

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

UNILOC 2017 LLC,

Plaintiff,

v.

RIOT GAMES, INC.,

Defendant.

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CIVIL ACTION NO. 2:19-CV-00223-JRG

FILED UNDER SEAL

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Riot Games, Inc.’s (“Riot”) Motion to Dismiss Plaintiff’s First Amended Complaint for Improper Venue or, in the Alternative, Transfer under 28 U.S.C. §§ 1404 or 1406 (the “Motion”). (Dkt. No. 26.) Having considered the Motion, the briefing, and the relevant authorities, the Court is of the opinion that the Motion should be and hereby is **DENIED WITHOUT PREJUDICE**, for the reasons set forth herein.

I. BACKGROUND

Plaintiff Uniloc 2017 LLC (“Uniloc”) filed this patent infringement suit against Riot on June 12, 2019. (Dkt. No. 1.) In its Original Complaint, Uniloc alleged that venue was proper in this District pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). (*Id.* ¶ 6.) Specifically, Uniloc alleged that Riot “has a regular and established place of business in this District through its robust network infrastructure, portions of which are located in this District” (*Id.*) On December 2, 2019, Riot moved to dismiss the Original Complaint for improper venue (“Riot’s First Motion to Dismiss”). (Dkt. No. 16.) However, Uniloc then filed its First Amended Complaint, which Riot conceded mooted Riot’s First Motion to Dismiss. (Dkt. No. 18; *see also* Dkt. No. 27.)

In Uniloc’s First Amended Complaint, Uniloc alleges that venue is proper in this District under 28 U.S.C. § 1391(c), 1391(d), and 1400(b). (Dkt. No. 18 ¶ 6.) Specifically, Uniloc alleges that Riot is “deemed a resident of this District under § 1391(d) because its contacts within this District are sufficient to subject it to personal jurisdiction if this District were a separate State.” (*Id.*) Uniloc further alleges that, Riot “has a regular and established place of business in this District through its robust network infrastructure” (*Id.*)

Riot is a computer game developer that is incorporated in Delaware with its principal place of business in California. (Dkt. No. 26.) Texas residents can play Riot’s games and obtain Riot’s data from the internet in two ways. First, Riot uses third-party content delivery network (“CDN”) vendors to deliver game software and patches to its customers. (*Id.* at 4.) Second, a third-party vendor delivers real-time in-game data after Riot’s games have been installed on a user’s computer. (*Id.*)

Riot now files the instant motion seeking to dismiss the case for improper venue, or in the alternative, transfer the case to the Central District of California on the basis that Uniloc’s “bare-bones allegations that a ‘robust network infrastructure’ exists” fail to establish that venue is proper in this District. (*Id.* at 3.)

II. LEGAL STANDARD

“Any civil action for patent infringement may be brought 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.” 28 U.S.C. § 1400(b); *see also TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1519 (2017) (“§ 1400(b) ‘is the sole and exclusive provision controlling venue in patent infringement actions.’” (quoting *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 229 (1957))).

Under § 1400(b), a domestic corporation resides only in its state of incorporation. *TC Heartland*, 137 S. Ct. at 1521. Thus, venue for a domestic corporation is proper only where the defendant either (1) is incorporated, or (2) commits acts of infringement **and** has a regular and established place of business. *Id.* at 1519.

If venue in the district in which the case is originally filed is improper, a defendant may move to dismiss the case or transfer it to a district in which the case could have been originally brought. *Id.* The plaintiff must establish that venue in the district in which the case is originally filed is proper. *See In re ZTE (USA), Inc.*, 890 F.3d 1008, 1013 (Fed. Cir. 2018) (“[U]pon motion by the Defendant challenging venue in a patent case, the Plaintiff bears the burden of establishing proper venue.”). However, the defendant still has the burden to establish that the proposed transferee venue is a “district in which the case could have originally been brought.” *See* 28 U.S.C. § 1406(a).

III. DISCUSSION

A. Section 1391(d)

Uniloc contends that venue is proper in this District because Riot resides in this District pursuant to 28 U.S.C. § 1391(d). (Dkt. No. 33 at 1.) Specifically, Uniloc argues that Riot is subject to personal jurisdiction in this District, and as such, venue is proper in this District under § 1391(d). (*Id.* at 2.) In taking this position, Uniloc urges that the United States Supreme Court’s holding in *TC Heartland v. Kraft Foods Group Brands LLC* is narrow and limited to § 1391(c). (*Id.* (citing 137 S. Ct. at 1516).) In other words, Uniloc contends that while the *TC Heartland* Court found that the current version of § 1391(c) does not supply the definition of “reside” for § 1400(b), it did not make the same finding with respect to § 1391(d). (*Id.*) As a result, Uniloc argues § 1391(d) supplies the definition of “reside” for § 1400(b).

