

FILED

DEC 23 2009

Clerk, U.S. District and Bankruptcy Courts

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

M.R. Mikkilineni,)
)
 Plaintiff,)
)
 v.)
)
 Robert Stoll, Commissioner of Patents,)
)
 Defendant.)

Civil Action No. 09 2417

MEMORANDUM OPINION

This matter is before the Court on the plaintiff's application to proceed *in forma pauperis* and *pro se* complaint. The application will be granted for the purposes of this decision, but the complaint will be dismissed without prejudice because venue does not lie with this court.

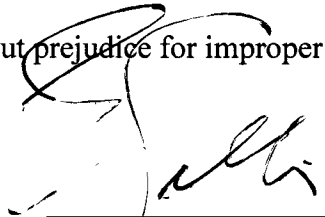
The *pro se* complaint sues the Commissioner of Patents under the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq. ("APA"), for allegedly violating the APA's prescribed procedures for rule-making when adopting a new "instruction" in August 2009. The general venue statute provides that

[a] civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(b). The Commissioner for Patents, as an official in the U.S. Patent and Trademark Office, is considered a resident of Virginia for purposes of venue in civil actions. *See* 35 U.S.C. § 1; *Sykes v. Dudas*, 573 F. Supp. 2d 191, 204 (D.D.C. 2008). The actions of which the plaintiff complains were carried out from the PTO. Accordingly, venue in this case lies in the

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Eastern District of Virginia and not with this court. Therefore, on its authority under 28 U.S.C. § 1406(a), the complaint will be dismissed without prejudice for improper venue.



United States District Judge

Dated: 12/21/09