

## Judge Albright Transfers to NDCA Despite Co-Pending Cases Where Third Parties Have Critical Testimony

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This week Judge Albright transferred the *Koss* case against Plantronics, Inc. and Polycom, Inc., No. 6:20-CV-00663-ADA, to the Northern District of California despite the existence of parallel litigation in the Western District. Weighing the transfer factors, the Court found that “to the extent that co-pending litigation weighs against transfer, that weight is undercut by the filing of motions to transfer.” Though the Court “recently decided to deny Apple’s motion to transfer venue” and found that “retaining this case in WDTX would promote judicial economy,” the Court found the “*All Other Practical Problems That Make Trial of a Case Easy, Expeditious and Inexpensive*” factor weighed only slightly against transfer because the case was in the early stages.

Agreeing with Polycom that “its engineering documents—pertaining to the design and development of the accused features and products—and Apple’s [third-party] documents weigh in favor of transfer” given their physical location, the Court found that “the relative access to sources of proof weighs in favor of transfer.” The Court found that “*the availability of compulsory process*” prong also weighed in favor of transfer. Though the Court gave little weight to party witnesses, the Court held that “convenience of third-party witnesses is given considerable weight” and that “this Court attaches weight to this factor to the extent that the third-party witnesses are unwilling to testify.” The Court found that the four third-party witnesses Polycom identified “have key testimony” and all “indicated that they are unwilling to travel to WDTX unless compelled to do.”

Though the Court transferred the case to the Northern District of California, the Court found that court congestion weighed against transfer, reiterating that “nonetheless, it is unquestionable that WDTX is advancing cases through the trial phase and alleviating docket congestion, whereas NDCA is not.”

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