

## Albright Denies Transfer to NDCA Despite Concluding Access to Sources of Proof Weighed in Favor of Transfer

JULY 30, 2021

On July 22, 2021, Judge Albright denied Defendant Pandora's Motion to Transfer Venue to NDCA. *Bluebonnet Internet Media Serv., LLC v. Pandora Media, LLC*, 6-20-cv-00731 (July 22, 2021, Order Denying Defendant's Motion to Transfer). Plaintiff Bluebonnet Internet Media Services, LLC (a Texas limited liability company with its principal place of business in Arlington, Texas) filed a lawsuit against Pandora Media, LLC (a Delaware limited liability company with its principal place of business in Oakland, California) for patent infringement. Pandora moved to have venue transferred to NDCA, arguing that nearly every aspect of the case, especially the relevant documents and the majority of witnesses, are located in California. Judge Albright concluded Pandora failed to meet its heavy burden of showing NDCA is a *clearly more convenient venue* warranting transfer. In reaching its conclusion, the court made the following key observations regarding the Section 1404(a) transfer factor:

### Private Interest Factors

1. On factor one, Pandora convinced the court that relative ease of access to sources of proof **avored transfer** because Pandora's source code is physically located in NDCA and can only be viewed via in-person inspection on a server in NDCA.
2. As to factor two, the availability of compulsory process to secure the attendance of unwilling witnesses, the court found this factor **neutral** largely because neither party identified any witnesses that are, in fact, "unwilling witnesses." Thus, the court afforded little weight to the long list of party witnesses both Pandora and Bluebonnet submitted, concluding that "when no party has alleged or shown any witness's unwillingness, a court should not attach much weight to the compulsory process factor."
3. Regarding factor three, the cost of attendance for willing witnesses, the court acknowledged that NDCA is more convenient for the totality of party witnesses. Yet, the court still found that the factor weighs **against transfer** because the court must "properly give more weight to the convenience of non-party witnesses," and Bluebonnet identified specific non-party witnesses that would be inconvenienced by transfer to NDCA. The court noted that although Pandora had identified numerous non-party witnesses, Pandora failed to identify the non-parties' residence or relevance to the case, indicating that if Pandora had done so, this factor may have come out differently.

4. As to factor four, all other practical problems that make trial easy, expeditious, and inexpensive, the court found that prior NDCA litigation involving similar technology did not weigh in favor of transfer because the litigation did not involve the exact same patents or parties, even though, as the court noted, the patents involved in the prior litigation were parent patents of the patents at issue. Accordingly, the Court found this factor **neutral**.

## Public Interest Factors

1. The court found no administrative difficulties flowing from court congestion and explained that the factor is **neutral**.
2. The court found that the local interest in having the case decided at home weighed slightly **in favor** of transfer to NDCA because NDCA is home to Pandora’s relevant third parties’ headquarters and Pandora’s business activities do not pervade WDTX. In response to Bluebonnet’s allegations that Pandora has significant physical presence in WDTX—evidenced by its lease of office space, entering insurance policies, and opening facilities in Austin and Dallas—the court noted that the presence of some office space in WDTX does not constitute as a “significant” physical presence for Pandora.
3. With regards to the factor, familiarity of the forum with the law that will govern the case, both Bluebonnet and Pandora agreed that this factor is **neutral**.
4. And, finally, both Bluebonnet and Pandora agreed the avoidance of unnecessary problems of conflict of laws or in the application of foreign law is **inapplicable** to this case.

In conclusion, the Court surmised that the only private factor weighing in favor of transfer is the ease of access of sources of proof and the only public factor favoring transfer was the interest in having local issues decided at home. The Court specifically noted that “the two most important factors—the availability of compulsory process and convenience of willing witnesses—are neutral.” Thus, the Court determined that the factors, taken together, weighed against transfer and Pandora “failed to meet its heavy burden of showing that NDCA is a clearly more convenient venue warranting transfer.”

*Bluebonnet Internet Media Services, LLC v. Pandora Media, LLC, 6-20-cv-00731 (July 22, 2021 Order Denying Defendant’s Motion to Transfer)*

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