

Featuring content from WESTLAW

LEGAL

HOME

NEWS

INSIGHT

LEGAL MATERIALS



In patent lawsuit forum fights, sometimes neither party wins

4/18/2013

COMMENTS (0)

By Erin Geiger Smith

(Reuters) - A Texas federal judge has made the rare decision to transfer a patent lawsuit to a venue that was the preference of neither plaintiff nor defendant, a ruling that highlights forum disputes among patent litigants.

Magistrate Judge Roy Payne in the U.S. District Court in the Eastern District of Texas issued the ruling Monday. He said that a June 2012 lawsuit filed against media company Meredith Corp by Dietgoal Innovations of Austin, Texas, should proceed in the Eastern District of Virginia.

Meredith, which is based in Iowa but has offices in Manhattan, had requested a transfer to the Southern District of New York. Dietgoal, which has filed more than a dozen cases accusing defendants of infringing a patent related to nutritional planning, had opposed transferring the case out of the court in Marshall, Texas, the opinion said.

While patent plaintiffs often prefer to file lawsuits in courts such as the Eastern District of Texas, which are considered friendly to plaintiffs and have a reputation for hearing cases quickly, defendant corporations often seek to transfer cases to larger cities where they are based or do more business.

Historically, judges in the Texas district were reluctant to transfer cases or they allowed requests to languish, but defendants have seen some success with the requests in recent months. In addition, the Federal Circuit Court of Appeals issued a decision in January that encouraged courts to quickly address the requests.

The Meredith case was not the first piece of litigation filed by Dietgoal in the Eastern District of Texas court to be transferred to Virginia. The court there, like in Texas, is a popular forum for patent cases and is sometimes called a "rocket docket" because they are heard relatively quickly.

In his order in the Meredith case, Judge Payne noted that at least three other cases have been moved to the Virginia court.

While it has happened "on occasion" that a judge sends a case to a venue not suggested by the parties, "it's more the norm" the judge follows the desire of one of the parties, said Dietgoal counsel Chris Joe of Buether, Joe & Carpenter.

TEXAS, VIRGINIA OR NEW YORK?

The judge's decision in the Meredith case did not come as a shock, Joe said, because the parties had been asked to brief on whether the litigation should be transferred to Virginia.

Christopher Carraway of Klarquist Sparkman, who represents Meredith and other companies sued by Dietgoal, declined to comment on pending litigation.

Some of the cases brought by Dietgoal have settled. And while some of the parties did not request a change of venue, a few are still waiting for the judge to rule on their transfer orders.

Dietgoal and Meredith did not advocate for Virginia, but Dietgoal agreed the case could have originally been brought in the state and Meredith did not contest its jurisdiction, Payne's order said.

In transferring the case, the judge focused on the fact that the patent's inventor, who is not a party to the suit, resides in Alexandria, Virginia. The attorney who originally prosecuted the patent is also within the subpoena power of the Virginia federal court, the order said.

Though Meredith had argued that Dietgoal's managing members as well as several of Meredith's own witnesses are in New York, the court was not persuaded.

Dietgoal has accused Meredith of infringement based on information on its Allrecipes.com and EatingWell.com websites.

Other Dietgoal cases transferred to the Eastern District of Virginia include the company's lawsuit against Wegmans Food Markets, according to an order issued in that case.

Wegmans, which had originally requested the Texas court send the litigation to Manhattan, is now asking the Virginia court to send the case to U.S. District Court in the Western District of New York.

MORE LEGAL NEWS

[U.S. Supreme Court declines to hear Alaska climate change case](#)

[Wielding Harrisburg example, SEC cautions cities nationwide](#)

[Supreme Court agrees to hear town meeting prayer case](#)

[Peregrine Pharma agrees with FDA on lung cancer trial design](#)

[SAC Capital's Cohen gets subpoena to testify - NY Times](#)

[Texas joins flood of states suing BP over 2010 Gulf spill](#)

[Analysis: High speed trading a stiff challenge for U.S. regulators](#)

[For Detroit in crisis, next six weeks determine bankruptcy fate](#)

[Colorado sheriffs sue to block new gun-control laws](#)

[Svnliverse: Mach deal set to win EU approval - sources](#)

Dietgoal is opposing that motion, and argued in court papers filed in April that the East Texas judge's order must stand. Wegmans' motion is just an attempt to improperly argue a venue motion that has already been decided, the papers said.

Counsel for Wegmans, Richard Rochford of Haynes and Boone, said the company's forthcoming reply to Dietgoal's argument will emphasize that Wegmans has not had the opportunity to address whether Virginia was an appropriate venue.

Unlike in some of the other Dietgoal cases, Wegmans was not asked to provide briefing to the Texas court on whether Virginia is an appropriate venue, Rochford said.

The transfer order against Meredith was issued in: Dietgoal Innovations LLC v. Meredith Corp, U.S. District Court for the Eastern District of Texas, No. 12-00032.

For Dietgoal: Chris Joe of Buether, Joe & Carpenter.

For Meredith: Christopher Carraway of Klarquist Sparkman.

The Wegmans case is: DietGoal Innovations v. Wegmans Food Markets, Inc., U.S. District Court for the Eastern District of Virginia, No. 13-00154.

For Dietgoal: Chris Joe of Buether, Joe & Carpenter.

For Wegmans: Richard Rochford of Haynes and Boone.

Follow us on Twitter [@ReutersLegal](#) | Like us on [Facebook](#)

[Register or log in to comment.](#)

© 2013 THOMSON REUTERS

[CONTACT US](#) [PRIVACY POLICY](#) [TERMS OF USE](#) [COPYRIGHT](#) [SITE MAP](#)