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Is a “necessary distributor” enough to qualify as a regular and established place of business for purposes of satisfying proper venue?

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According to the Eastern District of Texas, no. In our continued post-TC Heartland coverage, for the purpose of establishing venue, courts typically will decline to treat the place of business of one corporation as the place of the business of the other, even when the two are related, so long as a formal separation of entities is preserved.

The plaintiff in *EMED Technologies Corporation v. Repro-Med Systems, Inc. d/b/a RMS Medical Products* relied on evidence showing that the defendant used a distributor in the District allegedly necessary to the defendant’s business there. The court reasoned that “business necessity is insufficient to impute [the distributor’s] place of business to [the defendant].” Further, the two companies had an “arms-length” business relationship with each other. The distributor simply purchased products from the defendant and resold them. The defendant further testified that it sold its products to at least a dozen distributors in a similar fashion, tending to support the notion that the alleged distributor was not actually “necessary.”

Taking into consideration the Federal Circuit’s warning in *Cray*, Chief Judge Bryson expressed concern at the conflation of personal jurisdiction (or the general venue statute) with the necessary showing to establish proper venue in patent cases. For example, endorsing the proposed “necessary distributor” standard would potentially subject smaller corporations, reliant on distributors elsewhere, to suit in distant forums. Accordingly, the court determined that a place of business of a corporation’s distributor is not an appropriate basis to seat venue for a patent infringement suit.

Article By Anthony E. Faillaci
Andrew H. DeVoogdMintz
Global IP Matters Blog

Intellectual Property
Litigation / Trial Practice
Texas
5th Circuit (incl. bankruptcy)

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