

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**INTIRION CORPORATION,
Plaintiff,**

v.

**COLLEGE PRODUCTS,
Defendant.**

6:22-cv-00459-ADA

**MEMORANDUM OPINION & ORDER ON DEFENDANT’S
MOTION FOR ATTORNEYS’ FEES**

Came on for consideration this date is Defendant’s Motion for Attorneys’ Fees. ECF No. 36 (the “Motion”). Plaintiff Intirion Corporation (“Intirion”) filed an opposition to the Motion on May 8, 2023. ECF No. 37. Defendant College Products, Inc. (“College Products”) replied on May 15, 2023. ECF No. 41. The Court heard the parties’ arguments on the Motion on June 14, 2023, and made an oral ruling on the Motion during the hearing. ECF No. 47. Consistent with the Court’s oral rulings and for the reasons below, College Products’ Motion for Attorneys’ Fees is **GRANTED-IN-PART**.

I. BACKGROUND

Intirion filed its complaint for patent infringement against College Products on May 6, 2022. ECF No. 1. The Complaint alleges College Products infringes four of Intirion’s patents by making and selling the MicroChill systems in the United States. *See id.* College Products is incorporated in Iowa, and it has its principal place of business at 1400 W. 1st St., Sioux City, IA 51103. *Id.* ¶ 3; *see also* ECF No. 12-1 ¶ 3.

On September 27, 2022, College Products filed a Motion to Dismiss for Improper Venue. ECF No. 12. It argued that no facts show this District is a proper venue under 28 U.S.C. §1400(b).

Id. at 1. It asserted that it has never committed an act of infringement in this District because it has never made, used, offered for sale or sold the alleged infringing products in this District. *Id.* College Products further alleged that it does not reside in this District or have a regular and established place of business in this District, nor does it have any employees that reside here. *Id.* As such, College Products asked the Court to dismiss Intirion's complaint under Fed. R. Civ. P. 12(b)(3) for improper venue. *Id.* After hearing oral argument on College Products' Motion to Dismiss, the Court found that venue over College Products in this suit is improper. ECF No. 35 at 9. The Court denied College Products' Motion only to the extent that the case be transferred in lieu of dismissal to the Northern District of Iowa, where College Products is incorporated and has its principal place of business. *Id.* at 9–10. The case was then transferred on April 13, 2023.

One week after the case was transferred, College Products filed its Motion for Attorneys' Fees, asserting that Intirion made frivolous allegations that this District was a proper venue for this lawsuit, and that it never put forth a reasonable argument or any evidence to suggest otherwise. ECF No. 36 at 1. Arguing that Intirion's filing and maintenance of this lawsuit in this District wasted the Court's time and College Products' resources, College Products asks the Court for an award of its attorneys' fees, totaling [REDACTED] for defending against Intirion's frivolous venue allegations. *Id.* at 1–2. College Products charged time for six attorneys and one paralegal:

Name	Title	Hours	Rate	Total Fees
Domingo L Lagostera	Partner	[REDACTED]	[REDACTED]	[REDACTED]
Russel Wong	Partner	[REDACTED]	[REDACTED]	[REDACTED]
Megan Wood	Partner	[REDACTED]	[REDACTED]	[REDACTED]
Divya Kannegenti	Associate	[REDACTED]	[REDACTED]	[REDACTED]
Michael Rubin	Associate	[REDACTED]	[REDACTED]	
Sydney Salters	Associate	[REDACTED]	[REDACTED]	
M'Liss Hindman	Paralegal	[REDACTED]	[REDACTED]	

See ECF No. 36 at 10. According to College Products, these rates are reasonable, [REDACTED] found reasonable in other decisions within Texas for litigation of similar complexity. *Id.* at 10–11.

Intirion, however, urges the Court to deny College Products’ Motion. ECF No. 40. It responds that the Motion should be denied because Intirion had a reasonable, good-faith basis to assert venue here. *Id.* at 1. Because it seemed apparent at the outset that College Products had a regular and established place of business in this District, Intirion asserts that an award of fees is not appropriate. *Id.* at 2. Even still, Intirion argues that the attorneys’ fees sought are excessive, and at most, only the fees incurred after venue discovery concluded should be awarded. *Id.*

II. LEGAL STANDARD

Under Rule 11(b) of the Federal Rules of Civil Procedure, an attorney certifies to the best of its knowledge, after an “inquiry reasonable under the circumstances,” that the “pleading, written motion, or other paper” it presents to the Court is not for “any improper purpose.” FED. R. CIV. P. 11(b). An attorney also certifies that “the claims, defenses, and other legal contentions are warranted.” *Id.* Further, an attorney certifies that its “factual contentions have evidentiary support” and that any “denial[s] of factual contentions are warranted on the evidence” or “reasonably based on belief or lack of information.” *Id.*