Uniloc fails to point to any authority, with the exception of the *TC Heartland* decision itself. The Court declines to reach such a strained reading of *TC Heartland* without such additional authority. “*TC Heartland* makes clear that for purposes of the first prong of § 1400(b), ‘in the case of a corporate defendant, venue is proper where the corporation is incorporated.’” *Snyders Heart Valve LLC v. St. Jude Med. S.C., Inc.*, No. 4:16-cv-00812-ALM-KPJ, 2017 WL 4563076, at *2 (E.D. Tex. Aug. 29, 2017), *report and recommendation adopted*, 4:16-cv-00812, 2017 WL 4552517 (E.D. Tex. Oct. 12, 2017) (quoting *TC Heartland*, 137 S. Ct. at 1521). Accordingly, without any additional authority to consider, the Court agrees with the *Snyders* court that “venue for a corporate defendant is governed exclusively by § 1400(b).” *Snyders Heart Valve*, 2017 WL 4563076, at *3.

B. A Regular and Established Place of Business

Uniloc does not argue in its response to the Motion that Riot has a regular and established place of business in this District under the second prong of § 1400(b). Instead, Uniloc requests that this Court allow venue discovery if the Court does not find that Riot resides in this District. (Dkt. No. 42 at 2.) Unpersuaded by Uniloc’s residence argument, the Court must now consider whether it should grant venue discovery to determine whether venue is proper under the second prong of § 1400(b).

The Court has discretion to allow targeted venue discovery. *Moore v. CITGO Ref. & Chemicals Co., L.P.*, 735 F.3d 309, 315 (5th Cir. 2013) (“A district court has broad discretion in all discovery matters, and such discretion will not be disturbed ordinarily unless there are unusual circumstances showing a clear abuse.”); *Green v. Life Ins. Co. of N. Am.*, 754 F.3d 324, 329 (5th Cir. 2014) (“A district court abuses its broad discretion when its decision is based on an erroneous view of the law, but we will only vacate a court’s judgment if it affected the substantial rights of

the appellant. The appellant must prove both abuse of discretion and prejudice.” (citing *Crosby v. La. Health Serv. & Indem. Co.*, 647 F.3d 258, 261 (5th Cir. 2011)) (citations omitted). In all cases, discovery decisions “must . . . adhere to the liberal spirit of the Rules” of Civil Procedure. *U.S., ex rel., Rigsby v. State Farm Fire & Cas. Co.*, 794 F.3d 457, 469 (5th Cir. 2015), *aff’d sub nom. State Farm Fire & Cas. Co. v. U.S. ex rel. Rigsby*, 137 S. Ct. 436 (2016) (citing Fed. R. Civ. P. 26(b)(1)). The Court’s discretion—and the liberal thrust of the Rules of Civil Procedure—extends to venue discovery. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n.13 (1978) (“[W]here issues arise as to jurisdiction or venue, discovery is available to ascertain the facts bearing on such issues.”).

Riot contends that Uniloc has had the opportunity to take venue discovery in previous cases¹ between the two parties and additional discovery would not yield facts beyond the “bare-bones” venue allegations currently before the Court. (Dkt. No. 26 at 3.) Riot further argues that Uniloc unquestionably knows how Riot delivers its data to consumers in Texas, and as such, additional discovery is not needed. (*Id.* at 2.) However, Riot acknowledges that in both of the earlier cases an improper venue motion was never ruled on by the court and only minimal venue discovery was taken. (Dkt. No. 33 at 1.)

IV. CONCLUSION


In view of the foregoing, the Court is of the opinion that Uniloc should be permitted to take additional venue discovery. It is therefore **ORDERED** that Uniloc has leave to conduct discovery in the following, narrowly tailored manner to facilitate fair and full adjudication of the parties’ venue disputes. Specifically, Uniloc may serve on Riot five interrogatories, five requests for

¹ *Uniloc USA, Inc. v. Riot Games, Inc.*, No. 2:17-cv-275-JRG; *Uniloc USA, Inc. v. Riot Games, Inc.*, No. 2:17-cv-284-RWS

production, and a Rule 30(b)(6) deposition notice limited to the issues raised in the Motion. It is further **ORDERED** that the aforementioned venue discovery shall be completed by the parties no later than forty-five (45) days after entry of this Order.

For the foregoing reasons, the Court is of the opinion that Riot's Motion to Dismiss Plaintiff's First Amended Complaint for Improper Venue or, in the Alternative, Transfer Under 28 U.S.C. §§ 1404 or 1406 (Dkt. No. 26) should be and hereby is **DENIED WITHOUT PREJUDICE**. While Court declines to address Riot's alternative request to transfer this case to the Central District of California, Riot does have leave if it chooses, to refile a Federal Rule of Civil Procedure 12(b)(3) motion following the aforementioned venue discovery.

So ORDERED and SIGNED this 10th day of March, 2020.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE