

Stay Aware: Remote Employees Impact Venue Options In Patent Litigation

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For many patent cases, the United States District Court hearing your patent dispute can have a big impact on case strategy, budget and management, and even, to some extent, case outcomes. As we discussed earlier this year, how a patent owner approaches an alleged infringer can turn into a costly and inconvenient endeavor [if forced to defend their patents in an unexpected jurisdiction](#). A recent case out of the District of Arizona illustrates the opposite scenario – where the activities of an accused infringer results in a suboptimal venue for that defendant.

Evergreen Telemetry LLC (“Evergreen”) is an Arizona-based company that sells products related to wireless heating, ventilation, and air-conditioning (“HVAC”) tools and systems. Evergreen filed a patent infringement lawsuit against Fieldpiece Instruments, Inc. (“Fieldpiece”) in the U.S. District Court for the District of Arizona. Fieldpiece is a Southern California-based company that is incorporated in Delaware. Normally, in a case like this, one would expect the proper venue to be the Southern District of California or the District of Delaware, or another district where Fieldpiece has a “regular and established place of business.” Fieldpiece, accordingly, filed a Motion to Dismiss for Improper Venue – the Court denied the motion.

At the heart of this case is Evergreen’s allegation that “a ‘Fieldpiece Sales Representative’ lives in and maintains a home-based office in Arizona, stores work-related materials in their home-based office, accepts orders, makes business decisions, solicits customers, engages in technician training, and takes part in industry and community events on behalf of [Fieldpiece].” The Court agreed with Evergreen after analyzing the facts in view of the three requirements laid out in the Federal Circuit decision *In re Cray Inc.* – for a defendant to have a “regular and established place of business” within a district: “(1) there must be a physical place in the district; (2) it must be a regular and established place of business; and (3) it must be the place of the defendant.”

The Court found that the “physical place” requirement was met because “the products stored in Defendant’s employees’ homes are used to fulfill their job duties at locations throughout Arizona.” The Court held that the “regular and established” requirement was satisfied because “of the steady, uniform, orderly, and methodical business that both starts and finishes at the sales representatives’ homes, with visits to distributors in between.” Finally, with respect to finding that the “place of the defendant” requirement was established by the conduct of a sole employee, the Court placed great weight on “Fieldpiece’s ‘business specifically depend[ing] on employees being present’ in Arizona and it[s affirmative] act[s] to make permanent operations within that district to service its customers there.”

Takeaway

The patent venue provides a fair bit of certainty as to where businesses will defend patent disputes. The *Evergreen* case illustrates how this advantage can be undermined or even eviscerated when employees conducting regular business outside of a company’s principal places of business. As companies continue to adjust remote work policies, the Proskauer Intellectual Property Team can assist in auditing these policies to better prepare for venue disputes. Our team continually monitors the evolving caselaw with respect to personal jurisdiction and venue. We welcome questions about how these considerations may impact your ability to optimally defend yourself in connection with patent disputes.

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