

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

---

**In re: APPLE INC.,**  
*Petitioner*

---

2021-187

---

On Petition for Writ of Mandamus to the United States District Court for the Western District of Texas in No. 6:21-cv-00926-ADA, Judge Alan D. Albright.

---

**ON PETITION AND MOTION**

---

Before DYK, PROST, and HUGHES, *Circuit Judges*.  
PER CURIAM.

**O R D E R**

Apple Inc. petitions for a writ of mandamus directing the United States District Court for the Western District of Texas to vacate its order transferring this case from the Austin Division of the Western District of Texas to the Waco Division and to stay that order pending disposition of the petition. Because the district court cites no statutory authority for its re-transfer and because Austin remains the more convenient forum, we grant the petition and direct the district court to vacate its order.

1

## I

2 Fintiv, Inc. filed the underlying patent-infringement  
3 suit against Apple in the Waco Division of the Western Dis-  
4 trict of Texas in December 2018. In September 2019, the  
5 district court judge granted-in-part Apple’s motion to  
6 transfer venue of the action to the Austin Division of the  
7 Western District of Texas, where the same judge continued  
8 to preside over the case. Although the district court denied  
9 transfer to Apple’s preferred destination in Northern Cali-  
10 fornia, the district court agreed with Apple that the Austin  
11 Division of the Western District of Texas was, at the time,  
12 clearly more convenient for trial.

13 The district court scheduled the trial to begin in Austin  
14 on October 4, 2021. But on September 8, 2021, one month  
15 before trial, the district court ordered the case re-trans-  
16 ferred back to Waco. In its order, the district court ex-  
17 plained only that “[j]ury trials in the Austin courthouse  
18 ha[ve] largely been suspended” due to the COVID-19 pan-  
19 demic, that “it remains uncertain whether the Austin  
20 courthouse will be open for jury trial in the foreseeable fu-  
21 ture,” and that such intervening events “frustrated the  
22 original purpose of transferring this action to the Austin  
23 Division.” Order at 1–2, *Fintiv, Inc. v. Apple Inc.*, 6:21-cv-  
24 00926-ADA (W.D. Tex. Sept. 8, 2021), ECF No. 386 (“Re-  
25 Transfer Order”).

26 Apple now petitions this court for a writ of mandamus  
27 directing the district court to vacate the re-transfer order  
28 and to stay that order pending disposition of the petition.  
29 Fintiv opposes both requests. We have jurisdiction under  
30 28 U.S.C. §§ 1651 and 1295.

31

## II

32 Our review here is governed by Fifth Circuit law. *See*  
33 *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir.  
34 2008). When a writ of mandamus is sought, we review a  
35 decision to transfer for a clear abuse of discretion. *See In re*

IN RE: APPLE INC.

3

1 *Volkswagen of Am., Inc.*, 545 F.3d 304, 310 (5th Cir. 2008)  
2 (en banc).

3 In *In re Intel Corp.*, we explained that the only author-  
4 ity for an intra-district re-transfer without full consent of  
5 the parties is 28 U.S.C. § 1404(a). 841 F. App'x 192, 193–95  
6 (Fed. Cir. 2020). Under § 1404(a), a district court “should  
7 not re-transfer except under the most impelling and unu-  
8 sual circumstances,” such as unanticipated “post-transfer  
9 events [that] frustrate the original purpose for transfer.” *In*  
10 *re Cragar Indus., Inc.*, 706 F.2d 503, 505 (5th Cir. 1983)  
11 (cleaned up). Further, a re-transfer analysis should be  
12 “based on the traditional factors bearing on a § 1404(a)  
13 analysis” and “should take into account the reasons of con-  
14 venience that caused the earlier transfer.” *Intel*, 841 F.  
15 App'x at 195.

16 Here, the district court inexplicably failed to perform  
17 that analysis, giving “the parties and reviewing courts no  
18 way of understanding how the court reached its conclusion  
19 and providing no assurance that it was the result of consci-  
20 entious legal analysis.” *In re Lloyd's Reg. N. Am., Inc.*,  
21 780 F.3d 283, 291 (5th Cir. 2015). The district court artic-  
22 ulated no authority in its order to re-transfer, explaining  
23 only that “it remains uncertain whether the Austin court-  
24 house will be open for jury trial in the foreseeable future.”  
25 Re-Transfer Order at 1. Not only is this explanation mini-  
26 mal, but it is also not supported by any analysis of the tra-  
27 ditional § 1404(a) factors. Nor is there any indication that  
28 the Austin courthouse is currently closed for trial. The dis-  
29 trict court even acknowledged that some civil trials are pro-  
30 ceeding in Austin and that there is a possibility of “being  
31 able to use a courtroom in Austin” and “mov[ing] forward  
32 with [the trial] in Austin.” Appx175–77.

