

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

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|-------------------------|---|-------------------------------------------|
| BLUE SPIKE, LLC, | § | |
| | § | |
| Plaintiff, | § | CIVIL ACTION NO. 6:17-CV-00100-RWS |
| | § | |
| v. | § | |
| | § | |
| ROKU, INC., | § | |
| | § | |
| Defendant. | § | |
| | § | |

ORDER

Before the Court is Defendant Roku, Inc.’s Motion to Dismiss (Docket No. 16) in which Roku re-urges the Court to grant its underlying Motion to Dismiss for Improper Venue (Docket No. 14) in light of Plaintiff Blue Spike, LLC’s failure to respond. Roku filed its original motion on May 26, 2017. *See* Docket No. 14. Blue Spike’s response was due on June 9, but no response has been filed.

A. Legal Standard

“The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” 28 U.S.C. § 1406(a).

Venue is proper “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). Under the patent venue statute, a domestic corporation “resides” only in its state of incorporation. *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S.Ct. 1514, 1521 (2017).

“A party’s failure to oppose a motion in the manner prescribed [in the Local Rules] creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition.” L.R. CV-7(d). Nonetheless, the Court still considers the merits of the motion. *Johnson v. Pettiford*, 442 F.3d 917, 918–19 (5th Cir. 2006).

B. Analysis

Because Blue Spike failed to respond to Roku’s motion, the Court takes all factual assertions in the motion as uncontroverted. L.R. CV-7(d). These assertions include that “Roku is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the Northern District of California (Los Gatos, CA),” Docket No. 14 at 2, and that Roku has “no real estate holdings in this District, and no sales representatives in this District.” *Id.* at 3.

For purposes of the patent venue statute, Roku resides in Delaware. Moreover, Roku has put forward evidence that it does not have a regular and established place of business in this District, including that it has no sales staff or real estate holdings. *See In re Cordis Corp.*, 769 F.3d 733, 736–37 (Fed. Cir. 1985) (discussing effect of sales representatives on venue inquiry). Because the Court must presume that Blue Spike “has no evidence to offer in opposition,” L.R. CV-7(d), it finds that Roku’s motion should be **GRANTED**.

CONCLUSION

For the reasons stated above, it is

ORDERED that Roku’s Motion to Dismiss for Improper Venue (Docket No. 14) is **GRANTED**;

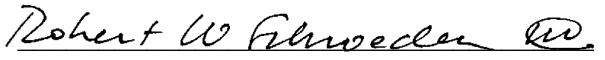
ORDERED that Roku’s subsequent Motion to Dismiss (Docket No. 16) is **DENIED AS MOOT**; and

ORDERED that Blue Spike's claims against Roku are **DISMISSED** without prejudice to their refiling in a District in which venue is proper.

All relief not previously granted is hereby denied.

The Clerk of the Court is directed to close this action.

SIGNED this 5th day of July, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE