

# Federal Circuit Orders Google Patent Case Transferred from E.D. Tex.

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*IN RE GOOGLE*: Feb. 21, 2017. Before Prost, Lourie, and Linn (dissenting).

## Takeaway:

- On a motion to transfer, the existence of related, co-pending litigations does not automatically outweigh all other factors and considerations in the transfer analysis.

## Procedural Posture:

Google petitioned the CAFC for a writ of mandamus following denial of its motion to transfer from the Eastern District of Texas to the Northern District of California. The CAFC granted the petition.

## Synopsis:

- **District court procedures – Transfer:** The CAFC held the district court’s denial of Google’s transfer motion was an abuse of discretion. Plaintiff Eolas had filed co-pending suits against Walmart and Amazon, and the district court refused to transfer the instant case in large part due to these pending litigations. The CAFC ruled it was “improper [for the district court] to weigh the judicial economy factor in a plaintiff’s favor solely based on the existence of multiple co-pending suits” and cautioned that the district court’s rationale “would automatically tip the balance in non-movant’s favor” in situations involving co-pending suits. The CAFC further found clear error in the district court’s reliance on institutional knowledge of the case’s subject matter, because the judge before whom the parties had litigated previous disputes had retired. In addition, the locations and sources of proof overwhelmingly favored Google because the vast majority of Google’s employees resided in the transferee district, while only one of the plaintiff’s employees resided in the transferor forum. Accordingly, the CAFC held the Northern District of California was the clearly more convenient forum.
- **Other Opinions:** Judge Linn dissented, arguing the district court did not apply an “automatic

rule” to deny the motion based on the co-pending suits and expressing concern that the majority opinion reflexively discounted the “other practical considerations” factor. Judge Linn found the district court had fully evaluated the merits of the motion and considered all of the relevant factors, and Google had not shown the district court’s ruling was a clear abuse of discretion or patently erroneous. The CAFC should not use mandamus review to substitute its judgment for that of the district court.

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National Law Review, Volume VII, Number 60

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