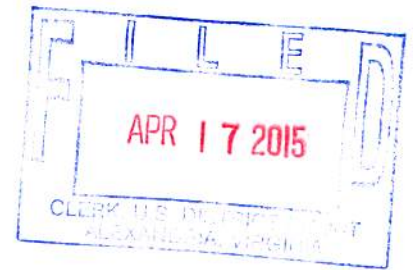


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA



Alexandria Division

ASIA VITAL COMPONENTS CO., LTD.,)	
)	
Plaintiff,)	Civil No. 1:14-cv-1293
)	
-v-)	Hon. Liam O'Grady
ASETEK DANMARK A/S,)	
)	
Defendant.)	

ORDER

This matter comes before the Court on the defendant's motion to dismiss the complaint for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1), or in the alternative to transfer venue pursuant to 28 U.S.C. § 1404(a). (Dkt. No. 13). Plaintiff has opposed the motion and defendant has replied. (Dkt. Nos. 19-22). Having carefully considered the pleadings, exhibits, and heard oral argument, the court grants the motion to dismiss.

In the instant action, plaintiff seeks a declaratory judgment that two patents held by defendant¹ are invalid and have not been infringed by plaintiff. The Declaratory Judgment Act, 28 U.S.C. § 2201-2202, provides that "[i]n a case of actual controversy within its jurisdiction, ...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). In *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007), the United States Supreme Court held that that the correct test for determining whether there is standing in a declaratory action is "whether the facts alleged, under

¹ U.S. Patent No. 8,240,362 and U.S. Patent No. 8,245,764.

all the circumstances, show that there is a substantial controversy, between the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Id.* at 127 (quoting *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941)). The Federal Circuit has stated that while *MedImmune* lowered the bar for establishing standing in patent actions, “declaratory judgment jurisdiction generally will not arise merely on the basis that a party learns of the existence of a patent owned by another or even perceives such a patent to pose the risk of infringement, without some affirmative act by the patentee.” *SanDisk Corp. v. STMicroelectronics, Inc.*, 480 F.3d 1372, 1380-81 (Fed. Cir. 2007).

For the reasons stated during the hearing and for good cause shown, the Court finds that the *MedImmune* standard has not been met in this case. Plaintiff’s complaint does not plead sufficient facts to show that there is a substantial controversy between the parties under the totality of the circumstances. Accordingly, it is hereby ORDERED that the motion to dismiss is GRANTED and the complaint is dismissed without prejudice. The motion to transfer venue is therefore moot.²

Date: April 7, 2015

Alexandria, Virginia

/s/ [Signature]
Liam O’Grady
United States District Judge

² However, had subject matter jurisdiction been satisfied, the Court would have granted the motion to transfer venue to the United States District Court for the Northern District of California.