

## **Netflix Must Face Patent Suit In EDTX, Gilstrap Rules**

By **Adam Lidgett**

*Law360 (October 26, 2021, 7:31 PM EDT)* -- Netflix will have to face a patent dispute brought by business-to-business software company CA Inc. in Texas instead of the streaming giant's preferred venue of California, Eastern District of Texas Judge Rodney Gilstrap has ruled.

Judge Gilstrap on Monday denied Netflix Inc.'s bid to dismiss the suit or at least ship it to the Northern District of California, officially adopting a report from federal Magistrate Judge Roy S. Payne that recommended the same.

In a one-page order, Judge Gilstrap agreed with the magistrate judge's recommendations, saying he didn't find persuasive any arguments made by Netflix.

In the September recommendation, Judge Payne found that Netflix "maintains a great deal of control" over servers stored in the Eastern District of Texas and that internet service providers in the district work closely enough with the company to be considered its agents.

But the streaming giant specifically took issue with the magistrate judge's conclusion that a number of content servers, which it uses to improve local streaming speed and quality in the state, qualify as physical business operations.

Netflix, citing the U.S. Supreme Court's landmark *TC Heartland LLC v. Kraft Foods Group Brands LLC* decision, argued that the servers, called open connect appliances, are virtual spaces and therefore cannot be "regular and established places of business."

The patent dispute behind the venue battle was launched by CA Inc. in March when the software company accused Netflix of infringing on several patents related to improving storage, caching, processing and computing techniques related to improved video streaming quality.

Netflix attempted to get the suit dismissed based on improper venue or transferred to the Northern District of California.

But Judge Payne found that Netflix has a "regular and established place of business" in Texas, noting that while Netflix transfers the ownership of servers to ISPs in title, it still has the ability to remotely delete and redistribute software, and it claims the servers are Netflix's in marketing materials.

Representatives for the parties did not immediately respond to requests for comment on Tuesday.

CA Inc. is represented by Bruce S. Sostek, Richard L. Wynne Jr., Adrienne E. Dominguez, Nadia E. Haghigatian and Austin Teng of Holland & Knight LLP, and Jennifer Leigh Truelove and Samuel Franklin Baxter of McKool Smith PC.

Netflix is represented by Robert Van Nest, Leo L. Lam, Paven Malhotra, Sharif E. Jacob, Michelle Ybarra and Edward A. Bayley of Kecker Van Nest & Peters LLP and Melissa Richards Smith of Gillam & Smith LLP.

The case is CA Inc. et al. v. Netflix Inc., case number 2:21-cv-00080, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Dani Kass and Ethan Beberness. Editing by Steven Edelstone.

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