

Judge Albright Grants Intra-district Transfer to the Austin Division

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Judge Albright granted Defendants' Motion to Transfer to the Austin Division of the Western District of Texas in *Express Mobile, Inc. v. Expedia, Inc., HomeAway.com, Inc.*, No. W-20-CV-00801-ADA (December 15, 2021, Order Granting Defendants' Motion to Transfer). Express Mobile sued Defendants for patent infringement in the Waco Division. HomeAway is headquartered in Austin and Expedia has offices there, collectively employing 1,500 employees; neither has offices in Waco. Before substantive proceedings occurred, Defendants moved to transfer venue to the Austin Division in February 2021. Judge Albright granted the motion in December 2021 – 278 days after briefing concluded. In the interim, Judge Albright stayed the case pending resolution of the transfer motion, noting that multiple related cases also had pending transfer motions.

In transferring the case to Austin, Judge Albright considered the 28 U.S.C. § 1404(a) transfer factors, focusing on the five factors contested by the parties.

Private Interest Factors

- **Relative ease of access to sources of proof:** Defendants store documents and house servers containing relevant documents in the Austin Division. Defendant HomeAway also maintains related financial records in the Austin Division. No related documents exist in the Waco Division. Therefore, Judge Albright ruled that this factor supports transfer.
- **Cost of attendance for willing witnesses:** Defendants argued that employees with technical responsibility for the accused technology are not located in Waco, but rather are in Austin, Seattle, Washington, Chicago, and other locations, with the majority of HomeAway's relevant employees located in the Austin Division.

Judge Albright noted that more weight should be afforded to specifically identified witnesses, and that vague references to an entire workforce receive less weight when considering witness convenience and cost of attendance. Defendants identified only one potential witness by name located in the Austin Division. But Judge Albright found the identified witness, and any other witness in Austin, would only face minimal inconvenience due to the proximity between Austin and Waco. For the unspecified witnesses outside of Austin, Judge Albright found

travel to Waco and Austin are “relatively the same” because most flights to Austin require a connection in Dallas or Houston. As a result, Judge Albright held that this factor only slightly favors transfer.

- **All other practical problems that make trial of a case easy, expeditious, and inexpensive:** Defendants argued that this factor supports transfer due to pending motions to transfer in related cases also seeking transfer to the Austin Division, which provided the opportunity for the related cases to proceed together in Austin. But at the time of Judge Albright’s ruling, the motions to transfer in the related cases had all been resolved, with three transferred to the Northern District of California, none transferred to Austin, and none remaining in Waco. Judge Albright therefore concluded that this factor is neutral.

Public Interest Factors

- **Administrative difficulties flowing from court congestion:** Judge Albright determined that this factor is neutral. While Express Mobile argued that the Austin Division has more congestion due to a backlog of cases caused by COVID-19, Judge Albright observed that it has begun holding jury trials since briefing concluded.
- **Local interest in having localized interests decided at home:** Express Mobile argued that this factor is neutral because the accused technology is used across the United States, including Waco. But Defendants do not have employees related to the accused infringing technology in Waco. On the contrary, many of those employees are in Austin, and HomeAway is headquartered in Austin. Because of this, Judge Albright found that the local interest factor favors transfer to the Austin Division.

Judge Albright concluded that ease of access to sources of proof, convenience of witnesses, and the local interest factors favor transfer, and five factors, including the conceded factors, are neutral. Accordingly, Judge Albright ruled that Defendants met their burden of proving that Austin is clearly the more convenient forum and granted transfer to the Austin Division for further proceedings.

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