IN THE

United States Court of Appeals for the Federal Circuit

In re: UBER TECHNOLOGIES, INC.,

Petitioner

2021-150

On Petitions for Writ of Mandamus to the United States District Court for the Western District of Texas in No. 6:20-cv00843-ADA and Judge Alan D. Albright

RESPONDENTS' PETITION FOR REHEARING EN BANC

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August 2, 2021

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number 2021-150

Short Case Caption In Re: Uber Technologies, Inc.

Filing Party/Entity Ikorongo Texas LLC and Ikorongo Technology LLC

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box**. Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 08/02/2021

Signature: /s/ Howard Wisnia

Name: Howard Wisnia

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	**2. Real Party in Interest.** Fed. Cir. R. 47.4(a)(2).	**3. Parent Corporations and Stockholders.** Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. ☑ None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. ☑ None/Not Applicable
Ikorongo Texas LLC		
Ikorongo Technology LLC		

☐ Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable ☐ Additional pages attached

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5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

☐ None/Not Applicable ☑ Additional pages attached

Ikorongo Texas LLC and Ikorongo Technology LLC v. Bumble Trading LLC	United States District Court Western District of TX-Waco Div.	Civil Action No. 6:20-cv-00256-ADA
Ikorongo Texas LLC and Ikorongo Tech. LLC v. LG Electronics Inc., et al.	United States District Court Western District of TX-Waco Div.	Civil Action No. 6:20-cv-00257-ADA
Ikorongo Texas LLC and Ikorongo Technology LLC v. Lyft, Inc.	United States District Court Western District of TX-Waco Div.	Civil Action No. 6:20-cv-00258-ADA

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☑ None/Not Applicable ☐ Additional pages attached

CERTIFICATE OF INTEREST

(Additional Page – Related Cases)

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STATEMENT OF COUNSEL

Based on my professional judgment, I believe the panel decision is contrary to the following decisions of the Supreme Court of the United States and the precedents of this court:

Bankers Life & Cas. Co. v. Holland, 346 U.S. 379 (1953)

In re EMC Corp., 677 F.3d 1351 (Fed. Cir. 2012)

Hoffman v. Blaski, 363 U.S. 335 (1960)

Van Dusen v. Barrack, 376 U.S. 612 (1964)

Based on my professional judgment, I believe this appeal requires an answer to one or more precedent-setting questions of exceptional importance:

1. Can a district court transfer a matter to a statutorily proscribed district based on expressly disregarding undisputed facts creating the proscription?
2. What is the applicable standard of review for a petition for a writ of mandamus based on a dispute of law?

/s/ Howard Wisnia
Howard Wisnia
Counsel for Respondents

INTRODUCTION

The panel (1) reversed the district court for directly applying the statutory mandate to the facts before it, instead of ignoring statutorily dispositive facts, by (2) expressly applying an ordinary legal error standard of review to the petitions for writs of mandamus here. *En Banc* review is warranted to address the conflict between the panel opinion and this Court's and Supreme Court precedent establishing that venue statutes are mandatory and must be applied as written, and the panel's decision that ordinary legal error is enough to warrant issuing a writ of mandamus.

Ikorongo Technology and Ikorongo Texas have geographically divided rights in the same patents, and the only places Ikorongo Texas can bring its patent infringement action are the Eastern or Western Districts of Texas and Uber's home district—Delaware. The panel here ruled based on its decision a week earlier in *In re Samsung Electronics Co., LTD.*, Nos. 2021-139 & -140: "In this case, we see no basis for a disposition different from the ones reached in *Samsung*." Op. 4.[1]

[1] Because the panel's decision here expressly turned on the panel's prior decision in *Samsung*, the arguments in this petition are identical to the

But the panel erred in *Samsung* and usurped its own authority. In the panel's words: "On the face of the complaint, the Northern District of California could not be a proper venue for Ikorongo Texas's claims because no act of infringement of Ikorongo Texas's rights took place there." *Samsung* Op. 9. But the panel held that the district court erred by failing to disregard the geographic division of rights. Instead, the court was *required* to create a fiction where Ikorongo Texas did *not* have limited patent rights thereby rendering the Northern District of California a proper venue. That requirement purportedly arose from Ikorongo Texas's motivation for acquiring those rights—seeking an expedient venue for this infringement litigation. That is erroneous in itself, but at the very least, the district court was reasonable in applying the plain language of the statute as it is written and thus, mandamus is inappropriate. For the reasons stated in Respondents' Petition for Rehearing *En Banc* in *Samsung*, the Court should review the panel's order here *en banc* and vacate it.

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arguments presented in Respondents' Petition for Rehearing *En Banc* filed in the *Samsung* proceedings on July 29, 2021.

BACKGROUND

A. Ikorongo Texas sues Samsung, LG, Bumble, Uber, and Lyft in the Western District of Texas for violating four patents.

In 2020, Ikorongo Texas and Ikorongo Technology sued Samsung, LG, Bumble, Lyft, and Uber in the Western District of Texas for infringing patents relating to sharing computer usage experiences. *Ikorongo Texas LLC v. Samsung Elecs. Co., Ltd*, No. 6:20cv259, Dkt. 1, (W.D. Tex. March 31, 2020); *Ikorongo Texas LLC v. LG Elecs., Inc.*, No. 6:20cv257, Dkt. 21 (W.D. Tex. March 31, 2020); *Ikorongo Texas LLC v. Bumble Trading, LLC*, No. 6:20cv256, Dkt. 1 (W.D. Tex. March 31, 2020); *Ikorongo Texas LLC v. Lyft, Inc.*, No. 6:20cv258, Dkt. 1 (W.D. Tex. March 31, 2020); *Ikorongo Texas LLC v. Uber Tech., Inc.*, No. 6:20cv843, Dkt. 1 (W.D. Tex. Sept. 15, 2020). It sued Samsung and LG for infringing four patents, and it sued Bumble, Lyft, and Uber for infringing two of those four. *Id*. All the cases, except the later-filed case against Uber, were placed on the same schedule for, among other things, motions to transfer, *Markman* hearings (which were later consolidated), pretrial conference, and trial. *Samsung* Dkt. 23; *LG* Dkt. 24; *Lyft* Dkt. 28; *Bumble* Dkt. 28.

B. Uber moves to transfer the case to the Northern District of California.

In January 2021—four months after the Uber complaint was filed—Uber moved to transfer the case to the Northern District of California. Appx. 25-26. The other four defendants already had moved to transfer their actions, but Bumble ultimately withdrew its motion because it did not have a place of business in the Northern District of California—a threshold requirement. *Bumble* Dkt. 37. That ensured that its case would go forward in the Western District of Texas.

Notably, Uber did not move to transfer the case to Delaware, where it is incorporated. Uber instead requested the Northern District of California while providing one superficial paragraph on whether the cases could have been filed there. *Ikorongo Texas LLC v. Uber Technologies, Inc.*, No. 6:20-cv-00843, Dkt. 26 at PageID 12 (W.D. Tex. Jan. 15, 2021) ("Uber Transfer Motion"). It also claimed that public and private interest factors render the Northern District of California "clearly more convenient" based largely on the same arguments as the defendants in the related cases. *Id* at PageID 12-19.

C. In response, Ikorongo again establishes it could not have filed this suit in the Northern District of California.

Ikorongo again spelled out the district court's lack of discretion in response. *Ikorongo Texas LLC v. Uber Technologies, Inc.*, No. 6:20-cv-00843, Dkt. 41 at PageID 8-9 (W.D. Tex. April 15, 2021) ("Transfer Opposition"). It noted that Uber did not reside in the Northern District of California, and it did not engage in acts of infringement there as to Ikorongo Texas, which only had patent rights in Texas. *Id*. Ikorongo then discussed the private and public interest factors, establishing that the Western District of Texas is the more convenient forum.

D. Uber's reply still fails to fully address the requirement that the action might have been filed in the proposed transferee district.

