

Trial Alert: *VLSI Technologies v. Intel* — Waco Weather Delays and Robust COVID-19 Protocols

FEBRUARY 12, 2021

Jury selection was slated to begin today in the long-anticipated jury trial in the patent matter *VLSI Technologies v. Intel* in the Western District of Texas in Waco before Judge Albright.

Winston & Strawn is attending the trial and will report ongoing developments on the WacoWatch blog.

Weather Delays

As many are aware, a significant winter storm swept across much of Texas and other parts of the country. For the safety of everyone associated with the trial, including jurors, Judge Albright has pushed jury selection to Tuesday, February 16.

COVID-19 Safety Precautions

Weather is not the only reason for caution. On February 10, the court issued a lengthy order spelling out significant COVID-19 safety precautions. Although jury trials in most parts of the country have been at a standstill for nearly a year, the restrictions in Texas have not been as severe. Judge Albright's 13-page "Notice of Trial Procedures" is primarily directed to the court's COVID-19 safety protocols, to help allow jury trials in a safe environment.

Judge Albright's safety protocol appears to match or exceed protocols issued by other courts. All party-affiliated trial participants are required to have a negative PCR test within five days of their first appearance and to have daily rapid antigen or PCR testing. Trial participants are encouraged to use a N95 mask at all times, unless questioning or testifying, where at that time they should be at least 10 feet from all other persons or in the witness box surrounded by plexiglass.

As compared to protocols for the party-affiliated participants, the protocols for the jury and non-party participants are not as burdensome. Although the rapid antigen tests will be "made available" daily, there is no daily testing requirement for the jury and non-party participants. A variety of PPE will also be made available free of charge to all jurors and court personnel, including (1) N95 or generally equivalent masks, (2) ASTM-rated surgical masks, (3) face shields, (4) disposable gloves, and (5) personal hand sanitizer bottles. The jurors and non-party trial participants are

also required to wear their masks at all time, except when permitted by the court, while eating, or if done in a reasonable manner while maintaining social distancing.

The courthouse also is taking additional precautions for everyone involved, including temperature checks upon entry to the courthouse, required COVID-19 health questionnaires, strict procedures for jury deliberations, additional courtroom precautions, requirement for electronic exhibits and not paper exhibits, no bench conferences, an overflow room with a video feed to limit capacity, and a live video feed so other party-affiliated trial participants can view remotely.

We will be reporting on any new developments during trial and are encouraged to see jury trials slowly coming back, and safely.

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