

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BOT M8 LLC,

Plaintiff,

v.

SONY CORPORATION OF AMERICA,
SONY CORPORATION, and SONY
INTERACTIVE ENTERTAINMENT
AMERICA LLC,

Defendants.

Civil Action No. 1:19-cv-07529-DLC

**SONY INTERACTIVE ENTERTAINMENT LLC'S MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO TRANSFER DUE TO IMPROPER VENUE**

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I. INTRODUCTION

This case involves patent infringement assertions by plaintiff Bot M8 LLC (“Bot”) against certain PlayStation® video game products and services of defendant Sony Interactive Entertainment LLC (“SIE”). SIE is a California limited liability company headquartered in San Mateo, California, and does not have any regular and established place of business in the Southern District of New York (“this District”). Venue for SIE is thus not proper in this District. Accordingly, SIE moves under Federal Rule 12(b)(3) as well as 28 U.S.C. §§ 1400(b) and 1406(a) to transfer Bot’s case against SIE due to improper venue.¹

Under Supreme Court and Federal Circuit precedent, venue for patent cases against a domestic company is proper under 28 U.S.C. § 1400(b) only in a district where the defendant: i) “resides” by virtue of incorporation in that state, or ii) “has a regular and established place of business” in a physical place of the defendant. These requirements are not satisfied here.

SIE is a California limited liability company with its headquarters located in San Mateo, California. SIE does not have any office or facility in this District, let alone a regular and established place of business. Venue in this District is therefore improper under Section 1400(b).

In cases where venue is found to be improper, the Court has discretion under 28 U.S.C. § 1406(a) to either dismiss or to transfer to another forum. Given that both SIE and Bot have their headquarters in the Northern District of California—and since numerous potential witnesses and documents are located there—SIE respectfully requests that the Court transfer Bot’s patent infringement claims against SIE to the Northern District of California.

¹ Bot’s Complaint also names Sony Corporation and Sony Corporation of America as defendants. These entities do not challenge venue at this time. However, SIE is the true party in interest with regard to Bot’s accusations against PlayStation® products. If this motion is granted, the claims against the Sony Corporation entities should be resolved either by dismissal or by transfer to the forum that handles Bot’s accusations against SIE—preferably via agreement of the parties, or if needed, through further motion practice.

II. FACTUAL BACKGROUND

A. Defendant Sony Interactive Entertainment LLC

SIE is a California limited liability company with its principal place of business in San Mateo, California. (Ex. 1, Anderson Dec. ¶ 4).² SIE is responsible for PlayStation® products and services in the U.S. and globally. SIE conducts research and development, marketing, sales, and other business functions relating to PlayStation® products at its headquarters and other facilities in the Northern District of California. (*Id.* ¶ 6). SIE does not have any office or facility in this District, nor anywhere in the State of New York. (*Id.* ¶ 7).

SIE is a separate entity from defendants Sony Corporation and Sony Corporation of America. SIE is the exclusive importer into and the exclusive distributor in the United States of PlayStation® products.

B. Plaintiff Bot M8 LLC

Plaintiff Bot is a Delaware company, which has listed its address in San Mateo, California, in a public filing with the Patent Office. (Ex. 2). Bot was formed several months before receiving an assignment of the patents asserted in this case and does not appear to have any business operations aside from engaging in patent infringement assertions.

C. Bot's Complaint Against SIE

On August 12, 2019, Bot filed its Complaint in this District against SIE and two other Sony entities. (Dkt. 1). The Complaint acknowledges that SIE is located in San Mateo, California. (*Id.* ¶ 4). With regard to venue, the Complaint offers a conclusory assertion that “[v]enue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).” (*Id.* ¶ 7).

² Exhibit citations refer to exhibits to the Declaration of Gregory S. Arovas filed concurrently with this motion.

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