

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DIGITAL BROADCASTING SOLUTIONS,
LLC,

Plaintiff,

V.

DISH NETWORK L.L.C.,

Defendant.

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CIVIL ACTION NO. 2:22-CV-00335-JRG

ORDER

Before the Court is the Motion Pursuant to 28 U.S.C. § 1404(a) to Transfer to the District of Colorado (the “Motion”) filed by Defendant DISH Network LLC (“DISH”). (Dkt. No. 20.) In the Motion, DISH requests that the Court transfer the above-captioned case from this District (“EDTX”) to the District of Colorado (“DCO”) pursuant to 28 U.S.C. § 1404(a). (*Id.*) Plaintiff Digital Broadcasting Solutions LLC (“DBS”) opposes the Motion, arguing that DISH failed to show that DCO is a clearly more convenient forum than EDTX. (*See generally* Dkt. No. 27 at 1.)

I. BACKGROUND

On August 29, 2022, DBS filed a complaint asserting infringement of U.S. Patent Nos. 8,929,710 and 9,538,122 (collectively, the “Asserted Patents”). (Dkt. No. 1, ¶ 20 (“Complaint”).) The Asserted Patents are directed generally to “innovations in time shifting video programs that relate to a system and method allowing a digital video recorder (‘DVR’) to skip commercials, especially when the commercials are no longer relevant given the passage of time, without altering the content of the original program.” (*Id.*, ¶ 21.) The sole inventor of the Asserted Patents is Todd Fitzsimmons, who is also the founder of DBS. (*Id.*, ¶ 20.) DBS accuses various DISH products of infringement, including the DISH Hopper, DISH Hopper 2, DISH Hopper 3, Hopper with Sling,

and Hopper Duo (collectively, the “Accused Products”). (*Id.*, ¶ 45.)

a. DISH

DISH is a Colorado company with its headquarters in Englewood, Colorado. (Dkt. No. 20 at 1; *see also* Dkt. No. 1, ¶ 2.) The Accused Products were developed by DISH in Colorado. (Dkt. No. 20 at 1; *see also id.* at 5–6.) DISH contends that “current and former DISH engineers” who worked on the Accused Products,¹ “as well as relevant iterations of DISH’s systems incorporating the accused technology dating back to 2007, are located in Colorado.” (*Id.* at 1.) DISH also argues that witnesses “likely to testify about financial, sales, and marketing information are located in Colorado.” (*Id.*) DISH concedes that the Accused Products are used “throughout the United States,” but argues that the same “have no special connection to this District,” unlike in Colorado, where source code, technical documents, and financial documents are located. (*Id.*)

DBS contends that DISH does business in Texas “directly or through intermediaries,” and contends that DISH “maintains regular and established places of business in this [D]istrict through its authorized retailers” in Plano, Argyle, Denton, Aubrey, Sherman, Paris, Sulphur Springs, Emory, Wills Point, Athens, Palestine, Trinity, Lufkin, and Longview, as well as through facilities in Beaumont and McKinney. (Dkt. No. 1, ¶¶ 9, 15–16.) DBS also contends that DISH owns, leases, maintains, and operates “Local Receive Facilities (LRFs)” in this District, in which DISH “stores equipment” and “acquire[s] and transmit[s] local television channels over the DISH spectrum to DISH customers.” (*Id.*, ¶¶ 10–11.) DBS further argues that DISH “employs personnel that install, service, repair, and/or replace equipment associated with the LRFs” and that DISH “may be served with process through its registered agent” in Austin. (*Id.*, ¶¶ 9, 12.) Finally, DBS contends that DISH “did not contest that venue was proper in this forum” in a recent case in this District. (Dkt.

¹ Such engineers include Mark Templeman, Yunfeng Yang, Charlie Zetterower, Robert Sadler, and Dan Minnick. (Dkt. No. 20 at 10.)

No. 1, ¶ 18) (citing *American Patents LLC v. DISH Network Corporation*, Case No. 4:20-cv-00905, Dkt. No. 27 (E.D. Tex. 2021)).

b. DBS

DBS is a Texas limited liability company with its principal place of business in Austin, Texas. (Dkt. No. 1, ¶ 1.) DBS was founded by the inventor of the Asserted Patents, Todd Fitzsimmons. (*Id.*, ¶ 20.) Mr. Fitzsimmons is a resident of California. (Dkt. No. 20 at 7.) DBS contends that for the past twenty years, Mr. Fitzsimmons “has counseled and represented clients in the acquisition, management, enforcement, and protection of intellectual property rights before the USPTO and in several states, including California and Texas.” (Dkt. No. 27 at 3.)

DISH notes that “DBS is a non-practicing entity formed [on June 27, 2022]” and its purported “office” in Austin is actually the office “of DBS’s registered agent and mail-forwarding service.” (Dkt. No. 20 at 6.) This “office” does not bear DBS signage and does not house any DBS employees. (*Id.* at 6–7.) Accordingly, DISH contends that DBS’s “presence” in Texas “appears to be little more than a façade” and that Mr. Fitzsimmons’s contacts with Texas rely wholly on his ownership of DBS. (*Id.* at 7.)

II. LEGAL STANDARD

a. Transfer 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 may have been brought.” 28 U.S.C. § 1404(a). The question of whether a suit “might have been brought” in the transferee forum encompasses subject matter jurisdiction, personal jurisdiction, and propriety of venue. *Viking Technologies, LLC v. Assurant, Inc.*, 2021 WL 3520756, at *1 (E.D. Tex. June 21, 2021) (quoting *Hoffman v. Blaski*, 363 U.S. 335, 343–44 (1960)). If this threshold burden is satisfied, the party seeking transfer must then establish that transfer is warranted in the interest of convenience.

In evaluating a motion to transfer pursuant to § 1404(a), the Court considers the Fifth Circuit’s non-exhaustive list of private and public interest factors. *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) (*Volkswagen I*). The private interest factors include: (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.” (*Id.*) The public interest factors include: (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 of the application of foreign law.” (*Id.*)

While a plaintiff’s choice of venue is not an express factor in this analysis, the appropriate deference afforded to the plaintiff’s choice is reflected in a defendant’s elevated burden of proof. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) (*Volkswagen II*). To support its claim for a transfer under § 1404(a), the defendant must demonstrate that the transferee venue is “*clearly* more convenient” than the venue chosen by the plaintiff. (*Id.*) (emphasis added). Absent such a showing, however, the plaintiff’s choice is to be respected. (*Id.*)

III. ANALYSIS

a. This Case Could Have Been Brought in Colorado

The first issue to consider is whether this case could have been brought in the transferee forum. DBS does not dispute that DISH is a Colorado resident and therefore that this case could have been brought in Colorado. (Dkt. No. 20 at 4; *see also generally* Dkt. No. 27.) Having found that the threshold requirement for transfer under § 1404(a) has been met, the Court now turns to the public and private factors to determine if DISH has established that the DCO is the clearly more convenient forum.

b. Private Interest Factors

1. Relative Ease of Access to Sources of Proof

In considering the relative ease of access to sources of proof, a court looks to determine where evidence, such as documents and physical evidence, is stored. *Volkswagen II*, 545 F.3d at 316. For this factor to weigh in favor of transfer, DISH must show that transfer to the DCO will result in more convenient access to such sources of proof. *See Diem LLC v. BigCommerce, Inc.*, 2017 WL 6729907, at *2 (E.D. Tex. Dec. 28, 2017). The location of evidence bears much more strongly on the transfer analysis when, as in *Volkswagen II*, the evidence is physical in nature. *In re Planned Parenthood Federation of America, Inc.*, 52 F.4th 625, 630 (5th Cir. 2022).

“Most evidence in patent infringement cases comes from the defendants so the place where the defendant’s documents are kept weighs in favor of transfer to that location.” *R2 Sol’ns LLC v. Target Corp.*, 2021 WL 2550908, at *2 (E.D. Tex. June 22, 2021) (citations omitted). “While electronic storage of documents makes them more widely accessible than was true in the past, the fact that documents can often be accessed remotely does not render the sources of proof factor irrelevant.” *In re Juniper Networks, Inc.*, 14 F.4th 1313, 1321 (Fed. Cir. 2021); *see also In re DISH Network L.L.C.*, 2021 WL 4911981, at *2 (Fed. Cir. Oct. 21, 2021) (finding that the center of gravity in a case against DISH was “clearly in Colorado,” considering both physical and electronic documents). DISH contends that documents relevant to the Accused Products, even those stored electronically, are “kept” in DISH’s headquarters in Englewood, Colorado, as well as in a nearby engineering office, also in Englewood. (Dkt. No. 20 at 5.)² Such relevant documents include design

