

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

SPRINT COMMUNICATIONS COMPANY L.P.,)
)
 Plaintiff,) Case No. 3:18-cv-00331-MHL
)
 v.) JURY TRIAL DEMANDED
)
 CHARTER COMMUNICATIONS, INC.,)
 CHARTER COMMUNICATIONS HOLDINGS,)
 LLC, SPECTRUM MANAGEMENT HOLDING)
 COMPANY, LLC, CHARTER)
 COMMUNICATIONS OPERATING, LLC, TIME)
 WARNER CABLE, LLC,)
)
 Defendants.)

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S COMPLAINT PURSUANT TO RULES 12(b)(3) AND 12(b)(6) OR IN THE
ALTERNATIVE TO TRANSFER PURSUANT TO 28 U.S.C. § 1404 OR § 1406**

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Defendants Charter Communications, Inc.; Charter Communications Holdings, LLC; Spectrum Management Holding Company, LLC; Charter Communications Operating, LLC; and Time Warner Cable, LLC (collectively “Defendants”), by their counsel, respectfully submit this memorandum in support of their motion to dismiss Plaintiff Sprint Communications Company L.P.’s (“Sprint”) Complaint pursuant to Federal Rules of Civil Procedure 12(b)(3) and 12(b)(6), or in the alternative to transfer pursuant to 28 U.S.C. § 1404 or 28 U.S.C. § 1406.

I. INTRODUCTION

Sprint filed this case against Defendants in the Eastern District of Virginia not because the Parties have any meaningful ties to this District and not because Sprint has any good faith basis to allege infringement, but because it wanted to make a strategic attempt to increase its settlement leverage in three *other* cases pending between the Parties or their respective affiliates. Sprint’s attempt to take advantage of the Eastern District of Virginia’s speed to trial to get ahead of the Parties’ other pending lawsuits is not a proper basis to file this case, and therefore, it should fail for at least the following three reasons.

First, Sprint’s Complaint should be dismissed for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3). Sprint pleads that venue in this District is proper by lumping all of the Defendants together into a single, nonexistent group termed “Charter” and then alleges, in the most conclusory fashion, that this non-entity has committed acts of infringement and has a regular, established place of business in this District. These allegations are insufficient on their face. They are also incorrect. Defendants are all incorporated in Delaware, none have committed any acts of infringement (much less within this District), and none have a regular, established place of business here. Therefore, the Complaint should be dismissed due to improper venue.

Second, and in the alternative, this case should be transferred to the District of Delaware pursuant to 28 U.S.C. § 1404 or § 1406. Preliminarily, venue in the District of Delaware is proper

as all Parties are incorporated in Delaware. Moreover, it is plainly a more convenient and appropriate forum in light of the fact that two of the Parties' lawsuits against one another are currently pending before the same judge in Delaware, who has two years of experience understanding the claims made by the Parties and their entities, the discovery disputes that have arisen, and the issues that have to be decided between the Parties. Indeed, Sprint itself chose to initiate one of those lawsuits against certain named Defendants and other related entities in December of last year, demonstrating that Sprint considers Delaware to be an appropriate and convenient venue. Conversely, there is nothing that ties Sprint, Defendants, or this dispute to the Eastern District of Virginia. Therefore, even if the Court finds that venue is proper in this District, the Court should transfer this case to the District of Delaware.

Third, aside from Sprint's failure to properly establish venue in this District, Sprint's Complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6), because it fails to contain sufficient factual allegations to state a plausible claim for patent infringement against Defendants. While Sprint's Complaint presents a list of various allegedly infringing products, Sprint fails to plead facts showing how these products allegedly infringe the Asserted Patents.¹ Instead, with respect to two of the Asserted Patents, Sprint simply copies and pastes vast swaths of various marketing websites, over and over again, and makes a blanket assertion that the Accused Products infringe.² With respect to the third Asserted Patent, Sprint does not even attempt

¹ The "Asserted Patents" are U.S. Patent Nos. 6,754,907; 6,757,907; and 7,559,077.

² The "Accused Products" are Spectrum TV, the "Spectrum TV" application, SpectrumTV.com, CharterTV, the "Charter TV" application, TWC TV, the "TWC TV" application, and TWCTV.com.

to identify *anything* in the Accused Products that infringe any limitation of the claim in this patent. This is not sufficient. This District and district courts throughout the United States have dismissed similar Complaints for failure to sufficiently set forth the factual allegations of infringement. As such, Sprint fails to meet its burden of stating a plausible claim for relief, and its Complaint should be dismissed.

II. BACKGROUND

A. The Parties

Sprint is a company that is incorporated in the State of Delaware and has its principal place of business in Overland Park, Kansas. (Compl. ¶ 1.) Defendant Charter Communications, Inc. is incorporated in the State of Delaware and has its principal place of business in Stamford, Connecticut. (Declaration of Daniel J. Bollinger (hereinafter “Bollinger Decl.”) ¶ 4.) Defendants Charter Communications Holdings, LLC and Spectrum Management Holding Company, LLC are each limited liability companies organized under the laws of the State of Delaware and each has its principal place of business in St. Louis, Missouri. (Bollinger Decl. ¶¶ 5-6.) Defendants Charter Communications Operating, LLC and Time Warner Cable, LLC are each limited liability companies organized under the laws of the State of Delaware and each has its principal place of business in Stamford, Connecticut. (Bollinger Decl. ¶¶ 7-8.) Neither Sprint nor any Defendant is incorporated in, or has a principal place of business in, the Eastern District of Virginia. None of the Defendants have a physical presence in the District, as none of them lease or own any property in the Eastern District of Virginia. (Declaration of Mary Ann Starosta (hereinafter “Starosta Decl.”) ¶ 5.)

B. Litigation History Between Sprint and Defendants

This case arises as part of a larger corporate dispute between the Parties that has involved a series of patent infringement cases pending for more than six years. In 2011, Sprint initiated a

patent infringement litigation against Time Warner Cable Inc. in the District of Kansas. That case has gone through trial and is now on appeal in the Federal Circuit. (Declaration of Daniel Boglioli (hereinafter “Boglioli Decl.”) ¶ 8.)

In 2016, TC Technology LLC, a then-partially-owned subsidiary of Time Warner Cable Inc., sued Sprint in the District of Delaware over a patent that TC Technology LLC owned related to LTE wireless technology. That case is pending before Judge Andrews. (Boglioli Decl. ¶ 9.) Two months later, Time Warner Cable Inc. merged with Charter Communications, Inc. (Bollinger Decl. ¶ 9.)

