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BLOG

Judge Albright Refuses to Transfer *Open Text Corp.* to Northern District of California

NOVEMBER 1, 2021

On September 30, 2021, Judge Albright denied Alfresco Software, Ltd.'s motion for transfer of venue under 28 U.S.C. 1404(a) in *Open Text Corp. v. Alfresco Software, Ltd.* The case will continue to be tried in the Western District of Texas before Judge Albright.

This case concerns nine patents Open Text owns. Open Text is an enterprise information management software company with offices in both the Northern District of California and the Western District of Texas. While Open Text accuses all 4 defendants of collectively infringing all nine patents, only 2 defendants have a connection to the Western District of Texas.

In analyzing the motion, the Court initially found that venue would have been proper in the Central District of California, had the case originally been filed there. However, on weighing the private and public factors, Judge Albright concluded that Alfresco Software, Ltd. "failed to prove that [CDCA] is a clearly more convenient venue than [WDTX]." Of the eight relevant factors, five were deemed "neutral." And of the remaining three, only two weighed in favor of transferring. Without more, the motion for transfer was denied. The case remains in the Western District of Texas. A breakdown of Judge Albright's weighing of the factors can be found below:

PRIVATE INTEREST FACTORS

1. The Court found that the first factor, relative ease of access to sources of proof, was neutral. Specifically, the Court found that while OpenText showed that some potentially relevant documents were in WDTX, Alfresco failed to identify any relevant documents that were in CDCA.
2. The Court found the second factor, the availability of compulsory process to secure the attendance of witnesses, neutral. Alfresco argued that because OpenText's offices are in Pasadena, several witnesses and former employees "likely reside in Los Angles [*sic*]" and are thus under the CDCA's subpoena power. Nonetheless, the Court found that both parties failed to assert affirmatively that any of its identified witnesses were unwilling to testify. And "[w]hen no party has alleged or shown any witness's unwillingness, a Court should not attach much weight to the compulsory process factor."

3. The cost of attendance for willing witnesses was also found neutral. The Court found that "[f]or some witnesses, the cost of attendance is lower" in WDTX, and for other witnesses, lower in CDCA.
4. The Court found that the fourth factor, all other practical problems that make trial easy, expeditious, and inexpensive, weighed slightly in favor of transfer. Alfresco argued that judicial economy favored CDCA because OpenText asserted six of the same patents against Hyland and Alfresco in CDCA based on the same technology and against similar accused products. And because Hyland is an Ohio corporation, it could not be sued in WDTX. However, the Court found that this case was sufficiently distinct as not to be entirely duplicative because the case involves different patents, different claims, different products, and different parties.

PUBLIC INTEREST FACTORS

1. The Court found that the first factor, administrative difficulties flowing from Court congestion, only slightly favored transfer. Alfresco argued that because CDCA's docket was "twenty percent less crowded than WDTX when looking at per-judge caseloads," transfer and consolidation of this case with the other California cases would promote efficiency. Notably, Judge Albright found this unconvincing because Alfresco "ignore[d] this Court's ability to get those cases to trial quickly," and that "this Court is slightly outpacing those [California] cases in pretrial matters like claim construction."
2. Second, as to the local interest in having localized interests decided at home, the Court found that the factor weighed against transfer. Specifically, Judge Albright found that "[n]one of the events giving rise to the infringement claim occurred in CDCA, and the Defendants' generalized presence in the district is insufficient" to merit transfer. Moreover, the accused products from at least one Defendant were sold in WDTX.
3. Both parties agreed that the third factor – familiarity of the forum with the law that would govern the case – was neutral.
4. Both parties agreed that the fourth factor – avoidance of unnecessary problems of conflict of laws or in the application of foreign law – was neutral.

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