

Defendants submitted Judge Folsom’s order in *WIAV Networks Inc. v. 3Com Corporation*, No. 5:09-CV-101 (DF) (EDTEX) (“WIAV”), in support of their Motion to Transfer (“Motion”), *see* Dkt. 368, but *WIAV* does not support Defendants’ Motion. The factual differences between *WIAV* and this case render *WIAV* distinguishable. For example:

- In *WIAV*, no party or non-party witnesses were located in the EDTX. *WIAV* at 6, 9. Here, Eolas is located in the EDTX as are at least five defendants. Dkt. 291 at 2-4.
- The plaintiff in *WIAV* had no employees, development or testing in the EDTX. *WIAV* at 6, 9. Eolas has employees in the EDTX that test and develop Eolas products—including embodiments of the patents-in-suit. Dkt. 291 at 1-2; Dkt. 359 at 2-4.
- In *WIAV*, Judge Folsom noted that the Court had yet to “hold a scheduling conference let alone issue scheduling, docket control, or discovery orders.” *WIAV* at 10-11. Here, the Court held a scheduling conference in February and issued docket control and discovery orders in March. Dkt. 210, 247, 249. Discovery is well under way. *Id.*

Given the factual dissimilarities, *WIAV* does not support Defendants’ Motion.

In addition, Judge Folsom found that in *WIAV* “there appears to be no dispute that the accused infringers’ documents are located across the United States and in both California and Texas. Keeping this case in the Eastern District of Texas would not impose a significant and unnecessary burden on Defendants. Accordingly, this factor is neutral.” *WIAV* at 4-5. Here, the accused infringers are located across the U.S.—and, unlike *WIAV*, the accused infringers have documents and employees in the EDTX. Dkt. 291 at 2-4; Dkt. 359 at 2-4. Therefore, applied to the facts of this case, the relative ease of access to sources of proof factor favors the EDTX.

Defendants also submitted a transfer order from *Boram Pham. Co. Ltd. v Life Technologies, Corp.*, No. 10-31 (D.Del) (“*Boram*”). This case is inapplicable to the facts presented here as it involved a single plaintiff from Korea and a single defendant from California, none of whom conducted business in Delaware (where suit was filed). *Boram* at 3. Here, parties to this case, including Eolas and at least five defendants, transact business and have documents, people and things in the EDTX. Dkt. 291 at 2-4; Dkt. 359 at 2-4.

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing document were served via email to all counsel of record.

/s/ Josh Budwin
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