

## Judge Albright Grants Defendant's Intra-District Motion To Transfer When a Witness Would Be Inconvenienced in Either Forum

JUNE 7, 2023

On May 17, 2023, Judge Albright granted Defendant Apple Inc.'s (Apple) motion for an intra-district transfer of venue to the Austin Division of the Western District of Texas. Plaintiff SpaceTime 3D, Inc. (SpaceTime) had alleged that Apple infringed several patents relating to various systems and methods for switching between applications on a mobile device.

In patent cases, motions to transfer under 28 U.S.C. § 1404(a) are governed by the law of the regional circuit. In the Fifth Circuit, "the preliminary question under § 1404(a) is whether a civil action 'might have been brought' in the [transfer] destination venue." If the destination venue would have been a proper venue, then "[t]he determination of 'convenience' turns on a number of public and private interest factors, none of which can be said to be of dispositive weight."

The Court first noted that neither Apple nor SpaceTime contested that venue could be proper in the Austin Division. The Court therefore proceeded to its analysis of the public and private interest factors.

The private factors include (i) the cost of attendance and the convenience for willing witnesses, (ii) the relative ease of access to sources of proof, (iii) the availability of compulsory process to secure the attendance of witnesses, and (iv) all other practical problems that make trial of a case easy, expeditious, and inexpensive.

The public factors include (i) the administrative difficulties flowing from court congestion, (ii) the local interest in having localized interests decided at home, (iii) the familiarity of the forum with the law that will govern the case, and (iv) the avoidance of unnecessary problems of conflict of laws with the application of foreign law.

The Court first examined the private factors. It began by analyzing "[t]he most important factor in the transfer analysis": the cost of attendance and convenience for willing witnesses. Apple argued that this factor weighed in favor of transfer because three of its four Texas-based engineers who worked on the accused technology, including one expected trial witness, live in Austin. Apple also noted that other potential trial witnesses located in California would have a significantly shorter commute time to Austin than to Waco. SpaceTime first argued that the three Austin-based engineers were duplicative witnesses because they shared the same job title. SpaceTime then pointed out that the last Texas engineer, who currently works on one of the accused functionalities, lives in Dallas. As a result, SpaceTime argued, Austin was no more convenient a forum than Waco.

The Court ultimately held that the convenience factor weighed slightly in favor of Apple. The Court observed that the Dallas-based engineer would be inconvenienced regardless of the forum, but the Austin-based engineers would not be inconvenienced if the transfer were granted. The Court also noted that SpaceTime had failed to address Apple’s evidence that the expected witnesses based in California—including one of SpaceTime’s own witnesses—would find Austin more convenient.

The Court also found that the “relative ease of access to sources of proof” factor weighed in favor of transfer because it was undisputed that no sources of proof were in Waco and substantial sources of proof were in Austin.

The Court then considered the public interest factors. The Court found that the “local interests” factor weighed in favor of transfer because Apple presented un rebutted evidence that the development of the accused functionalities took place in Austin.

The Court continued its pattern of tabulating its holdings for each factor in the conclusion. With two factors in favor of transfer, one factor slightly in favor of transfer, and the remaining factors neutral, the Court granted Apple’s motion to transfer.

FACTOR	THE COURT’S FINDING
Relative ease of access to sources of proof	In favor of transfer
Cost of attendance for willing witnesses	Slightly in favor of transfer
Availability of compulsory process to secure the attendance of witnesses	Neutral
All other practical problems that make trial of a case easy, expeditious, and inexpensive	Neutral
Administrative difficulties flowing from court congestion	Neutral
Local interest	In favor of transfer
Familiarity of the forum with law that will govern case	Neutral
Problems associated with conflict of law	Neutral

## Author

Rex Mann

---

## Related Locations

Dallas

## Related Topics

Motions to Transfer

District Court for the Northern District of California

Infringement

## Related Capabilities

Intellectual Property

Patent Litigation

## Related Regions

North America

## Related Professionals

---



Rex Mann

*This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.*