

Judge Albright Denies Two WDTX-to-NDCA Transfer Motions Largely Due to Parallel Litigation in WDTX

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On July 1, 2021, in two separate rulings, Judge Albright denied defendants Samsung's and Intel's Motions to Transfer Venue to the NDCA. The cases were:

- *Demaray, LLC v. Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Semiconductor, Inc., and Samsung Austin Semiconductor, LLC*, No. 6-20-cv-00636 (July 1, 2021, Order Denying Defendant's Motion to Transfer) (the "Samsung case") and
- *Demaray, LLC v. Intel Corporation*, No. 6-20-CV-00634 (July 1, 2021, Order Denying Defendant's Motion to Transfer) (the "Intel case").

On July 14, 2020, Demaray, LLC (a Delaware limited liability company based in Silicon Valley) sued Samsung and Intel (the "Defendants") in WDTX, alleging both infringed the same two patents. Demaray asserted Defendants infringed the patents by configuring products obtained from third-party Applied Materials Inc. for their respective semiconductor products. Applied Materials has its principal place of business in Santa Clara, California, and also has a large manufacturing facility in Austin, Texas.

Judge Albright denied Defendants' motions to transfer venue to NDCA, concluding that Defendants did not meet their significant burden of showing NDCA is *a clearly more convenient venue* than WDTX:

Private Interest Factors

1. **In the Samsung case**, on factor one, the relative ease of access to sources of proof, the court weighed **slightly against transfer** because Demaray convinced the court that Austin, Texas-based employees of third-party Applied Materials have remote access to documents located in NDCA that are relevant to the accused technology. **In the Intel case**, the court found factor one **neutral** because Intel failed to point to any of its own documents that cannot be accessed or would be difficult to access in WDTX, indicating that had Intel be able to identify such documents, this factor would have come out differently. Judge Albright refused to ignore the reality that in today's digital world, computer-stored documents are readily moveable to almost anywhere with just the click of a mouse.

2. As to factor two, the availability of compulsory process to secure the attendance of unwilling witnesses, the court found this factor **neutral in both cases** mainly because Defendants failed to persuade the court why former employees of Applied Materials and another third party residing in NDCA would be necessary at trial. The court also noted that Defendants provided no evidence that Applied Materials witnesses would not voluntarily participate in trial, especially after a Director of Engineering at Applied Materials voluntarily provided declarations in support of the transfer motions.
3. Regarding factor three, the cost of attendance for willing witnesses, the court found this factor **neutral in both cases** because Austin-based manufacturing personnel of Applied Materials are involved with the Defendants' accused use of the claimed reactor configurations.
4. As to factor four, all other practical problems that make trial easy, expeditious, and inexpensive, the court found this factor weights **strongly against transfer in both cases** because parallel litigation concerning the same asserted patents and the same technology is pending in WDTX. Both Samsung and Intel argued that judicial economy favors transfer to NDCA in view of Applied Materials' currently pending declaratory judgment action in NDCA. However, the court concluded a defendant (or a third party coordinating with a defendant) cannot manufacture "convenience" simply by filing a declaratory judgment action in its desired venue after the plaintiff filed a complaint in its chosen venue.

Public Interest Factors

1. The court found administrative difficulties flowing from court congestion to weigh **strongly against transfer in both cases** mainly because the time to trial in NDCA would be longer.
2. **In the Samsung case**, the court found having localized interests decided at home weighs **slightly against transfer** largely because Samsung's only two domestic fabrication plants are in WDTX. **In the Intel case**, however, the court found this factor **neutral** because Intel has a campus in Austin, but its domestic fabrication plants are located elsewhere. The court noted the fact that Applied Materials is headquartered in NDCA did not weigh in favor of transfer because Applied Materials is an unnamed third party and it is Defendants' alleged infringing use that constitutes the core of this action.
3. With regard to the factor familiarity of the forum with the law that will govern the case, the court found this factor **neutral in both cases**.
4. And, finally, both Demaray and Samsung agreed the avoidance of unnecessary problems of conflict of laws or in the application of foreign law is **neutral** in this case.

Based on these findings, the court concluded that Samsung and Intel respectively had not met their significant burden to demonstrate that the NDCA is "clearly more convenient" than WDTX, denying their respective Motions to Transfer Venue to the Northern District of California.

Demaray, LLC v. Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Semiconductor, Inc., and Samsung Austin Semiconductor, LLC, No. 6-20-cv-00636 (July 1, 2021, Order Denying Defendant's Motion to Transfer).

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