

First Quarter 2021: Judge Albright's Transfer Orders and Procedures in Review

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Since the Federal Circuit's November 2020 Mandamus decision in *In re Apple, Inc.*, motions to transfer filed in the Waco Division are a hot topic. For 1Q 2021, we reviewed the transfer-related orders and procedures for Judge Albright. Here are our observations.

For 1Q 2021, the Federal Circuit weighed in twice: once in *In re Intel Corporation* allowing Judge Albright's re-transfer back to Waco (from Austin) to stand; and once in *In re SK hynix Inc.* staying the district court schedule until Judge Albright ruled on the motion to transfer.

Judge Albright issued 13 transfer orders. Of those 13, nine were orders denying transfer and four were orders granting transfer. For the nine transfer motions that were denied, three were motions from related cases Ikorongo Texas filed, which were all seeking transfer to the Northern District of California and denied on the same day. Thus, for anyone keeping score, Judge Albright essentially denied seven motions to transfer and granted four in 1Q 2021.

All four transfer motions that were granted in 1Q 2021 had unique circumstances that are worth mentioning. One motion was in the *Uniloc v. Apple* case—where the Federal Circuit had granted Apple's mandamus petition concerning Judge Albright's previous denial of the motion to transfer. Apple requested the case be transferred to the Northern District of California, even though Uniloc had a pending petition for certiorari. Judge Albright agreed with Apple and issued a short order transferring the case, even with the petition for certiorari pending. The second transfer order also issued after the Federal Circuit granted Nitro Fluids' mandamus petition.

The two remaining orders granting transfer were both in cases where the plaintiff was seeking to transfer a case to Waco. One of those was from the series of patent cases between VLSI and Intel. VLSI and Intel have a second trial that is set for April 12, 2021, and as Judge Albright did for the first VLSI/Intel trial, he transferred the case from Austin to Waco because of the indefinite closure of the Austin courthouse due to COVID-19. Interestingly, however, Judge Albright did not transfer the third VLSI/Intel case to Waco, which is set for trial on June 7, 2021, and noted that he would re-visit that issue as the trial date approaches.

The other transfer order was also largely based on COVID-19 issues, and Judge Albright transferred the *True Chemical Solutions v. Performance Chemical Company* matter from Midland to Waco for trial.

For the motions Judge Albright denied, one group is worth noting. It has become more commonplace to see motions to transfer from Waco to Austin, either as the sole basis for the motion or sometimes in the alternative to another transfer request. Judge Albright ruled on four motions that sought transfer to Austin from Waco and denied all four.

In 1Q 2021, Judge Albright adopted a [new standing order](#) for inter-district transfer motions. A summary of the standing order is [here](#). Under the procedures, the Court will no longer hold *Markman* hearings while a motion for inter-district transfer is pending. The Court also now requires a showing of good cause for any delay and leave of Court for any inter-district transfer motion filed within eight weeks of a *Markman* hearing.

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