

## Judge Albright Denies Defendant's Motion to Transfer Venue in a Close Call Where Neither Party Has a Significant Presence in Waco or the Transferee District

APRIL 10, 2023

In *SVV Technology Innovations, Inc. v. Micro-Star International Co.*, Case Nos. 6:22-CV-511-ADA, 6:22-CV-512-ADA, 6:22-CV-513-ADA, Plaintiff SVV Technology Innovations Inc. ("SVVTI") brought three separate cases against Defendant Micro-Star International ("MSI") alleging that MSI infringes 13 patents related to LED-backlit LCD display panels.

MSI moved to transfer all three cases to the Central District of California (CDCA), or in the alternative, the Northern District of California (NDCA), emphasizing that SVVTI is a California corporation and MSI is a Taiwanese corporation, neither of which has a relevant presence in the Western District of Texas. On April 4, Judge Albright denied MSI's motion, finding that MSI failed to meet its burden to show that the CDCA is clearly a more convenient forum. The alternative motion to transfer to the NDCA was also denied because that motion hinged on whether the other co-pending SVVTI cases were transferred to the NDCA, which they were not.

In patent cases, motions to transfer under 28 U.S.C. § 1404(a) are governed by the law of the regional circuit. In the Fifth Circuit, the preliminary question under § 1404(a) is whether a civil action "might have been brought" in the [transfer] 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 private interest factors include (i) the cost of attendance and the convenience for willing witnesses; (ii) the relative ease of access to sources of proof; (iii) the availability of compulsory process to secure the attendance of witnesses; and (iv) all other practical problems that make trial of a case easy, expeditious, and inexpensive.

The public interest factors include (i) the administrative difficulties flowing from court congestion; (ii) the local interest in having localized interests decided at home; (iii) the familiarity of the forum with the law that will govern the case; and (iv) the avoidance of unnecessary problems of conflict of laws with the application of foreign law.

As to the preliminary question, the court found that venue and jurisdiction would have been proper in the CDCA. As a foreign defendant, venue is proper in the CDCA under 28 U.S.C. § 1391(c)(3). The court also found that the CDCA had personal jurisdiction over MSI because MSI continuously and systematically sent all U.S.-bound MSI products to its California subsidiary, bringing MSI within California's jurisdiction under the stream-of-commerce theory.

As to the private interest factors, the court first examined the cost of attendance and convenience for willing witnesses, which is “[t]he most important factor in the transfer analysis.” MSI argued that all its witnesses are in City of Industry, California, in the CDCA, or in Taiwan. Specifically, MSI argued that Andy Tung, the President of MSI’s subsidiary, CA MSI, lived in the CDCA and would testify about the accounting, sales, and importation information for the Accused Products as well as the logistics of their importation and product management. MSI also argued that the CDCA would be more convenient for Dr. Vasylyev, SVVTI’s sole officer and the sole inventor of the Asserted Patents, because he resides in Elk Grove in the NDCA. SVVTI questioned the relevancy of Mr. Tung’s testimony and countered that all other relevant MSI employees resided in Taiwan. SVVTI further countered that Dr. Vasylyev was willing to travel to Waco because he did not live within 100 miles of the CDCA, and thus was far enough away from both the CDCA and Waco to make both districts equally inconvenient. SVVTI, citing the difference in hotel rates, also argued that the cost of holding a trial in the CDCA is more expensive than in Waco.

The court found that Mr. Tung was in the CDCA and had at least some relevant knowledge, but declined to accord much weight to any Taiwan-based witnesses in the analysis since they would be required to travel a significant distance irrespective of transfer. The court also acknowledged Dr. Vasylyev’s presence in California and declined to accord much weight to Dr. Vasylyev’s willingness to travel to Waco over the CDCA. However, the court did consider that the cost of attendance in Waco would be less expensive than in the CDCA. Based on these considerations, the court found this factor weighed slightly in favor of transfer.

The court found that the “relative ease of access to sources of proof” factor was neutral because MSI did not contend that any of its design or development takes place in the CDCA, nor did MSI allege that the location of CA MSI’s servers or relevant physical documentation is located in the CDCA. Additionally, the court noted that MSI did not dispute SVVTI’s assertion that SVVTI’s documents are stored on cloud-based servers that are accessible from anywhere. The court also noted that any evidence in Taiwan should not weigh in favor of or against transfer since it is outside both forums.

