



## Amazon Warehouse Used by Accused Infringer Not a “Regular and Established” Place of Business for Establishing Venue

May 30, 2025

Reading Time : **2 min**

By: Megan R. Mahoney, Caitlin E. Olwell, Jonathan James Underwood

A district court recently dismissed a patent infringement complaint for improper venue under 28 U.S.C. § 1400(b), finding that the storage and distribution of products from an Amazon warehouse was not sufficient to establish that warehouse as a regular and established place of business in the district.

The plaintiff sought to establish venue based on the e-commerce defendant’s “regular and established” business in the district under § 1400(b). Specifically, the plaintiff argued that the defendant’s use of Amazon warehouses in the district to store and ship its products to customers with a high level of efficiency showed that the warehouses were regular and established places of business. The plaintiff also argued that the warehouses should be deemed places of the defendant because the defendant contracted with Amazon and paid a “lease fee” for use of Amazon warehouses.

The court determined that venue was improper under the three-prong test of *In re Cray*. First, the court found that the first prong was met because there was no dispute that the Amazon warehouses were physical places. However, for the second prong, the court rejected the plaintiff’s argument that the warehouses were regular and established places of business for the defendant. The court explained that because the defendant lacked any employees at the warehouses, the plaintiff needed to show an agency relationship between the defendant and Amazon. The court found that the plaintiff had failed to show that Amazon acted at the defendant’s direction, nor had the plaintiff shown that the defendant had rights to control any activity at the warehouse. The court explained that storing products and facilitating

distribution were insufficient to show control of activity at the warehouse. Finally, for the third prong of *Cray*, the court rejected the argument that the defendant had established or ratified the warehouses as places of business through making lease payments. On the contrary, the court explained that the defendant did not lease the warehouse to use as its own place, so the defendant had not established a place of business. Similarly, for ratification, the court found that the defendant's and Amazon's relationship was more akin to an authorized retailer, and that the lease fee was more like a contract to distribute than a lease of a physical location to do business.

In concluding its analysis, the court also recognized the potential far-reaching impact of finding venue based on the defendant's use of an Amazon warehouse, particularly in view of the Amazon warehouses throughout the country. The court noted that the patent venue statute requires a stronger showing of localized business activities and presence within a given district.

**Practice Tip:** In patent infringement cases involving e-commerce and the use of third-party warehousing, venue is not necessarily established where the accused infringer's products are stored at the third-party's warehouse to facilitate the distribution of those products to customers in the district. Patentees and accused infringers should carefully consider whose employees work at the warehouse and whether there is evidence of an agency relationship between the accused infringer and the warehouse operator. Furthermore, patentees and accused infringers should carefully consider how the warehouse space is used and who controls it.

*CKI 2712218 LLC v. G&L Decor Inc.*, 9:24-cv-81447, D.I. 25 (S.D. Fla. Apr. 17, 2025)

## Categories

Patent Infringement

Litigation

© 2025 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. Prior results do not guarantee a similar outcome. Akin is the practicing name of Akin Gump LLP, a New York limited liability partnership authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG. For more information about Akin Gump LLP, Akin Gump Strauss Hauer & Feld LLP and other associated entities under which the Akin Gump network operates worldwide, please see our Legal Notices page.