

## Judge Albright Dismisses IngenioShare's Case Against Epic Games for Improper Venue

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On June 25, 2021, IngenioShare, LLC ("IngenioShare") sued Epic Games, Inc. ("Epic") for direct and indirect patent infringement in the Western District of Texas ("WDTX"). Epic argued that venue was improper. On March 18, 2022, in a nine-page Order, Judge Albright expressed his agreement and dismissed the case.

Epic does not reside in the Western District of Texas. It is organized under Maryland law and headquartered in Cary, North Carolina. Thus, Judge Albright was forced to analyze whether Epic had a sufficiently regular and established place of business in the WDTX to merit a finding of proper venue. IngenioShare argued that because the pandemic forced Epic's employees to conduct their business from their home offices, and at least twenty Epic employees were based in the district at the time of COVID-19, Epic can be validly sued in the WDTX. Judge Albright disagreed.

Judge Albright found that IngenioShare's arguments were "not new." Judge Albright further stated that "[t]ime and again, this Court has rejected remote employees as a basis for establishing venue under similar facts. And, while [IngenioShare] tries to support its arguments with nuanced arguments of Zoom policies enforced at home, stipends, and location restrictions, such arguments still do not meet the demands of venue set out by the Federal Circuit."

First, Judge Albright found the fact that Epic did not own, lease, or rent any portion of the homes of these twenty Austin employees particularly significant to his venue analysis. In reaching this conclusion, Judge Albright found that a one-time payment of a work stipend that was provided to all Epic employees was "too far a stretch" to constitute "owning, leasing, renting, or even reimbursement for its employees' homes such that the employees' homes are places of Defendant."

Second, Judge Albright found that IngenioShare's argument that Epic allegedly regulated the conduct of its employees in their homes also failed since "the relevant inquiry is whether Epic controls the place, not the conduct, of its employees." Judge Albright noted that "[f]ocus on *the place* is directly tied to the statute and cannot be sidestepped" (emphasis in original).

Third, Judge Albright rejected IngenioShare's argument that venue was proper because the locations in which Epic employees can work are restricted because "those restrictions do not erect boundaries around the Western District of Texas." Judge Albright found that "[b]ecause Epic's employees in the Western District of Texas are free to move and work remotely outside of this District, this factor does not support a finding a venue."

Fourth, Judge Albright also rejected IngenioShare’s argument that marketing for a job position in the Western District would support venue. Judge Albright cited to *In re Cray Inc.*, 871 F.3d 1355, 1360, 1364-64 (Fed. Cir. 2017), and noted that “the court must identify a physical place, of business, *of the defendant*” (emphasis in original).

Thus, Epic’s Motion to Dismiss for Improper Venue was granted. It remains to be seen whether IngenioShare will pursue its claims elsewhere.

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