

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

JOHN LEWIS GUYMON, JR.,
Plaintiff-Appellant

v.

**JOHN A. SQUIRES, UNDER SECRETARY OF
COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE, OFFICE OF
THE GENERAL COUNSEL, UNITED STATES
PATENT AND TRADEMARK OFFICE,**
Defendants-Appellees

2025-1542

Appeal from the United States District Court for the
Eastern District of Virginia in No. 1:23-cv-01302-RDA-
JFA, Judge Rossie David Alston, Jr.

Decided: September 10, 2026

JONATHAN HERSTOFF, Haug Partners LLP, New York,
NY, argued for plaintiff-appellant. Also represented by
CAMILLE YVETTE TURNER.

MATTHEW JAMES MEZGER, United States Attorney's Office for the Eastern District of Virginia, Alexandria, VA, argued for defendants-appellees. Also represented by TODD W. BLANCHE, LINDSEY HALLIGAN, REBECCA S. LEVENSON, ROBERT K. MCBRIDE, KIRSTIN O'CONNOR; KAKOLI CAPRIHAN, MAUREEN DONOVAN QUELER, BRIAN RACILLA, SHEHLA WYNNE, Office of the Solicitor, United States Patent and Trademark Office, Alexandria, VA.

Before MOORE, *Chief Judge*, LOURIE, and HUGHES, *Circuit Judges*.

HUGHES, *Circuit Judge*.

John Lewis Guymon Jr. appeals a decision of the United States District Court for the Eastern District of Virginia dismissing his amended complaint with prejudice. For the reasons below, we *affirm*.

I

Mr. Guymon is the inventor and owner of U.S. Patent No. 10,943,030, which claims a method for creating secure electronic documents that enable the protected exchange of information. Upon issuance, the United States Patent and Trademark Office awarded Mr. Guymon a patent term adjustment (PTA) determination of 1,525 days pursuant to 35 U.S.C. § 154(b) to account for certain delays during the examination and prosecution process. Mr. Guymon, however, believed he should have received a PTA determination of 2,327 days and accordingly requested reconsideration by the USPTO Director. The Director denied Mr. Guymon's request for reconsideration on March 28, 2023.

In response to the reconsideration denial, Mr. Guymon, proceeding pro se, sought review in the Eastern District of Virginia under 35 U.S.C. § 154(b)(4)(A), which allows dis-

satisfied patent applicants to challenge the Director's decision on a PTA reconsideration within 180 days of that decision. By operation of Rule 6(a)(1)(C) of the Federal Rules of Civil Procedure (FRCP), Mr. Guymon's filing deadline for any such review action was September 25, 2023.

On September 25, 2023, the filing deadline, Mr. Guymon attempted to electronically file his complaint, naming the USPTO's Director and Office of General Counsel (collectively, the Defendants) as defendants. He then discovered that the district court prohibited pro se litigants from electronically filing without leave. *See* U.S. Dist. Ct. E.D. Va., Electronic Case Filing Policies and Procedures Manual, 12, 23, 58 (revised in relevant part Sep. 23, 2020 and Oct. 3, 2016), 2025-9-26PoliciesProceduresVAED.pdf [<https://perma.cc/5K5H-AT3Y>] (E.D. Va. Electronic Filing Manual). As such, Mr. Guymon purportedly emailed his complaint to the district court's clerk¹ and mailed a paper copy through overnight delivery. The mailed complaint, while dated September 25, 2023, was received and filed by the clerk's office on September 27, 2023—two days after the 180-day filing deadline.

On March 26, 2024, the Defendants moved to dismiss on two grounds: (1) lack of standing,² and (2) timeliness. Mr. Guymon requested leave to amend his complaint, explaining that he could rectify his lack of standing and that, until he does so, ruling on the timeliness of his complaint “would be improper.” J.A. 108–09. The district court granted leave given his pro se status but noted that Mr. Guymon failed to directly respond to the Defendants' timeliness arguments. Mr. Guymon filed his amended complaint on April 24, 2024, but it did not address timeliness

¹ There is no evidence in the record that the clerk's office ever received Mr. Guymon's emailed complaint.