In December 2017, only days after the Parties agreed to mediation in the TC Technology LLC case, Sprint filed a new case in the District of Delaware against Charter Communications, Inc. and its Bright House subsidiary, alleging infringement of many of the same patents Sprint had previously asserted in 2011 against Time Warner Cable Inc. in the District of Kansas case. That case is also pending before Judge Andrews. (Boglioli Decl. ¶ 10.)

In April 2018, the Parties attended mediation in the District of Delaware and attempted to reach a global settlement of all pending cases. That mediation was unsuccessful. (Boglioli Decl. ¶ 11.) Just one month later, Sprint filed its Complaint in the present case in a transparent attempt to exert additional pressure against Defendants, despite the fact that none of the Defendants have sufficient ties to this District that would make venue proper, and despite the fact that Sprint filed a bare-bones Complaint without any explanation of its alleged infringement allegations.

C. Sprint’s Complaint

In the introduction to Sprint’s Complaint, Sprint lists each of the five Defendants and states that these five Defendants will be collectively referred to as “Charter.” (Compl. at 1.) Then, in a sum total of one paragraph, Sprint sets forth its venue allegations as to the collective “Charter” without setting forth its basis for venue as to each individual Defendant:

Venue is proper in this Court pursuant to 28 U.S.C. § 1400(b) and § 1391 because Charter transacts business within this Judicial District and has committed acts of infringement in this Judicial District. In addition, on information and belief, a substantial part of the events or omissions giving rise to these claims occurred in this District. Venue is also proper because Charter has committed acts of infringement in this District and has multiple regular and established places of business in this District. Specifically, on information and belief, Charter has a regular and established place of business at 13820 Sunrise Valley Drive Herndon, VA 20171, at 107 N Main St, Franklin, VA, 23851, at 216 Moore Ave, Suffolk, VA, 23434, and at 6743 Maddox Blvd #2, Chincoteague, VA, 23336.

(Compl. ¶ 11.) Sprint does not make any specific venue allegations with respect to any of the Defendants.

Sprint's infringement allegations in its Complaint are similarly lacking. Sprint's Complaint alleges that Defendants, or some undefined subset of them, infringe three patents that Sprint owns related to video-on-demand and buffering technology. Sprint alleges that Defendants directly infringe U.S. Patent Nos. 6,754,907 ("the '4,907 patent"); 6,757,907 ("the '7,907 patent"); and 7,559,077 ("the '077 patent"). (*See* Compl. ¶¶ 15-17, 34.) Sprint asserts that the Defendants infringe the Asserted Patents by making, using or operating, selling, and/or offering for sale various products and services collectively attributed to Defendants, namely Spectrum TV, the "Spectrum TV" application, SpectrumTV.com, CharterTV, the "Charter TV" application, TWC TV, the "TWC TV" application, and TWCTV.com. (Compl. ¶ 33.)

Sprint's infringement allegations related to the '4,907 and '7,907 patents are set forth in paragraphs 34 through 39 of the Complaint. In these paragraphs, Sprint copies and pastes screenshots of marketing websites of the various Accused Products and states in conclusory fashion that these marketing materials demonstrate that the Accused Products meet elements of claim 1 of one or both of the '4,907 and '7,907 patents. Sprint relies on the same marketing material for a number of the claimed limitations, repeating the same screenshots for each limitation. (Compl. ¶¶ 34-39.) And for some of the claim limitations in the '4,907 and '7,907

patents, Sprint fails to identify anything to show its belief that the Accused Products infringe these limitations, relying entirely “on information and belief.” (Compl. ¶¶ 37, 39.)

Sprint’s allegations concerning infringement of the ’077 patent are even more lacking. (Compl. ¶¶ 40-49.) Sprint alleges that the Defendants infringe at least claim 20 of the ’077 patent. (Compl. ¶ 61.) With respect to some of the claim limitations of claim 20, Sprint refers in wholesale fashion to all the website screenshots of marketing material it identified for the ’4,907 and ’7,907 patents, without providing any analysis of which of those screenshots reads on which limitation of the ’077 patent. (Compl. ¶¶ 40-41.) However, for a majority of the claim limitations in the ’077 patent, Sprint does not even attempt to identify how the Accused Products infringe these limitations, relying entirely “on information and belief” with no further support. (Compl. ¶¶ 42-49.)

III. LEGAL STANDARDS

A. Improper Venue Pursuant to Rule 12(b)(3)

Under 28 U.S.C. § 1400(b), a 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). For purposes of venue in patent suits, “a domestic corporation ‘resides’ only in its State of incorporation.” *TC Heartland v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514, 1517 (2017). Furthermore, to establish that a defendant has a “regular and established place of business” within a district, three requirements must be met: “(1) there must be a physical place in the district; (2) it must be a regular and established place of business; and (3) it must be the place of the defendant.” *In re Cray Inc.*, 871 F.3d 1355, 1360 (Fed. Cir. 2017). “If any statutory requirement is not satisfied, venue is improper under § 1400(b).” *Id.* When a defendant challenges venue in a patent case, “the

[p]laintiff bears the burden of establishing proper venue” as a matter of Federal Circuit law. *In re ZTE (USA) Inc.*, 890 F.3d 1008, 1012-13 (Fed. Cir. 2018).

B. Transfer Pursuant to 28 U.S.C. § 1404 and § 1406

Where a district court determines that a case filed in its district lacks venue, the court must dismiss the case or, if in the interest of justice, transfer it to another district in which it could have been brought. 28 U.S.C. § 1406(a). Alternatively, if a court finds that venue in its district is proper, the court can still transfer under 28 U.S.C. § 1404: “For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.” 28 U.S.C. § 1404(a).

In considering whether such transfer under § 1404(a) is warranted, “a district court must make two inquiries: (1) whether the claims might have been brought in the transferee forum, and (2) whether the interest of justice and convenience of the parties and witnesses justify transfer to that forum.” *Koh v. Microtek Intern. Inc.*, 250 F. Supp. 2d 627, 630 (E.D. Va. 2003); *see also Trustees of the Plumbers & Pipefitters Nat. Pension Fund v. Plumbing Servs., Inc.*, 791 F.3d 436, 444 (4th Cir. 2015). Once it has been determined that an action could have been filed in the proposed transferee district, the subsequent decision to transfer venue “is committed to the sound discretion of the district court.” *One Beacon Ins. Co. v. JNB Storage Trailer Rental Corp.*, 312 F. Supp. 2d 824, 828 (E.D. Va. 2004) (citing *Verosol B.V. v. Hunter Douglas, Inc.*, 806 F. Supp. 582, 591 (E.D. Va. 1992)). In doing so, courts in this district consider a number of factors, with the primary considerations being: “(1) the plaintiff’s choice of forum; (2) witness convenience and access to sources of proof; (3) party convenience; and (4) the interest of justice.” *Global Touch Solutions, LLC v. Toshiba Corp.*, 109 F. Supp. 3d 882, 896 (E.D. Va. 2015) (citing *Koh*, 250 F.

