

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
TEXAS, MARSHALL DIVISION

Lemko Corporation v. AT&T Enterprises LLC, AT&T Mobility
LLC, AT&T Mobility LLC II, and AT&T Services, Inc.

Lemko v. AT&T · No. 2:25-CV-00305-JRG · Decided March 6, 2026

SUMMARY

The United States District Court for the Eastern District of Texas denied Defendants’ motion to transfer the patent infringement action to the Northern District of Texas under the first-to-file rule. The Court concluded that the two cases did not substantially overlap because they involved different defendants, accused products, technology platforms, and expected discovery. The Court found that transfer would produce minimal gains in judicial economy.

CASE DETAILS

COURT	United States District Court for the Eastern District of Texas, Marshall Division
WRITING FOR THE COURT	Rodney Gilstrap
JURISDICTION	United States District Court for the Eastern District of Texas, Marshall Division
DECIDED	March 6, 2026
DOCKET	2:25-CV-00305-JRG
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved to transfer this patent-infringement action to the Northern District of Texas under the first-to-file rule based on an earlier-filed patent action involving Lemko. The district court denied the motion.
STANDARD OF REVIEW	Application of the discretionary first-to-file rule is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	unpublished district court memorandum opinion and order

TOPICS

- venue
- civil procedure
- patent law
- patent infringement

PRACTICE AREAS

civil procedure

patent law

patent infringement

commercial litigation

QUESTIONS PRESENTED

1. Whether the present action and the earlier Northern District of Texas action substantially overlap under the discretionary first-to-file rule.
2. Whether transfer of the present patent action to the Northern District of Texas was warranted to promote comity and judicial economy.

HOLDINGS

1. The actions do not substantially overlap because they involve different defendants, different technology platforms and accused products, and are unlikely to involve substantially overlapping discovery.
2. Transfer to the Northern District of Texas was not warranted because it would produce only minimal gains in judicial economy, if any.

KEY QUOTATIONS

“Substantial overlap does not exist here.” (III)

“A potential but not assured overlap in a mere subcomponent of a system is not substantial.” (III)

“At best, the cases involve related patents.” (III)

“For the foregoing reasons, the Court finds that the Motion should be and hereby is **DENIED**.” (IV)

FACTUAL BACKGROUND

Lemko's earlier Northern District of Texas action accused Microsoft and Affirmed Networks of infringing eight patents concerning distributed mobile architecture for 4G and 5G networks, including through the Affirmed Mobile Core and Azure Stack Edge. In this action, Lemko accused four AT&T entities of infringing seven different, though related, patents through the AT&T Private 5G Edge, which uses Azure Private 5G software and may run on various commercially available servers. The court found material differences in the defendants, software platforms, accused products, and expected discovery.

PROCEDURAL HISTORY

Lemko filed the present action in the Eastern District of Texas on March 17, 2025, alleging that the AT&T defendants infringed seven patents. Lemko had previously filed an action in the Northern District of Texas against Microsoft and Affirmed Networks involving eight related but different patents. The AT&T defendants moved to transfer this action to the Northern District of Texas, and Lemko opposed the motion. The court denied transfer.

DISPOSITION

other

CASES CITED

- Cadle Co. v. Whataburger of Alice, Inc., 174 F.3d 599, 603 (5th Cir. 1999)
- Int'l Fidelity Ins. Co. v. Sweet Little Mexico Corp., 665 F.3d 671, 677-678 (5th Cir. 2011)
- SIPCO, LLC v. Emerson Electric Co., 2016 WL 7743496, at *2 (E.D. Tex. Jul. 1, 2016)
- E-Z-EM, Inc. v. Mallinckrodt, Inc., 2010 WL 1378820, at *2 (E.D. Tex. Feb. 26, 2010)
- Robert Bosch Healthcare Sys., Inc. v. Cariocom, 2014 WL 12618095, at *1 (E.D. Tex. Mar. 10, 2014)
- Personalized Media Communications, L.L.C. v. Motorola, Inc., 2009 WL 10643344, at *2 (E.D. Tex. Sep. 30, 2009)
- Affinity Labs of Texas v. Samsung Electronics Co., Ltd., 968 F. Supp. 2d 852, 857 (E.D. Tex. 2013)

OPINION

Lemko Corporation v. AT&T Enterprises LLC, AT&T Mobility LLC, AT&T Mobility LLC II, and AT&T Services, Inc.

