IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

IMMERSION CORPORATION,	§	
	§	
Plaintiff,	§	Civil Action No. 6:22-cv-00541-ADA
	§	
v.	§	**Filed Under Seal**
	§	
META PLATFORMS, INC., *f/k/a* FACEBOOK, INC.,	§	
	§	
	§	
Defendant.	§	
	§	
	§	

DEFENDANT META PLATFORMS, INC.'S MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA

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I. INTRODUCTION

Neither side calls the Waco division home. To the contrary, Plaintiff was headquartered for 28+ years in the Northern District of California ("NDCA"), recently relocating to a small space in Florida, and Defendant is based in NDCA. More than half of the named inventors of the patents-in-suit reside in California, along with Plaintiff's CEO. [redacted] This case belongs in NDCA.[1]

II. BACKGROUND

A. Plaintiff Immersion's Longstanding NDCA Roots.

From 1993 to early this year, Plaintiff Immersion was based in NDCA.[2] Notably, Immersion's current CEO, Francis Jose, still appears to reside in San Jose, in NDCA. (Ex. 1, Ex. 2.) Mr. Jose's work at Immersion has included: "draft[ing], negotiat[ing] and manag[ing] various revenue-generating agreements," including "patent license agreements," "[m]anag[ing] all aspects of Immersion's licensing business" and "assist[ing] in formulation and execution of short-term and long-term licensing strategy[.]" (Ex. 1 at 1-2.)

In February 2022, Immersion moved its headquarters from its long-time home in NDCA to a small (1,390 square foot) office in Aventura, Florida. (Ex. 3 at 31.) Plaintiff has no relevant ties to Waco.[3] Indeed, Plaintiff does not list any office leases in Texas in its SEC filings. (Ex. 3

[1] Meta alternatively requests transfer to the Austin division. Plaintiff Immersion stated it agrees that Austin is a convenient forum under 28 U.S.C. § 1404(a).

[2] (*E.g.*, Ex. 4 at 8; Ex. 5 at 1; Ex. 6; Ex. 7 at 1; Ex. 8; Ex. 9 at 1; Ex. 3 at 31.) In 2020, Immersion moved its headquarters to San Francisco, after transitioning certain functions to Canada in 2019-2020. (Ex. 9 at 1; Ex. 3 at 31.)

[3] While it appears that Plaintiff's current CTO, Yeshwant Muthusamy, resides in the Dallas area – in the Northern District of Texas – Dr. Muthusamy has been at Immersion only since 2020, and it is unclear what, if any, relevant information he would have with respect to this matter. (Ex. 10; Ex. 2.) Immersion's CFO appears to reside in Montreal. (Ex. 11; Ex. 2.)

at 31.) Instead, Plaintiff's sources of proof appear to be in Montreal, Florida, or with employees or former employees in NDCA, as described below.

B. The Majority of the Named Inventors Live in California, as do Other Former Immersion Employees Named on Prior Art Patents.

Immersion asserts six patents,[4] collectively listing fifteen named inventors. None appear to be current Immersion employees, and none appear to have any relevant ties to Waco or Texas.

Seven of the named inventors appear to reside in NDCA: Robert Heubel (San Leandro), Marcus Aurelius Bothsa (San Francisco), Allan Visitacion (San Francisco Bay Area), Trevor Jones (Campbell), Daniel Parker (San Jose), Keith Reed (San Jose), and Jessica Ferro (San Francisco Bay Area). (Exs. 12-18.) An eighth inventor, Christopher Ullrich, resides in Ventura, California, in Southern California, which is significantly closer to NDCA than to Waco. (Ex. 20.)

Four of the remaining inventors appear to reside in Canada, a fifth in Oslo, Norway, and a sixth in Japan. (Exs. 19, 21-25.) Finally, one inventor (David Birnbaum) resides in Franklin, Tennessee. (Ex. 26.) But Mr. Birnbaum works at a California-based company and previously resided in California, including in NDCA during his work on at least one Asserted Patent.[5]

Also, former Immersion employees who are listed as inventors on prior art patents reside in NDCA, including Mike Levin, Kenneth Martin, Erik Shahoian, Chris Hasser, Jonathan Beamer, Bruce Schena, and Shoichi Endo. (Exs. 27-41.) Immersion also purchased and sold a division devoted to a prior art system, CyberGlove, and NDCA-based former employees James Kramer, Trevor Jones and Faizal Yazadi may have knowledge regarding this system. (Exs. 42-45.)