Supp. 2d at 633); *see also Trustees of the Plumbers & Pipefitters Nat. Pension Fund v. Plumbing Servs., Inc.*, 791 F.3d 436, 444 (4th Cir. 2015).

C. Failure to State a Claim Pursuant to Rule 12(b)(6)

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal of a complaint where a plaintiff fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). When challenged pursuant to Rule 12(b)(6), a complaint's factual allegations are assumed to be true and are construed in the light most favorable to the nonmoving party. *Vitol, S.A. v. Primerose Shipping Co. Ltd.*, 708 F.3d 527, 539 (4th Cir. 2013). While a challenged complaint "does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). Accordingly, "[t]o survive a motion to dismiss, the complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

To satisfy this pleading standard in the context of patent infringement,

a plaintiff must first identify which patent claims the defendant infringed. The plaintiff must also specify which features of an accused product correspond to the limitations in the allegedly infringed patent. Moreover, the plaintiff must identify with "particularity *how* each allegedly infringing feature of the accused product[] infringes" the patent, literally or under the doctrine of equivalents.

Kim v. Green Tea Ideas, Inc., No. 3:17-cv-00449-JAG, 2018 WL 1172998, at *2 (E.D. Va. Mar. 6, 2018) (quoting *Jenkins v. LogicMark, LLC*, No. 3:16-cv-751, 2017 WL 376154, at *3 (E.D. Va. Jan. 25, 2017)).

IV. ARGUMENT

A. Venue in This District Is Improper and the Case Should Be Dismissed Under Federal Rule of Civil Procedure 12(b)(3)

Sprint's Complaint should be dismissed for lack of venue under Federal Rule of Civil Procedure 12(b)(3). A suit 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). Sprint attempts to plead that venue is proper, in part, under the general venue statute of 28 U.S.C. § 1391 because "on information and belief, a substantial part of the events or omissions giving rise to these claims occurred in this District." (Compl. ¶ 11.) But the Supreme Court has made clear that "[Congress] placed patent infringement cases in a class by themselves, outside the scope of general venue legislation." *TC Heartland*, 137 S. Ct. at 1518. Thus, Section 1400 alone determines the propriety of venue in a patent infringement action.

Under Section 1400, a domestic corporation "resides" solely in its state of incorporation. *TC Heartland*, 137 S. Ct. at 1517. All five Defendants—Charter Communications, Inc.; Charter Communications Holdings, LLC; Spectrum Management Holding Company, LLC; Charter Communications Operating, LLC; and Time Warner Cable, LLC—are all individually incorporated in the State of Delaware, and therefore, for purposes of venue, reside only in Delaware. (Compl. ¶¶ 2-6.) Thus, for venue to be proper over Defendants in this case, each Defendant must have committed acts of infringement and have a regular and established place of business in this District. However, as explained in detail below, Sprint has failed to plead facts showing that Defendants have committed acts of infringement and have regular and established places of business in the District.

i. Sprint's Complaint Fails to Allege Facts Establishing that Venue is Proper as to Any of the Defendants

Sprint's Complaint fails to make even a prima facie case that venue is proper in the Eastern District of Virginia because it contains no venue allegations that are specific to any Defendant. By its terms, Section 1400 makes clear that a civil action for patent infringement may only be brought against a defendant in the district "where *the* defendant resides, or where *the* defendant has committed acts of infringement and has a regular and established place of business." 25 U.S.C. §1400(b) (emphasis added). Accordingly, the Federal Circuit has explained that it is "firmly established [that] . . . in an action involving multiple defendants venue . . . requirements must be met as to each defendant." *Magnacoustics, Inc. v. Resonance Tech. Co.*, 132 F.3d 49 (Fed. Cir. 1997); *see also Insituform Techs., Inc. v. Amerik Supplies, Inc.*, No. 3:07-cv-687, 2008 WL 276404, at *1 (E.D. Va. Jan. 30, 2008) ("When the cause of action is personal to the individual defendant, the venue requirement must be met as to that defendant.") (quoting *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 84 F.3d 1408, 1410 (Fed. Cir. 1996)). Thus, a patent plaintiff must make specific venue allegations as to each defendant; otherwise, the Complaint should be dismissed with respect to those entities or transferred to a district where venue would be proper. *See* 28 U.S.C. § 1406(a).

Sprint fails to meet this requirement, because it fails to make any specific venue allegations with respect to any of the Defendants. Instead, Sprint simply uses the collectively defined "Charter" for its venue allegations and alleges that "Charter" has committed acts of infringement and has a regular and established place of business in the District. (Compl. ¶ 11.) This is not sufficient under the law. *See Insituform Techs.*, 2008 WL 276404, at *2 (finding venue improper because plaintiff failed to allege that one defendant had a regular and established place of business

in the District, and holding that “[v]enue must be proper as to *all* defendants for venue to be proper for the case as a whole”).

Sprint cannot rely on general allegations of corporate relatedness to excuse its muddled venue pleading. Courts in this district, and throughout the country, have made clear that a plaintiff cannot rely on the acts of a subsidiary to show the parent’s presence in the District, or vice versa, unless a plaintiff is able to meet the very high threshold for piercing the corporate veil. *See, e.g., Symbology Innovations, LLC v. Lego Systems, Inc.*, 282 F. Supp. 3d 916, 931-33 (E.D. Va. 2017) (refusing to impute stores of a subsidiary to be regular and established places of business to the parent company because “lack of formal corporate separateness is maintained”); *see also Post Consumer Brands, LLC v. General Mills, Inc.*, No. 4:17-cv-2471, 2017 WL 4865936, at *2 (E.D. Mo. Oct. 27, 2017) (“[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”); *Blue Spike, LLC v. Nook Digital, LLC*, No. 6:16-cv-1361-RWS-JDL, 2017 WL 3263871, at *3 (E.D. Tex. Jul. 28, 2017). This District has stated that

for [venue] purposes, the integrity of the corporate shell is [even] more rigidly respected [than in the liability context]; and only in the most extreme circumstances will the inter-relationship between parent and subsidiary justify piercing the corporate veil to establish the parent’s presence, for . . . venue purposes, based on the subsidiary’s presence.