“Federal courts have inherent power to impose sanctions for abuse of the judicial process.” *Howard v. St. Germain*, 599 F.3d 455, 458 (5th Cir. 2010). Courts have recognized that “[t]hese powers are ‘governed not by rule or statute but by the control necessarily vested in the courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.’” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). “When parties exploit the judicial process, a court may sanction conduct beyond the reach of other rules.” *Id.* (quoting *Nat. Gas Pipeline v. Energy Gathering, Inc.*, 2 F.3d 1397, 1407 (5th Cir. 1993)). In granting sanctions, a court must

only impose “the least severe sanction on attorneys and parties” who are in violation of Rule 11. *Merriman v. Security Ins. Co. of Hartford*, 100 F.3d 1187, 1194 (5th Cir. 1996).

III. ANALYSIS

College Products asserts that Intirion should have never filed its suit in this Court, and that it acted in bad faith in maintaining its venue allegations even after venue discovery. *Id.* at 7. Accordingly, College Products asserts that it should be awarded its attorneys’ fees incurred in defending against Intirion’s venue allegations, and that the fees it requests are reasonable. *Id.* at 5, 7. Intirion opposes the Motion, asserting that it had a reasonable basis to believe that venue was appropriate, and that the fees Intirion requests are excessive. ECF No. 41 at 4. The Court addresses each argument in turn.

A. Intirion’s actions warrant sanctions.

Where, as here, the defendant resides in another state, venue is only proper where the defendant has (a) committed acts of infringement; and (b) has a regular and established place of business. *See* 28 U.S.C. § 1400(b). College Products argues that Intirion’s actions were not in good faith since at the time Intirion filed its complaint, it had no evidence that College Products, an Iowa corporation, has a physical place of business in this District. ECF No. 36 at 6. On this basis alone, College Products argues that Intirion should be sanctioned for filing suit here. *Id.*

Yet even if Intirion believed it had a reasonable basis to file here, College Products maintains that it should have recognized that venue was improper after it took extensive venue discovery. *Id.* at 7. College Products points to multiple instances during discovery that it insists prove Intirion’s bad faith: (i) Mr. Hennings, College Products’ CEO, executed a declaration on September 27, 2022, stating College Products has never had a physical place, property, equipment, or employees in this District (ECF No. 12-1, ¶ 4); (ii) College Products produced [REDACTED]

[REDACTED]

[REDACTED] on November 4, 2022 (ECF No. 36-3); (iii) nothing in venue discovery contradicted Mr. Hennings’ declaration; and (iv) Mr. Pedraza, [REDACTED] executed a declaration stating he has never worked for College Products in this District (ECF No. 23-1, ¶ 4). Accordingly, College Product asserts that Intirion had no basis to maintain its venue allegations after discovery. ECF No. 36 at 7. Moreover, College Products argues that Intirion’s proposal to transfer the case to Iowa during the venue hearing was an “eleventh-hour concession” further evidencing that it knew venue was improper here. *Id.*

Intirion, however, argues that sanctions are not appropriate, as it maintains it had a reasonable basis to believe that venue might be proper here. ECF No. 40 at 6–7. Intirion believed that College Products was marketing itself on its website as doing business in the Western District of Texas. *Id.* at 7. It also asserts that because Intirion knew that College Products [REDACTED]

[REDACTED] *Id.* Based on these facts, Intirion argues that sanctions are not appropriate. *Id.*

Even after venue discovery, though, Intirion maintains that College Products’ discovery responses were contradicted by documents produced during discovery, thus furthering Intirion’s belief that venue may still be proper here. *Id.* at 7. It disputes the four pieces of evidence College Products argues make clear that sanctions are appropriate. *Id.* First, Intirion claims that inconsistencies between Mr. Hennings’ declaration and the evidence developed during venue discovery “calls into question” the reliability of Mr. Hennings’ statements. *Id.* Second, Intirion asserts that [REDACTED] is not dispositive, as it was reasonable to believe that [REDACTED] *Id.* Third, it argues that College

Products' claim that nothing contradicts Mr. Hennings' declaration is false, as multiple facts offered in Mr. Hennings' declaration are contradicted by materials produced in discovery. *Id.* at 8. Lastly, as to Mr. Pedraza's declaration, Intirion argues that College Products did not produce any information about Mr. Pedraza despite Intirion submitting relevant discovery requests. *Id.* It thus claims that College Products cannot complain about Intirion's investigation of Mr. Pedraza, given that it did not provide contact information for him at the time. *Id.*