[4] U.S. Patent Nos. 8,469,806, 8,896,524, 9,727,217, 10,248,298, 10,269,222 and 10,664,143 (the "Asserted Patents"). (Dkt. 1, Exs. A-F.)
[5] (*See* Ex. 26 (listing Los Angeles company); '524 patent (listing Oakland, California).)

C. Defendant and the Accused Products Have Strong Ties to NDCA.

1. Defendant Meta is Headquartered in NDCA with a Significant Percentage of Its Workforce Based in NDCA.

Defendant Meta Platforms, Inc. ("Meta," formerly known as Facebook, Inc.) has had its headquarters and principal place of business in NDCA since 2004. (Woodhouse Decl. ¶ 2.) As of August 31, 2022, [redacted] of Meta's U.S.-based employees ([redacted] people) work in Meta's Bay Area offices or work remotely within the Bay Area. (*Id.* ¶¶ 4, 5.)

Oculus VR, Inc. was founded in Southern California. (*Id.* ¶ 3.) In 2014, Meta acquired Oculus VR, resulting in Oculus VR, LLC, which is now called Meta Platforms Technologies, LLC. (*Id.*) Oculus moved its headquarters to NDCA shortly after the acquisition and Meta Platforms Technologies remains headquartered in NDCA today. (*Id.*) Meta employees working on Meta's VR products are a part of Meta's Reality Labs organization. (*Id.*) As of August 31, 2022, [redacted] of Meta's U.S.-based employees within the Reality Labs organization ([redacted] people) work in Meta's Bay Area offices or work remotely within the Bay Area. (*Id.* ¶¶ 4, 5.)[6]

2. [redacted] Plaintiff's Complaint accuses Meta's Quest 2, game engines (Unity, Unreal Engine, and Native Development), and certain software (*e.g.*, *Horizon Worlds*, *First Steps*, *Beat Saber*, and *Creed: Rise to Glory*). (Dkt. 1, Compl. ¶ 2.) Plaintiff's preliminary infringement contentions ("PIC") accuse (1) the Quest 2 headset and its controllers with actuators; (2) the Unity Engine, Unreal Engine, and Native Engine

[6] In contrast to the NDCA Bay Area (29,731 NDCA people at Meta; 5,252 NDCA people in Reality Labs), only 6.2% of Meta's U.S.-based employees and 2.9% of Meta's U.S.-based Reality Labs employees work in the state of Texas. (Woodhouse Decl. ¶¶ 4, 5.)

(Oculus Mobile SDK), associated APIs, and client-server architecture; (3) Oculus Insight's tracking of controllers and the user's head; and (4) first-party content (*i.e.*, content made by Meta and its studios) and third-party content (*i.e.*, content made by third parties).[7]

[redacted]

[7] Exemplary cites are collected in footnotes 4 to 7 of the Woodhouse Declaration. Throughout this brief, these instrumentalities will collectively be referred to as the "accused instrumentalities;" however, it should be understood that when discussing Meta employees' knowledge and work on these products, the discussion is intended to address products Meta designed and developed.

[redacted]

[redacted]

[redacted]

[8] [redacted]

[redacted]

[redacted]

3. [redacted]

[redacted]

D. Relevant Third Parties Are In NDCA and Worldwide.

1. Game Engine Developers Are in NDCA or Have Offices in NDCA.

Plaintiff accuses Meta's Unity and Unreal integrations, which can be used by developers in creating content. Third-party Unity Software Inc., based in San Francisco in NDCA, provides the Unity platform – described "as a comprehensive set of software solutions to create and operate real-time 2D and 3D content for multiple platforms, including mobile phones, tablets, PCs, consoles, and augmented and virtual reality devices." (Ex. 50 at face page, 1.) Third-party Epic Games, Inc. provides the Unreal Engine – described as "power[ing] the world's leading games[.]" (Ex. 51.) Epic Games is based in Cary, North Carolina, with 3 offices in NDCA (Larkspur, Novato, and San Francisco). (*Id.*)

