

## Judge Albright Finds W.D. Texas Was Not Proper And That N.D. Alabama Was Clearly More Convenient

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In its opposed motion, ADTRAN argued the Western District of Texas was improper, but even if it were the proper venue, the Northern District of Alabama is a more convenient venue for the action. The court first determined that venue was improper. Having done this, the court also analyzed the private and public factors laid out by the Fifth Circuit and ultimately granted ADTRAN's motion to transfer based on convenience.

**Improper Venue.** First, the court noted that ADTRAN does not reside in the Western District of Texas and is not incorporated in Texas; thus, it needed to determine whether ADTRAN committed acts of infringement in W.D. Texas and has a regular and established place of business such that venue is proper in W.D. Texas. The court declined to determine whether ADTRAN committed acts of infringement in the Western District of Texas because it found that ADTRAN's purported Austin and El Paso offices were not regular and established businesses in the Western District of Texas, and that ADTRAN's employees' homes, where these employees worked in the district, were not regular and established businesses.

Specifically, the court examined the Austin office under the *Cray* test to determine whether it had a regular and established place of business. Under *Cray*, the plaintiff must show that: (1) the defendant has a "physical place in the district"; (2) the place is a "regular and established place of business"; and (3) it is "the place of the defendant." The plaintiff argued that ADTRAN maintains an office in Austin, Texas. Countering this, ADTRAN explained that it engaged the services of a telemarketing firm based in Austin under an independent contractor relationship, but ADTRAN did not maintain an office in Austin. Furthermore, this relationship ended in 2016, which was four years prior to the filing of the lawsuit. The court noted that venue is analyzed at the time of filing, not at the time of alleged infringement as the plaintiff argued. The court accordingly found that plaintiff's argument failed the third factor of the *Cray* test as the Austin office is not "the place of the defendant" and it has never been "the place of the defendant."

The court further examined whether a distribution center owned by a third party in El Paso is a regular and established business of ADTRAN. The court held that the El Paso facility was not a regular and established business in the district for the same reasons the court found the Austin office failed the *Cray* test. More specifically, ADTRAN engaged the third party as an independent contractor and thus the third party's facility cannot be ADTRAN's regular and established place of business.

Lastly, the court rejected the plaintiff's argument that employees who worked from home in the district established a regular place of business in the district. Specifically, while focusing on a single employee's home that was the focus of the relevant pleadings, the court found that ADTRAN did not establish or ratify the employee's home as his place of work, did not own, rent, or lease any portion of his home, and did not store inventory there. Although focusing on the single employee's home, the court also found that the same analysis applies to ADTRAN's other employees in the Western District of Texas, all of whom work from their homes of their own accord and therefore no ADTRAN employee's home qualifies as a regular and established place of business in the district. Thus, the court found that venue is improper in W.D. Texas.

### **Venue Is Also More Convenient In N.D. Alabama**

The court began this analysis by noting that the Northern District of Alabama satisfies both elements of 28 U.S.C. § 1400(b) and that venue is therefore proper in the Northern District of Alabama: first, since ADTRAN manufactured the Accused Products in Alabama, the court assumed without deciding that ADTRAN committed acts of infringement in the District; second, the court found that ADTRAN has a regular and established place of business there. 28 U.S.C. § 1400(b).

**Private Interest Factors.** First, the court found that the relative ease of access to sources of proof favored transfer because ADTRAN's corporate headquarters as well as the accused products' place of manufacture were located in N.D. Alabama. In addition, the relevant evidence is stored in Alabama, albeit electronically. Second, as to the availability of compulsory process to secure the attendance of witnesses, the factor favored transfer because ADTRAN identified two former employees who were out of reach of the court's subpoena power and were living in N.D. Alabama. In addition, the other witnesses that ADTRAN intends to call are located in N.D. Alabama. Third, the cost of attendance for willing witnesses favored transfer because every ADTRAN witness was located in N.D. Alabama. The court also found that this factor held even more weight because plaintiff was a Delaware company with its principal place of business in Delaware and the N.D. Alabama venue was therefore several hundred miles closer than the W.D. Texas venue. Finally, the fourth factor, all other practical problems that make trial of a case easy, expeditious, and inexpensive, weighed in favor of transfer because ADTRAN's witnesses are all located in the transferee forum and plaintiff does not have a presence in W.D. Texas. In addition, despite the fact that there was a co-pending suit in W.D. Texas, the court found that "[w]here multiple other factors weigh in favor of transfer and the plaintiff has no connection to the district, the possibility of judicial economy gained through a co-pending case where venue is challenged does not tip the balance of this factor against transfer."

**Public Interest Factors.** First, the court found that N.D. Alabama had more localized interests, considering that ADTRAN has a principal place of business there. Second, the court found the remaining public interest factors to be neutral as both districts have familiarity with patent law and there are no conflict of laws issues. Regarding the administrative difficulties factor, the court found even if the Western District of Texas's shorter average time to trial favors keeping the case in the Western District, this was not enough to overcome the other five factors that weigh in favor of transfer and the two that are neutral.

In sum, because the plaintiff did not adequately plead proper venue in W.D. Texas, and because all four private interest factors and one public interest factor favored transfer, N.D. Alabama was clearly more convenient. As a result, the court found that N.D. Alabama was more convenient and the case should be transferred.

*Correct Transmission LLC. v. ADTRAN, Inc.*, 6:20-CV-00669 (Order Granting Defendant's Motion to Transfer)

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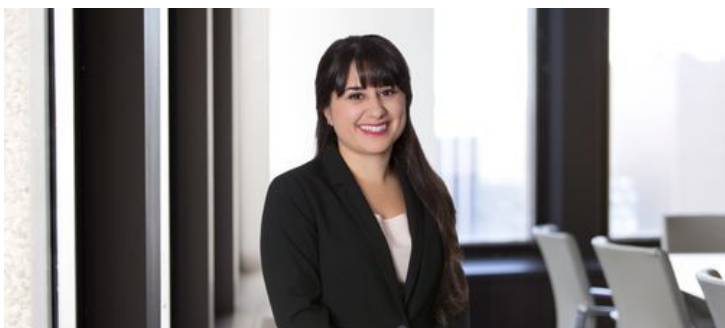
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