

Federal Circuit Directs Transfer of Waco Case to Northern California and Confirms that Venue Manipulation is Still Not Okay

JULY 1, 2021

IN RE: SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC., LG ELECTRONICS INC., LG ELECTRONICS USA, INC., 2021-139, 2021-140. On Petitions for Writs of Mandamus to the United States District Court for the Western District of Texas in Nos. 6:20-cv-00257-ADA, 6:20-cv-00259-ADA, Judge Alan D Albright.

On June 30, 2021, the Federal Circuit granted a mandamus challenge and directed Judge Albright to transfer a pair of cases against Samsung and LG defendants from West Texas to Northern California. The opinion is located [here](#). We previously blogged on the district court's denial of Samsung and LG's transfer motions in Winston's WacoWatch blog located [here](#). As a recap, the North Carolina-based plaintiff formed two shells—Ikorongo Technology and Ikorongo Texas—and assigned the "Texas" entity limited rights to sue only in Texas. Plaintiff later opposed Samsung and LG's transfer motions under the theory that Ikorongo Texas, with its limited rights, could not have brought the suits in the proposed transfer venue: Northern California. Judge Albright agreed and further opined that transfer was not warranted regardless.

The Federal Circuit disagreed. Pointing to mandamus law stemming from a case pending in the Eastern District of Texas ten years ago (*In re Microsoft Corp.*, 630 F.3d 1361 (Fed. Cir. 2011)), and other opinions, the panel noted that venue manipulation is given no weight in the transfer analysis. The panel explained: "the presence of Ikorongo Texas is plainly recent, ephemeral, and artificial— just the sort of maneuver in anticipation of litigation that has been routinely rejected . . . therefore, we need not consider separately Ikorongo Texas's geographically bounded claims."

Having dealt with the venue manipulation issue, the panel continued by finding that Judge Albright "gave too little weight to the relative convenience" factors at issue. Here, there were "over a dozen third-party individuals with relevant and material information" and two inventors residing in Northern California. There were no relevant witnesses identified as residing in West Texas. Under these facts, the panel held that even "if not all witnesses testify, with nothing on the other side of the ledger, the factor strongly favors transfer" and "transfer ensures that the transferee court could compel these individuals to appear."

The panel also discounted Judge Albright's concerns about wasting judicial resources and the possibility of inconsistent results due to the pending Ikorongo litigation in West Texas against Bumble. The panel noted that only two of the asserted patents overlap between the two sets of cases, there is an "entirely different underlying application," and it is "likely that these cases will result in significantly different discovery, evidence, proceedings,

and trial.” In addition, the panel commented that “importantly,” Multi-District Litigation Procedures could be used to effectuate further efficiency.

The panel also took issue with Judge Albright’s statement that “it is generally a fiction that patent cases give rise to local controversy or interest, particularly without record evidence suggesting otherwise.” The panel noted that the “Supreme Court has long held that there is ‘a local interest in having localized controversies decided at home.’” Here, Northern California’s “local interest” was established because the allegations involved applications, developed by Northern California-based third parties, that run on Samsung and LG’s accused products.

Finally, the Court disagreed that the faster time to trial offered by Judge Albright’s Court favored keeping the case in West Texas. The panel cited precedent for the proposition that “a court’s general ability to set a fast-paced schedule is not particularly relevant.” The panel continued by stating: “even if the court’s speculation is accurate that it could more quickly resolve these cases based on the transferee venue’s more congested docket, neither respondents nor the district court pointed to any reason that a more rapid disposition of the case that might be available in the Western District of Texas would be important enough to be assigned significant weight in the transfer analysis here.”

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