2. Content Creators Are in NDCA and Worldwide.

Plaintiff appears to be relying on first-party and third-party content in its complaint and PICs. For example, it invokes first-party content, such as Meta's *Horizon Worlds* and *First Steps* content, as well as *Beat Saber*, a game published by a Meta-owned studio in Prague, Czechia. (Ex. 52.) Plaintiff also invokes third-party content, including *Creed: Rise to Glory*, developed by Survios, a company based in Southern California. (Ex. 53.)

In addition, studios producing Meta content are based in NDCA, including, for example, LucasFilm's ILMxLAB (offering Star Wars content such as *Vader Immortal*) and Electronic Arts (publisher of *Medal of Honor*). (Ex. 54; Ex. 55; Ex. 56; Ex. 57; Ex. 58.) There are also studios throughout the world creating content for the Quest 2.[9] Although Plaintiff's recently served PICs appear to invoke certain content allegedly developed by studios in the Austin area, Plaintiff has not suggested this case is limited to only content created in Texas. Rather, just as Meta sells its

[9] (*E.g.*, Ex. 59; Ex. 60 (Harmonix Music Systems based in Boston); Ex. 61; Ex. 62 (Rec Room Inc. based in Seattle); Ex. 63; Ex. 64 (Warpfrog based in France).)

VR devices across the country, it offers content from creators across the country (and the globe).

3. Many Third-Party Licensees Are in NDCA or the West Coast.

Plaintiff has a litigious history. (Ex. 65.) As a result, Plaintiff has obtained patent licenses from various companies headquartered in NDCA, including Apple (based in Cupertino), Fitbit (based in San Francisco), Google (based in Mountain View), and Sony Interactive Entertainment (based in San Mateo, which encompasses prior licensee Sony Computer Entertainment). (*See* Exs. 66-76.) These third parties, based in NDCA, likely have relevant information regarding licensing, prior art, and damages issues.

Other potentially relevant third parties are in Washington state or have offices on the West Coast. For example, other patent licensees include Seattle-area based Microsoft, which has numerous offices in NDCA; Nintendo and HTC, whose U.S. headquarters are in the Seattle area; Motorola Mobility, based in Chicago, with an office in Sunnyvale in NDCA; and Samsung Electronics, with several offices in NDCA. (*See* Exs. 77-86.)

III. LEGAL STANDARD

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer" a civil action to any district "where it might have been brought[.]" 28 U.S.C. § 1404(a). The Fifth Circuit also considers "private" and "public" factors to determine whether transfer is appropriate, where the private factors are: "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive"; and the public factors are: "(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws [or in] the application of foreign law." *In re Volkswagen*

of Am. Inc., 545 F.3d 304, 312, 315 (5th Cir. 2008) (citations omitted). Plaintiff's choice of venue is not a factor in the transfer analysis. *In re Nintendo Co.*, 589 F.3d 1194, 1200 (Fed. Cir. 2009).

IV. ARGUMENT

A. This Action Could Have Been Brought in NDCA.

This case could have been brought in NDCA, as Meta's headquarters and principal place of business are located in NDCA. 28 U.S.C. § 1400(b); Woodhouse Decl. ¶¶ 2-5.

B. The Private Factors Weigh Heavily in Favor of Transfer to NDCA.

1. The Sources of Proof Weigh In Favor of Transfer to NDCA.

Neither side has any relevant connection to the Waco division.

Defendant Meta's Sources of Proof. "In patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer." *HD Silicon Sols. v. Microchip Tech*, No. 20-CV-01092-ADA, 2021 WL 4953884, at *2 (W.D. Tex. Oct. 25, 2021) (citation omitted); *cf. In re Apple*, 979 F.3d 1332, 1340 (Fed. Cir. 2020) ("the movant need not show that all relevant documents are located in the transferee venue").