Hauni Werke Koerber & Co. v. Molins Ltd., No. 73-404-R, 1974 WL 20172, at *7 (E.D. Va. June 11, 1974) (citing *Manville Boiler Co., Inc. v. Columbia Boiler Co., Inc.*, 269 F.2d 606 (4th Cir. 1959)). No such “extreme circumstances” exist here. In this case, Sprint makes no allegations that any Charter-related entities have disregarded or misused the corporate form, nor has Sprint made any allegations of fraud that might support piercing the corporate veil. As such, Sprint cannot rely on a general allegation of a parent-subsidary relationship to lump together all five Defendants as one entity for venue purposes.

ii. Sprint's Complaint Fails to Demonstrate that Defendants Have Committed Acts of Infringement and Have Regular and Established Places of Business in This District

Separate and apart from Sprint's improper attempt to lump together all five Defendants for venue purposes, venue in this District is improper because Sprint has failed to plead facts showing that any of the Defendants have committed acts of infringement and have regular and established places of business in the District. The sum total of Sprint's venue allegations are contained in a single paragraph:

Venue is proper in this Court pursuant to 28 U.S.C. § 1400(b) and § 1391 because Charter transacts business within this Judicial District and has committed acts of infringement in this Judicial District. In addition, on information and belief, a substantial part of the events or omissions giving rise to these claims occurred in this District. Venue is also proper because Charter has committed acts of infringement in this District and has multiple regular and established places of business in this District. Specifically, on information and belief, Charter has a regular and established place of business at 13820 Sunrise Valley Drive Herndon, VA 20171, at 107 N Main St, Franklin, VA, 23851, at 216 Moore Ave, Suffolk, VA, 23434, and at 6743 Maddox Blvd #2, Chincoteague, VA, 23336.

(Compl. ¶ 11.) Taken in the light most favorable to Sprint, it appears that Sprint is basing its venue allegations on (1) the sale of the accused services in the District, and (2) various business addresses that Sprint imputes to "Charter." Neither factor, alone or taken together, supports a finding that venue is proper in the Eastern District of Virginia.

First, courts have held that the mere sale of products or services within the district does not suffice to show that the defendant has a "regular and established" place of business there, unless there is also a "physical presence." *See In re Cray*, 871 F.3d at 1360; *see also, e.g., JPW Indus., Inc. v. Olympia Tools Int'l, Inc.*, No. 3:16-cv-03153, 2017 WL 4512501, at *3 (M.D. Tenn. Oct. 10, 2017) (merely relying on sales is insufficient for venue because "a patent infringement defendant must have a physical presence in the district for venue to be proper"); *Westech Aerosol Corp. v. 3M Co.*, No. C17-5067-RBL, 2017 WL 3387363, at *3 (W.D. Wash. Aug. 7, 2017)

(finding that a corporate defendant “must have more contact with [a venue] than simply doing business there” and “mere presence of sales . . . is insufficient”). This is particularly true where goods are sold nationwide and the portion sold in the district is not substantially different from the volume sold elsewhere. *Cf. McCain Foods Ltd. v. J.R. Simplot Co.*, No. 17-C-1326, 2017 WL 3432669, at *2 (N.D. Ill. Aug. 9, 2017) (“Sales alone are insufficient to establish a substantial connection to the forum if the defendant’s goods are sold in many states.”); *Koh*, 250 F. Supp. 2d at 636 (transferring venue where there were only “limited sales” in the District). Here, Charter-related entities provide services in 41 states, and their subscribers in the Eastern District of Virginia make up less than 0.172% of total subscribers. (Boglioli Decl. ¶ 12.) Thus, the fact that certain Charter-related entities sell services in the Eastern District of Virginia is plainly insufficient to demonstrate the required “physical presence” of each of the five Defendants in the District.

Second, Sprint’s property-based allegations are also inadequate to support a finding that the five Defendants have a physical presence in the District. As shown above, Sprint identified in its Complaint four properties within the District (Compl. ¶ 11), but none of those properties constitute a place of any of the Defendants, because Defendants do not own or lease these properties, nor do they own or lease any property in the Eastern District of Virginia (Starosta Decl. ¶ 5). *See In re Cray*, 871 F.3d at 1362 (“[T]here must still be a physical, geographic location in the district from which the business of the defendant is carried out.”).

Moreover, the fact that these locations may be operated by a different Charter-related entity is immaterial. In *Symbology Innovations, LLC v. Lego Systems, Inc.*, for example, this Court considered the analogous situation of whether a location owned and controlled by a related corporate entity can be imputed to the defendant for venue purposes. 282 F. Supp. 3d 916. Applying the Supreme Court’s rule of *Canon Manufacturing Co. v. Cudahy Packing Co.*, 267 U.S.

333, 334 (1925), the District Court explained that “even where the parent corporation controls a subsidiary’s operations and the companies share a unitary business purpose, the subsidiary’s presence in the forum cannot be imputed to the parent company so long as they maintain formal corporate separateness.” *Symbology*, 282 F. Supp. 3d. at 932; *see also, e.g., Reflection, LLC v. Spire Collective LLC*, No. 17-cv-1603, 2018 WL 310184, at *3 (S.D. Cal. Jan. 5, 2018) (“[A] subsidiary of a parent corporation selling the infringer’s product does not demonstrate that the defendant has a regular and established business in the district.”). Defendants, for example, maintain all relevant corporate formalities, including corporate charters, bylaws, and records that are separate from those of other corporate entities including its subsidiaries. (Bollinger Decl. ¶¶ 10-14.) Accordingly, properties owned and controlled by different, unnamed Charter-related entities cannot be imputed to Defendants for purposes of establishing that Defendants have regular and established places of business in this District.

Thus, because Sprint’s Complaint fails to make a prima facie showing that venue is proper in this District as to any of the Defendants and because Sprint has failed to allege facts showing that Defendants have committed acts of infringement and have regular and established places of business in the District, this case should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(3). Alternatively, this Court should transfer this case to the District of Delaware under 28 U.S.C. § 1404 or § 1406 for the reasons set forth below.

