

PUBLIC VERSION

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

RFCyber CORP.,

Plaintiff,

v.

APPLE INC.,

Defendant.

Civil Action No. 6:21-cv-00916-ADA

JURY TRIAL DEMANDED

**APPLE'S OPPOSED MOTION FOR INTRA-DISTRICT
TRANSFER TO THE AUSTIN DIVISION
PURSUANT TO 28 U.S.C. § 1404(a)**



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I. INTRODUCTION

Apple respectfully moves to transfer this case from the Waco Division to the Austin Division of this District. Apple initially sought to transfer this case to the Northern District of California based on its understanding of the scope of the accused products and accused features. During venue discovery, RFCyber took the position that its infringement contentions extend to features beyond those Apple had considered relevant when it sought transfer to California. Although Apple disagrees that RFCyber's contentions can extend to these other features, the expanded scope of RFCyber's contentions have implicated additional Apple witnesses who live and work in Austin. In light of this recent development, Apple asked RFCyber to stipulate to transfer to the Austin Division, but RFCyber refused. Thus, given the expanded scope of RFCyber's contentions and the implication of Austin-based witnesses and sources of proof and although California remains more convenient generally, Apple has withdrawn its motion to transfer to California (ECF No. 92) and now seeks transfer to the Austin Division—which is the clearly more convenient venue relative to the Waco Division.

As such, based on RFCyber's alleged scope of the case, Apple's relevant witnesses and evidence are located primarily in Northern California with some in Austin. There are no Apple witnesses or evidence nor any third parties relevant to this case in the Waco Division. Plaintiff RFCyber is a Texas shell for a Chinese company with no meaningful connections to Waco. In fact, RFCyber has admitted in pleadings filed in the Eastern District of Texas that its principal place of business is in Plano, Texas. In accordance with the factors set forth in *In re Radmax, Ltd.*, 720 F.3d 285 (5th Cir. 2013), the Austin Division is a clearly more convenient venue than the Waco Division for this dispute.

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