

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

JAWBONE INNOVATIONS, LLC,
Plaintiff,

v.

APPLE INC.,
Defendant.

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Civil No. 6:21-CV-00984-ADA

TRANSFER ORDER

This opinion memorializes the Court’s decision on Defendant Apple Inc.’s (“Apple” or “Defendant”) Motion to Transfer Venue from the Western District of Texas (“WDTX”) to the Northern District of California (“NDCA”) under 28 U.S.C. § 1404(a). ECF NO. 38.

This case was filed on September 23, 2021. Apple filed its transfer motion on May 2, 2022. The Court’s Order Governing Proceedings (“OGP”) sets rules governing motions to transfer. OGP § IV. For cases filed before March 7, 2022, the OGP refers to the Second Amended Standing Order Regarding Motions for Inter-District Transfer. *Id.* The Second Amended Standing Order Regarding Motions for Inter-District Transfer sets a three-month deadline for venue discovery from the filing of the initial motion, another two weeks for the Plaintiff’s response, and another two weeks for the Defendant’s reply.

Thus, venue discovery should have concluded on August 2, 2022, which is three months from the transfer motion filing on May 2, 2022. Plaintiff’s response was due on August 16, 2022, which is two weeks thereafter. Defendant’s reply was due on August 30, 2022.

Due to Apple’s pending transfer motion, the Court needed to reschedule the *Markman* hearing originally set for July 27, 2022 to comply with the Federal Circuit’s order. ECF No. 66; ECF No. 76; *In re SK Hynix Inc.*, 835 F. App’x 600, 601 (Fed. Cir. Feb. 1, 2021) (“the district

court must stay all proceedings concerning the substantive issues in the case until such time that it has issued a ruling on the transfer motion.”). The Court rescheduled the *Markman* hearing for September 22, 2022 so that the Court would have at least three weeks to rule on the transfer motion after the conclusion of briefing on August 30, 2022. ECF No. 89.

On August 24, 2022, the parties filed a Joint Notice Regarding Venue Discovery and Briefing. ECF No. 86. The Parties modified their own discovery deadlines as permitted by the Court. However, the Parties also improperly modified Jawbone’s opposition deadline to September 8, 2022 and Apple’s Reply to September 22, 2022.

This modification of the briefing deadline violates the Court’s rules. The Court’s Amended Standing Order Regarding Joint or Unopposed Request to Change Deadlines allows parties to stipulate to any deadline change that “does not extend any deadline of a final submission that affects the Court’s ability to hold a scheduled hearing.” Modifying the transfer opposition deadline without motion violated this rule. Setting Apple’s reply to September 22, 2022—the same date as the *Markman* hearing—also violates this rule because the Court cannot hold the *Markman* hearing before ruling on the motion to transfer.

IT IS HEREBY ORDERED:

- All transfer briefing (ECF NO. 90, 91, 92) filed after August 30, 2022 is hereby **STRICKEN AS UNTIMELY**.
- Apple **WAIVES** its right to file a reply in support of transfer.
- Apple’s Motion to Supplement (ECF No. 78) is hereby **DENIED AS MOOT**.
- Apple’s Motion to Transfer (ECF No. 38) is hereby **GRANTED** as unopposed.
- The Clerk of the Court is hereby **ORDERED** to transfer this case to the Northern District of California.

SIGNED this 15th day of September, 2022.



ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE