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BLOG

Judge Albright Denies Transfer in *BillJCo, LLC v. Apple, Inc.*, Saying That Apple Failed to Show That the NDCA Is a Clearly More Convenient Forum

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On March 1, 2022, Judge Albright denied Defendant Apple, Inc.'s ("Apple") Motion to Transfer Venue to the Northern District of California ("NDCA"), "alleging that it is more convenient than this District." Plaintiff BillJCo, LLC ("BillJCo") did not contest that this action could have been brought in the NDCA.

BillJCo accuses a variety of Apple iPhones and iPods of infringing six patents: U.S. Patent No. 8,566,839, No. 8,639,267, No. 9,088,868, No. 10,292,011, and No. 10,477,994 (collectively, the "Asserted Patents"). "BillJCo's Complaint accuses iOS products, such as iPhones and iPads, that allegedly 'conform to and implement the iBeacon protocol.'" Apple is a California corporation, with headquarters in Cupertino. BillJCo is a Texas corporation, headquartered in Flower Mound, Texas.

Judge Albright found two of the eight factors favored transfer, two disfavored transfer, one slightly disfavored transfer, and three were neutral. His analysis is as follows:

Private Interest Factors

1. The court found that the first factor, relative ease of access to sources of proof, favored transfer. While most of BillJCo's relevant documents are located in the Eastern District of Texas ("EDTX"), the court found that this was close enough to the Western District of Texas ("WDTX") to disfavor transfer. Apple made several arguments for transfer under this favor, including that the relevant source code is maintained in the Northern District of California ("NDCA"). However, the court found that Apple failed to explain "how transfer affects the inconvenience visited upon BillJCo's experts and counsel when source-code inspection is limited to the NDCA." The court did find Apple's argument "that the standards development organization ('SDO') overseeing the development of Bluetooth standards is in Kirkland, Washington," to favor transfer. Ultimately, the court relied on the fact that "[m]ost of the relevant evidence will come from the accused infringer," to hold that this factor favored transfer.
2. The court found that the second factor, the availability of compulsory process to secure the attendance of witnesses, disfavored transfer. The court disregarded the convenience of potential witnesses when BillJCo failed to explain "what knowledge these potential witnesses have that is relevant to any claim or defense at issue." The court similarly disregarded relevant third-party witnesses when BillJCo failed to "offer any suggestion as to what knowledge a[n] SXSW or Texas Instrument employee may have relevant to a claim or defense in this litigation." The court found that the two parties' former representatives at negotiations neutralized one another. Ultimately, the

court found that BillJCo's witness—one of the inventors of the asserted patents, who lives in Waco—broke the tie and disfavored transfer.

3. The court found that the cost of attendance for willing witnesses favored transfer. BillJCo's one employee is located in Texas. However, Apple's witnesses are primarily located in Cupertino. The court disregarded BillJCo's argument that Apple historically "only presented an average of 2.33 fact witnesses in patent trials over the past two years." The court similarly disregarded BillJCo's argument to disregard a witness whom Apple has identified as a likely witness in several cases involving different technologies because BillJCo failed to show that the witness was identified for the purpose of distorting the § 1404(a) analysis. However, the court did consider "Apple's increasing footprint in this District." Therefore, the court found this factor favored transfer, but not heavily.
4. The court found that the fourth factor, all other practical problems that make trial easy, expeditious, and inexpensive, was neutral. The court relied on the fact that two other motions to transfer venue in the EDTX actions had been denied, and there is no assurance that the Federal Circuit will grant petitions for mandamus from those denials. The court, therefore, held that it "will not have the fate of this factor rest entirely on events outside of this Court's control that may not come to pass," and found this factor neutral.

Public Interest Factors

1. The court found that the first factor, administrative difficulties flowing from court congestion, disfavored transfer. The court relied on the fact that BillJCo "cited statistics showing that the average time to trial in patent cases in the NDCA is now 45.2 months but 25.9 months in this District." Although recognizing the Federal Circuit's decision that this factor "should not alone outweigh all of [the] other factors," Judge Albright found that this factor favored transfer.
2. As to the second factor, the local interest in having localized interests decided at home, the court found that this factor slightly disfavored transfer. The court emphasized the fact that Apple's second-largest U.S. campus was located in this District and that BillJCo's Flower Mound headquarters is close to the WDTX. Therefore, the court found that because "both maintain a significant presence in Texas," this factor slightly disfavors transfer.
3. Both parties agreed that the third factor—the 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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Author

Kelly C. Hunsaker

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