Based on the record before it, the Court finds that Intirion articulates some basis to support its belief that venue may have been proper at the time it filed its Complaint. Intirion argues that College Products represented that it offered its products and services in San Antonio, which is in this District. ECF No. 40 at 3. Intirion also believed that [REDACTED]

[REDACTED] in San Antonio, where it believed College Products was doing business. *Id.* Further, because College Products was working with [REDACTED] Intirion asserts it had another basis for believing that venue was proper here based on the locations of [REDACTED] this District. *Id.* Based on the evidence Intirion had before it when it filed its Complaint, the Court is not inclined to second guess Intirion's belief that venue may have been proper. However thin College Products thinks the venue evidence was at the outset, Intirion's actions before venue discovery do not rise to the level of sanctionable behavior.

That said, the Court agrees with College Products that after venue discovery, Intirion had no basis to maintain its venue allegations. Although the Court declines to find its pre-discovery actions sanctionable, the Court cannot agree that Intirion's venue allegations after venue discovery were reasonable.

First, the Court is not persuaded by Intirion's arguments that Mr. Hennings' declaration created inconsistencies with the evidence developed during discovery. Intirion highlights three alleged inconsistencies between Mr. Hennings' declaration and the evidence produced during discovery. *See* ECF No. 41 at 4. It argues that Mr. Hennings' declaration claimed that "College Products does not have an office or other place of business in Texas," but that during his deposition, he acknowledged that College Products [REDACTED]

[REDACTED] Intirion asserts that this statement affects Mr. Hennings' credibility. *Id.* Intirion also alleges that Mr. Hennings' declaration claimed that "College Products has never . . . offered for sale" the accused products in the Western District of Texas, but that College Products contacted Baylor with the *intent* of offering the product to or through Baylor. *Id.* (emphasis added). And because [REDACTED]

[REDACTED] Mr. Hennings' sworn statement claiming that there were no College Products' employees in Texas "justifiably raised suspicions." But Intirion fails to prove how these examples support its argument that Mr. Hennings made any untrue or inconsistent statements in his declaration. Intirion cannot credibly argue that these statements and the evidence related to venue created inconsistencies such that "Intirion could not just take College Products' assurances at face value, and it was reasonable for Intirion to have doubts about College Products' representations regarding its business in Texas." ECF No. 41 at 4.

Intirion also argues that College Products' [REDACTED] is not dispositive as to venue, as it was reasonable to believe that [REDACTED]

[REDACTED] *Id.* But Mr. Hennings testified during his deposition that [REDACTED] [REDACTED] ECF No. 12-1 at ¶¶ 4, 5; ECF No. 36-3 at 1, 4–6, ECF

No. 22-1 at 27:5-22. Intirion provides no other evidence to support a reasonable basis for why it continued to believe otherwise.

The Court also disregards Intirion's argument about Mr. Pedraza's declaration. *See* ECF No. 40 at 8. Mr. Pedraza executed a declaration stating he was never a student at TAMUSA and never worked for College Products in San Antonio. Yet Intirion argues that College Products produced no other information about him despite Intirion's discovery requests. *Id.* Intirion, however, cannot now allege discovery misconduct in support of its venue allegations when nothing in the record suggests College Products violated its discovery obligations. Nor does Intirion provide any support for why it discredited Mr. Pedraza's sworn statement.

Importantly, apart from its arguments that College Products' venue representations were not credible, Intirion points to no other evidence that would support any basis for its claimed venue in the Western District of Texas. Accordingly, the Court finds that sanctions are appropriate, and College Products should be awarded attorneys' fees incurred after Mr. Hennings' deposition.

B. Whether College Products' requested fees are reasonable.

In accordance with the Court's decision that College Products should be awarded the attorneys' fees it incurred only after Mr. Hennings' deposition, the Court disregards any requested attorneys' fees for work that took place before the deposition. Accordingly, the Court addresses only whether the fees requested after Mr. Hennings' deposition are reasonable.

"To determine reasonable rates, a court considers the attorneys' regular rates as well as prevailing rates." *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 328 (5th Cir. 1995). "When an attorney's customary billing rate . . . is within the range of prevailing market rates, the court should consider this rate when fixing the hourly rate to be allowed." *Id.* "An attorney's requested hourly rate is *prima facie* reasonable when he requests that the lodestar be computed at his or her customary billing rate, the rate is within the range of prevailing market rates[,] and the rate is not

contested.” *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1087 (S.D. Tex. 2012) (alteration in original) (internal quotation marks omitted) (citing *Kellstrom*, 50 F.3d at 328).

