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BLOG

Mandamus Vacates Order Re-Transferring Case to Waco

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Fintiv brought a patent infringement suit against Apple in the Waco Division of the Western District of Texas in December 2018. In response to Apple's early motion to transfer, Judge Albright transferred the suit to his docket in the Austin Division after finding that Austin was the most convenient forum. Yet on September 8, 2021, Judge Albright ordered the suit re-transferred to Waco, a mere month before trial reasoning that it is unclear whether a jury trial can occur in Austin given the pandemic. Apple petitioned the Federal Circuit for a writ of mandamus directing Judge Albright to vacate the re-transfer. The Federal Circuit granted the petition.

The Federal Circuit stated that 28 U.S.C. § 1404(a) is the only basis a district court can use to authorize an intra-district re-transfer without the consent of both parties. Quoting *In re Cragar Indus.,* the Federal Circuit explained that § 1404(a) permits re-transfer only "under the most impelling and unusual circumstances" like "post-transfer events [that] frustrate the original purpose for transfer." 706 F.2d 503, 505 (5th Cir. 1983). The Federal Circuit also found that re-transfer analysis must consider the traditional § 1404(a) factors, including the convenience rationale that justified the original transfer.

The Federal Circuit noted that Judge Albright's sole justification for re-transfer was the uncertainty of holding a jury trial in Austin. The Federal Circuit observed that this justification did not include the required § 1404(a) convenience analysis, which the court views as crucial in showing that the district court's conclusion stemmed from sound legal reasoning. The Federal Circuit also disagreed with Fintiv's argument that its position statement filed with the district court provides an adequate justification for Judge Albright's re-transfer order. The Federal Circuit clarified that it is not sufficient to infer a ruling's justification from a party's filings. Rather, the district court must itself provide the explanation.

In an apparent acknowledgment of the requirements of § 1404(a), Judge Albright's order specified that the pandemic "frustrated the original purpose" of the transfer to Austin. But in the previous transfer proceedings, Judge Albright found that Austin was the most convenient venue under the § 1404(a) analysis. Even considering the pandemic, the Federal Circuit found that Austin remains the most convenient venue. While both parties have a "significant presence" in Austin, there is no similar presence in Waco, nor does any evidence come from Waco. The Federal Circuit also remarked that some Apple witnesses must fly to Texas from California, but there are no direct flights between California and Waco. Additionally, since the previous transfer proceedings, both parties have prepared for an imminent trial in Austin.

The Federal Circuit found that the only § 1404(a) factor possibly affected by the pandemic is court-congestion. This factor may weigh slightly in favor of re-transfer. But the Federal Circuit held in *In re Genentech* that this is the "most speculative" of the transfer factors, and cannot outweigh the other factors. 566 F.3d 1338, 1347 (Fed. Cir. 2009). The Federal Circuit also observed that court-congestion is not a concern here as it is currently possible to hold a jury trial in Austin. Judge Albright himself acknowledged that the Austin courthouse is now hosting some civil trials.

Given the § 1404(a) considerations, the Federal Circuit found that Austin continues to be the most convenient forum. The Federal Circuit granted Apple's petition for writ of mandamus, vacated the district court order re-transferring the suit to Waco, and remanded with instructions for the suit to proceed in Austin.

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