

Third Quarter 2021: Judge Albright's Transfer Orders in Review

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The third quarter of 2021 was one of the busier quarters for Judge Albright on transfer orders. For 3Q 2021, we reviewed the judge's transfer-related orders and procedures. Here are our observations:

During 3Q 2021, the Federal Circuit weighed in eight times: granting four mandamus petitions and denying four. In the four decisions ordering transfer ([Juniper Networks](#), [Hulu](#), [Uber](#), and [Google \(Sonos\)](#)), the Federal Circuit took issue with the Court's evaluation of the private interest factors related to willing and unwilling witnesses and noted that a plaintiff's litigation presence in the venue and the relative speed of the venues under consideration carry no weight in the evaluation of the eight factors. For two of the denials, [Apple and Google \(EcoFactor\)](#), the Federal Circuit acknowledged the decisions denying transfer were not error-free but also observed potential witnesses resided in the District. For the other two denials, TCO AS and [Intel/Samsung](#), the Federal Circuit did not find clear abuse of discretion based on judicial economy due to other pending cases asserting the same patent claims, potential witnesses who resided in Waco, and the party headquartered in the transferee venue chose to file suit in the Waco Division.

Judge Albright ruled on 25 motions to transfer during 3Q 2021, setting aside motions that were granted after a remand from a mandamus or other unique issues.

For intra-district motions to transfer, the third quarter was a lighter quarter. Judge Albright only granted an inter-district motion to transfer one time when he *sua sponte* transferred the Fintev/Apple case from Austin to Waco given issues related to COVID-19. A petition of mandamus was granted on that ruling by the Federal Circuit on October 1, 2021, which resulted in Judge Albright vacating the order and transferring the case back to Austin.

As for inter-district motions to transfer, Judge Albright granted five and denied 19. We focus here on the six inter-district motions to transfer that Judge Albright granted. One of these motions was a motion to transfer filed by Lyft in a case against Ikorongo (Case No. 6:20-cv-258), which was related to other cases filed by Ikorongo that the Federal Circuit had granted a writ of mandamus directing transfer on June 30, 2021. In addition, Judge Albright granted an unopposed motion to transfer to Delaware in the matter of *Cedar Lane Technologies v. Hilton Worldwide Holdings* (Case No. 6:21-cv-237).

As for a more typical opposed motion to transfer, Judge Albright granted NCR's motion to transfer to the Atlanta Division of the Northern District of Georgia in a case brought by Caselas, LLC (Case No. 6:20-cv-01138). The Court

found that the access to sources of proof factor, cost of attendance of willing witnesses factor, and the local interest factors all weighed in favor of transfer—largely based on NCR having its headquarters in Atlanta and there not being any specific ties to the Western District of Texas.

Judge Albright granted Amazon’s motion to transfer to the Western District of Washington in a case brought by Flexiworld Technologies (Case No. 6:20-cv-553). Judge Albright found that the access to sources of proof factor weighed in favor of transfer. Here, Judge Albright reiterated that the physical location of the documents is what matters under Fifth Circuit precedent, despite this being nonsensical in the age of electronic information. Ultimately, because Judge Albright found that Amazon’s documents were closer to Washington than Texas, he found this factor weighed in favor of transfer. Moreover, given Amazon’s presence in Washington, the local interest factor weighed in favor of transfer. As a result, Judge Albright transferred the case.

Finally, Judge Albright granted Facebook’s motion to transfer to the Northern District of California in a case brought by MasterObjects (Case No. 6:20-cv-87). The access to sources of proof factor weighed slightly in favor of transfer, given that the relevant documents at issue were primarily located in California, although Facebook’s code could be accessed in Austin. In addition, given that MasterObjects failed to identify a single witness in the Western District of Texas, and Facebook identified a significant number of witnesses in California, the willing witnesses factor weighed in favor of transfer. Therefore, Judge Albright granted the motion to transfer.

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