However, the court found that the “availability of compulsory process to secure the attendance of witnesses” factor at least slightly favored transfer. The court noted that MSI credibly alleged that non-party CA MSI is responsible for the importation and sales of the Accused Products, so the court was not willing to discount entirely the potential relevance of some of CA MSI’s witnesses at the early stage of the case. Absent evidence to the contrary, the court treated CA MSI’s witnesses as unwilling to testify even though CA MSI was a subsidiary. But because MSI failed to identify any of CA MSI’s employees by name or identify their relevancy with any specificity, the court accorded the unnamed witnesses only “some weight.”

For the final private factor, the court held that practical considerations weighed against transfer. In addition to the three related actions asserted by SVVTI against MSI, there are six other related co-pending cases before the court involving the same 13 patents asserted in the current SVVTI-MSI case. The court also noted that it had already denied the motions to transfer filed by two other defendants in co-pending cases, which the court stated raised a significant hurdle to transfer in this case because “[t]wo courts ruling on the same patents asserted by the same plaintiff wastes judicial resources and risks inconsistent rulings on the patents-in-suit.” In contrast, the court noted that “[t]rying all nine cases in the same court increases judicial economy.” As such, the court found that this factor weighed against transfer.

The court then examined the public factors. First, the court held that the “administrative difficulties” factor was neutral because the Federal Circuit (i) has previously held that there are no significant differences in caseload or time-to-trial statistics between the Western District of Texas and the CDCA, and (ii) has instructed the court to diminish the weight given to this factor. The court held that the “local interest” factor weighed only slightly in favor of transfer because, although MSI has established that CA MSI is responsible for the importation and sale of the Accused Products within the United States, CA MSI is indisputably not responsible for any design, development, or manufacturing. The court held, and both parties agreed, that the “familiarity of the forum with the law that will govern the case” and “avoidance of unnecessary problems with conflicts of law” factors would be neutral.

The court summarized its holdings regarding each factor in a table in its conclusion:

| FACTOR  | THE COURT'S FINDING      |
|---|--------------------------|
| Cost of attendance of willing witnesses   | Slightly favors transfer |
| Relative ease of access to sources of proof   | Neutral                  |
| Availability of compulsory process to secure attendance of witnesses                        | Slightly favors transfer |
| All other practical problems that make trial of the case easy, expeditious, and inexpensive | Against transfer         |
| Administrative difficulties flowing from court congestion                                   | Neutral                  |
| Local interest  | Slightly favors transfer |
| Familiarity of the forum with law that will govern case                                     | Neutral                  |
| Problems associated with conflict of law  | Neutral                  |

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## Authors

[Michael Bittner](#)

[Dustin Edwards](#)

[Juan C. Yaquian](#)

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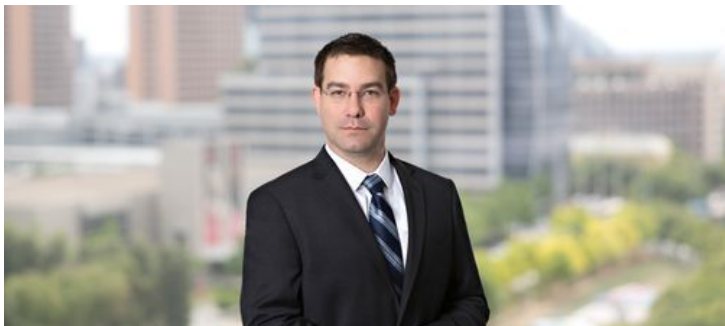
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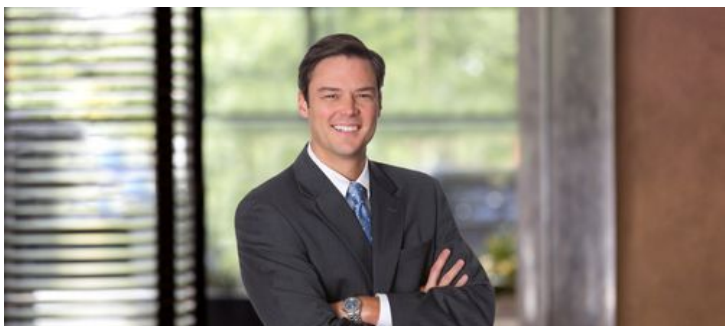
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## Related Professionals

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Michael Bittner



Dustin Edwards



Juan C. Yaquian

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