

## Another Texas Mandamus Ruling

*In re Samsung Elecs. Co., Ltd.*, No. 2021-139, 2021 WL 2672136

By: Mike Bregenzer and Peter Danos | July 23, 2021

The Court of Appeals for the Federal Circuit (CAFC) has again ordered a judge from the Western District of Texas to transfer a patent case into the Northern District of California. Specifically, the CAFC held that courts should disregard plaintiff's pre-litigation attempts to manipulate venue when determining whether an action "might have been brought" in a transferee district under 28 U.S.C. § 1404(a).

Ikorongo Tech ("Tech") owns four patents ("asserted patents") directed to the functionality of third-party applications that run on mobile devices. On or about March 3, 2021, Tech, located in North Carolina, spun off Ikorongo Texas LLC, an alleged "unrelated" company, despite having the same owners as Tech and operating out of the same North Carolina office. Approximately ten days before filing suit, Tech assigned to Ikorongo Texas the exclusive rights to sue for infringement within the Western District of Texas, while simultaneously retaining the rights to the asserted patents throughout the country (the "licensing agreement"). Ikorongo Texas subsequently sued Samsung and LG in the Western District of Texas. The next day, Ikorongo amended the Complaint, listing Tech as a co-plaintiff. The Amended Complaint accused Defendants of patent infringement based on third-party applications running on Samsung and LG's products. Defendants subsequently moved under U.S.C. § 1404(a) to transfer suit to the Northern District of California. The District Court denied the request, finding that the defendants failed to establish the threshold requirement that the complaints "might have been brought" in the Northern District of California. In that regard, the District Court stated that the relevant inquiry was "where [Defendants] committed any alleged acts of infringement as to Ikorongo Texas." And given the fact that the scope of the Ikorongo license was limited to the Western District, any alleged infringement by Defendants could have only occurred within the Western District of Texas. In short, the Plaintiffs successfully influenced venue through the licensing agreement purporting to limit where a patent infringement suit might have been brought. The Court also analyzed the traditional public- and private-interest factors, but concluded they did not warrant transfer. The defendants then sought writs of mandamus to force transfer to the Northern District of California.

Under the All Writs Act, the CAFC may issue a writ if three conditions are met: "(1) the petitioner '[must] have no other adequate means to attain ... relief'; (2) the petitioner must show that the right to mandamus is 'clear and indisputable'; and [3] the court 'must be satisfied that the writ is appropriate under the circumstances.'" *Id.* (internal citations omitted).

The CAFC granted the mandamus, finding that the District Court improperly disregarded the pre-litigation acts by Tech and Ikorongo Texas aim at manipulating venue. Specifically, "the presence of Ikorongo Texas is plainly recent, ephemeral, and artificial – just the sort of maneuver in anticipation of litigation that has been routinely rejected ... therefore, we need not consider separately Ikorongo Texas's geographically bounded claims." Accordingly, the CAFC found that the underlying dispute "might have been brought" in the Northern District of California, as this is where the third-party applications were developed and significant business activities occurred. The CAFC also found that the District Court abused its discretion in balancing the traditional factors, as no potential witnesses or sources of proof existed in the Western District of Texas, and the Western District of Texas had no more of a local interest than other venues simply because suit was filed there.

This ruling is important, as it demonstrates that certain types of pre-litigation manipulation will not be tolerated when determining where an action "might have been brought."