

Maxell Ltd.'s Opposition to Apple's Motion to Transfer

September 17, 2019

Legal Standard

The section 1404(a) analysis turns on a number of public and private interest factors, none of which is given dispositive weight.

The private factors:

- (1) ease of access to evidence (“sources of proof”);
- (2) subpoena power over potential witnesses;
- (3) cost of attendance for willing witnesses; and
- (4) other practical problems.

The public factors:

- (1) administrative difficulties flowing from court congestion;
- (2) local interest in having localized interests decided at home;
- (3) the familiarity of the forum with the law that will govern the case; and
- (4) the avoidance of unnecessary problems of conflict of laws.

Apple's Burden

- Apple's burden is to show that the Northern District of California would be **clearly more convenient for the parties** than the Eastern District of Texas.

e-Watch Inc. v. Apple, Inc., 2016 WL 7338342, at *1 (E.D. Tex. Dec. 19, 2016).

- The burden is a “significant” one.

AGIS Software Dev. LLC v. Apple, Inc., 2018 WL 2721826 (E.D. Tex. June 6, 2018).

Apple Failed to Meet Its Burden

Apple Failed to Satisfy its Significant Burden:

The private factors:

- (1) ease of access to sources of proof **weighs against transfer;**
- (2) subpoena power over potential witnesses **is neutral;**
- (3) cost of attendance for willing witnesses **weighs against transfer;**
- (4) other practical problems **weigh against transfer.**

The public factors:

- (1) Court congestion **weighs against transfer;**
- (2) local interests **are neutral;**
- (3) familiarity with governing law **is neutral;**
- (4) conflict of laws **are neutral.**

Apple Failed to Meet Its Burden

Ease of Access to Source of Proof Weighs Against Transfer:

Apple's Evidence

- Apple contends its documents are in NDCA or electronically accessible from NDCA.
- Apple's burden is to provide evidence of categories and volumes of documents, or, even better, examples of physical evidence that might have a real bearing on allegations of infringement.

Affinity Labs of Tex. V. Samsung Elecs. Co., Ltd., 968 F. Supp. 2d 852, 857 (E.D. Tex. 2018).

- It hasn't doesn't done that.

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