

Miscellaneous Docket No. 22-162

IN THE
United States Court of Appeals for the Federal Circuit

IN RE APPLE INC.,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Western District of Texas
No. 6:21-cv-01101-ADA, Hon. Alan D Albright

**APPLE INC.'S REPLY IN SUPPORT OF
PETITION FOR WRIT OF MANDAMUS**

Andrew N. Thomases
Andrew T. Radsch
ROPES & GRAY LLP
1900 University Avenue,
6th Floor
East Palo Alto, CA 94303
(650) 617-4763

Melanie L. Bostwick
Lauren A. Weber
ORRICK, HERRINGTON &
SUTCLIFFE LLP
1152 15th Street NW
Washington, DC 20005
(202) 339-8400

Melanie R. Hallums
ORRICK, HERRINGTON &
SUTCLIFFE LLP
2121 Main Street
Wheeling, WV 26003

Counsel for Petitioner

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTRODUCTION.....	1
ARGUMENT	2
I. The District Court’s Clear Abuse Of Discretion Warrants Mandamus Relief.....	2
A. The district court clearly abused its discretion by violating binding precedent.	2
B. Aire’s criticisms of Apple’s conduct are unfounded.....	5
II. Apple Has No Other Adequate Means To Obtain Relief.....	11
III. Mandamus Is Appropriate Under The Circumstances.	14
CONCLUSION.....	16
CERTIFICATE OF COMPLIANCE	

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re Apple Inc.</i> , 979 F.3d 1332 (Fed. Cir. 2020)	3
<i>In re Apple Inc.</i> , No. 2022-128, 2022 WL 1196768 (Fed. Cir. Apr. 22, 2022)	7
<i>Cheney v. U.S. Dist. Ct.</i> , 542 U.S. 367 (2004).....	12, 14
<i>In re Google Inc.</i> , No. 2015-138, 2015 WL 5294800 (Fed. Cir. July 16, 2015)	3, 12, 16
<i>GUI Glob. Prods., Ltd. v. Samsung Elecs. Co.</i> , No. 4:20-cv-2624, 2021 WL 3705005 (S.D. Tex. May 28, 2021)	7
<i>In re Hewlett Packard Enter. Co.</i> , No. 2022-154, 2022 WL 3209326 (Fed. Cir. Aug. 9, 2022).....	6
<i>In re Horseshoe Ent.</i> , 337 F.3d 429 (5th Cir. 2003).....	4
<i>Koss Corp. v. Apple Inc.</i> , No. 6-20-CV-00665-ADA, 2021 WL 5316453 (W.D. Tex. Apr. 22, 2021).....	8
<i>LoganTree LP v. Apple Inc.</i> , No. 6:21-CV-00397-ADA, 2022 WL 1491097 (W.D. Tex. May 11, 2022).....	8
<i>In re Netflix, Inc.</i> , No. 2021-190, 2021 WL 4944826 (Fed. Cir. Oct. 25, 2021).....	3
<i>In re Nintendo Co.</i> , 544 F. App'x 934 (Fed. Cir. 2013)	4

In re Pruett,
 133 F.3d 275 (4th Cir. 1997)..... 13

In re SK hynix Inc.,
 835 F. App'x 600 (Fed. Cir. 2021) 3, 15

In re TracFone Wireless, Inc.,
 848 F. App'x 899 (Fed. Cir. 2021) 12, 15

In re TS Tech USA Corp.,
 551 F.3d 1315 (Fed. Cir. 2008) 13

In re Volkswagen of Am., Inc.,
 545 F.3d 304 (5th Cir. 2008) 12

Statutes

28 U.S.C. § 1404(a) 4, 7, 15

Other Authorities

Discovery and Scheduling Order, *XR Commc'ns v. Apple Inc.*,
 No. 6:21-cv-00620-ADA, Dkt. 72 (W.D. Tex. Sept. 9, 2022) 6, 13

Order Denying Motion to Transfer, *CPC Patent Techs. Pty
 Ltd. v. Apple Inc.*, No. 6:21-cv-00165-ADA, Dkt. 82 (W.D.
 Tex. Feb. 8, 2022) 7

Order Granting Motion to Transfer, *Cub Club Inv., LLC v.
 Apple Inc.*, No. 6:20-cv-00856-ADA, Dkt. 28 (W.D. Tex.
 Sept. 7, 2021) 8

Order Granting Motion to Transfer, *Identity Sec. LLC v.
 Apple Inc.*, No. 6:21-cv-00460-ADA, Dkt. 55 (W.D. Tex.
 Jan. 20, 2022) 8

Petition for Writ of Mandamus, *In re Apple*, No. 22-164, Dkt. 2
 (Fed. Cir. Sept. 8, 2022) 13

INTRODUCTION

Apple's petition demonstrated that the district court here committed the same clear abuse of discretion that this Court has previously cured through the exercise of its mandamus authority. Indeed, the district court here did not merely let a fully briefed transfer motion linger on the docket. It affirmatively ordered the parties to spend another eight months completing fact discovery on the merits, taking numerous other substantive steps to prepare this case for trial, and then re-briefing the transfer issue, at which point—a full year after Apple's transfer motion was filed—the district court will consider transfer.

Aire's opposition confirms that neither party asked for or wanted this result. And Aire offers no defense of the district court's order, other than to blame Apple. Aire first blames Apple for the court-ordered delay, because Apple sought to supplement the venue record. Aire concedes, however, that Apple's supplement contained no new evidence; it merely confirmed the information already provided by Apple's corporate venue declarant. And, contrary to Aire's assertion, Apple told the district court that it did not believe this supplement required any

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.