Even after Ikorongo explained how transfer to the Northern District of California is statutorily barred, Uber held its powder, apparently awaiting the petition for a writ of mandamus. In its reply brief below, Uber cited little of the Supreme Court and Federal Circuit precedent it cited to this Court. *Ikorongo Texas LLC v. Uber Technologies, Inc.*, No. 6:20-cv-00843, Dkt. 44 at PageID 5 (W.D. Tex. April 14, 2021) ("Uber Transfer Reply"). It asked the district court to

apply a new standard that the district court may disregard limits on a party's patent rights. *Id*.

E. The district court denies transfer both based on statutory requirements and based on the private and public interest factors.

On May 26, 2021, the district court denied the motion to transfer. Appx. 20. Initially, it found that Uber failed to meet its burden "to show that Ikorongo's current action could have initially been brought in the NDCA . . . because no acts of infringement occurred in the NDCA, with respect to Ikorongo Texas" for the same reasons it rejected the other defendants' arguments. Appx. 5-8. The district court further found the transfer motions would have been denied in any event based on the *Volkswagen* private and public interest factors. Appx 8-20.

F. Uber files its writ petition raising new arguments.

Uber filed a petition for a writ of mandamus, and the panel granted the petition. The panel summarized its order in *Samsung* and stated "[i]n this case, we see no basis for a disposition different from the ones reached in *Samsung*." Op. 4. In *Samsung*, at the outset of its discussion, the panel stated that it would "review the district court's decision to deny transfer for an abuse of discretion" and noted that an error of law necessarily establishes an abuse of discretion. *Samsung* Op. 6. On the

threshold requirement that the claims "might have been brought" in the Northern District of California, the panel acknowledged that the geographic assignment of rights, if respected, would render venue in the Northern District of California improper. *Samsung* Op. 9. But the panel ruled it was "not bound by a plaintiff's efforts to manipulate venue." *Id.*

Instead, the panel ruled—admitting reliance on cases interpreting the discretionary part of the venue statute and *not* the threshold requirement—that the district court *is bound* to ignore the geographic assignment of rights here, regardless of its real legal consequences. *Samsung* Op. 11. In the process, the panel relied on a factual error *no one* asserted—that ownership of Ikorongo Technology and Ikorongo Texas are identical. *Samsung* Op. 12. They are not. The panel then incorrectly stated that "Ikorongo Texas is plainly recent, ephemeral, and artificial" without record evidence to support anything other than its recency. *Id.*

REASONS FOR GRANTING THE PETITION

I. The panel's order should be vacated because the panel did not defer to the District Court's reasonable statutory interpretation.

The district court's interpretation of 28 U.S.C. §§ 1404(a) and 1400(b) was reasonable and correct. The Northern District of California

is not an allowable venue. At the very least, the district court reasonably so found, which, as discussed below, is all that should be needed when reviewed for a writ of mandamus. Under 28 U.S.C. § 1404(a), "for the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." A case "might have been brought" in a district only if federal jurisdiction and venue statutes would have allowed the complaint to have been filed there. *Hoffman v. Blaski*, 363 U.S. 335, 342-43 (1960).

There is no dispute here that 28 U.S.C. § 1400(b) governs venue for this suit. It provides that "[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides or where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400(b). The meaning is plain on its face. Considering the section providing the venue requirement for "[a]ny civil action for patent infringement" and the provision's discussion later in the sentence of places "where the defendant has committed acts of infringement," the section necessarily refers to infringement for which

the civil action was brought. So a plaintiff with geographically limited rights can only bring a suit for infringement that occurs within that geographic area. *The panel agreed on the law*. *Samsung* Op. 9.

The complaint here asserted infringement of Ikorongo Texas's patent rights only in the place Ikorongo Texas has any patent rights—Texas, and it alleges that Uber resides in Delaware. Appx. 31-32. Thus, under Section 1400(b)'s plain language, Uber could be sued in Delaware or in Texas *if* it had "established place[s] of business" there. It does. *Id*. By statute, no other judicial district could have been a proper venue. *The panel agreed on the facts*—it acknowledged that, as pleaded, the case cannot be transferred to the Northern District of California. *Samsung* Op. 9.

