

## Judge Albright Denies Broadcom's Motion to Transfer

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On February 21, 2022, Judge Albright denied Defendants' Motion to Transfer to the Northern District of California in *Monterey Research, LLC v. Broadcom Corporation*, No. W-21-CV-00542.

On May 28, 2021, Monterey Research, LLC ("Monterey") sued Broadcom Corporation ("Broadcom") in the Waco Division, alleging infringements of seven patents. Broadcom and Monterey, however, are both headquartered and have their principal places of business in the Northern District of California. Therefore, on November 29, 2021, and before substantive proceedings occurred, Broadcom moved to transfer venue to N.D. Cal. Judge Albright denied the motion—less than a month after briefing concluded.

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

### **Private Interest Factors**

Relative Ease of Access to Sources of Proof: Relevant to the case was the location of Broadcom's source code and GDS files. Broadcom failed to provide their location to the court. Instead, it merely "refer[red] to . . . where Broadcom unilaterally intend[ed] to provide source code and GDS files to Monterey during discovery . . ." Judge Albright found this particularly disturbing, stating: "[I]f this Court were to lend credence to such a statement, parties could 'manufacture venue' by limiting the place of discovery to a preferred venue." At the same time, it was discovered that the relevant files and source code were available in Virginia and Nevada. Therefore, this factor only slightly favored transfer.

Availability of Compulsory Process to Secure the Attendance of Witnesses: Several non-party witnesses, including relevant Broadcom distributors, customers, and partners, resided in the Northern District of California. Additionally, most of the inventors for a heavy majority of the Patents-in-Suit resided outside of Texas. Thus, the court found this factor favored transfer because the Northern District of California had greater subpoena power for both depositions and trial.

Cost of Attendance and Convenience for Willing Witnesses: This proved to be the most significant factor of the analysis. Broadcom argued that the cost of attendance and convenience for the witnesses in the case favored the Northern District of California because both parties had their principal places of business there. However, for this

proposition, Broadcom cited a declaration filed by a “Mr. Phillips,” who broke down the most relevant witnesses by accused product. Monterey argued that this declaration should have been disregarded because Mr. Phillips lacked knowledge to support his assertions. Judge Albright agreed, going so far as to say that Mr. Phillips was not a “very credible witness” and that “each of his statements” must be taken “with a grain of salt.” The court went on to analyze potential witnesses and concluded that because most resided outside either district, the factor was—at best—neutral.

All Other Practical Problems that Make Trial of a Case Easy, Expeditious, and Inexpensive: The Court found significant that parallel litigation was ongoing in the Western District between the same parties. Thus, because judicial efficiency would be achieved due to some of the overlap in patents, the Court found this factor to disfavor transfer.

### Public Interest Factors

Administrative Difficulties Flowing from Court Congestion: As Judge Albright has noted in previous cases, the Court found this factor to disfavor transfer because there is “an appreciable difference in docket congestion, cases per judgeship, and estimated time-trial” between the districts—and the Western District was favored in all three statistics.

Local Interest in Having Localized Interests Decided at Home: Employees involved in the research and design of the accused products reside in both the Western District of Texas and Northern District of California. And because Mr. Phillip’s declaration lacked credibility, this factor only slightly favored transfer.

Because only one factor fully favored transfer, while the remaining—at most—either slightly favored transfer or was neutral, Judge Albright found that Broadcom had failed to meet its burden. Therefore, its motion to transfer was denied.

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