B. Alternatively, This Case Should Be Transferred to the District of Delaware Under 28 U.S.C. § 1404 or § 1406

Sprint’s claims could have been brought in the District of Delaware and the interests of justice weigh heavily in favor of transfer to the District of Delaware. Therefore, should the Court determine not to dismiss this case, this case should be transferred to the District of Delaware under either 28 U.S.C. § 1404 or § 1406.

i. Sprint's Claims Could Have Been Brought in the District Of Delaware

In determining whether transfer is appropriate under § 1404 or § 1406, a district court must first determine whether the claims might have been brought in the proposed transferee forum. *Koh*, 250 F. Supp. 2d at 630. Here, there is no question that the District of Delaware would have been an appropriate forum for Sprint's claims. Since this is a patent infringement case, it arises under the federal laws of 35 U.S.C. § 271 et. seq., and therefore, the District of Delaware has subject matter jurisdiction over the case. Further, the District of Delaware may exercise general jurisdiction over each of the Defendants, as they are each incorporated in the State of Delaware, rendering them "essentially at home" there. *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014). Finally, venue is proper in the District of Delaware because, being incorporated in Delaware, each Defendant resides in the district pursuant to 28 U.S.C. § 1400(b). Therefore, both venue and jurisdictional requirements are satisfied in the District of Delaware.

Therefore, Sprint's patent infringement claims against Defendants could have been brought in the District of Delaware. In the absence of proper venue, transfer to the District of Delaware would, therefore, be appropriate under § 1406. As further detailed below, even if venue is proper in this District, the convenience of the parties and witnesses and the interests of justice favor transfer to the District of Delaware under § 1404.

ii. Sprint's Choice of Forum

The first factor this Court considers in deciding whether to transfer a suit under § 1404 is the plaintiff's choice of forum. *Koh*, 250 F. Supp. 2d at 633. While Sprint has chosen this District as its preferred forum, this factor is given considerably less weight because it is neither Sprint's nor Defendants' home forum. *Ion Beam Applications S.A. v. Titan Corp.*, 156 F. Supp. 2d 552, 560 (E.D. Va. 2000) (citing *Cognitronics Imaging Sys. Inc. v. Recognition Research, Inc.*, 83 F. Supp. 2d 689, 696 (E.D. Va. 2000)); *see also Koh*, 250 F. Supp. 2d at 633 (noting that this factor

“is not given such substantial weight when the plaintiff selects a forum other than its home forum and the claims bear little or no relation to the chosen forum”). First, Sprint has no connection to this forum as it is incorporated in the State of Delaware and it has its principal place of business in Overland Park, Kansas. (Compl. ¶ 1.) Second, not a single named Defendant has a connection to this District, with each being incorporated in Delaware and having its principal place of business in Missouri or Connecticut. (Bollinger Decl. ¶¶ 4-8.) Third, Sprint’s Complaint does not provide a single factually supported allegation tying its claims to this forum, and simply provides the conclusory assertion that Defendants “made, used, offered to sell, or sold” the Accused Products and “continues to do so in this District.” (*Id.* at ¶ 28.) For purposes of venue, this Court discounts such allegations of infringement when they are not unique to Virginia and the defendants “likely have [the] same contact with every other state in [the] nation.” *Global Touch*, 109 F. Supp. 3d at 898 (quoting *Lycos, Inc. v. TiVo, Inc.*, 499 F. Supp. 2d 685, 692-93 (E.D. Va. 2007)).

Sprint has already conceded that the District of Delaware is a proper forum for the dispute between the Parties. Sprint filed a separate patent infringement case last year against certain of the Defendants and their affiliates in the District of Delaware.³ (Boglioli Decl. ¶ 10.) Further, Sprint itself has chosen to incorporate in Delaware. (*See* Compl., ¶ 1.) For both reasons, Sprint cannot take the position that the District of Delaware is not a convenient forum. *See Golden Bridge Tech., Inc. v. Apple Inc.*, No. 2:12-cv-4014-ODW, 2012 WL 3999854, at *4 (C.D. Cal. Sep. 11, 2012) (granting motion to transfer where the plaintiff’s filing of other patent suits against the same defendants in other districts “suggests that forum convenience matters little” to the plaintiff); *Wesley-JessenCorp. v. Pilkington Visioncare, Inc.*, 157 F.R.D. 215, 218 (D. Del. 1993) (“Absent

³ *Sprint Communications Co. LP v. Charter Communications, Inc.*, No. 1:17-cv-01734.

some showing of a unique or unexpected burden, these corporations should not be successful in arguing that litigation in their state of incorporation is inconvenient.”). Accordingly, Sprint’s choice of forum should be granted no weight in determining whether transfer to the District of Delaware is appropriate.

iii. Witness and Party Convenience and Access to Sources of Proof

Next, this Court considers the convenience of witnesses, the ability to access sources of proof, and the convenience to the parties. *Koh*, 250 F. Supp. 2d at 633. As the Federal Circuit has explained, “[i]n patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer.” *In re Genentech, Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009). While it is premature at this stage to identify all relevant evidence and witnesses, relevant evidence and witnesses likely include: (1) technical documents showing the technical specifications of the Accused Products; (2) marketing, sales, and financial records relating to the Accused Products; (3) engineers and other technical witnesses to provide testimony regarding the technical specifications of the Accused Products; and (4) business personnel to provide testimony regarding the marketing, sale, and financial details relating to the Accused Products. None of this information is located in the Eastern District of Virginia.

Technical and engineering documents related to the Accused Products are primarily located in Colorado. (Boglioli Decl. ¶ 4.) Marketing, sales, and financial records related to the Accused Products are primarily located at offices in North Carolina, Missouri, and Connecticut. (Boglioli Decl. ¶ 6.) Personnel involved with research, development, and engineering related to the design and implementation of the Accused Products primarily live and work in Colorado. (Boglioli Decl. ¶ 5.) Finally, the business, management, and legal personnel with substantial knowledge of the business-related aspects of the Accused Products are also primarily located in offices located in North Carolina, Missouri, and Connecticut. (Boglioli Decl. ¶ 7.) Given that none of these sources

of evidence are located in this District, it would not be more convenient for Defendants to produce this evidence in this Court than in the District of Delaware.

As for Sprint's likely evidence and witnesses, Sprint's Complaint does not allege that any relevant sources of proof in this case are found within this District. To the contrary, the bulk of Sprint's relevant documents and witnesses are likely located at Sprint's corporate headquarters in Overland Park, Kansas. Finally, it is likely that the inventors of the Asserted Patents will be called as witnesses in this case. For the '4,907 and '7,907 patents, the face of the patents indicate that the three named inventors lived in California. It appears that at least two of these inventors still reside in California, as shown by public LinkedIn profiles of individuals sharing the same names as the inventors and indicating their employment with Sprint during the relevant time period. (Declaration of Cameron Clawson (hereinafter "Clawson Decl.") Exs. 1-2.)⁴ Similarly, the '077 patent indicates on its face that its sole named inventor lived in Olathe, Kansas, and based on a public LinkedIn profile, he still resides in Kansas. (Clawson Decl. Ex. 3.) As such, there is no indication that it would be more convenient for Sprint to produce its evidence or witnesses in this District than in the District of Delaware.

iv. The Interest of Justice

The final factor this Court considers under § 1404 is the interest of justice. *Koh*, 250 F. Supp. 2d at 633. In evaluating this factor, the Court considers "the pendency of a related action, the court's familiarity with the applicable law, docket conditions, access to premises that might have to be viewed, the possibility of unfair trial, the ability to join other parties, and the possibility

⁴ The current location of the third named inventor has not yet been determined.

of harassment.” *Acterna, L.L.C. v. Adtech, Inc.*, 129 F. Supp. 2d 936, 940 (E.D. Va. 2001). These considerations weigh heavily in favor of transferring this case to the District of Delaware.