But the panel ruled the district court must *disregard* the fact that Ikorongo Texas has limited rights based on inapplicable case law. The panel acknowledged that the cases it relied on "involved 'the convenience of the parties and witnesses, in the interest of justice' factor," and not "the *requirement* that an action 'might have been brought' in the transferee district." *Samsung* Op. 11 (emphasis added). Without any explanation, the panel asserted that these cases about the discretionary

part of the statute are "no less applicable" to the *mandatory* part of the statute. *Id*. Of course they are less applicable. *E.g. BP P.L.C. v. Mayor of Balt.*, 141 S. Ct. 1532, 1541 (2021) ("the fact that this Court deemed certain orders appealable under the statute's first clause simply does not settle, one way or another, the scope of appellate review under the statute's second clause"). "[T]ransfer may be ordered (1) '[f]or the convenience of parties and witnesses, in the interest of justice,' but only (2) 'to any other district or division where it might have been brought.' In making determination (1) the district court is vested with a large discretion. In making determination (2) the district court has a much narrower discretion, if indeed any exists." *Solomon v. Continental Am. Life Ins. Co.*, 472 F.2d 1043, 1045 (3d Cir. 1973).

Courts cannot ignore statutory mandates and create extra-textual exceptions. *See*, *e.g.*, *Ross v. Blake*, 136 S. Ct. 1850, 1856-57 (2016) (rejecting Fourth Circuit's "special circumstances" exception to PLRA exhaustion requirement); *see also Rotkiske v. Klemm*, 140 S. Ct. 355, 361 (2019) ("It is not our role to second guess Congress' decision to include a 'violation occurs' provision, rather than a discovery provision, in §1692k(d)."). Congress—not the courts—determines the allowable

venues for federal actions. And "by making it explicit in § 1404(a) that the transfer could only be made to a district or division where the action could have been brought, Congress made clear its intention not to confer on the transferor district court a power to . . . disregard other statutory venue requirements." *Solomon*, 472 F.3d at 1045.

Moreover, the Supreme Court stressed the importance of following the patent venue statutory language at issue in this case to its formal end, regardless of alternate considerations, in *TC Heartland v. Kraft Foods Group Brands, LLC.* 137 S. Ct. 1514, 1518 (2017). And it eschewed policy considerations of judicial efficiency and party maneuvering in favor of applying the statute as written in *Holmes Grp., Inc. v. Vornado Air Circulation Sys.*, 535 U.S. 826, 833 (2002) ("Our task here is not to determine what would further Congress's goal of ensuring patent-law uniformity, but to determine what the words of the statute must fairly be understood to mean.") and *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 813-14 (1988) (Congress determined the relevant focus, however, when it granted jurisdiction to the Federal Circuit over 'an appeal from . . . a district court . . . if the jurisdiction of that court was based . . . on section 1338.'"). The Supreme Court provided further

examples of applying the statute as written rather than imposing its own policy views this term. *E.g. HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass'n*, 141 S. Ct. 2172 (2021) ("our analysis only can be guided by the statute's text"); *BP*, 141 S. Ct. at 1541 ("As this Court has explained, 'even the most formidable' policy arguments cannot 'overcome' a clear statutory directive.").

Meanwhile, the panel here applied its own policy decision that blocking perceived "venue manipulation" has greater societal value than predictable and proper venue requirements. This weighing of interests and policy concerns is a classic legislative, not judicial, function. The public holds elected officials accountable for decisions it disagrees with by its vote, but it has no such recourse for decisions by the judiciary. It is telling that the panel asserts it is "not bound by a plaintiff's efforts to manipulate venue" and yet no party nor the panel cited a single case where this Court, the Fifth Circuit, or the Supreme Court ruled that a case can be transferred to a district where the filing plaintiff was barred by statute from bringing the action. If the panel's approach was viable, given all the other cases allowing disregard of facts on the discretionary

factor, one would expect there to be cases on disregarding the mandatory factor.

