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

TOUCHSTREAM TECHNOLOGIES, INC.,

Plaintiff,

v.

CHARTER COMMUNICATIONS, INC., et al,

Defendants.

This Document Relates To
Case No. 2:23-cv-00059-JRG
(Lead Case)

JURY TRIAL DEMANDED

DEFENDANTS' REPLY IN FURTHER SUPPORT OF THEIR MOTION TO DISMISS THE FIRST AMENDED COMPLAINT FOR IMPROPER VENUE PURSUANT TO FRCP 12(b)(3) AND FOR FAILURE TO STATE A CLAIM FOR WILLFUL INFRINGEMENT UNDER FRCP 12(b)(6)

[redacted]

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I. INTRODUCTION

Touchstream relies on the Court's *Entropic* decision and seeks to disregard CCI's and CCO's corporate forms based on comingled theories of "imputation," "ratification," and "agency," and by arguing that CCI has "management control" and CCO has "financial control" over the subsidiaries. Dkt. 155[1] at 1, 13-24. Nonetheless, Touchstream recognizes the that CCI, CCO, and their subsidiaries, each have a distinct role and function in the corporate family. *E.g.*, *id.* at 22-23 (stating that "[e]ach entity plays a dependent role" and explaining those different roles). And even though Touchstream conducted additional venue discovery, the fact remains that CCI and CCO maintain all corporate forms, offer no products or services, have no employees, and do not own or lease any location in this district, including the locations or addresses identified in the Amended Complaint. There is no evidence that would permit the Court to find a lack of corporate separateness, that CCI or CCO ratified any property in this district, or an agency relationship between CCI, CCO, or any subsidiary (or employees of subsidiary Charter Communications, LLC ("CC LLC")). The Court should grant CCI and CCO's motion to dismiss for improper venue.

The Court should also dismiss Touchstream's claim for willful infringement for the very same reasons that it dismissed Touchstream's willful infringement claim against the Comcast defendants (Dkt. 156): Touchstream fails to allege that Defendants had pre-suit "[k]knowledge of the asserted patents," which is "a prerequisite[.]" *Fractus, S.A. v. TCL Corp.*, No. 20-CV-97, 2021 WL 2483155, at *4 (E.D. Tex. June 2, 2021) (Gilstrap, J.). Moreover, the Court should deny the belated request for leave to further amend the complaint. Touchstream has known the facts it seeks to assert in an amended pleading for months, if not years, and should not be rewarded for its delay.

II. ARGUMENT

A. Touchstream Cannot Meet the "Difficult" Standard To Establish a Lack of

[1] Citations are to the previously consolidated docket at 23-cv-0060 (E.D. Tex.).

Corporate Separateness Between CCI, CCO, and the Subsidiaries

Although Touchstream fails to explicitly argue a lack of corporate separateness, it relies on a purported lack of corporate separateness in support of each *Cray* factor.[2] Dkt. 155 at 13. However, "[e]xcept where corporate formalities are ignored and an alter ego relationship exists, the presence of a corporate relative in the district does not establish venue over another separate and distinct corporate relative." *Bd. Of Regents v. Medtronic PLC.*, No. 17-CV-942, 2018 WL 4179080, at *2 (W.D. Tex. July 19, 2018). "There ***must*** be a plus factor, something beyond the subsidiary's mere presence within the bosom of the corporate family." *Interactive Toybox, LLC v. Walt Disney Co.*, No. 17-CV-1137, 2018 WL 5284625, at *3 (W.D. Tex. Oct. 24, 2018). This is a "difficult standard," and "[s]ettled law always presumes that corporations exist as separate entities." *Soverain IP, LLC v. AT&T, Inc.*, No. 17-CV-293, 2017 WL 5126158, at *1 (E.D. Tex. Oct. 31, 2017); *Interactive Toybox*, 2018 WL 5284625, at *3. When determining whether corporate formalities have been ignored and an alter ego relationship exists, courts undertake a rigorous analysis. Dkt. 82 at 20-21. Touchstream cannot satisfy this standard.

1. Neither CCI Nor CCO Exercised Improper Control Over the Subsidiaries

Touchstream asserts that CCI has "management control" and that CCO has "financial control" over their subsidiaries, arguing that "the entities all operate as a single enterprise," such that SGC-owned or -leased locations in the district "can be imputed to both CCI and CCO" because they lack of corporate separateness. Dkt. 155 at 1, 14-15, 20-24. Designating CCI as a manager does not convert CCI into an alter ego of the managed LLC. *E.g.*, Dkt. 82 at 9-11, 20-23. That is precisely how manager managed LLCs are designed to operate. *Id.* at 9-11, 21-23; Ex. 14, Kovach

[2] Touchstream relies on the Court's ruling in *Entropic* without asserting any arguments, facts, or supporting information for the Court to consider. CCI and CCO incorporate all arguments and facts as asserted in *Entropic* before the District Court and the Federal Circuit. Exs. 15-18.

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