First, there are a number of related patent infringement cases between Sprint and certain Defendants and their affiliates currently pending in the District of Delaware. Specifically, both *Sprint Communications Co. LP v. Charter Communications, Inc.*, No. 1:17-cv-01734 and *TC Technology LLC v. Sprint Corp.*, No. 1:16-cv-00153 are pending patent infringement cases assigned to the Honorable Richard G. Andrews in the District of Delaware. Thus, Judge Andrews is familiar with the Parties and their respective affiliates to this case.

Under these circumstances, it would be much more efficient if Judge Andrews were to coordinate these three related patent infringement cases to ensure an overall schedule that is fair and reasonable to both sides and to ensure that discovery obligations and rulings are consistent across all three matters. *See Neology, Inc. v. Fed. Signal Corp.*, No. , 2012 WL 13013024 (C.D. Cal. Oct. 15, 2012) (transferring patent case to Delaware because plaintiff chose to sue defendant on other patents in Delaware in pending action and “common rulings on evidence, discovery and other pre-trial matters will . . . be more efficient and consistent” if both cases were tried in a single forum). Trying all three cases in a single forum will also ensure consistency with respect to overlapping issues related the Parties’ respective patent licensing practices, witness availability, and the ability to use testimony and documents produced in one case in the other under a single, coordinated protective order, thereby streamlining and making efficient use of judicial and party resources. This consideration, therefore, weighs heavily in favor of transferring this case to the District of Delaware.

With regard to the consideration of docket conditions, it is well-known that this District is an attractive forum for patent plaintiffs due to its “rocket docket.” However, “[a]s noted by the

EDVA many times over, ‘[t]his Court cannot stand as a willing repository for cases which have no real nexus to this district’ In other words, this Court should not allow itself to be overrun by a horde of Visigoths who simply want quick results.” *Intercarrier Comm’s, LLC v. Glympse, Inc.*, No. 3:12-cv-767-JAG, 2013 WL 4083318, at *6 (E.D. Va. Aug. 12, 2013) (quoting *Cognitronics*, 83 F. Supp. 2d at 699). Thus, due to this Court’s desire to “not dull the ability of the Court to continue to act in an expeditious manner” for those claims having a true nexus to this District, this Court is particularly cautious in permitting patent infringement cases to go forward in this District where, as here, plaintiff has shown no real connection between the District and the parties or their respective claims and defenses. *Id.*

In this case, this consideration weighs heavily in favor of transfer because Sprint is using this District’s fast time to trial to attempt to leapfrog the other three pending patent infringement cases between the Parties and their affiliates. The interests of justice would not be served by rewarding Sprint for its forum shopping. *See Pragmatus AV, LLC v. Facebook, Inc.*, 769 F. Supp. 2d 991, 997 (E.D. Va. 2011) (“When a plaintiff with no significant ties to the Eastern District of Virginia chooses to litigate in the district primarily because it is known as the ‘rocket docket,’ the interest of justice ‘is not served.’”); *Original Creatine Patent Co., Ltd. v. Met-Rx USA, Inc.*, 387 F. Supp. 2d 564, 572 (E.D. Va. 2005) (“[W]hen docket considerations are the primary reason a party has initiated an action in this court, . . . the interest of justice is not served.”) (citing *Telepharmacy Solutions, Inc. v. Pickpoint Corp.*, 238 F. Supp. 2d 741, 743-44 (E.D. Va. 2003)).

Finally, the interests of justice favor transfer to the District of Delaware because that court holds a greater interest in adjudicating the current dispute between the Parties. Again, neither Sprint nor Defendants are incorporated in Virginia nor have their principal places of business in this District, and there is no specific nexus tying Sprint’s claims to this District. Both Sprint and

all Defendants, however, are incorporated in the State of Delaware. Delaware has a substantial interest in adjudicating business disputes between corporations established under its laws. *See Autodesk Canada Co. v Assimilate, Inc.*, No. 08-cv-587, 2009 WL 3151026, at *9 (D. Del. Sept. 29, 2009) (“Delaware clearly has a substantial interest in addressing lawsuits brought against Delaware corporations.”). Thus, this consideration also weighs in favor of transfer.

In summary, because Sprint could have filed this case in the District of Delaware originally and because the interests of justice strongly favor transfer, this Court should transfer this case to the District of Delaware pursuant to 28 U.S.C. § 1404 or § 1406.

C. Sprint’s Complaint Fails to Adequately Plead a Claim for Patent Infringement and the Case Should Be Dismissed Under Federal Rule of Civil Procedure 12(b)(6)

Even if venue were proper in this District (which it is not), Sprint’s Complaint should be dismissed because it fails to state a claim under Federal Rule of Civil Procedure 12(b)(6). As this Court has explained, “[t]he standards enumerated by the Supreme Court in *Iqbal* and *Twombly* are strictly applied in direct patent infringement cases.” *Jenkins*, 2017 WL 376154, at *3 (citing *Macronix Int’l Co., Ltd. v. Spansion Inc.*, 4 F. Supp. 3d 797, 803 (E.D. Va. 2014) (“[T]o exempt patent complaints from the requirements of *Twombly* and *Iqbal* is to ignore a fundamental rationale that underpins those decisions.”)).

