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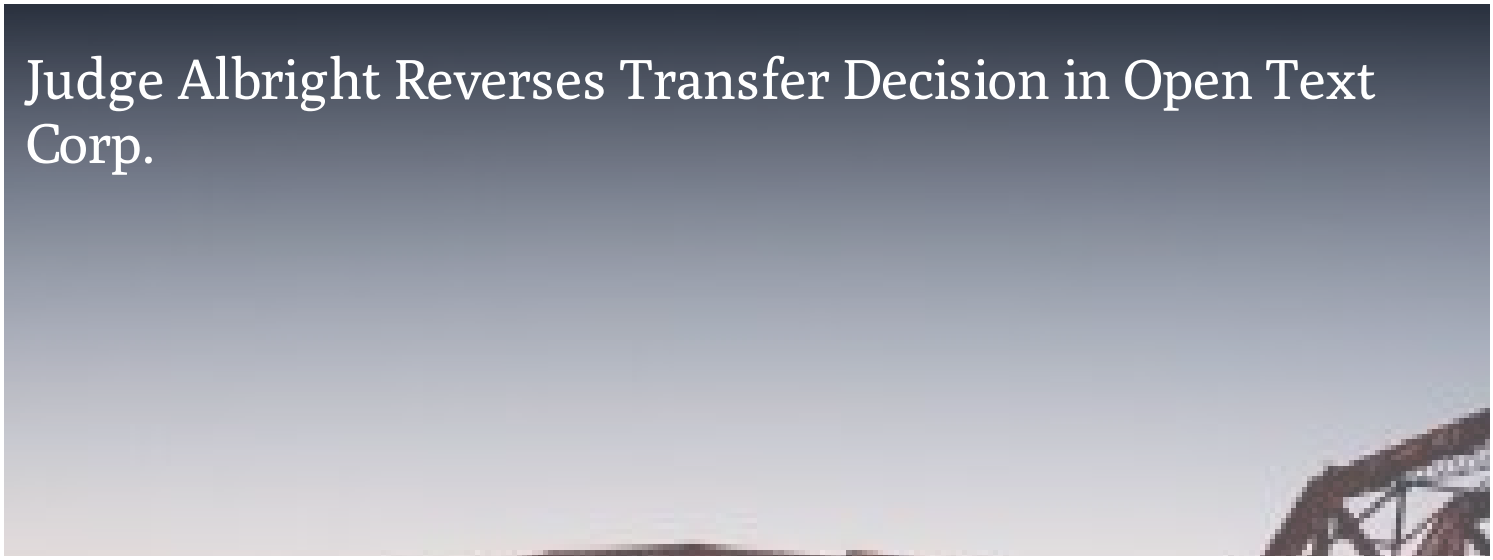
BLOG

Judge Albright Reverses Transfer Decision in Open Text Corp.



DECEMBER 2, 2021

Less than a month after denying Alfresco Software, Ltd.'s motion for transfer of venue under 28 U.S.C. 1404(a) in *Open Text Corp. v. Alfresco Software, Ltd.*, Judge Albright reversed his own order in light of *In re Juniper Networks, Inc.*, 14 F.4th 1313 (Fed. Cir. 2021). The case has now been transferred to the Central District of California (CDCA).

As previously discussed, the case concerns nine patents Open Text owns. Open Text is an enterprise information management software company with offices in both the Northern District of California and the Western District of Texas (WDTX). While Open Text accuses all four defendants of collectively infringing all nine patents, only two defendants have a connection to the WDTX. The defendants sought to have the case transferred to the CDCA.

When the Court initially analyzed the motion on September 30, 2021, it concluded that Alfresco Software, Ltd. "failed to prove that [CDCA] is a clearly more convenient venue than [WDTX]." Of the eight relevant factors, five were deemed "neutral." And of the remaining three, only two weighed in favor of transferring. However, shortly after entry of the Order, the Federal Circuit provided new and additional guidance in the weighing of these factors in *In re Juniper Networks*. In particular, the handling of the second factor of the private interest factors – the availability of compulsory process to secure the attendance of witnesses – changed dramatically.

Previously, courts were instructed to focus this factor's analysis on the parties' failure to demonstrate that a witness was unwilling to testify at trial. However, the Federal Circuit now instructs: "[W]hen there is no indication that a non-party witness is willing, the witness is *presumed* to be unwilling and considered under the compulsory process factor." Thus, to satisfy this factor, the moving party does not have to prove that a witness is unwilling to testify, and when a party has failed to show that a witness is willing to testify, that witness will be *presumed* unwilling.

Using this approach, Judge Albright reversed his initial finding of the second factor. Thus, three factors now weighed in favor of transfer. Three were neutral, while only one disfavored transfer. Albright found this weighing sufficient for transfer to the CDCA.

PRIVATE INTEREST FACTORS

1. The Court, again, found that the first factor, relative ease of access to sources of proof, was neutral. Specifically, the Court found that while OpenText showed that some potentially relevant documents were in WDTX, Alfresco failed to identify any relevant documents that were in CDCA.
2. Contrary to its initial analysis, the Court found that the second factor favored transfer in light of *In re Juniper Networks*. Alfresco argued that the CDCA was more convenient for numerous prior art witnesses. However, Judge Albright did not give weight to these witnesses because Alfresco failed to show their relevance to the suit. Nonetheless, the Court found that there was no indication that four relevant non-party witnesses who lived in California were willing to testify. Only one such witness lived in the WDTX. Thus, because compulsory process could secure the attendance of three more witnesses in the CDCA than in WDTX, Albright found the factor favored transfer.
3. The cost of attendance for willing witnesses was again found neutral. The Court found that "[f]or some witnesses, the cost of attendance is lower" in WDTX, and for other witnesses, lower in CDCA.
4. The Court found that the fourth factor, all other practical problems that make trial easy, expeditious, and inexpensive, again weighed in favor of transfer. Alfresco argued that judicial economy favored CDCA because OpenText asserted six of the same patents against Hyland and Alfresco in CDCA based on the same technology and against similar accused products. And because Hyland is an Ohio corporation, it could not be sued in WDTX. However, the Court found that this case was sufficiently distinct as not to be entirely duplicative because the case involves different patents, different claims, different products, and different parties.

PUBLIC INTEREST FACTORS

1. The Court found that the first factor, administrative difficulties flowing from court congestion, again favored transfer. Alfresco argued that because CDCA's docket was "twenty percent less crowded than WDTX when looking at per-judge caseloads," transfer and consolidation of this case with the other California cases would promote efficiency. Notably, Judge Albright found this unconvincing because Alfresco "ignore[d] this Court's ability to get those cases to trial quickly," and that "this Court is slightly outpacing those [California] cases in pretrial matters like claim construction." However, Albright also found that because trial date in the California cases is set for three months before the trial date in this case, transfer was favored.
2. Second, as to the local interest in having localized interests decided at home, the Court again found that the factor weighed against transfer. Specifically, Judge Albright found that "[n]one of the events giving rise to the infringement claim occurred in CDCA, and the Defendants' generalized presence in the district is insufficient" to merit transfer. Moreover, the accused products from at least one defendant were sold in WDTX.
3. Both parties agreed that the third factor – familiarity of the forum with the law that would govern the case – was neutral.
4. Both parties agreed that the fourth factor – avoidance of unnecessary problems of conflict of laws or in the application of foreign law – was neutral.

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