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BLOG

Federal Circuit Grants Petition of Mandamus to Transfer Cases to NDCA

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On September 24, 2021, the Federal Circuit granted Juniper Networks' petition for mandamus and directed Judge Albright to transfer Brazos's six remaining lawsuits against Juniper Networks from the Waco Division to the Northern District of California. The opinion is located here. We previously blogged on the district court's denial of Juniper's motion. As a recap, the district court denied Juniper's motion to transfer finding only one factor, the cost of attendance for willing witnesses, weighed slightly in favor of transfer, while the other factors were neutral or weighed against transfer.

The Federal Circuit determined the district court clearly abused its discretion in five ways. First, as to "probably the single most important factor," the district court erred in not giving sufficient weight to the convenience of the Northern District of California for the potential witnesses. Juniper identified 11 potential party witnesses in the Northern District. Brazos identified one potential party witness in Waco. The Court rejected the district court's positions that (a) party witnesses are accorded little weight because they can be compelled to testify; (b) no more than a few witnesses will testify at trial; and (c) prior art witnesses are accorded little weight because they are generally considered unlikely to testify. Relying on its decision in *Samsung*, the Court noted that "[t]he force of Juniper's showing as to the inconvenience and cost entailed in requiring witnesses to testify at a remote forum is particularly strong in light of the very weak showing on that issue made by Brazos. . . . Even if not all witnesses testify, with nothing on the other side of the ledger, the factor strongly favors transfer."

Second, the district court erred in applying the local interest factor because Brazos's connections to Waco were insubstantial and only the product of pursuing litigation in a preferred forum. By comparison, Juniper's connections to the Northern District were substantial and its general presence in Austin was wholly unrelated to the events that gave rise to the lawsuits.

Third, the district court erred in assessing the availability of sources of proof. The Court took issue with the district court's criticism of Juniper's declaration regarding the locations of its sources of proof. The Court noted that regardless of where else Juniper's servers with evidence may be located, it is undisputed none of the evidence was located in the Western District of Texas.

Fourth, the district court erred in finding that the potential need for compulsory process weighed against transfer. The Court disagreed with the district court's finding that—because the parties failed to identify any unwilling

witnesses who would need to be subpoenaed—the factor weighed against transfer. Instead, the Court stated that the factor should have at least been neutral, or if not slightly in favor of transfer, because the Court stated there were apparently some non-party witnesses in the Northern District of California.

Finally, the district court erred in finding the court congestion factor weighed against transfer. The Court stated that the Western District of Texas and the Northern District of California show no significant differences in caseload or time-to-trial statistics. The Court also held that it was improper to assess the court congestion factor based on the fact that the Western District of Texas has employed an aggressive scheduling order for setting a trial date. Moreover, the Court stated that this was the most "speculative" factor, and that since the plaintiff was not engaged in the sale of products that practiced the patents, it is in no need of a quick trial because its position in the market would not be threatened.

The Court concluded that this case was very similar to its previous mandamus petitions in *Samsung* and *Hulu* and granted the petition.

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