

Judge Albright Denies Amazon and eero's Motion To Dismiss For Improper Venue and To Transfer Venue To The Northern District of California

DECEMBER 6, 2023

On November 6, 2023, Judge Albright denied Defendants Amazon Services LLC and eero LLC's Motion to Dismiss for Improper Venue and to Transfer Venue to the Northern District of California.

On July 13, 2021, TrackThings LLC filed a complaint against Amazon.com Inc., Amazon Services LLC, and eero LLC (which Amazon purchased in 2019) alleging infringement of U.S. Patent Nos. 9,642,017; 9,332,442; and 10,107,893, which are directed to wireless networking technology that allows smart devices to communicate with each other. That case progressed through infringement contentions, disclosures, and *Markman* decisions. After the defendants raised a meritorious standing challenge, TrackThings filed a new Complaint on February 17, 2023, curing the standing defect and asserting the same patents. Defendants then filed this motion to transfer on April 7, 2023, alleging that venue is improper as to eero and that the Northern District of California is a clearly more convenient forum.

I. EERO'S REGULAR AND ESTABLISHED PLACE OF BUSINESS

Amazon did not contest that venue was proper in the Western District of Texas. TrackThings acknowledged that eero was not incorporated in Texas and therefore did not "reside" there under 28 U.S.C. § 1400(b). Eero alleged that it did not have a "regular and established place of business" in the district, and that all of its employees working in the district a) worked mostly in customer support roles and had nothing to do with the technical design and development of the accused technology and b) were not required to live in the Western District or near any particular physical office. However, eero's employees in Texas working "remotely" had access to Amazon's Tech Hub located in Austin, Texas, and discovery revealed that many of them accessed the office two to three times per week during the relevant period.

The Court ruled that companies cannot have physical locations available to employees, have their employees use those locations on a regular basis, but still escape venue because the employees are labeled "remote" internally.

II. TRANSFER ANALYSIS

Judge Albright first concluded that the threshold determination was met—this case could have been brought in the Northern District of California. Next, Judge Albright examined the following private and public interest factors to

determine whether the Northern District of California is a *clearly* more convenient forum than the Western District of Texas:

A. Private Interest Factors

- 1. The Cost of Attendance and Convenience for Willing Witnesses.** The Court found that this factor, “the most important factor in the transfer analysis,” is neutral. Amazon told the Court that its offices and presence in Austin and NDCA lessened the burden for testifying employees in either forum (including eero employees) as they could work from a convenient office while waiting. Given that Defendants’ employees with knowledge reside in WDTX, NDCA, and New York and all of Plaintiffs’ witnesses reside in New Jersey, the Court found this factor neutral.
- 2. The Availability of Compulsory Process to Secure the Attendance of Witnesses.** The Court concluded that this factor slightly favors transfer because of specific non-party witnesses identified in the invalidity contentions residing in NDCA. The Court also applied the Fifth Circuit’s recent guidance in *In re Planned Parenthood Federation of America, Inc.* that even if this factor favors transfer, the weight is diminished because neither party has alleged any of the witnesses mentioned are unwilling.
- 3. The Relative Ease of Access to Sources of Proof.** The Court concluded that this factor is neutral. Evidence showed relevant electronic documents were stored in Oregon or with third parties, but that any physical documents—none of which had been identified—would be in NDCA. The Fifth Circuit held in *Planned Parenthood* that the location of evidence bears much more strongly when the evidence is physical in nature. However, the Federal Circuit has held that it is an error to conclude the factor is neutral because electronic documents are easily accessible in both forums. Reconciling these, the Court found the factor is neutral.
- 4. All Other Practical Problems That Make Trial of a Case Easy, Expeditious, and Inexpensive.** The Court found this factor weighed heavily against transfer given the Court’s familiarity with the patents from the previous case and the parties’ agreement on an expedited schedule due to the progress made in that case.

B. Public Interest Factors

- 1. Administrative Difficulties Flowing from Court Congestion.** The court found this factor neutral and in doing so noted that the Federal Circuit recently concluded that this factor should not weigh against transfer when the plaintiff is not engaged in product competition in the marketplace and is not threatened in the market in a way that might add urgency to case resolution.
- 2. Local Interest in Having Localized Interests Decided at Home.** The Court found that this factor slightly favors transfer. Defendants offered that NDCA had a local interest in the case because its headquarters are there, but TrackThings pointed out that defendants have job openings in WDTX and received tax breaks for facilities near Waco. The Court noted that those job openings and tax breaks do not relate to the issues or patents, and further noted that TrackThings is based in New Jersey and has little connection to WDTX beyond its choice of forum.
- 3. Familiarity of the Forum with the Law That Will Govern the Case and Avoidance of Unnecessary Problems of Conflict of Laws or in the Application of Foreign Law** The Court found that this factor is neutral, and both parties agreed.

For these reasons, Judge Albright found that Amazon and eero had not met their burden of showing that the Northern District of California is a clearly more convenient forum.

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