

The Possibility of Consolidation in an Ongoing Case Persuaded Judge Albright to Transfer the Case Outside of W.D. Texas

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On June 16, 2020, Judge Albright granted his first motion to transfer to a venue outside of W.D. Texas. Plaintiffs filed suit against Defendant Hunting Titan, Inc. on January 30, 2020, alleging Defendant infringed two of Plaintiffs' patents. Defendant specifically requested the Court to transfer venue to S.D. Texas to consolidate with an ongoing case in that district with substantially similar parties and subject matter.

First, the Court analyzed whether the case should be transferred for potential consolidation under the first-to-file rule considering the ongoing case in S.D. Texas. The case filed in Waco involves the same parties except for the omissions of a parent company and a sister company of Defendant. Both cases involve allegations against the same accused product made by Defendant. The patents in both cases also share three of the five inventors, with overlapping claims in the patents. Under the first-to-file rule, the Court found that there is a likelihood of substantial overlap between the two cases.

Second, the Court analyzed the public and private interest factors prescribed by the Fifth Circuit.

Private Interest Factors. First, the Court found that relative ease of access to sources of proof favored transfer because the location of documents was in Houston with Defendant and the ongoing case, and many of the witnesses would be traveling from outside of the United States, making Houston an easier travel destination than Waco. Second, as to the availability of compulsory process to secure the attendance of witnesses, the factor weighed neutrally, because neither party provided any evidence that would favor either position. Third, the cost of attendance for willing witnesses also weighed in favor of transfer because many of the proposed relevant witnesses would be testifying in S.D. Texas already, and out-of-country witnesses would have an easier time flying to Houston than to Waco. Finally, as to the fourth factor, making trial easy, expeditious, and inexpensive, the Court noted that although the case in S.D. Texas was stayed, the parties agreed to the stay in the ongoing case, and the possibility of consolidation in S.D. Texas weighed in favor of transfer.

Public Interest Factors. The Court found the first factor, administrative difficulties flowing from court congestion, weighed in favor of transfer because of the possibility of consolidation. Second, the Court found W.D. Texas had a more localized interest because Defendant's flagship facility, smaller facility, and majority of the business was tied to W.D. Texas, which weighed against transfer. Third, the parties and the Court agreed that the familiarity of the forum

with the law that would govern the case was a neutral factor. Fourth, the parties and the Court agreed that avoiding conflict of laws and application of foreign laws was a neutral factor.

Because consolidation was highly likely if Judge Albright transferred to S.D. Texas, Judge Albright found no compelling circumstances to keep the case in W.D. Texas.

DynaEnergetics Europe GmbH et al v. Hunting Titan, Inc.

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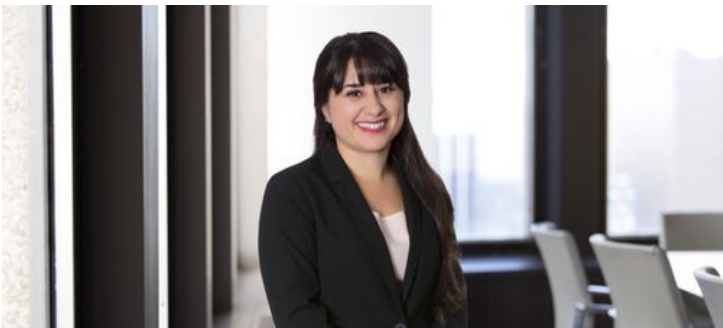
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