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

LEMKO CORPORATION, §

§ Plaintiff, § §

v. § CASE NO. 2:25-CV-00305-JRG

§

AT&T ENTERPRISES LLC, AT&T §

MOBILITY LLC, AT&T MOBILITY LLC II, §

and AT&T SERVICES, INC., § § Defendants. §

MEMORANDUM OPINION AND ORDER

Before the Court is the Motion to Transfer Venue to the Northern District of Texas (the “Motion”) filed by Defendants AT&T Enterprises LLC, AT&T Mobility LLC, AT&T Mobility LLC II, and AT&T Services, Inc. (the “Defendants”). (Dkt. No. 33). In the Motion, Defendants move to transfer the above-captioned case to the United States District Court for the Northern District of Texas (the “NDTX”) pursuant to the first-to-file rule. (Id. at 1). Specifically, Defendants assert that this case substantially overlaps with the earlier-filed Lemko Corp. v. Microsoft Corp. et al, Case No. 3:22-cv-363-K (the “NDTX Case”). (Dkt. No. 31, at 1). Plaintiff Lemko Corporation (“Plaintiff”) opposes the Motion. (See Dkt. No. 37). Having considered the Motion and its related briefing, and for the reasons set forth herein, the Court finds that it should be DENIED.

I. BACKGROUND

On February 14, 2022, Plaintiff filed suit against non-parties Microsoft Corporation and Affirmed Networks Inc. (the “Non-Parties”) in the NDTX. (NDTX Case, Dkt. No. 1). There, Plaintiff alleges that the Non-Parties infringe eight (8) of its patents¹ that generally relate to a distributed mobile architecture structure for use in a 4G (LTE) or 5G Network (the “NDTX Patents”). (See NDTX Case, Dkt. No. 80 ¶ 38). Specifically, Plaintiff accuses the Affirmed Mobile Core (software) and the Azure Stack Edge (a common-off-the-shelf server (“COTS”)) of infringement. (Dkt. No. 33, at 7). Then, on March 17, 2025, Plaintiff filed this case. (Dkt. No. 1). Here, Plaintiff alleges that Defendants infringe seven (7) of its patents² that are related to but distinct from the NDTX Patents (the “Asserted Patents”). (Id. ¶¶ 27–33; see also Dkt. No. 33-13, at 2). Particularly, Plaintiff accuses the AT&T Private 5G Edge of infringement. (Dkt. No. 33, at 7). The Private 5G Edge runs Azure Private 5G software on a variety of COTS, including the Azure Stack Edge. (Id.).

