

CLIENT ALERT

## 19 Orders in 17 Months on WDTX Transfer-Related Mandamus Petitions

MAY 26, 2021

On May 25, 2021, the Federal Circuit denied Bose Corporation's mandamus petition seeking to direct Judge Alan Albright to stay all non-venue-related proceedings until he rules on Bose's pending motion to dismiss or transfer. The Federal Circuit relied on Judge Albright's March 23, 2021 standing order which confirmed the court would not conduct a *Markman* hearing until Bose's pending motion is resolved. With the absence of a ruling on a substantive motion and the expectation that "the court will promptly decide the pending motion," the Federal Circuit denied the petition.

Earlier this month, the Federal Circuit denied Western Digital's mandamus petition seeking to direct Judge Albright to transfer the case from the Western District of Texas to the Northern District of California. While the Federal Circuit observed "the district court incorrectly overstated the burden on [Western Digital] as 'heavy' and 'significant'" and acknowledged it may have evaluated some factors differently, the Federal Circuit concluded the district court's "ultimate conclusion" was not a clear abuse of discretion.

This is not the first time the Federal Circuit has suggested it would have weighed the factors under 28 U.S.C. § 1404(a) differently from Judge Albright. Earlier this year, the Federal Circuit made the same observation in its denial of Intel's mandamus petition seeking to vacate Judge Albright's order re-transferring its case from the Austin Division back to the Waco Division pursuant to 28 U.S.C. § 1404(a).

In addition to analyzing Judge Albright's transfer orders and procedures for 1Q 2021, we have analyzed all 19 transfer-related mandamus orders the Federal Circuit has issued since Judge Albright took the bench in September 2018. Of these 19 orders, the Federal Circuit granted 7 mandamus petitions, denied 11, and denied 1 as moot. Over the last several months, the Federal Circuit has indicated its concerns with the timing of the Western District's rulings on pending motions to transfer in two orders granting mandamus. The Western District responded to the Federal Circuit's concerns with rule changes, including a new standing order on March 23, 2021 to resolve pending motions to transfer before a *Markman* hearing, which based on the Federal Circuit's decision in *In Re Bose Corporation*, seems to have addressed the concern.

Similarly, the Federal Circuit has taken issue with the Western District's evaluation of the private interest factors related to willing and unwilling witnesses, noting in some instances that the Western District "misapplied the law in finding that any inconvenience to [willing non-party witnesses] outweighed the convenience of having several party

witnesses be able to testify at trial without having to leave home.” See, e.g., *In re TracFone Wireless, Inc.*, 2021 WL 1546036 (Fed. Cir. April 20, 2021). Based on the Western District’s decisions granting motions to transfer in *Correct Transmission LLC. v. ADTRAN, Inc.* and *Infogation Corp. v. Google LLC*, however, it appears the Western District has also addressed the Federal Circuit’s concerns.

The orders granting mandamus are:

**GRANTED**

CASE NAME	DOCKET NO.	ORDER DATE	RELIEF REQUESTED
IN RE: TRACFONE WIRELESS, INC.	<u>21-136</u>	4/20/2021	Mandamus for transfer to S.D. Fla. under 28 U.S.C. § 1404(a)
IN RE: TRACFONE WIRELESS, INC.	<u>21-118</u>	3/8/2021	Mandamus to stay proceedings until order issued on pending motion to transfer
<u>IN RE: SK HYNIX INC.</u>	<u>21-113</u>	2/1/2021	Mandamus to stay proceedings until order issued on pending motion to transfer
<u>IN RE: INTEL CORPORATION</u>	<u>21-105</u>	12/23/2020	Mandamus to vacate order transferring case back to Waco from Austin under Rule 77(b) and inherent authority for docket management
<u>IN RE: APPLE INC.</u>	<u>20-135</u>	11/9/2020	Mandamus for transfer to N.D. Cal. under 28 U.S.C. § 1404(a)
IN RE: NITRO FLUIDS L.L.C.	<u>20-142</u>	10/28/2020	Mandamus for transfer to S.D. Tex. under 28 U.S.C. § 1404(a)
<u>IN RE: ADOBE INC.</u>	<u>20-126</u>	7/28/2020	Mandamus for transfer to N.D. Cal. under 28 U.S.C. § 1404(a)

The orders denying mandamus are:

**DENIED / DENIED AS MOOT**

CASE NAME	DOCKET NO.	ORDER DATE	RELIEF REQUESTED
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CASE NAME	DOCKET NO.	ORDER DATE	RELIEF REQUESTED
IN RE: BOSE CORPORATION	<u>21-145</u>	5/25/2021	Mandamus to stay all non-venue-related proceedings until order issued on pending motion to dismiss or transfer
IN RE: WESTERN DIGITAL TECHS, INC.	<u>21-137</u>	5/10/2021	Mandamus for transfer to N.D. Cal. under 28 U.S.C. § 1404(a)
IN RE: APPLE INC.	<u>21-135</u>	4/9/2021	Mandamus for transfer to N.D. Cal. under 28 U.S.C. § 1404(a)
IN RE: NITRO FLUIDS L.L.C.	<u>21-130</u>	3/29/2021	Mandamus for transfer to S.D. Tex. under 28 U.S.C. § 1404(a)
IN RE: TRUE CHEMICAL SOLUTIONS, LLC	<u>21-131</u>	3/23/2021	Mandamus to reverse intra-division transfer from Austin to Waco under 28 U.S.C. § 1404(a)
IN RE: ADTRAN, INC.	<u>21-115</u>	3/19/2021	Mandamus to stay all deadlines unrelated to venue until order issued on pending motion to transfer
IN RE: SK HYNIX INC.	<u>21-114</u>	2/25/2021	Mandamus for transfer to C.D. Cal. under 28 U.S.C. § 1404(a)
<u>IN RE: INTEL CORPORATION</u>	<u>21-111</u>	1/21/2021	Mandamus to vacate re-transfer back to Waco from Austin under 28 U.S.C. § 1404(a)
IN RE: APPLE INC.	<u>20-127</u>	6/16/2020	Mandamus for transfer to N.D. Cal. under 28 U.S.C. § 1404(a)
IN RE: DROPBOX, INC.	<u>20-132</u>	6/1/2020	Mandamus for transfer to N.D. Cal. under 28 U.S.C. § 1404(a)

CASE NAME	DOCKET NO.	ORDER DATE	RELIEF REQUESTED
IN RE: DROPBOX, INC.	<u>20-130</u>	5/29/2020	Mandamus for transfer to N.D. Cal. under 28 U.S.C. § 1404(a)
IN RE: APPLE INC.	<u>20-104</u>	12/20/2019	Mandamus for transfer to N.D. Cal. under 28 U.S.C. § 1404(a)

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