Plaintiff Immersion's Sources of Proof. For 28+ years, Immersion was headquartered in NDCA. At least seven of the named inventors – who are third parties – also reside in NDCA. (Exs. 12-18.) Plaintiff's sources of proof are thus likely in California, Montreal, Florida, or with employees or former employees, including with Immersion's CEO, Mr. Jose, in NDCA. Meta is unaware of any Immersion office or employee in WDTX.

The Federal Circuit has criticized litigation-inspired attempts to create connections with a forum. *E.g.*, *In re Zimmer Holdings*, 609 F.3d 1378, 1381 (Fed. Cir. 2010) (transport of copies of prosecution files to Texas was "recent, ephemeral, and an artifact of litigation," which, along with other attempts to manipulate venue, "should be given [no] weight in the transfer analysis"). Plaintiff's counsel noted in its recent PICs that certain notebooks were available for review in Waco. (Ex. 46, PICs at 3.)

[redacted]

2. Many Relevant Third Parties Are Subject to NDCA's Subpoena Power.

Numerous third-party witnesses would be subject to NDCA's subpoena power. ***At least 7 (possibly 8) of the named inventors reside in NDCA***, and another is in Southern California. No inventor appears to reside in Texas, let alone WDTX or the Waco division. In addition, prominent licensees of Immersion, including Apple, Google, Fitbit, and Sony Interactive, are all based in NDCA, as is Unity Software, maker of the Unity platform that works with the accused Unity integration, and several game studios that make content for the Quest 2 product. Where a movant identifies "multiple third-party witnesses and shown that they are overwhelmingly located within the subpoena power of only the transferee venue," this factor favors transfer regardless of whether the movant demonstrates the unwillingness of a given third party to testify. *In re Hulu*, No. 2021-142, 2021 WL 3278194, at *4 (Fed. Cir. Aug. 2, 2021).

There are also relevant third parties outside of NDCA, including elsewhere in California (Mr. Ullrich, Survios), in Seattle (Microsoft, Nintendo, HTC, Rec Room), and in foreign countries (Canada-based inventors, Warpfrog).[10] Although Plaintiff's PICs appear to invoke a few game studios in Austin, Plaintiff does not appear to be confining its case to Texas or Austin, nor has Plaintiff shown any Austin-based game studios are somehow more relevant to the exclusion of other game studios in NDCA or elsewhere in the world.[11]

This factor weighs heavily in favor of transfer to NDCA.

[10] (*See* Exs. 20, 94; Ex. 53; Exs. 82, 83, 84, 62; Exs. 21-24; Ex. 64.)
[11] To the extent Plaintiff asserts that the Austin-based game studios are relevant and important, this would support intra-district transfer to Austin – not keeping the case in Waco.

3. The Costs for Willing Witnesses Would be Lower in NDCA.

"The convenience of witnesses is the single most important factor in the transfer analysis." *Triller v. ByteDance*, No. 20-CV-00693-ADA, 2021 WL 3913589, at *5 (W.D. Tex. July 9, 2021) (granting transfer to NDCA). The cost of attendance for willing witnesses, including party witnesses, is significantly lower in NDCA than in WDTX. [redacted] *In re Volkswagen AG*, 371 F.3d 201, 204-05 (5th

[12] [redacted] is much closer to NDCA than WDTX, with many direct flights each day. (Exs. 87-90.)

Cir. 2004) (when the distance is "more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled."). NDCA, with three airports, is more convenient to Meta's witnesses. *See also Sonrai Memory v. Oracle*, No. 21-CV-00116, 2022 WL 315023, at *3 (W.D. Tex. Feb. 2, 2022) ("[n]either party has witnesses in Waco").

Immersion's CEO, who resides in NDCA, would also find testifying in NDCA less costly and more convenient. Similarly, even if any California-based inventors were willing to travel to WDTX, they would incur fewer costs and less disruption to their lives were they to testify in NDCA. Other potentially relevant Immersion employees and inventors in Montreal, Canada (or Norway) would need to travel a significant distance regardless of the location of trial. *Accord In re Atlassian*, No. 2021-177, 2021 WL 5292268, at *3 (Fed. Cir. Nov. 15, 2021) (employees overseas would spend "significantly less time traveling to the Northern District of California because there is no major airport in the Waco Division of the Western District of Texas").

