

A Tale of Seven Districts: Reviewing The Past, Present and Future of Patent Litigation Filings to Form a Two-Step Burden-Shifting Framework for 28 U.S.C. § 1404(a)

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Abstract : Current patent venue transfer laws under 28 U.S.C. § 1404(a) e.g., the Gilbert factors from *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947) are too malleable in that they often lead to frequent mandamus orders from the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") overturning district court rulings on venue transfer motions. Thus, this paper proposes a more robust two-step burden-shifting framework that replaces the eight Gilbert factors. Moreover, a brief history of venue transfer patterns in the seven most active federal patent district courts is covered, with special focus devoted to the venue transfer orders from Judge Alan D Albright of the U.S. District Court for the Western District of Texas. A comprehensive data summary of 45 case sets where the Federal Circuit ruled on writs of mandamus involving Judge Albright's transfer orders is subsequently provided, with coverage summaries of certain cases including four precedential ones from the Federal Circuit. This proposed two-step burden shifting framework is then applied to these venue transfer cases, as well as Federal Circuit mandamus orders ruling on those decisions. Finally, alternative approaches to remedying the frequent reversals for venue transfer will be discussed, including potential legislative solutions, adjustments to common law framework approaches to venue transfer, deference to the inherent powers of Article III U.S. District Judge, and a unified federal patent district court. Overall, this paper seeks to offer a more robust and consistent three-step burden-shifting framework for venue transfer and for the Federal Circuit to follow in administering mandamus orders, which might change somewhat in light of Western District of Texas Chief Judge Orlando Garcia's order on redistributing Judge Albright's patent cases.

Keywords : Patent law, venue, judge Alan Albright, minimum contacts, western district of Texas

Conference Title : ICIPR 2023 : International Conference on Intellectual Property and Rights

Conference Location : Vancouver, Canada

Conference Dates : August 03-04, 2023