

Three Patent Cases, Two Defendants, and One Consistent View Regarding Convenience in Marshall, Texas

***Quest NetTech Corp. v. Apple, Inc.*, No. 2:19-CV-00118-JRG ;**
***Rembrandt Wireless Tech. v. Apple, Inc.*, No. 2:19-CV-00025-JRG;**
***Vocalife LLC v. Amazon.com, Inc.*, No. 2:19-CV-00123-JRG (E.D. Tex. Nov. 27, 2019)**

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In *T.C. Heartland v. Kraft Foods Group Brands, LLC*,¹ the United States Supreme Court clarified that only the patent venue statute, 28 U.S.C. § 1400(b), without interpretation of the general venue statute (28 U.S.C. § 1391(c)) controls venue for patent infringement actions, and concluded that a domestic corporation accused of patent infringement “resides” only in its state of incorporation. Prior to *T.C. Heartland*, the Eastern District of Texas was the center of patent infringement filings due to its rocket docket for patent cases and its reputation for being friendly to patent holders. Even after *T.C. Heartland*, however, the Eastern District of Texas remains a hotbed for patent infringement cases and transferring out of that venue can be difficult. Three separate cases,² each decided on November 27, 2019 by Chief Judge of the Eastern District of Texas Rodney Gilstrap, exemplify the difficulty of transferring out of that court; in each he denied a motion to transfer venue pursuant to 28 U.S.C. § 1404. Understanding courts’ rationales for denying venue transfer can be crucial to patent defendants seeking a friendly venue.

In determining whether to transfer the case, the court first answers the threshold inquiry of whether the case could have been filed in the requested venue in the first place. If yes, then the court analyzes several public and private factors (as of the time the action was filed) to determine whether the “transferee venue is clearly more convenient than the than the venue chosen by the plaintiff.”³ Although these factors are not exhaustive and a single factor is not dispositive, a court also does not merely tally up the factors. In each of *Quest NetTech*, *Rembrandt Wireless*, and *Vocalife*, the court appears to have apportioned more weight to the public factor of administrative difficulties due to court congestion than it did to private

¹ 137 S.Ct. 1514 (2017).

² *Quest NetTech Corp. v. Apple, Inc.*, No. 2:19-CV-00118-JRG, 2019 WL 6344267 (E.D. Tex. Nov. 27, 2019); *Rembrandt Wireless Tech. v. Apple, Inc.*, No. 2:19-CV-00025-JRG, 2019 WL 6344470 (E.D. Tex. Nov. 27, 2019); *Vocalife LLC v. Amazon.com, Inc.*, No. 2:19-CV-00123-JRG, 2019 WL 6345191 (E.D. Tex. Nov. 27, 2019).

³ *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008). The “clearly more convenient” standard is not equal to the “clear and convincing” standard, “the movant must show materially more than a mere preponderance of convenience.” *Quest NetTech Corp.*, slip op. at *11 (E.D. Tex. Nov. 27, 2019).

factors such as access to proof and ability to secure witness attendance. For example, in *Quest NetTech*, the only factor weighing against transfer was that the median time to trial for patent cases was shorter in the Eastern District of Texas than the Northern District of California, yet the court still denied the transfer of venue. Regarding the other transfer factors, a potential movant can glean guidance as to the weight of the factors from this trio of opinions, such as:

- Access to sources of proof may be given less weight because many are documents that are digitized and readily deliverable by electronic means;
- More weight is given to specifically identified witnesses when considering inconvenience than vague assertions of what witnesses are available in a particular forum;
- The willingness of potential, specific witnesses to appear in the transferor forum, even if appearing to be inconvenient those witnesses, can reduce the weight of that factor; and
- Regarding local interest, a lack of identification of individuals whose reputation has been implicated or how any specific reputations have been implicated may reduce the weight of a particular venue’s local interest.

Private Transfer Factors	<i>Quest</i>	<i>Rembrandt</i>	<i>Vocalife</i>
• <i>Relative ease of access to sources of proof</i>	For	Against	Against
• <i>Availability of compulsory process to secure attendance of witnesses</i>	Neutral	Slightly for	Neutral
• <i>Cost of attendance for willing witnesses</i>	Slightly for	Against	Neutral
• <i>Other practical problems that make trial easy, expeditious, and inexpensive</i>	Neutral	Against	Neutral
Public Transfer Factors			
• <i>Administrative difficulties flowing from court congestion</i>	Against	Against	Against
• <i>Local interest in having localized interests decided at home</i>	Neutral	Neutral	Neutral
• <i>Familiarity of the forum with the law that will govern the case</i>	Neutral	Neutral	Neutral
• <i>Avoidance of unnecessary problems of conflict of laws or application of foreign law</i>	Neutral	Neutral	Neutral

Defendants who find themselves in what they consider unwelcome venues may have difficulty transferring to venues with “slower” dockets. However, filing motions to transfer with specificity to the other transfer factors may allow defendants to overcome the heavily weighted court congestion factor.