Under the pleading standard of *Twombly* and *Iqbal*, Sprint’s Complaint must set forth sufficient factual content to allow the Court to draw a reasonable inference of Defendants’ liability for patent infringement. *See Iqbal*, 556 U.S. at 678. Sprint fails to do so here. Instead, Sprint’s Complaint contains nothing more than vague and conclusory statements that the Accused Products infringe without attempting to specify which portions of the Asserted Patents are infringed or how the Accused Products do so. In particular, Sprint’s Complaint is deficient because it fails to (1) identify which features of the Accused Products correspond to the limitations in the allegedly

infringed patent, (2) explain how each allegedly infringing feature of the Accused Product infringes the patents, or (3) set forth infringement allegations specifically directed against any of the Defendants. Accordingly, each count of the Complaint should be dismissed for failure to state a claim under Rule 12(b)(6). *See Adiscov, LLC v. Autonomy Corp.*, 762 F. Supp. 2d 826, 832 (E.D. Va. 2011) (dismissing complaint for failure to meet *Iqbal's* plausibility test where plaintiff merely identified a product and a patent claim without alleging how the product infringed).

i. Sprint's Complaint Fails to Identify Which Features Correspond to Which Limitations in the Asserted Patents

Sprint's claims for patent infringement are deficient, because they fail to adequately specify "which features of [the] accused product[s] correspond to the limitations in the allegedly infringed patent[s]." *Kim*, 2018 WL 1172998, at *2. Much of Sprint's Complaint follows the same pattern for many of the claim limitations of the '4,907 and '7,907 patents—merely reciting language corresponding to a claim limitation of the patents and copying and pasting one or more marketing website screenshots for the Accused Product. (*See* Compl. ¶¶ 34-36, 38.) Sprint nowhere attempts to explain the significance of these screenshots, does not even specify which features of the Accused Products are shown by the screenshots, or identify which aspect of the Accused Products read on the specific limitations of the claims.

Paragraph 35 of Sprint's Complaint is representative of this pattern. Paragraph 35 recites that "Charter's Accused Products and Services, including its video-on-demand system, comprise a second communication interface configured to transfer control screen signals to a second communication system" This is a limitation required by claim 1 of both the '4,907 and '7,907 patents. The Complaint then sets forth a series of screenshots from a marketing website. (Compl. ¶ 35, pp. 17-24.) First, Sprint identifies three websites providing marketing and instructional information for the Spectrum TV App. (*Id.* at ¶ 35, pp. 17-20.) Sprint, however, fails to identify

any features of the Spectrum TV App shown in these screenshots that allegedly correspond to the recited “second communication interface configured to transfer control screen signals to a second communication system.” Next is a marketing webpage for the Charter TV App (*id.* at ¶ 35, p. 21); again Sprint nowhere identifies specific features allegedly corresponding to the recited limitation. Next is a screenshot from Charter’s YouTube channel (*id.* at ¶ 35, p. 22); again, no specific infringing features are identified. Next are screenshots from www.spectrum.net providing more marketing information for “On Demand” video (*id.* at ¶ 35, pp. 22-23); as with the previous screenshots, no specific allegedly infringing features are identified. Finally, Sprint includes a marketing release for the “TWC TV app for iPad” (*id.* at ¶ 35, p. 24), with again, no specific allegedly infringing features identified.

Paragraphs 34, 36, and 38 of Sprint’s Complaint follow this same pattern. There is substantial overlap between the screenshots reproduced in these paragraphs, with the screenshots included for paragraphs 34, 36, and 38 consisting of some or all of those set forth in paragraph 35. Moreover, Sprint does not provide any substantive description or labeling of the screenshots for any of the paragraphs. Sprint’s reproduction of the exact same screenshots for multiple claim limitations of the ’4,907 and ’7,907 patents, without any substantive explanation of those screenshots, prevents Defendants from ascertaining which features of the Accused Products are alleged to correspond to which limitations of the Asserted Patents or even what features of the Accused Products that Sprint alleges infringe.

This Court has previously dismissed substantially similar infringement allegations under Rule 12(b)(6). In *Kim*, 2018 WL 1172998, at *2, the Court found that the complaint “merely cop[ied] and paste[d] the patent language, and insert[ed] a photograph of the unbundled Accused Product[s] with written notations of some claim elements.” Sprint’s allegations in its Complaint

fare worse than those in *Kim*. As with the plaintiff in *Kim*, Sprint merely recites the limitations of the claims and copies and pastes screenshots purporting to show the Accused Products, however, unlike the plaintiff in *Kim*, Sprint does not even provide accompanying notations. This Court in *Kim* held that photographs alone did not allow the defendants “to discern which features of the Accused Product infringe which elements of [the asserted claim].” *Id.* Likewise here, Sprint’s screenshots fail to allow Defendants to discern which features of the Accused Products allegedly infringe the claims of the Asserted Patents. *See also Jenkins*, 2017 WL 376154, at *3 (finding that recitation of claims in conjunction with “a general overview of [d]efendant’s allegedly infringing products . . . is clearly deficient”).

For other elements of the ’4,907 and ’7,907 patents and the entirety of the ’077 patent, Sprint’s Complaint does not even attempt to show that the Accused Products allegedly correspond to the claim limitations of the Asserted Patents. For example, claim 1 of the ’4,907 patent requires the following claim limitation:

a processing system configured to transfer the control screen signal to the second communication interface, receive the video control signal from the second communication interface, implement a viewer-control selection indicated by the video control signal, and transfer the video content signals to the first communication interface if the first communication interface is indicated by the video control signal received from the second communication interface or transfer the video content signals to the second communication interface if the second communication interface is indicated by the video control signal.

Yet rather than set forth factual allegations demonstrating that this claim limitation is met, the Complaint simply states that this limitation is present in the Accused Products “[o]n information and belief.” (Compl. ¶ 39.) Similarly, claim 1 of the ’7,907 patent requires sending “second video signals to a second communication system using a second bandwidth that is less than [a] first bandwidth.” In addressing this limitation, the Complaint merely states “on information and belief” that this limitation is met by the Accused Products without any explanation. (*Id.* at ¶ 37.)

Finally, for the '077 patent, the Complaint dispenses with the pretext of providing factual allegations of infringement altogether. In contrast to its allegations based on the '4,907 and '7,907 patents, where Sprint at least identified marketing materials of the Accused Products—albeit still insufficient disclosure—Sprint fails to set forth *anything* from the Accused Products that infringe any of the '077 patent's claim limitations. For each limitation of claim 20 of the '077 patent, the Complaint simply references in bulk to the entirety of the screenshots set forth for the '4,907 and '7,907 patents or recites language corresponding to the limitation followed by the recital of Sprint's "on information and belief" that this limitation is found somewhere in the Accused Products. (Compl. ¶¶ 40-49.)

