

**FILED**

DEC 23 2009

Clerk, U.S. District and  
Bankruptcy Courts

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

M.R. Mikkilineni,

Plaintiff,

v.

Robert Stoll, Commissioner of Patents,

Defendant.

Civil Action No. 09 2417

MEMORANDUM OPINION

This matter is before the Court on the plaintiff's application to proceed *in forma pauperis* and *pro se* complaint. The application will be granted for the purposes of this decision, but the complaint will be dismissed without prejudice because venue does not lie with this court.

The *pro se* complaint sues the Commissioner of Patents under the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq. ("APA"), for allegedly violating the APA's prescribed procedures for rule-making when adopting a new "instruction" in August 2009. The general venue statute provides that

[a] civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(b). The Commissioner for Patents, as an official in the U.S. Patent and Trademark Office, is considered a resident of Virginia for purposes of venue in civil actions. *See* 35 U.S.C. § 1; *Sykes v. Dudas*, 573 F. Supp. 2d 191, 204 (D.D.C. 2008). The actions of which the plaintiff complains were carried out from the PTO. Accordingly, venue in this case lies in the

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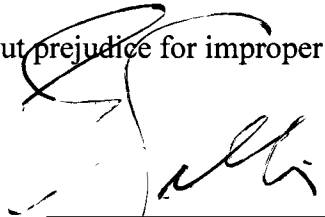
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Eastern District of Virginia and not with this court. Therefore, on its authority under 28 U.S.C.

§ 1406(a), the complaint will be dismissed without prejudice for improper venue.

Dated:

12/21/09

  
United States District Judge