



Defendants submitted Judge Everingham’s order in *Software Rights Archive, LLC v. Google, Inc.*, No. 2:07-CV-511 (CE) (E.D.Tex. signed July 22, 2010) (“*Software Rights*”), in support of their Motion to Transfer (“Motion”), *see* Dkt. 373, but *Software Rights* does not support Defendants’ Motion. The factual differences between *Software Rights* and this case render it distinguishable. For example:

- In *Software Rights*, the only party located in the EDTX was the plaintiff. *Software Rights* at 1, 4. Here, at least five defendants—in addition to Eolas—are in the EDTX. Dkt. 291 at 2-4.
- In *Software Rights*, the plaintiff did not indicate why its documents were located in Texas. *Software Rights* at 4. Here, Eolas has employees in the EDTX that test and develop Eolas’ products—including embodiments of the patents-in-suit. Dkt. 291 at 1-2, 4; Dkt. 359 at 2-4.
- In *Software Rights*, the plaintiff failed to identify any party or non-party witnesses within the EDTX. *Software Rights* at 5. Here, Eolas has identified numerous party witnesses (both its own personnel and that of the five EDTX defendants) located in the EDTX. Dkt. 291 at 2-5; Dkt. 359 at 2-3. Eolas has also identified numerous third-party witnesses who reside within Texas (some who may be within 100 miles of the courthouse in Tyler). Dkt. 291 at 11-12 and Exs. 4-14; Dkt. 359 at 5.

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

In addition, Judge Everingham found that because “the parties fully briefed a motion to dismiss, agreed to a docket control, discovery and protective orders, engaged in discovery, served initial disclosures, and exchanged infringement and invalidity contentions” this “weighs heavily against transfer.” *Software Rights* at 7. Here, the parties have done all of these things, but agree to a protective order (which the parties are close to agreement on). *See* Dkt. 175, 184, 205, 206, 282, 309, 333, 353, and 365 (two fully briefed motions to dismiss); 247 (discovery order); 249 (docket control order); 363 (referencing the protective order). Therefore, applied to the facts of this case, the “other practical problems” factor weighs heavily against transfer.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the foregoing document were served to all counsel of record via the Court's ECF system.

/s/ Josh Budwin  
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