Date 01/13/09
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I hereby certify and return that I have personally served, have legal evidence of service, have executed as shown in "Remarks", the process described on the individual, company, corporation, etc. at the address shown above on the on the individual, company, corporation, etc shown at the address inserted below
 I hereby certify and return that I am unable to locate the individual, company, corporation, etc named above (See remarks below)

Name and title of individual served (if not shown above) ELSIE SAFO - PARALEGAL	<input type="checkbox"/> A person of suitable age and discretion then residing in defendant's usual place of abode
Address (complete only different than shown above)	Date 01/26/09
	Time 2:30
	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm
	Signature of Marshal or Deputy <i>[Signature]</i>

Service Fee \$55.00	Total Mileage Charges including favors 0	Forwarding Fee	Total Charges \$55.00	Advance Deposits	Amount owed to U.S. Marshal* or (Amount of Refund*) \$0.00
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REMARKS:

- PRINT 5 COPIES:**
1. CLERK OF THE COURT
 2. USMS RECORD
 3. NOTICE OF SERVICE
 4. BILLING STATEMENT* To be returned to the U.S. Marshal with payment, if any amount is owed. Please remit promptly payable to U.S. Marshal
 5. ACKNOWLEDGMENT OF RECEIPT
- PRIOR EDITIONS MAY BE USED
- Form USM-285
Rev. 12/15/80
Automated 01/00

RFP DOC-62-PAPT-07-01001
Attachment 1

Appendix to Statement of Work/Specifications

Page 4 of 11

USPTO Campus - Throughout most of its history, USPTO examiners and support staff worked out of a centralized set of offices in the Washington, DC area. Currently, the USPTO maintains a campus in the Carlyle area of Alexandria, Virginia. The USPTO allows its Government staff the opportunity to participate in a flexi-time program that allows Government staff to start work as early as 5:00 am, or to stay as late as 10:00 PM. Information and instructional support provided by USPTO Information Centers has historically been provided during core work hours - weekdays from 8:00 AM to 5:00 PM. As the needs of our customers continue to change, future support under this contract may also be required outside of these core hours.

Telework Programs - The USPTO has implemented telework programs. A number of years ago, the Trademarks organization instituted the Trademark Work at Home program (TWAH). In 2006, the Patent organization instituted the Patents Hotelling Program (PHP). Initially, the PHP program is geared to allow examiners to work from home in the Washington, DC metropolitan area. In the future, examiners will be able to telework from any location throughout the United States. At the end of FY2006, about 500 patent examiners worked from remote locations. In FY2007, 500 or more additional patent examiners will be trained to work remotely and an additional 500 or more will be trained per year for the next several years. The scope and effect of this cultural change is rapidly redefining how examiners work, and therefore also requires that the provision of information and instructional services remain flexible and progressive in order to meet changing needs.

Contractor Work Sites - Although most contract staff are currently located on the USPTO campus in Alexandria, VA, some contract staff will be required to work from off-site locations. For example, some contract staff may need to work at off-campus sites close to the USPTO's Alexandria campus. Also, the USPTO is currently exploring the creation of regional offices throughout the United States. Contract staff may be required to provide informational and instructional services at regional USPTO locations or at other locations as they are identified.

USPTO's organizational structure and additional information about USPTO is located at USPTO's Internet web site: <http://www.uspto.gov>.

Exhibit 23: USPTO RFP Statement