Articles + Publications | November 19, 2021

# Locke Lord QuickStudy: The Federal Circuit Issues Multiple ?Orders Directing Transfer of Venue out of the Western ?District ?of Texas

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On November 15th, the United States Court of Appeals for the Federal Circuit entered orders granting ?three separate petitions for writ of mandamus in the cases styled *In re Apple Inc.*, *In re Atlassian Corp. ?PLC, Atlassian, Inc*., and *In re Google LLC* ("November 15 Orders"). Judge Alan Albright of the United ?States District Court for the Western District of Texas was ordered to transfer the cases to the United ?States District Court for the Northern District of California, although for different reasons based upon ?the facts of each case. In each Order, the Federal Circuit noted that Judge Albright's decision to ?deny a transfer based upon the Western District of Texas' speculative expedited time-to-trial was ?improper. The Federal Circuit has over the past two years entered more than fifteen other orders ?directing transfer of venue in patent cases out of the Western District of Texas. [1]

**The November 15 Orders**

In each case, the defendants sought to have their case transferred to the Northern District of ?California under 28 U.S.C. § 1404(a), arguing that the Northern District of California was a more ?convenient forum. In determining whether to transfer venue, a court traditionally analyzes private ?and public interest factors. The Federal Circuit's November 15 Orders analyzed six such factors.?

The first factor in the Federal Circuit's transfer of venue analysis is the location of the sources of ?proof relevant to the dispute. The Federal Circuit has acknowledged that while electronic storage ?and modern technology has made documents more widely accessible, what matters is the competing ?forums' *ease* of access to the sources of evidence. Although the electronic information was ??"available" in the Western District of Texas due to modern technology, the Federal Circuit ruled that ?this factor weighed in favor of transferring the cases to the Northern District of California because the ?source code, servers storing the information, and maintenance of all such information was located in ?the Northern District of California.?

The second factor in the Federal Circuit's transfer of venue analysis is a venue's ability to compel ?third-party witnesses to testify through its subpoena power. The Federal Circuit has repeatedly held ?that when more third-party witnesses reside within the transferee venue than reside within the ?transferor venue, this factor weighs in favor transferring the case. In all three cases, the ?overwhelming majority of third-party witnesses resided within

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the Northern District of California, thus ?favoring a transfer.?

The third factor in the Federal Circuit's transfer of venue analysis is the relative convenience of the ?competing forums for potentially willing witnesses. Previous Federal Circuit opinions have held that ?when there are several potentially willing witnesses located in the transferee forum and none in the ?transferor forum, this factor weighs in favor of transferring the case. In all three cases, the ?defendants identified multiple employees with extensive knowledge of the design, development, ?marketing, licensing, and finances of the accused products residing within the Northern District of ?California, while only a few employees with minimally relevant knowledge resided within the ?Western District of Texas. As such, the Federal Circuit weighed this factor in favor of transferring the ?case.?

The fourth factor in the Federal Circuit's transfer of venue analysis is the venue's local interest, ?specifically whether a defendant is "at home" in the venue and/or whether the events giving rise to ?the dispute occurred in the forum. A party's "general presence" in a forum is not enough on its own. ?In all three cases, the defendants had their headquarters in the Northern District of California, as well ?as designed and developed the products at issue in the Northern District of California. Thus, the ?Federal Circuit found that the Northern District of California had a greater localized interest than the ?Western District of Texas.?

The fifth factor in the Federal Circuit's transfer of venue analysis is whether inconsistent results can ?be avoided and judicial resources may be preserved if the dispute is handled in a specific forum. The ?preservation of judicial economy is viewed at the time the suit was filed, such that multiple lawsuits ?filed on the same day in the same court may weigh against a transfer. However, the practical ?considerations are not to be over-weighed. In all three cases, although there were co-pending cases ?filed on the same day in the Western District of Texas, the Federal Circuit held that any incremental ?gains obtained by keeping the cases in the Western District of Texas were insufficient to justify ?overriding the inconvenience created for the parties and witnesses. Thus, the Federal Circuit held ?this factor weighed in favor of transferring the cases to the Northern District of California.?

The final factor in the Federal Circuit's transfer of venue analysis is the ability of a court to efficiently ?and effectively handle the dispute. In all three cases, Judge Albright denied transferring the cases to ?the Northern District of California based upon his determination that the Western District of Texas ?had a significantly faster time to trial due to its continued jury trials during the COVID-19 pandemic. ?The Federal Circuit has consistently held that when the other relevant factors discussed above ?weigh in favor of transferring the matter, then the speed of the transferee district court should not ?alone outweigh all of those other factors. Additionally, the Federal Circuit noted that the Northern ?District of California and Western District of Texas did not show any significant differences in ?caseload or time-to-trial statistics to justify Judge Albright's denial.?

The Federal Circuit continues to provide guidance in these patent venue cases. Any consideration ?of a potential motion to transfer should involve continued monitoring of Federal Circuit decisions ?relating to venue and a thorough investigation into venue-related facts.?

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[1] ? *See In re DISH Network, LLC, No. 2021-182* (Fed. Cir. Oct. 21, 2021); *In re NetScout Sys.,* Inc., No. 2021-173, 2021 WL 4771756 ??(Fed. Cir. Oct. 13, 2021); *In re Pandora Media, LLC,* No. 2021-172, 2021 WL

4772805 (Fed. Cir. Oct. 13, 2021); *In re Google LLC,* ?No. 2021-171, 2021 WL 4592280 (Fed. Cir. Oct. 6, 2021); *In re Juniper Networks, Inc.,* No; 2021-156, 2021 WL 4519889 (Fed. Cir. ?Oct. 4, 2021); *In re Apple*, No. 2021-187, 2021 WL 4485016 (Fed. Cir. Oct. 1, 2021); *In re Google LLC,* No. 2021-170, 2021 WL ??4427899 (Fed. Cir. Sep. 27, 2021); *In re Juniper Networks,* No. 2021-160, 2021 WL 4343309 (Fed.-Cir. Sep. 24, 2021); *In re Hulu, ?LLC,* No. 2021-142, 2021 WL 3278194 (Fed. Cir. Aug. 2, 2021); *In re Uber Techs., Inc.,* 852 F.App'x 542 (Fed. Cir. 2021); *In re ?Samsung Elecs. Co., Ltd.,* 2 F.4th 1371 (Fed. Cir. 2021); *In re TracFone Wireless, Inc.,* 852 F.App'x 537 (Fed. Cir. 2021); *In re Apple ?Inc.,* 979 F.3d 1332 (Fed. Cir. 2020); *In re Nitro Fluids LLLC,* 978 F.3d 1308 (Fed. Cir. 2020); *In re Adobe Inc.,* 823 F.App'x 929 (Fed. ?Cir. 2020).?

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