

EDVA Reaffirms its Aversion to Litigation Between Out of State Companies in Recent Venue Decision

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From the mid-1990s until the mid-2010s, the EDVA typically ranked among the top 10 federal districts for patent litigation. See Gugliuzza, Paul R. and Anderson, Jonas, *Why Do Judges Compete for (Patent) Cases?* at 24-25 (January 19, 2023). University of Utah College of Law Research Paper No. 535, Available at SSRN: <https://ssrn.com/abstract=4331055> or <http://dx.doi.org/10.2139/ssrn.4331055>. As case filings went up, it became common for out-of-state defendants to move to transfer venue under 28 U.S.C. § 1404. An individual district judge has fairly wide discretion when deciding venue motions, but EDVA judges granted these motions at a relatively high rate, *id.* at n. 136, when the following factors were present:

- the EDVA was not the plaintiff's home forum, and the claims did not have a substantial relationship to Virginia;
- the products and technology at issue were designed and manufactured outside of Virginia, even if the defendant had employees, offices or other contacts with Virginia; and
- Virginia was not the "locus of infringing activity" even if some sales of infringing products occurred in the state

See e.g., *Lycos, Inc. v. TiVo, Inc.*, 499 F.Supp.2d 685 (E.D.Va. 2007); *Koh v. Microtek Intern., Inc.*, 250 F.Supp.2d 627 (E.D.Va. 2003); *Acterna, L.L.C.*, 129 F.Supp.2d 936 (E.D.Va. 2001).

This line of cases stands in contrast to other federal districts, particularly in the Eastern and Western Districts of Texas, where judges are reluctant to transfer cases even when the parties, witnesses and evidence are primarily located elsewhere. The upshot is that in the EDVA, litigation, particularly patent litigation, between out-of-state companies stands a good chance of being transferred unless the plaintiff can show a substantial tie with the state, such as relevant witnesses or documentary evidence in Virginia.

A recent decision in [Seoul Semiconductor Co., Ltd. v. Ace Hardware Corp.](#), Civil Action No. 3:22cv272, 2023 U.S. Dist. LEXIS 57238 (E.D.Va. March 31, 2023), reaffirmed these principles in cases involving out of state companies.

Seoul Semiconductor involved claims of patent infringement against Ace Hardware relating to the sale of LED lamps and lighting products. Ace Hardware is based in Illinois, but has several retail locations in Virginia. The plaintiff, Seoul Semiconductor, could not rely on those contacts, however, for reasons that are redacted from the decision. Instead, Seoul asserted that the case should stay in Virginia because Ace has a Redistribution Center (RDC) located in Suffolk that served as Ace's East Coast hub for receiving imported merchandise, including,

Seoul claimed, the accused LED products.

Relying on a number of EDVA cases decided between 1999 and 2014, the court granted Ace Hardware's motion to transfer, holding that the principal factors considered under § 1404 weighed in favor of transfer:

- Seoul's choice of forum was entitled to little weight because Virginia was not Seoul's home forum and Virginia was not the "center of accused activity" because the accused products were not designed, developed or manufactured in Virginia;
- While accused products may be sold in Virginia or distributed through the Suffolk RDC, that did not lend much weight to Seoul's choice of forum;
- Ace Hardware's relevant documents and witnesses were located in Illinois and there was no specific evidence of non-party witnesses located in Virginia or outside of Illinois; and
- The interest in having local controversies decided at home "far outweighed" the court's familiarity with the facts of the case and the judicial resources already expended in the case.

While most of the recent venue decisions in the EDVA involve patent litigation, the factors and reasoning apply to any type of business litigation. If the parties are from out of state and there are no witnesses or some other connection to Virginia, the factors cited in *Seoul Semiconductor* would support transfer to the district where the events giving rise to the suit occurred, regardless of the type of claims that are asserted. Litigants should always keep in mind, though, that a district judge has a lot of discretion in assessing venue transfer, and so the presence of any connection to Virginia suffice to defeat a motion to transfer.

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