College Products asserts that its requested fees are reasonable because it applied the lodestar method. ECF No. 36 at 8 (citing *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992) (noting that there is a strong presumption that the lodestar represents a reasonable fee)). Counsel for College Products submitted a declaration which included contemporaneous billing records for this litigation, organized chronologically by activity or project, which lists the attorney or paralegal name, date, and hours expended on the activity or project. ECF No. 36-5. It explains that it then determined the number of attorney and paralegal hours expended defending against Intirion’s venue allegations, which it asserts was [REDACTED] *Id.* ¶¶ 7–9, 18.

On the other hand, Intirion disputes that the fees are reasonable, primarily arguing that College Products should not be entitled to the fees it incurred for all the time College Products spent on venue issues. ECF No. 40 at 8. It also asserts that more than [REDACTED] of the fees being sought are for College Products’ preparation of this Motion. *Id.* As already noted, the Court agrees that College Products should not be awarded all fees incurred that relate to venue. But Intirion raises no other specific issues with College Products’ calculations, nor does it challenge any of the fees incurred after Mr. Hennings’ deposition as excessive, duplicative, or inadequately documented. Indeed, Intirion states that the “best-case scenario for College Products is that only the fees incurred after venue discovery concluded should be awarded.” *Id.* at 2. It does not otherwise contest whether those specific fees are reasonable.

The Court finds that the fees College Products requests after Mr. Hennings’ deposition are reasonable. College Products’ counsel submitted a declaration with contemporaneous billing

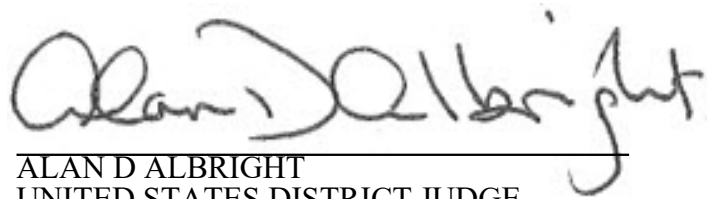
records attached, detailing in chronological order the activity, the attorney, or the paralegal who worked on the activity, date, and the hours expended. ECF No. 36-5. College Products multiplied the hours expended by the timekeepers' reasonable hourly rates. *Id.* ¶ 10. [REDACTED] found reasonable in other decisions within Texas for litigation of similar complexity. *See, e.g., WPEM, LLC v. SOTI Inc.*, No. 2:18- CV-00156-JRG, 2020 WL 555545, at *7 (E.D. Tex. Feb. 4, 2020), *aff'd*, 837 F. App'x 773 (Fed. Cir. 2020) (awarding attorneys' fees in 2020 in a patent case at rates of \$285–\$900 for practice support personnel, associates, senior associates, and partners); *SAP Am., Inc. v. Investpic, LLC*, No. 3:16-CV-02689-K, 2018 WL 6329690, at *6 (N.D. Tex. Dec. 4, 2018), *aff'd*, 779 F. App'x 744 (Fed. Cir. 2019) (awarding attorneys' fees in 2018 in a patent case at rates of \$484.25– \$757.25 for a partner and \$243–\$520.00 for an associate); *Raniere v. Microsoft Corp.*, No. 3:15- cv-0540-M, Dkt. 181 (N.D. Tex. Dec. 13, 2016), *aff'd*, 887 F.3d 1298, 1309 (Fed. Cir. 2018) (awarding attorneys' fees in 2016 at rates of \$375–\$1,030 for three associates, one senior associate, and one partner at Paul Hastings, \$500–\$600 for local counsel, and \$525–\$1,100 for three partners and two associates at Sidley Austin). Intirion does not contest these rates. *See generally* ECF No. 40.

College Products thus provides sufficient documentation of the hours it spent defending against Intirion's venue allegations after Mr. Hennings' deposition. The Court agrees that College Products' requested fees totaling [REDACTED] are reasonable.

IV. CONCLUSION

Accordingly, **IT IS ORDERED** that Defendant's Motion for Attorneys' Fees (ECF No. 36) is **GRANTED-IN-PART. IT IS THEREFORE ORDERED** that College Products is awarded its attorneys' fees incurred after Mr. Hennings' deposition, totaling [REDACTED]

SIGNED this 23rd day of August, 2023.



ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE