

Motion for Intradistrict Transfer from Waco Division to Austin Division Granted

JUNE 2, 2020

Finding that the multi-patent case could have been properly brought in the Austin Division and that three of the private/public transfer factors favored transfer while the remaining five factors were neutral, the court granted the Amazon defendants' motion to transfer from the Waco Division to the Austin Division. In doing so, the court maintained the case on its docket (so that Judge Albright remained the presiding judge) and kept the case's original scheduling order in place.

The thrust of Amazon's motion was that its engineers and documentary evidence most pertinent to the accused products were primarily located in Austin, with any other proof being located outside of Texas altogether. The court applied the traditional transfer analysis under section 1404(a) as informed by the Fifth Circuit's decisions in *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) (*Volkswagen I*) and *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 312 (5th Cir. 2008) (*Volkswagen II*). The parties did not dispute that the action could have been properly brought in the Austin Division originally, and thus, the court moved from this preliminary question to weigh the four private and four public factors affecting transfer. The private factors are: "(1) relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive." *Volkswagen I*, 371 F.3d at 203. The public factors are: "(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws or the application of foreign law." *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960).

The parties agreed that private factor (2) compulsory process; and public factors (1) court congestion; (3) forum familiarity with governing law; and (4) conflict of law; were all neutral. The court agreed. Defendants argued that private factor (4) (practical problems) favored transfer because the case was in early stages, no scheduling order was entered and that other co-pending litigation by plaintiff in the division did not weigh against transfer. The court found this factor to be neutral, even though, subsequent to the filing of the transfer motion, the case had been consolidated with the other co-pending litigation and a scheduling order had been entered.

The court found that private factor (1), ease of access to proof, weighed in favor of transfer, noting that no witness or documentary proof was in the Waco Division and the accused infringers would likely have the bulk of documents (so where those documents were kept—here largely Austin—weighed in favor). Plaintiff pointed to documents and

witnesses in or near Dallas and argued Dallas was closer to Waco than Austin, but the court found that argument unpersuasive, given that the primary sources of proof for defendants were physically located in the Austin Division.

The court similarly found that private factor (3), cost of attendance, weighed in favor of transfer and noted that it was not persuaded by long lists of potential party and non-party witnesses since trial realities dictate that only a few party witnesses and even fewer non-party witnesses would actually testify at a trial. Plaintiff argued that its witnesses (party and non-party) were largely located in Dallas, and thus it was closer to travel to Waco (with lower lodging costs) than Austin. The court was persuaded that “[w]hile Waco has a lower cost of attendance for HDI witnesses and Austin has a lower cost of attendance for Amazon witnesses, because there are likely significantly more Amazon witnesses than HDI witnesses and because many of the Amazon witnesses can stay in their Austin homes if trial is in Austin, thus lowering overall lodging costs” that the factor weighed in favor of transfer to Austin.

As to public factor (2), local interest, the court found that plaintiff only pointed to interests that extend to virtually every venue in the U.S. and that such arguments should be ignored. The court was persuaded that a strong local interest existed in Austin because Amazon employed 1200 employees in the division and the fact that the case “centers around the work of engineers which design and develop components of the accused products within Austin[.]”

Hammond Dev. Intern. Inc. v. Amazon.com, Inc., et al., 6:19-CV-00355-ADA (Order Granting Defendants’ Motion for Leave to Transfer Venue under 28 U.S.C. § 1404(a))

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