

Judge Albright Grants Motion to Dismiss for Improper Venue in *Gesture Technology Partners*

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On December 29, 2021, Judge Albright granted Lenovo USA and Motorola's motion to dismiss for improper venue in *Gesture Technology Partners LLC v. Lenovo Group*. It remains to be seen whether Gesture Technology Partners ("Gesture") will appeal or refile in another jurisdiction.

Gesture had alleged that Defendants' "various smartphones and tablets" infringe multiple patents. Notably, however, neither Defendant is incorporated or headquartered in Texas. Gesture nevertheless claimed that Defendants had "maintained established and regular places of business in [the] District" based on (1) 50-plus work-from-home employees in the District; (2) reimbursements to said employees for home office expenses; (3) advertisements for job openings in the District; and (4) numerous authorized service centers and resellers located in the area. Judge Albright disagreed.

First, although it was undisputed that Defendants' employees' homes were in the District, the "mere presence of employees in the district" is not sufficient to meet the "regular and established place of business" requirement. Second, Judge Albright found that it was not accurate for Gesture to argue that said employees were routinely receiving reimbursements from their employers. Rather, the employees received a one-time reimbursement for establishing their home offices. Third, it was also not accurate for Gesture to argue that Defendants had frequently advertised job openings in the District. Instead, to the extent that there was any employment advertising, the court found that such was limited to the Defendants' work-from-home employees' LinkedIn profiles. Finally, Judge Albright found that Gesture had failed to show that the third-party authorized service centers and resellers were established places of business of the Defendants because they did not act as agents on Defendants' behalf. Instead, the relevant service centers and retailers were all independently owned and operated.

All told, the "mere presence of employees in the district," those employees' LinkedIn profiles, limited one-time reimbursements, and independent service centers and retailers were not sufficient to meet the "regular and established place of business" requirement for Defendants themselves. As a result, Judge Albright concluded that the Western District of Texas was an improper venue.

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Author

Michael Bittner

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