Indeed, the cases the panel relies on offer no support for the proposition that a court can override a congressional venue mandate when it does not like the facts. Quite the contrary, the Supreme Court stated in *Miller & Lux, Inc. v. East Side Canal & Irrigation Co.*, 211 U.S. 293, 304 (1908): "We do not intend by what has been said to qualify the general rule, long established, that the jurisdiction of a Circuit Court, when based on diverse citizenship, cannot be questioned upon the ground merely that a party's motive in acquiring citizenship in the State in which he sues was to invoke the jurisdiction of a Federal court." But, as the panel noted, 28 U.S.C. § 1359 provides a statutory requirement for courts to disregard certain arrangements to affect jurisdiction. The Supreme Court relied on the statute or its predecessor in *Miller & Lux*, 211 U.S. at 296-97, *Hertz Corp. v. Friend*, 559 U.S. 77, 91 (2010), and other cases cited by the panel.

Section 1359's existence undermines the panel opinion. Here, the panel divined a similar authority with respect to venue that it admits does not exist in statute. *Samsung* Op. 10. But if Congress wants to

apply a similar rule to venue decisions, Congress can legislate to that end. It has not. There are myriad reasons it may choose not to enact a concomitant venue rule, since there are strong constitutional and policy interests in limited subject matter jurisdiction of federal courts, but no constitutional interest and only questionable policy interests in expanding the power for defendants to dictate venue. Indeed, it runs contrary to the basic principle of a plaintiff being the master of its complaint.

Given “there is not an analogous statute for venue,” *Samsung* Op. 10, a court’s power to disregard plaintiffs’ actions in pursuit of a venue where it might have its claims heard in a reasonable amount of time is limited to actions that affect discretionary aspects of the court’s analysis. Thus, in *Van Dusen v. Barrack*, 376 U.S. 612, 622, (1964) the Supreme Court disregarded a state law impediment to transfer, but it “noted that the instant case, unlike *Hoffman*, involves a motion to transfer to a district in which both venue and jurisdiction are proper.” Here, the district court was correct not to tread upon Congress’s territory and properly respect the separation of powers. It did not err at all, let alone

commit unreasonable error. Thus, the Court should grant the petition for rehearing *en banc* and vacate the panel's order.

II. *De novo* review of a legal issue is inappropriate on mandamus, and the Court should defer to a district court's reasonable statutory interpretation.

The *Samsung* panel opinion ironically took the leap into its own usurpation of authority by granting the petitions for writs of mandamus, and *en banc* review is warranted for that reason as well. Petitions for writs of mandamus are not substitute appeals, and courts must apply a standard much higher than mere error to support granting the writ. *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 382-83 (1953). In *Bankers Life*, the Supreme Court rejected the use of mandamus as an appropriate mechanism to correct a purported error of law regarding transfer because the decision "even if erroneous—which we do not pass on—involved no abuse of judicial power." *Id*. at 382. "In strictly circumscribing piecemeal appeal, Congress must have realized that in the course of judicial decision, some interlocutory orders might be erroneous." *Id*. at 383.

This Court has acknowledged "a district court abuses its discretion if it relies on an erroneous conclusion of law," but any abuse of discretion

is not enough—mandamus is appropriate only if the district court committed a *clear* abuse of discretion or usurped its authority. *In re EMC Corp.*, 677 F.3d 1351, 1354-55 (Fed. Cir. 2012). Thus, even if the district court committed legal error, this Court still "will only grant mandamus relief in extraordinary circumstances." *Id.*, at 1355. Indeed, "[c]ourts faced with petitions for the peremptory writs must be careful lest they suffer themselves to be misled by labels such as 'abuse of discretion' and 'want of power' into interlocutory review of nonappealable orders *on the mere ground that they may be erroneous*." *Will v. United States*, 389 U.S. 90, 98 n.6 (1967) (emphasis added). The panel made just that mistake.

The *Samsung* panel stated that it would "review the district court's decision to deny transfer for an abuse of discretion" and noted that an error of law necessarily establishes an abuse of discretion. *Samsung* Op. 6. Later in that paragraph, the panel noted the need for a "clear abuse of discretion" to grant mandamus but did not state—or even suggest—that it would then apply a more strident standard of legal error (such as a clear legal error or an unreasonable interpretation of the law) to support issuance of the extraordinary writ. Indeed, it could not have called the district court's legal analysis "clear legal error" or

"unreasonable" because the district court applied the relevant statutes as written. The panel then created a judicial exception to the applicable venue statute and granted the petition.

The panel's use of the extraordinary writ on what is—under the panel's analysis—ordinary legal error is an issue of exceptional importance. The continued deterioration of the standard for obtaining a writ of mandamus has led to an inefficient writ practice in this Court that undermines the roles of district judges. As noted in another petition for rehearing *en banc*, writ practice has become a direct appellate option for any party dissatisfied with a transfer order now that the Court grants 30-50% of them. *In re Apple, Inc.*, No. 2020-135, UNILOC 2017 LLC's Petition for Rehearing En Banc at 16 (Fed. Cir. Dec. 9, 2020). And this is at least the twentieth transfer order on which the losing party sought a writ in this Court just from the Western District of Texas since 2018. Danielle Williams & Kathi Vidal, *Federal Circuit Denies Two WDTX Transfer-Related Mandamus Petitions*, Winston & Strawn Blog (May 26, 2021).[2] But mandamus petitions from the Western District of Texas have

[2] https://www.winston.com/en/wacowatch/federal-circuit-denies-western-digitals-mandamus-petition-or-case-remains-in-wdtx.html.

not been granted at a greater rate than those from other districts. *Id.* As such, the Court is not more likely to find error in that district's rulings and there is no need for closer supervision. Yet, the writ has become exactly the substitute appeal the Supreme Court feared in *Bankers Life*, creating an incentive for movants to sandbag the district court as Petitioner did here. On issues of law, parties can go through the front door and move to certify an interlocutory appeal under 28 U.S.C. § 1292(b). Instead, Uber, like Samsung, LG, and many others now, treated the district court as a waystation on the path to mandamus in this Court, and it is exceptionally important for the Court to stem this flow of overreach.

CONCLUSION

For the foregoing reasons, the petition for rehearing *en banc* should be granted, the panel's order should be vacated, and the petitions for writs of mandamus should be denied.

Respectfully Submitted,

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ADDENDUM

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

In re: UBER TECHNOLOGIES, INC.,
Petitioner

2021-150

On Petition for Writ of Mandamus to the United States District Court for the Western District of Texas in No. 6:20-cv-00843-ADA, Judge Alan D. Albright.

ON PETITION

Before LOURIE, DYK, and REYNA, *Circuit Judges*.

DYK, *Circuit Judge*.

O R D E R

In this patent infringement case brought by Ikorongo Technology LLC and Ikorongo Texas LLC (collectively, "Ikorongo"), the United States District Court for the Western District of Texas denied Uber Technologies, Inc.'s motion to transfer to the United States District Court for the Northern District of California under 28 U.S.C. § 1404(a). Uber seeks a writ of mandamus directing transfer.

In its order denying transfer, the district court determined that Uber had failed to establish that this action "might have been brought" originally in Northern

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California as required under section 1404(a). Specifically, the district court found that the California forum would not be a proper venue under 28 U.S.C. § 1400(b) over Ikorongo Texas's claims, which were limited to its geographic rights under the asserted patents to certain counties in Texas. In doing so, the district court rejected Uber's argument that Ikorongo Texas's recent formation and acquisition of those specified rights from Ikorongo Tech (which shares offices in Northern California and the same ownership and management team as Ikorongo Texas) should be disregarded as mere tactics to avoid transfer. In the alternative, the district court found that Uber had failed to show the Northern District of California was clearly more convenient for trial.

We recently granted mandamus to direct the Western District of Texas to transfer to the Northern District of California two other actions of Ikorongo asserting infringement of two of the same patents against different defendants. *See In re Samsung Electronics Co.*, Nos. 2021-139, -140, ___ F.4th __, 2021 WL 2672136 (Fed. Cir. June 30, 2021). *Samsung* rejected the district court's determination that Ikorongo's actions could not have been brought in the transferee venue. *Samsung* observed that "the presence of Ikorongo Texas is plainly recent, ephemeral, and artificial" and "the sort of maneuver in anticipation of litigation that has been routinely rejected" by the Supreme Court and this court in related contexts. 2021 WL 2672136, at *5–6. As a result, this court in *Samsung* held that it did not need to "consider separately Ikorongo Texas's geographically bounded claims" for purposes of assessing whether the Northern District of California had venue over the case under section 1400(b). *Id.*

The district court itself recognized "that the issues present here are identical to those" in Ikorongo's other cases. Appx6. As in *Samsung*, the Western District of Texas erred in this case in concluding that Uber had failed to satisfy the threshold requirement for transfer of venue.

