

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

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In re: HULU, LLC,  
*Petitioner*

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2021-142

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On Petition for Writ of Mandamus to the United States District Court for the Western District of Texas in No. 6:20-cv-00472-ADA, Judge Alan D. Albright.

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### ON PETITION

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Before TARANTO, HUGHES, and STOLL, *Circuit Judges*.  
STOLL, *Circuit Judge*.

### O R D E R

Hulu, LLC petitions for a writ of mandamus directing the United States District Court for the Western District of Texas to transfer this case to the United States District Court for the Central District of California. We agree with Hulu that the district court clearly abused its discretion in evaluating Hulu's transfer motion and denying transfer. We therefore grant the petition.

## I

Plaintiffs SITO Mobile R&D IP, LLC and SITO Mobile, Ltd. (collectively, “SITO”) sued Hulu, LLC for patent infringement in the United States District Court for the Western District of Texas on June 2, 2020. Complaint, *Sito Mobile R&D IP, LLC v. Hulu, LLC*, Case No. 6:20-cv-00472, ECF No. 1 (W.D. Tex. June 2, 2020). SITO alleged that Hulu infringed seven of its patents directed to “System[s] and Method[s] for Routing Media”—U.S. Patent Nos. 8,825,887; 9,026,673; 9,135,635; 9,135,636; 9,591,360; 10,009,637; and 10,171,846. Complaint at 8–10 (¶¶ 22–42). In particular, SITO accused the “Hulu Streaming Platform” of infringement based on its delivery of streaming video content in combination with other features, such as revenue sharing with content providers, *id.* at 11–12 (¶¶ 46–47), selections of advertisements by a “media selector,” *id.* at 15 (¶ 57), and advertising based on geographic location or statistical information, *id.* at 23, 39 (¶¶ 89, 96). In particular, SITO’s complaint points to Hulu’s use of two video standards for their “adaptive bitrate streaming techniques”—Dynamic Adaptive Streaming over Hypertext Transfer Protocol (MPEG-DASH) and Hypertext Transfer Protocol Live Streaming (HLS). *Id.* at 7 (¶ 20).

As to the parties, both SITO entities are Delaware companies with their principal places of business in New Jersey. *Id.* at 2 (¶¶ 2–3). Hulu is a Delaware company with its principal place of business in Santa Monica, California, which is within the Central District of California. *Id.* (¶ 4).

On October 2, 2020, four months after SITO filed its complaint, Hulu moved to transfer the case to the Central District of California for convenience under 28 U.S.C. § 1404(a). Hulu’s motion explained that it delivers its streaming content via various “third party content delivery networks” or “CDNs” and that potential witnesses from those CDNs are located in the Central District of

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California. App. 80–82;<sup>1</sup> *see also* Answer, *SITO Mobile R&D IP, LLC v. Hulu*, Case No. 6:20-cv-00472, ECF No. 12 at 5 (¶ 20).

On April 28, 2021, the district court denied Hulu’s motion to transfer. *SITO Mobile R&D IP v. Hulu, LLC*, Case No. 6:20-cv-00472, 2021 WL 1166772 (W.D. Tex. Mar. 24, 2021) (“*Order*”). The district court analyzed each of the public and private interest factors required under Fifth Circuit precedent, finding two factors (sources of proof and local interest) “slightly” favored transfer, three factors (compulsory process, willing witnesses, and court congestion) weighed against transfer, and three factors (other practical problems, familiarity with relevant law, and conflicts of laws) were neutral or did not apply. *Id.* at \*3–9.

Hulu petitioned this court for a writ of mandamus ordering the district court to transfer the case to the Central District of California. We have jurisdiction under the All Writs Act, 28 U.S.C. § 1651(a).

## II

Under the All Writs Act, federal courts “may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). Before a court may issue the writ, three conditions must be satisfied: (1) the petitioner must have “no other adequate means to attain the relief he desires”; (2) the petitioner must show that the right to the writ is “clear and indisputable”; and (3) the court “in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380–81 (2004) (citation and internal quotation marks omitted). In transfer cases, those

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<sup>1</sup> “App.” refers to the appendix Hulu filed with its petition for mandamus. “Supp. App.” refers to the supplemental appendix filed by SITO with its response.

requirements are generally reduced to a single inquiry: “whether the district court’s denial of transfer amounted to a clear abuse of discretion under governing legal standards.” *In re TracFone Wireless, Inc.*, No. 2021-136, 2021 WL 1546036, at \*2 (Fed. Cir. Apr. 20, 2021) (citing *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008)).

We follow regional circuit law on § 1404(a) transfer motions. *TS Tech*, 551 F.3d at 1319. The Fifth Circuit requires that when a movant “clearly demonstrate[s] that a transfer is [f]or the convenience of parties and witnesses, [and] in the interest of justice,” the district court “should” grant transfer. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) (en banc) (“*Volkswagen II*”) (second alteration in original) (quoting § 1404(a)). “That determination is focused on a comparison of the relative convenience of the two venues based on assessment of the traditional transfer factors.” *In re HP Inc.*, 826 F. App’x 899, 901 (Fed. Cir. 2020) (citing *In re Radmax, Ltd.*, 720 F.3d 285, 288 (5th Cir. 2013)). In asking whether the district court abused its discretion in making that determination, Fifth Circuit law instructs us to consider whether the district court “(1) relies on clearly erroneous factual findings; (2) relies on erroneous conclusions of law; or (3) misapplies the law to the facts.” *Volkswagen II*, 545 F.3d at 310 (quoting *McClure v. Ashcroft*, 335 F.3d 404, 408 (5th Cir. 2003)).

In assessing a motion to transfer under § 1404(a), the Fifth Circuit analyzes a number of private and public interest factors. “The private interest factors are: ‘(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive.’” *Id.* at 315 (quoting *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) (“*Volkswagen I*)). “The public interest factors are: ‘(1) the

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administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws [or in] the application of foreign law.” *Id.* (alteration in original) (quoting *Volkswagen I*, 371 F.3d at 203).

In denying Hulu’s motion for transfer, the district court at least erred in its analysis for each factor that it found weighed against transfer: (1) the availability of compulsory process to secure the attendance of witnesses; (2) the cost of attendance for willing witnesses; and (3) the administrative difficulties flowing from court congestion. We discuss each in turn below.

#### A

First, the district court erred in finding that the availability of compulsory process to secure the attendance of witnesses weighed against transfer.

Hulu identified several CDNs and revenue sharing content partners that are located in California with many in the Central District of California. App. 77–78, 82. Furthermore, Hulu identified a significant number of potential prior art witnesses that were also based in California. App. 82–83. On the other hand, SITO merely posited that certain third-party witnesses that Hulu had identified (from Apple and Microsoft) may be subject to the compulsory power of both the Western District of Texas and the Central District of California. App. 231 (citing an attorney declaration relying on a location found on maps.bing.com, Supp. App. 16).

The district court did not dispute Hulu’s contention that the vast majority of witnesses to be analyzed under this factor would be subject to the compulsory process of the Central District of California. Instead, it determined that this factor weighed against transfer by discounting

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