33 Fintiv suggests that its position statement before the  
34 district court sufficiently explains the district court's rul-  
35 ing. But “[a]n explanation must be generated by the court,  
36 not inferred by the appellate court from the submissions of

1 the parties,” and a “[c]ontrary rule would require us to  
2 guess the basis for the decision without guidance, essen-  
3 tially reducing us to the role of replacing the district court’s  
4 discretion with our own.” *Lloyd’s Reg.*, 780 F.3d at 290–91.

5 To be sure, the district court gestures to our decision in  
6 *Intel* by stating that “the intervening COVID-19 pandemic  
7 has frustrated the original purpose of transferring this ac-  
8 tion to the Austin Division.” Re-Transfer Order at 1–2. But  
9 the purpose of transfer under § 1404(a) is “for the conven-  
10 ience of parties and witnesses” and the “interest of justice.”  
11 28 U.S.C. § 1404(a). In originally granting Apple’s motion  
12 to transfer venue to the Austin Division, the district court  
13 performed the required analysis and found that Austin was  
14 clearly the more convenient venue. Order Denying Defend-  
15 ant Apple’s Motion to Transfer Venue at 4–17, *Fintiv, Inc.*  
16 *v. Apple Inc.*, 6:21-cv-00926-ADA (W.D. Tex. Sept. 10,  
17 2019), ECF No. 73. It relied in large part on the fact that  
18 there are no sources of proof in the Waco Division and that  
19 the parties and a relevant third party have a significant  
20 presence in Austin, but not in Waco. *Id.* at 17. We approved  
21 this reasoning in our order denying Apple’s previous peti-  
22 tion for mandamus seeking transfer to the Northern Dis-  
23 trict of California. *See In re Apple Inc.*, No. 2020-104 (Fed.  
24 Cir. Dec. 20, 2019).

25 On the record before us, it is far from clear that the  
26 intervening COVID-19 pandemic has frustrated any of the  
27 original purposes for transferring this case from Waco to  
28 Austin under § 1404(a). Relevant witnesses and evidence  
29 remain in Austin, and the parties continue to maintain  
30 their presences there. Pet. Opening Br. at 20. Furthermore,  
31 the parties have prepared for trial in Austin. And Apple’s  
32 employee witnesses will all be traveling from California,  
33 from which there are no direct flights to Waco. Pet. Reply  
34 at 9. So far as the briefing before this court reflects, the  
35 only factor that may have changed as a result of the  
36 COVID-19 pandemic is the public interest “court-conges-  
37 tion” factor—which seems, at most, to slightly weigh in

IN RE: APPLE INC.

5

1 favor of re-transfer. But as we have said previously, this  
2 factor is the “most speculative” of the factors bearing on  
3 transfer and “should not alone outweigh all . . . other fac-  
4 tors.” *In re Genentech, Inc.*, 566 F.3d 1338, 1347 (Fed. Cir.  
5 2009). This is particularly so here, given the district court’s  
6 acknowledgement that there is a possibility of “mov[ing]  
7 forward with [the trial] in Austin.” Also, court congestion  
8 was not a factor relied on by the district court as a basis for  
9 transferring the case to Austin.

10 Under these circumstances, where the district court  
11 has failed to perform the requisite § 1404(a) analysis and  
12 where Austin remains the more convenient forum, the dis-  
13 trict court’s decision to re-transfer this case back to the  
14 Waco Division amounts to a clear abuse of discretion.

15 Accordingly,

16 IT IS ORDERED THAT:

17 (1) The petition for a writ of mandamus is granted. The  
18 district court’s September 8, 2021 order re-transferring the  
19 trial from Austin to Waco is vacated and we remand with  
20 instructions that this action shall proceed in the Austin Di-  
21 vision of the United States District Court for the Western  
22 District of Texas.

23 (2) The motion to stay is denied as moot.

FOR THE COURT

October 01, 2021  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

24

25 s31