The district court's analysis of the traditional public and private factors in this case is also virtually the same to its analysis in the cases in *Samsung*. As in this case, *Samsung* involved cases where the accused technology was researched, designed, and developed in the Northern District of California and the defendants identified several party and non-party witnesses, including two inventors, as residing in the Northern District of California, while no party identified a single witness as residing in or close to the Western District of Texas. Here, Uber is headquartered in the Northern District of California and below submitted a declaration identifying over a dozen witnesses residing in the transferee venue that were linked to the development of the accused technology. *See* Appx161–63.

In *Samsung*, we rejected the district court's conclusion that the willing witness factor weighed only slightly in favor of transfer. *See* 2021 WL 2672136, at *6. We explained that the court had erroneously diminished the relative convenience of the Northern District of California by: (1) giving little weight to the presence of identified party witnesses in the Northern District of California despite no witness being identified in or near the Western District of Texas and (2) simply presuming that few, if any, party and non-party identified witnesses will likely testify at trial despite the defendants' submitting evidence and argument to the contrary. *Id.* At the same time, *Samsung* rejected the district court's view that there was a strong public interest in retaining the case in the district based on Ikorongo's other pending infringement action against Bumble Trading, LLC. Because "the Bumble case involves an entirely different underlying application," we explained, it was unlikely the cases would result in inconsistent judgments. *Id.* *Samsung*, moreover, explained that multidistrict litigation procedures could efficiently resolve overlapping invalidity or infringement issues. *Id.* Accordingly, we said that "the incremental gains in keeping these cases in the Western

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District of Texas simply are not sufficient to justify overriding the inconvenience to the parties and witnesses." *Id.*

Samsung bolstered that conclusion by finding that other public interest considerations favored transfer. Specifically, we rejected the district court's conclusion that the local interest factor was neutral despite the district court itself recognizing that the underlying accused functionality was researched, designed, and developed in the transferee venue. *Id.* at *7. We concluded that the district court had erred in minimizing that local interest in relying merely on the fact that Ikorongo Texas's claims specifically related to infringement in the Western District of Texas. *Id.* Those infringement allegations, we explained, gave plaintiffs' chosen forum no more of a local interest than the Northern District of California or any other venue. *Id.*

In this case, we see no basis for a disposition different from the ones reached in *Samsung*. The district court here relied on the same improper grounds as in *Samsung* to diminish the clear convenience of the Northern District of California. The reasons for not finding judicial economy considerations to override the clear convenience of the transferee venue also apply with even more force here. Though the district court in this case relied on the co-pending case against Lyft, Inc. as well as Bumble, both of those litigations involve entirely different underlying functionality and the Samsung Electronics Co., Ltd. et al. and LG Electronics Inc. et al. litigations have now been directed to be transferred to Northern California. In addition, the district court clearly erred in negating the transferee venue's strong local interest by relying merely on the fact that plaintiffs alleged infringement in the Western District of Texas.

Accordingly,

IT IS ORDERED THAT:

The petition for a writ of mandamus is granted. The district court's May 26, 2021 order denying transfer is vacated, and the district court is directed to grant Uber's motion to the extent that the case is transferred to the United States District Court for the Northern District of California under 28 U.S.C. § 1404(a).

FOR THE COURT

July 08, 2021	/s/ Peter R. Marksteiner
Date	Peter R. Marksteiner
	Clerk of Court

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RELEVANT STATUTES

28 U.S.C. § 1400(b)

Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.

28 U.S.C. § 1404(a)

For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I certify that the foregoing is proportionately spaced and contains 3,809 words excluding parts of the document exempted by Rule 32(a)(7)(B)(iii).

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August 2, 2021

Counsel for Respondent

CERTIFICATE OF SERVICE

I certify that on August 2, 2021, the foregoing was served on all parties or their counsel of record through the CM/ECF system and by First Class Mail, postage prepaid.

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