In an obvious attempt to create connections with Texas, the Complaint invoked four Meta individuals in Austin. (Complaint ¶ 13.) But even when individuals live in Texas, this factor may tip in favor of transfer. *Hulu*, 2021 WL 3278194, at *5. The four people do not help Plaintiff. Two are *recruiters* – [redacted] – who help find people to hire, [redacted], and would have no relevant information for this patent case.[13] (Woodhouse Decl. ¶ 29.) [redacted]

[13] Immersion inaccurately describes [redacted] title as "Design Director, Virtual Reality," when her title is "Technical Sourcer, Reality Labs – Specialized Tech (AR/VR)." (Ex. 49.)

[redacted] And, as of September 9, 2022, [redacted] of Meta's U.S.-based employees ([redacted] people) work in the NDCA Bay Area. (*Id.* ¶¶ 4, 5.) [redacted] people in Meta's Reality Labs organization ([redacted]) work in the NDCA Bay Area. (*Id.* ¶¶ 4, 5.) In contrast, only approximately [redacted] of Meta's Reality Labs organization is based in Texas. [redacted] (*Id.* ¶ 28.) [redacted] (*Id.*) [redacted] (*Id.*.) [redacted] (*Id.*)

This factor heavily favors transfer.

4. Other Practical Issues Favor Transfer to NDCA.

These patents have not previously been litigated and there are no co-pending suits. The primary consideration here is that of convenience of witnesses, which heavily favors transfer.

C. The Public Factors Favor Transfer or Are Neutral.

1. Court Congestion is Neutral.

The first public interest factor is neutral. The WDTX averaged 984 cases per active judgeship and NDCA 703 for the previous 12 months, and the time to trial has averaged 28.3

months in WDTX and 34.7 months in NDCA. (Ex. 91.) These differences – particularly in view of COVID-19 surges – are not significant enough to favor WDTX, as this factor is "the most speculative" and "case-disposition statistics may not always tell the whole story." *In re Genentech*, 566 F.3d 1338, 1347 (Fed. Cir. 2009). This factor should be provided little weight in the analysis. *In re Apple*, 2022 WL 1676400, at *2.

2. The Local Interests of NDCA Favor Transfer.

This factor favors transfer. *In re Google*, No. 2021-178, 2021 WL 5292267, at *2 (Fed. Cir. Nov. 15, 2021) (finding local interest factor favored transfer when design and development of the accused products took place in the transferee forum, and Plaintiff and several inventors resided there). Plaintiff Immersion's headquarters were in NDCA from its founding through earlier this year. Immersion's CEO still resides in NDCA. At least 7 named inventors live in NDCA. Defendant Meta's headquarters have been in NDCA for over a decade. (Woodhouse Decl. ¶ 2.) And, much of the design and development of the accused instrumentalities took place in NDCA. (*Id*. ¶¶ 8-18.) Both parties have strong ties to NDCA.

3. The Last Two Public Factors Are Neutral.

As both this Court and NDCA are familiar with patent law, and as there is no foreign law at issue in this case, these factors are both neutral.

V. CONCLUSION

NDCA is clearly the more convenient venue. Meta respectfully requests the Court transfer this action to NDCA, pursuant to 28 U.S.C. § 1404(a), or in the alternative, transfer this action to the Austin division.

Dated: September 12, 2022

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CERTIFICATE OF CONFERENCE

In accordance with Local Rule CV-7(i), counsel for the parties conferred on September 9 and September 12, 2022. Immersion informed Meta that it opposes Meta's motion to transfer this action to the Northern District of California, and that it agrees that Austin is a convenient forum under 28 U.S.C. § 1404(a).

Dated: September 12, 2022

/s/ Phillip E. Morton
Phillip E. Morton

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5, I hereby certify that, on September 12, 2022, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system.

/s/ Heidi L. Keefe
Heidi L. Keefe