II. LEGAL STANDARD

“Under the first-to-file rule, when related cases are pending before two federal courts, the court in which the case was last filed may refuse to hear it if the issues raised by the cases substantially overlap.” *Cadle Co. v. Whataburger of Alice, Inc.*, 174 F.3d 599, 603 (5th Cir. 1999) (citations omitted); see also *Int’l Fidelity Ins. Co. v. Sweet Little Mexico Corp.*, 665 F.3d 671, 677– 678 (5th Cir. 2011). “The rule rests on principles of comity and sound judicial administration.” *Cadle*, 174 F.3d at 603 (citations omitted). “The concern manifestly is to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result.” *Id.* (quotation omitted). In determining whether cases “substantially overlap,” the Court may look to “factors such as whether 1 Plaintiff asserts the following patents in the NDTX Case: U.S. Patent No. 7,548,763; U.S. Patent No. 7,653,414; U.S. Patent No. 7,855,988; U.S. Patent No. 8,107,409; U.S. Patent No. 8,688,111; U.S. Patent No. 9,191,980; U.S. Patent No. 9,332,478; and U.S. Patent No. 9,755,931. (NDTX Case, Dkt. No. 80 ¶¶ 20–36). 2 Plaintiff asserts the following patents in the this case: U.S. Patent No. 7,840,230; U.S. Patent No. 7,979,066; U.S. Patent No. 8,224,322; U.S. Patent No. 8,310,990; U.S. Patent No. 8,340,667; U.S. Patent No. 8,359,029; and U.S. Patent No. 9,198,020. (Dkt. No. 1 ¶¶ 28–34). ‘the core issue . . . was the same’ or if ‘much of the proof adduced . . . would likely be identical.’” *Int’l Fidelity*, 665 F.3d at 678 (quotations omitted). “The first-to-file rule is a discretionary doctrine,” and a district court’s decision to apply the rule is reviewed for abuse of discretion. *Id.* at 677–678 (citation omitted). “In patent cases, courts determining whether cases were substantially [overlapping] have examined whether they involved the same parties, the same technology, the same inventors, overlapping remedies, the same witnesses, or overlapping issues in claim construction.” *SIPCO, LLC v. Emerson Electric Co.*, 2016 WL 7743496, at *2 (E.D. Tex. Jul. 1, 2016) (citing *E-Z-EM, Inc. v. Mallinckrodt, Inc.*, 2010 WL 1378820, at *2 (E.D. Tex. Feb. 26, 2010)). For example, this Court has found “substantial[] overlap” between cases that involved closely related patents and “many of the same products.” *Robert Bosch Healthcare Sys., Inc. v. Cariocom*, 2014 WL 12618095, at *1 (E.D. Tex. Mar. 10, 2014). In another example, the Court has

found that “[s]ubstantial overlap does not exist” between cases that involved “the same patents” because “the plaintiff assert[ed] different claims against different defendants and accuse[d] different technology platforms” of infringement. *Personalized Media Communications, L.L.C. v. Motorola, Inc.*, 2009 WL 10643344, at *2 (E.D. Tex. Sep. 30, 2009).

III. ANALYSIS

Substantial overlap does not exist here. First, this case and the NDTX case involve different defendants. See *Personalized Media*, 2009 WL 10643344 at *2. Second, the cases involve different technology platforms. *Id.* Specifically, the underlying software is different in this case (Azure Private 5G Core) than in the NDTX Case (Affirmed Mobile Core). (See Dkt. No. 33, at 7). Further, and whereas Plaintiff has identified Azure Stack Edge servers as an accused product in the NDTX Case, the Private 5G Edge at issue here is not required to use the Azure Stack Edge. (See *id.* (“The servers may be common-off-the-shelf servers (COTS), including [Microsoft] Azure Stack Edge servers, or other COTS servers”) (quotation omitted)). A potential but not assured overlap in a mere subcomponent of a system is not substantial. Third, and as a result of having different defendants and different accused products, this case and the NDTX Case are unlikely to have substantial overlap in discovery. Indeed, patent cases have an “assumption” that most discovery “comes from the infringer . . . [that] is now so engrained in the case law.” *Affinity Labs of Texas v. Samsung Electronics Co., Ltd.*, 968 F.Supp.2d 852, 857 (E.D. Tex. 2013). At best, the cases involve related patents.> However, given the significant differences in parties, accused products, and expected discovery, transferring this case to the NDTX “will produce only minimal gains in judicial economy, if any at all.” *Personalized Media*, 2009 WL 10643344 at *2. Accordingly, the Court finds that transfer under the first-to-file rule is not warranted here.

IV. CONCLUSION

For the foregoing reasons, the Court finds that the Motion should be and hereby is DENIED. So ORDERED and SIGNED this 6th day of March, 2026.

RODNEY GILSTRAP \

UNITED STATES DISTRICT JUDGE

3 The Court notes that none of the Asserted Patents are asserted in the NDTX Case. See *supra* notes 1-2.