² The issue of Mr. Guymon's standing is not at issue on appeal.

other than repeating a statement from the original complaint that it was timely filed. *Compare* J.A. 16, *with* J.A. 124.

The Defendants again moved to dismiss on May 8, 2024, focusing on their argument that the action was untimely under § 154(b)(4)(A). Mr. Guymon did not deny that his complaint was untimely and instead raised a series of statutory and regulatory arguments as to why his untimeliness should be excused. *See* J.A. 164–65. He explained how he had only discovered he was unable to electronically file the same day his complaint was due and how he emailed his complaint “in hopes it was an appropriate method for filing.” J.A. 165. He further suggested that his email and other later actions “demonstrated due diligence” and so “any perceived neglect therefore is excusable.” J.A. 165.

The district court dismissed Mr. Guymon’s amended complaint with prejudice after finding the original complaint was filed on September 27, 2023, and therefore was untimely. *Guymon v. Vidal*, No. 23-CV-1302, 2025 WL 77390, at *1, *4 (E.D. Va. Jan. 10, 2025) (*Decision*). It rejected Mr. Guymon’s statutory and regulatory arguments, explaining that they were inapplicable. *Id.* at *4–5. The district court also rejected Mr. Guymon’s request that his untimeliness be excused. It noted that Mr. Guymon waited until the complaint was due, “which left no room for error.” *Id.* at *5 (citation omitted). The district court concluded that Mr. Guymon “knowingly assumed a significant risk to the status of his claim by waiting until the last day to file it,” and thus his “failure to act was not the result of excusable neglect but rather the consequences of his procrastination.” *Id.*

Now represented by counsel, Mr. Guymon timely appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(4)(C).

II

This court reviews procedural issues not unique to patent law under the law of the regional circuit. *See, e.g., Madey v. Duke Univ.*, 307 F.3d 1351, 1358 (Fed. Cir. 2002). The Fourth Circuit reviews a dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure (FRCP) *de novo*. *Turner v. Thomas*, 930 F.3d 640, 644 (4th Cir. 2019). “To survive a motion to dismiss, a 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) (quotation omitted). “[T]he court need not accept the [plaintiff’s] legal conclusions drawn from the facts, nor need it accept as true unwarranted inferences, unreasonable conclusions, or arguments.” *Wahi v. Charleston Area Med. Ctr., Inc.*, 562 F.3d 599, 615 n.26 (4th Cir. 2009) (cleaned up). Decisions to dismiss with or without prejudice are reviewed for abuse of discretion. *See, e.g., Cozzarelli v. Inspire Pharms. Inc.*, 549 F.3d 618, 630 (4th Cir. 2008).

III

Mr. Guymon presents three categories of argument on appeal. First, Mr. Guymon argues his complaint was not untimely because he emailed the complaint to the clerk’s office within the statute of limitations period. Second, he argues the district court erred in dismissing his amended complaint based on an affirmative defense during the motion to dismiss stage. Finally, Mr. Guymon argues that, even if dismissal was proper, the district court abused its discretion by dismissing *with prejudice*. We consider each in turn.

A

1

We first consider Mr. Guymon’s argument that his complaint was timely filed because he emailed it to the

clerk's office on the September 25 filing deadline. Mr. Guymon contends that his complaint should have been deemed filed on September 25, 2023, and the district court's determination to the contrary is legal error because it violates FRCP Rule 5(d)(4).³

Rule 5(d)(4) states that "[t]he clerk [of the court] must not refuse to file a paper solely because it is not in the *form* prescribed by these rules or by a local rule or practice." Fed. R. Civ. P. 5(d)(4) (emphasis added).⁴ According to Mr. Guymon, "form" includes whether the filing is an electronic or paper document. *See* Appellant Br. 11–13. And thus, the clerk's office was prohibited from refusing to file his

³ Mr. Guymon also argues that the district court's timeliness finding runs afoul of Rule 83, which concerns district courts' local rules. *See* Fed. R. Civ. P. 83. As Mr. Guymon concedes, however, the Fourth Circuit has squarely rejected this argument in *Folse v. Hoffman*, 122 F.4th 80, 84 (4th Cir. 2024) (holding that Rule 83(a)(2) is inapplicable because the paper filing requirement for pro se litigants derives from the Rules of Civil Procedure and not a local rule). We therefore reject Mr. Guymon's Rule 83 arguments in light of *Folse* and decline to address them further.

