

## Judge Albright Grants Motion To Transfer Volvo Patent Case To New Jersey, Denies Motion to Dismiss

OCTOBER 9, 2024

On September 18, 2024, Judge Albright found four Volvo dealerships do not constitute regular and established places of business for two Volvo defendants and transferred a patent infringement case against them to the District of New Jersey on the grounds that the Western District of Texas (W.D. Tex.) is an improper venue.

Defendants Volvo Car Corporation (VCC), Volvo Cars of North America, LLC (VCNA), and Volvo Car USA LLC (VCUSA) were accused of infringing patents directed toward improvements to wireless communications used in vehicles. See *Intell. Ventures I LLC v. Volvo Car Corp.*, Civil No. W-23-CV-00429-ADA (W.D. Tex. 18 Sept. 2024) (Order) at 1–2. Judgment for VCC was reserved because it simultaneously moved to dismiss for improper service and the parties agree that the court did not need to resolve the service issue at the time. *Id.* at 1. The defendants moved to dismiss the case for improper venue or transfer venue to the District of New Jersey pursuant to 28 U.S.C. § 1406(a). *Id.*

The other two defendants, VCNA and VCUSA, are corporations organized under the laws of the state of Delaware with their principal places of business in Mahwah, New Jersey. *Id.* at 2. Defendant VCUSA sells vehicles and parts to four independently owned and operated dealerships governed by retailer agreements in the W.D. Tex. *Id.*

The court applied the *TC Heartland* test for venue as modified by *In re Cray*. *Id.* at 2–3. A claim for patent infringement must be brought (1) “in the judicial district where the defendant resides” or (2) “where the defendant has committed acts of infringement and has a regular and established place of business.” *Id.* at 3 (citing 28 U.S.C. § 1400(b); and citing *Optic153 LLC v. Thorlabs Inc.*, Civil Action No. 6:19-CV-00667-ADA, 2020 WL 3403076, at \*3 (W.D. Tex. June 19, 2020)). Under the first prong, “a domestic corporation ‘resides’ only in its State of incorporation for purposes of the patent venue statute.” *Id.* (citing *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 262 (2017)). *In re Cray* defined a “regular and established place of business” to impose three general requirements: “(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.” *Id.* (citing *In re Cray Inc.*, 871 F.3d 1355, 1360 (Fed. Cir. 2017)).

The court found that the defendants do not reside in W.D. Tex. because they are incorporated in Delaware. *Id.* Accordingly, the dispute centered on whether the Volvo dealerships constitute regular and established places of business for the defendants. See *id.* at 4–6. The court found they do not. *Id.* at 6.

The court stated that whether the Volvo dealerships constitute regular and established places of business for defendants VCNA and VCUSA distills to three issues: “(1) whether the dealerships are agents of [the defendants]; (2)

whether the dealerships conduct [the defendants'] business; and (3) whether [the defendants] have ratified the dealerships as [the defendants'] places of business." *Id.* at 4 (citing *In re Volkswagen Grp., Inc.*, 28 F.4th 1203, 1208 (Fed. Cir. 2022)). The plaintiffs argued that implementation of a "Care by Volvo" (CbV) leasing program, governed by a dealer lease addendum (CbV Addendum), is sufficient to create an agency relationship, citing an investigation report adopted by the California DMV. *Id.* at 4; see *id.* at 2.

The court rejected this argument, finding that the language of the CbV Addendum does not create an agency relationship between the defendants and the dealership. *Id.* at 4. The court also found that the investigation report imprecisely combined several Volvo entities for purposes of venue analysis and that these different entities' acts are not necessarily imputed to VCNA and VCUSA. *Id.* at 5–6. Accordingly, the court denied a dismissal and granted a transfer to the District of New Jersey because that is where VCNA and VCUSA have their principal places of business. *Id.* at 6–7.

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