

## Judge Albright Denies Defendant Vivint, Inc.'s Motion To Transfer Venue and Grants Defendant Google LLC's Motion To Transfer Venue

DECEMBER 5, 2022

In orders ruling on two motions to transfer venue to the Northern District of California (N.D. Cal.) in related cases, Judge Albright granted transfer to Defendant Google LLC and denied transfer to Defendant Vivint, Inc.

*EcoFactor, Inc. v. Google LLC*, W-22-CV-00032-ADA (“Google’s Case”), and *EcoFactor, Inc. v. Vivint, Inc.*, W-22-CV-00034-ADA (“Vivint’s Case”), are two related cases where Plaintiff EcoFactor, Inc. sued for patent infringement of U.S. Patent Nos. 8,131,497 and 8,432,322. In *Google’s Case*, EcoFactor also sued for patent infringement of U.S. Patent Nos. 8,498,753 and 10,018,371. The patents in these cases relate to smart thermostat systems.

In Texas and other states within the Fifth Circuit, the preliminary question under § 1404(a) is whether a civil action “‘might have been brought’ in the destination venue.” If the destination venue would have been a proper venue, then “[t]he determination of ‘convenience’ turns on a number of public and private interest factors, none of which can be said to be of dispositive weight.” The moving party has the burden, which is to show that the alternative venue is “clearly more convenient.”

To satisfy § 1404(a)’s threshold determination, the movant must show that venue and jurisdiction would have been proper in the transferee forum when the plaintiff filed suit. Venue is proper in a transferee forum if (1) the defendant resides in the district or (2) the defendant has committed acts of infringement and has a regular and established place of business in the district. For purposes of patent venue, a domestic corporation resides in its state of incorporation. “[A] regular and established place of business” requires (1) a physical place in the district, (2) a regular and established place of business, and (3) the place is of the defendant.

In *Vivint’s Case*, plaintiff EcoFactor argued that defendant Vivint failed to show it has a regular and established place of business in the N.D. Cal. Vivint is not incorporated in California. Judge Albright found that while Vivint had shown it has a “physical place” in the N.D. Cal., that was not “a regular and established place of business” because Vivint’s sales offices were temporary. Judge Albright did not reach the issue of whether the sales offices were places “of the defendant” and did not reach the analysis of public and private interest factors in *Vivint’s Case* because the threshold requirement had not been met.

In *Google’s Case*, plaintiff EcoFactor and defendant Google did not dispute whether *Google’s Case* could have been brought in the N.D. Cal. Judge Albright found the “relative ease of access to sources of proof” and “cost of attendance for willing witnesses” factors are in favor of transfer; the “local interest” factor is slightly in favor of

transfer; the “all other practical problems that make trial of a case easy, expeditious and inexpensive” and “administrative difficulties flowing from court congestion” factors are slightly against transfer; and the “availability of compulsory process to secure the attendance of witnesses,” “familiarity of the forum with law that will govern the case” and “problems associated with conflict of law” factors are neutral. With these conclusions, Judge Albright found that Google had met its burden to show that the N.D. Cal. is a clearly more convenient forum in *Google’s Case*.

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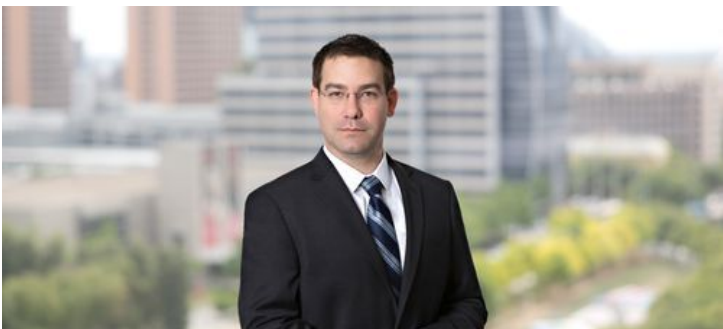
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