

## CAFC Issues Writ of Mandamus Directing Judge Albright to Transfer Case to the Northern District of California

AUGUST 12, 2020

*In re Adobe Inc.*, No. 2020-126 (Fed. Cir. July 28, 2020)

The CAFC issued a writ of mandamus, for the first time, overturning one of Judge Alan Albright's transfer orders. Adobe had challenged Judge Albright's denial of Adobe's motion to transfer to the Northern District of California under 28 U.S.C. § 1404(a).

The CAFC held that in denying transfer, Judge Albright committed several errors, including: (1) failing "to accord the full weight of the convenience factors it considered and weighed in favor of transfer"; (2) overlooking the willing witness factor, which favored transfer; and (3) running afoul of governing precedent in giving dispositive weight to its "ability to more quickly schedule a trial."

As to the first issue, the CAFC noted that Judge Albright did not give proper weight to the fact that no private convenience factors favored retaining the case, while several, including the location of Adobe's witnesses and key third-party witnesses, favored transfer.

As to the second issue, the CAFC noted that Judge Albright's decision overlooked the fact that a significant number of Adobe's witnesses reside in the transferee district, while the patent owner's witnesses would be coming from outside both districts.

As to the third issue, the CAFC noted that Judge Albright erred in denying transfer based on "the ability to more quickly schedule a trial." When several factors weigh in favor of transfer and others are neutral, the speed of the transferor court should not outweigh all those other factors. Moreover, a court's general ability to set a schedule does not speak to the court congestion factor. Court congestion concerns whether there is an appreciable difference in docket congestion between the two forums.

Because retaining the case in the Western District of Texas was not convenient for the parties and witnesses and was not in the interest of justice or proper administration, the CAFC said Judge Albright's determination was a clear abuse of discretion.

This decision marks the first transfer of a case out of Waco since Judge Albright was confirmed in 2018.

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