⁴ The Defendants argue that Mr. Guymon has forfeited the argument that his complaint was timely filed because he (1) conceded his complaint was filed on September 27, 2023, and (2) failed to present his FRCP-based arguments to the district court. Appellee Br. 11–13. Given that Mr. Guymon was previously proceeding pro se and the issues have been fully briefed, we decline to find these arguments forfeited. *Forshey v. Principi*, 284 F.3d 1335, 1357 (Fed. Cir. 2002) ("[I]n situations where a party appeared pro se before the lower court, a court of appeals may appropriately be less stringent in requiring that the issue have been raised explicitly below.").

emailed complaint “merely because it was in electronic form rather than in paper form.” *Id.* at 11. We disagree with Mr. Guymon’s reading and the applicability of Rule 5(d)(4).

Although Mr. Guymon frames the issue as involving a defect with the document type—electronic versus paper—the real defect was the *method* he used to submit his complaint. And the meaning of “form” in Rule 5(d)(4) does not encompass the manner of filing, as other rules explicitly govern permissible filing methods. *See Maybin v. Northside Corr. Ctr.*, 891 F.2d 72, 74 (4th Cir. 1989) (“Rules of civil procedure must be considered in relation to one another and construed together.”). For example, Rule 5(d)(3)(B)(i) states that pro se litigants may “file electronically *only if* allowed by court order or by local rule.” Fed. R. Civ. P. 5(d)(3)(B)(i) (emphasis added). Given that in the parallel statutory context, different statutory provisions “should be interpreted so they are compatible, not contradictory,” *Speaks v. U.S. Tobacco Coop., Inc.*, 31 F.4th 838, 843 (4th Cir. 2022), it would be illogical to read “form” in Rule 5(d)(4) such that, even if a pro se plaintiff uses an impermissible method of filing in violation of Rule 5(d)(3)(B)(i), the filing could not be rejected for that reason under Rule 5(d)(4). *See Pavelic & LeFlore v. Marvel Ent. Grp.*, 493 U.S. 120, 123 (1989) (suggesting rules of statutory construction are informative in construing FRCP).

Rather, we find that “form” in Rule 5(d)(4) is most fairly read to refer to aspects of the content of a filing, such as case caption, style guidelines, and the information that must be included. This understanding is supported by other rules governing the “form” of a pleading. *See* Fed. R. Civ. P. 10 (requiring, for example, specific information in the case caption, numbered paragraphs, and separate counts for “promot[ing] clarity”); *cf. IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005) (“[I]dentical words used in different parts of the same statute are generally presumed to have

the same meaning.”). We therefore reject Mr. Guymon’s argument that the district court violated Rule 5(d)(4) when it held that Mr. Guymon’s complaint was untimely filed on September 27, 2023.

2

Given that the true problem with Mr. Guymon’s complaint was his method of filing, the relevant question is therefore whether a local rule or court order permitted Mr. Guymon to file his complaint by email. *See* Fed. R. Civ. P. 5(d)(3)(B)(i). The answer is no.

Mr. Guymon does not point to any local rule that permits a pro se litigant to file a complaint by email. In fact, the opposite is true. Local Rule 1A states that “all documents filed with the Court must be filed through the Electronic Case Filing System, except as provided otherwise in the Court’s *Electronic Case Filing Policies and Procedures* manual.” E.D. Va. Loc. Civ. R. 1(A). And that manual specifically bars pro se litigants from electronically filing “initiating documents,” such as complaints, which must instead be “[s]ubmitted on paper by filer and [s]canned by clerk’s office staff.” E.D. Va. Electronic Filing Manual, at 23. While Mr. Guymon eventually was granted leave to file electronically, he did not have permission to do so on September 25, 2023, when his complaint was due. Therefore, Mr. Guymon’s complaint was not filed through email because it was not a permissible method for filing under Rule 5(d)(3)(B)(i). We find no legal error by the District Court.

* * *

In rejecting Mr. Guymon’s Rule 5(d)(4) and email-based arguments, we are left with Mr. Guymon’s mailed complaint. It is undisputed that the mailed complaint was not received and filed by the clerk’s office until September 27, 2023—two days after the statutory deadline to challenge the Director’s PTA reconsideration decision.

Mr. Guymon's complaint was therefore untimely and barred by the statute of limitations.

B

We next consider Mr. Guymon's argument that, even if his complaint was untimely, the district court used an improper mechanism to dismiss on statute of limitations grounds. We are unpersuaded.

Asserting that a complaint is barred by the statute of limitations is an affirmative defense. Fed. R. Civ. P. 8(c). As such, since a complaint does not need to anticipate or plead facts in response to an affirmative defense, it is typically improper to dismiss on statute of limitations grounds in a Rule 12(b)(6) motion. *Goodman v. Praxair, Inc.*, 494 F.3d 458, 464 (4th Cir. 2007). If all facts necessary to the affirmative defense are apparent from the face of the complaint, however, a statute of limitations defense may permissibly be reached in a 12(b)(6) motion to dismiss. *Id.*

Here, we find that the untimeliness of Mr. Guymon's complaint was clear from its face such that dismissal based on the statute of limitations was proper at the 12(b)(6) stage. While courts must accept all well-pleaded allegations of a complaint as true and, if the plaintiff is pro se, liberally construe them, *see, e.g., Matherly v. Andrews*, 859 F.3d 264, 274 (4th Cir. 2017), they need not accept conclusory, unsupported statements, *see Ashcroft*, 556 U.S. at 678–79. So although Mr. Guymon's complaint stated that he “files this complaint timely,” J.A. 16, this is a conclusory statement, and neither we nor the district court need accept it as true. Indeed, it is directly contradicted by the clerk's stamp on the complaint denoting its filing date as September 27, 2023, J.A. 15, and by the complaint's docket entry, J.A. 12.

Mr. Guymon nonetheless argues that dismissal at this stage was premature because his deadline to file was sub-

ject to equitable tolling. And he suggests that under *Goodman*, a plaintiff need not specifically raise equitable tolling in the complaint for it to apply. Therefore, he contends, it was error for the district court to dismiss given that the allegations in his amended complaint do not *foreclose* the possibility that equitable tolling applies. We disagree.⁵

As an initial matter, we find no support for Mr. Guymon's assertion that "dismissal is proper *only if* the complaint affirmatively demonstrates that Guymon is not entitled to equitable tolling." Reply Br. 18. Practically, it would be unreasonable to find that Mr. Guymon's failure to make an equitable tolling showing saves his complaint from dismissal simply because his silence leaves open some possibility that discovery may unearth facts that support equitable tolling. This is especially true given the strict nature of filing deadlines. See *United States v. Locke*, 471 U.S. 84, 100–01 (1985). Further, *Goodman*'s suggestion that it is typically improper to dismiss a case pursuant to a Rule 12(b)(6) motion on the basis of an affirmative defense stems from the rationale that to hold otherwise would "require a plaintiff to plead affirmatively in his complaint matters that might be responsive to affirmative defenses even before the affirmative defenses are raised." 494 F.3d at 466. But, as *Goodman* makes clear, that rationale is subject to exception, such as "in the unusual case where a claim is filed *clearly* beyond the applicable limitations period and the plaintiff seeks to forestall its dismissal by alleging the facts of discovery." *Id.* This is that case. We see no legal error in the district court's dismissal.

In any event, the district court did consider, and rejected, the factual allegations in Mr. Guymon's briefing on

⁵ We do not decide whether 35 U.S.C. § 154(b)(4)(A) is subject to equitable tolling generally because, as described below, Mr. Guymon has made no showing that suggests he may be entitled to equitable tolling in this case.

the Defendants' motion to dismiss that he suggests could reasonably be construed to support entitlement to equitable tolling.

To establish entitlement to equitable tolling, a party must show "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Holland v. Florida*, 560 U.S. 631, 649 (2010) (quotations omitted). The party seeking equitable tolling has the burden of establishing entitlement. *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). Before the district court, Mr. Guymon argued, in part, that his untimeliness should be excused, explaining that he only discovered the district court's electronic filing restrictions the day his complaint was due. While the district court did not explicitly refer to equitable tolling, it found that Mr. Guymon failed "to establish that his neglect in determining that he was unable to file electronically until the day of his deadline was in any way excusable." *Decision*, 2025 WL 77390, at *5. And equitable tolling does not apply to "garden variety claims of excusable neglect," let alone to the inexcusable neglect caused by the party's own actions the district court found here. *Rouse v. Lee*, 339 F.3d 238, 246 (4th Cir. 2003) (citing *Irwin v. Dep't of Veterans Affs.*, 498 U.S. 89, 96 (1990)). So, to the extent that Mr. Guymon contends that the district court erred by failing to consider

any allegations that could suggest entitlement to equitable tolling, we disagree⁶ and see no error.⁷

C

Finally, Mr. Guymon asserts that, even if his amended complaint is subject to dismissal, the district court abused its discretion in dismissing with prejudice without leave to amend. Mr. Guymon, however, never moved for leave to amend his complaint for a second time. *See* Fed. R. Civ. P. 15(a)(2). It is not an abuse of discretion to decline to grant a motion that was never made. *See Drager v. PLIVA USA, Inc.*, 741 F.3d 470, 474–75 (4th Cir. 2014); *see also Cozzarelli*, 549 F.3d at 630–31 (holding that court did not

⁶ Mr. Guymon’s arguments in his August 10, 2026, Federal Rule of Appellate Procedure 28(j) letter, *see* ECF No. 39, are therefore inapplicable—the district court did consider the facts of the case and did not apply a categorical bar. Furthermore, Mr. Guymon’s relied-upon case, *Chitlik v. Sec’y of Health & Hum. Servs.*, No. 25-1804 (Fed. Cir. Aug. 10, 2026), concerns the United States Court of Federal Claims, not applicable district or regional circuit law.

⁷ Mr. Guymon suggests that we should vacate and remand his case to permit him to develop a record on the issue of tolling. But Mr. Guymon has failed to allege anything, even on appeal, that suggests further factual development would be useful and thus we decline. For example, he suggests that “the clerk’s improper refusal to accept the document because of its form” was an extraordinary circumstance that “prevented him from filing within the statutory period” and thus might provide grounds for tolling his filing deadline. Appellant Br. 28–29. But the clerk’s proper adherence to the district court’s local rules, *see supra* Part III.A., is not an extraordinary circumstance. Nor does Mr. Guymon’s unfamiliarity with the local rules or legal proceedings generally justify equitable tolling. *See, e.g., United States v. Sosa*, 364 F.3d 507, 512 (4th Cir. 2004).

GUYMON v. SQUIRES

13

abuse discretion by denying motion for leave to amend “that was never properly made”). That Mr. Guymon was pro se before the district court “does not transform the court into an advocate,” *Weller v. Dep’t of Soc. Servs. for City of Balt.*, 901 F.2d 387, 391 (4th Cir. 1990), so we cannot say that the district court abused its discretion by not inviting a second amendment and instead dismissing his amended complaint with prejudice.⁸

IV

We have considered Mr. Guymon’s remaining arguments and find them unpersuasive. For the foregoing reasons, we *affirm*.

AFFIRMED

⁸ Regardless, any amendment Mr. Guymon would have made would be futile based on our conclusions above.