

Gilstrap Refuses To Send Apple, Amazon IP Cases To Calif.

By **Matthew Bultman**

Law360 (December 2, 2019, 5:20 PM EST) -- Facing separate patent lawsuits, Apple and Amazon have each lost their bids to have the cases moved from the Eastern District of Texas, with the district's chief judge in both instances finding California would not be a more convenient place to litigate.

Judge Rodney Gilstrap entered a pair of orders Wednesday denying requests from Apple and Amazon to have their respective lawsuits transferred from East Texas to the Northern District of California. The judge said neither company had shown California was "clearly more convenient."

The case against Amazon was brought in April by a company called Vocalife, which has alleged that Amazon's Echo smart speakers infringe a patent covering a microphone system. Vocalife has an office in Plano, and its president is one of the patent's inventors.

That same month, Apple was hit with a lawsuit accusing it of infringing a Quest NetTech patent on credit card technology with its Apple Pay service. NetTech's headquarters are across the street from the federal courthouse in Marshall.

In each case, Judge Gilstrap considered the relative ease of access to documents and evidence.

With respect to Amazon, the judge said much of the retailer's evidence was at its headquarters in Seattle, meaning that whether the case was tried in Texas or in California, the company would be required to transport certain documents.

"It is not entirely clear that moving (largely electronic) documents from Seattle to San Francisco is more convenient than moving documents from Seattle to this district," Judge Gilstrap wrote.

While Apple is based in Cupertino, Calif., just outside of San Jose, the judge said this didn't tip the scales far in the iPhone maker's favor. He noted that in today's digital world large amounts of documents can be delivered "with the click of a mouse."

"No one seriously doubts that Apple's relevant documents are digitized and readily deliverable by electronic means," wrote the judge, adding there was no indication that relevant witnesses would be unwilling or unavailable to travel to East Texas.

The judge in each case also pointed out that the time to trial for patent suits is typically shorter in the Eastern District of Texas than in Northern California, which he said weighed against transferring the cases. The judge also took into account both plaintiffs' ties to Texas.

"Having analyzed the factors, the court finds that Amazon has failed to meet its significant burden to show that the Northern District of California is clearly more convenient than the Eastern District of Texas," the judge wrote, while making similar findings with respect to Apple.

Alfred Fabricant of Brown Rudnick LLP, who represents both Vocalife and NetTech, said the court's rulings correctly captured the analysis of the factors that are taken into account in the context of a motion to transfer.

He noted, in particular, Judge Gilstrap's comments regarding electronic document production.

"I hope the law will move in that direction more strongly, where the courts acknowledge the fact that electronic discovery is the way things take place and people are no longer going to look at documents in some warehouse in some city," he said.

Attorneys for Apple and Amazon could not immediately be reached for comment.

Apple is represented by Claudia Frost, Travis Jensen and Tyler Miller of Orrick Herrington & Sutcliffe LLP, and by Melissa Smith of Gillam & Smith LLP.

Amazon is represented by Joseph Re, Colin Heideman, Jeremy Anapol, Joseph Cianfrani and Kendall Loebbaka of Knobbe Martens, and by Jennifer Doan and Kyle Akin of Haltom & Doan.

NetTech is represented by Alfred Fabricant, Vincent Rubino, Lawrence Drucker and Peter Lambrianakos of Brown Rudnick LLP, and by Justin Truelove of Truelove Law Firm.

Vocalife is represented by Alfred Fabricant, Alessandra Messing, Justine Park, Lawrence Drucker and Vincent Rubino of Brown Rudnick LLP, and by Jennifer Truelove and Samuel Baxter of McKool Smith PC.

The cases are Vocalife LLC v. Amazon.com Inc. et al., case number 19-cv-00123, and Quest NetTech Corp. v. Apple Inc., case number 19-cv-00118, in the U.S. District Court for the Eastern District of Texas.

--Editing by John Campbell.