These conclusory allegations are insufficient to identify which features of the Accused Products purportedly correspond to the recited limitations of the Asserted Patents. *See Asghari-Kamrani v. United. Servs. Auto. Assoc.*, No. 2:15-cv-478, 2016 WL 1253533, at *2-4 (E.D. Va. 2016) (dismissing patent infringement complaint relying in part on "catch-all allegation" of "information and belief"); *see also Mician v. Catanzaro*, No. 2:17-cv-548, 2018 WL 2977398, at *3-4 (E.D. Va. June 13, 2018) (finding pleading of infringement deficient where the "complaint states, in conclusory fashion, that [d]efendants' offending device is virtually identical to [plaintiff's] patented device but fails to identify the features they allegedly have in common").

ii. Sprint's Complaint Fails to Identify How the Products Allegedly Infringe

In addition, Sprint's Complaint fails to state a claim because it does not "identify with particularity *how* each allegedly infringing feature of the accused product infringes the patent, literally or under the doctrine of equivalents." *Kim*, 2018 WL 1172998, at *2 (citations omitted) (finding that where a complaint fails to allow the defendant "to discern which features of the Accused Product infringe," the claims likewise "do not identify *how* each feature of the Accused

Product infringes the patent.”). Even where a complaint properly identifies a product’s infringing features, which Sprint’s Complaint fails to do, this Court has dismissed the complaint if it does not also specifically describe how the identified features allegedly infringe. *See Asghari-Kamrani*, 2016 WL 1253533, at *4 (dismissing complaint even though it identified four specific infringing features because “there is no information in the complaint that elucidates how these features infringe the patent”); *Jenkins*, 2017 WL 376154, at *3 (dismissing complaint because it did “not identify with any particularity *how* each allegedly infringing feature of the accused products infringe[.]”). As detailed above, Sprint’s Complaint fails to even identify which features of the Accused Products correspond to the limitations of the Asserted Patents. Rather, for many limitations of the ’4,907 and ’7,907 patents, Sprint simply provides marketing website screenshots without explaining their relevance or which infringing features are shown in the screenshots.

Again, paragraph 35 of the Complaint is representative. At paragraph 35, for the alleged Spectrum TV App, the Complaint sets forth screenshots from three marketing websites purporting to describe the application. (Compl. ¶ 35, pp. 17-20.) As shown above, the Complaint provides no description or identification of any features shown in these screenshots that allegedly infringe the “second communication interface configured to transfer control screen signals to a second communication system” limitation in the asserted claim. The other screenshots corresponding to other Accused Products are similarly deficient. (*Id.* at ¶ 35, pp. 20-24.) Moreover, the Complaint provides no explanation of precisely *how* any features that may be shown in the screenshots correspond to this “second communication interface” limitation. (*Id.* at ¶ 35.) Thus, Defendants are left to guess both as to which features of the Accused Products allegedly infringe or how those features allegedly infringe.

iii. Sprint's Complaint Fails to Identify Which Defendant Engaged in Which Wrongful Act

Finally, Sprint's Complaint should be dismissed because it fails to identify which Defendants engaged in any of the allegedly infringing acts. As the Western District of Virginia has explained, "Courts have been quick to reject pleadings in which multiple defendants are lumped together and in which no defendant can determine from the complaint which of the alleged [acts of wrongdoing] it is specifically charged with having [done]." *Webb v. Equifirst Corp.*, No. 7:15-cv-00413, 2016 WL 1274618, at *9 (W.D. Va. Mar. 31, 2016) (quoting *Dealers Supply Co. v. Cheil Indus., Inc.*, 348 F. Supp. 2d 579, 590 (M.D.N.C. 2004)). This is particularly true in the patent context, where plaintiff must allege that "each defendant committed at least one infringing act" to meet the pleading requirements of Federal Rule of Civil Procedure 8. *T-Jat Sys. 2006 Ltd. v. Expedia, Inc.*, No. 16-581-RGA-MPT, 2017 WL 896988, at *7 (D. Del. Mar. 7, 2017); *see also, e.g., M2M Sols. LLC v. Telit Comm'ns PLC*, No. 14-1103-RGA, 2015 WL 4640400, at *3 (D. Del. Aug. 5, 2015) (finding "lump[ing] two defendants together" in direct infringement claim insufficient under now-expired Form 18, which set a lower bar for patent plaintiff to meet than the current requirements).

Sprint's Complaint fails to meet this pleading requirement. Rather than plead facts that would give rise to a plausible inference of infringement as to any individual Defendant, Sprint defines all five Defendants collectively as "Charter" in the very first sentence of its Complaint, and then alleges that "Charter has made, used, offer to sell, and/or sold" allegedly infringing products without making any allegations specific to any specific Defendant. (Compl. ¶ 27; *see also, e.g., id.* ¶¶ 28–29, 32–49 (allegations only as to "Charter" without identifying any individual Defendant).) Sprint's approach is the opposite of what is required under the Federal Rules.

Nor can Sprint evade the requirement to allege facts specific to each Defendant by arguing that Defendants are part of the same corporate family. As courts have explained, the acts of a subsidiary cannot be imputed to a parent (or vice versa) except in “extraordinary cases, such as [where] the corporate form [is] being used for wrongful purposes.” *Vitol*, 708 F.3d at 544. As explained above, Sprint has not alleged that Defendants failed to respect the corporate form. In such circumstances, dismissal is required. *See, e.g., Gal derma Labs, L.P. v. Teva Pharm. USA, Inc.*, 290 F. Supp. 3d 599, 618 (N.D. Tex. 2017) (granting 12(b)(6) motion as to claims against Teva Israel because complaint did not allege acts of infringement “specific to Teval Israel” but rather “lump[ed] together all of the Defendants” with Teva USA); *T-Jat Sys. 2006 Ltd.*, 2017 WL 896988, at *2, *6 (granting 12(b)(6) motion where plaintiff “improperly lump[ed] multiple defendants together” despite plaintiff’s contention that doing so was proper because defendants “acted as one entity because of the companies’ parent-subsidary relationship[s]”).

Sprint’s Complaint does not contain any specific infringement allegations with respect to any particular Defendant and it alleges infringement in only the broadest and most conclusory terms, and therefore, the Complaint fails to meet the pleading standard required by *Iqbal* and *Twombly* and must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

V. CONCLUSION

For all of these reasons, Defendants respectfully request that this Court dismiss Sprint’s Complaint pursuant to Federal Rule of Civil Procedure 12(b)(3) or 12(b)(6), or in the alternative transfer this case to the District of Delaware pursuant to 28 U.S.C. § 1404 or § 1406.

DATED: July 19, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2018, I electronically filed the forgoing Memorandum in Support of Defendants' Motion to Dismiss Plaintiff's Complaint Pursuant to Rules 12(b)(3) and 12(b)(6) or in the Alternative to Transfer Pursuant to 28 U.S.C. § 1404 or § 1406 with the Clerk of the District Court using the CM/ECF system, which will send notice to counsel of record who have appeared for the parties:

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