² DBS notes that DISH “concedes that any relevant electronically stored documents located outside of Colorado ‘are accessible to database administrators in Colorado’” to support its argument that transferring this case to DCO “would therefore not make access to sources of proof more convenient for anyone.” (Dkt. No. 27 at 6.) The Court is puzzled by this assertion because, rather than support DBS’s argument, the fact that administrators *in Colorado* are the individuals who have access to electronic documents stored elsewhere supports *DISH’s* argument that the DCO is a more convenient location for sources of proof, both physical and electronic.

and development documents, documents related to DISH's prior art patents, source code, marketing documents, and financial records. (*Id.*)

DBS contends that even though the “bulk of the relevant evidence usually comes from the accused infringer,” in cases “where evidence is dispersed across venues, this private interest factor will be neutral.” (Dkt. No. 27 at 2–3.) DBS argues, based on a declaration from DBS's owner, Mr. Fitzsimmons, that DISH's non-witness evidence in this case is “dispersed across multiple venues,” including Texas, California, Colorado, Wyoming, Kentucky, Pennsylvania, and Florida. (*Id.* at 3.)³ DBS also purports to have gathered these facts from “sworn statements from DISH submitted in prior litigation involving DISH's digital video recorders,” including *Fox Broadcasting Company*, a case from 2013 in a different judicial district. (*Id.* at 4 (citing *Fox Broadcasting Company, Inc. v. DISH Network LLC*, 723 F.3d 1067, 1072 (9th Cir. 2013))).

DBS also argues that there is a “dispute over whether DISH's numerous facilities in this [D]istrict—including authorized resellers and local receive facilities—contain sources of proof.” (Dkt. No. 27 at 5.) Since the locations in this District are where DBS contends the “DVRs containing the accused technology are sold and serviced,” DBS argues there is “no[] dispute that these locations likely contain relevant documents.” (*Id.*)

DISH concedes that it has certain operations in this District, including its authorized retailers and LRFs, but argues that “none of these operations are relevant to the present dispute.” (Dkt. No. 20 at 5.) The authorized retailers are “independently owned retailed locations that are authorized to solicit customer orders for DISH services and equipment,” but are “not DISH facilities and do not have DISH employees.” (*Id.*) Similarly, the LRFs are merely the locations

³ DISH notes that Mr. Fitzsimmons, the founder of DBS, “does not have personal knowledge of where DISH maintains its documents” and therefore Mr. Fitzsimmons' “self-serving” declaration should be given little weight. (*See, e.g.*, Dkt. No. 37 at 1–2, n.1.) The Court agrees.

“where DISH receives signals for local stations” and “have nothing to do with the development or provision” of the Accused Products. (*Id.* at 5–6.) DISH contends that its facilities in Texas house “few (if any) relevant documents” as compared to DISH’s headquarters in Colorado. (*Id.*)

Finally, DISH notes that DBS “is not likely” to have sources of proof located in Texas, given that DBS only has one employee—located in California—and only a mailing address in Austin (at the office of its registered agent). (Dkt. No. 20 at 6–7.) DBS does not dispute this, and represents that “DBS’s documents related to the invention and the prosecution of the Asserted Patents are primarily located at Mr. Fitzsimmons’s law office...in *Gardena, California*.” (Dkt. No. 27 at 3) (emphasis added).

As the Federal Circuit has noted, “the bulk of the relevant evidence usually comes from the accused infringer.” *In re Genentech, Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009). Here, the accused infringer, DISH, maintains the evidence related to the Accused Products at its offices in Colorado. Such evidence is both physical and electronic in nature. DBS does not dispute that the “bulk of the relevant evidence” will come from DISH, but only disputes where such evidence is stored. However, aside from attorney argument casting doubt on the veracity of DISH’s representations and declarations, DBS submits no evidence showing that the sources of proof related to the Accused Products in this case are located anywhere in Texas. The Court is not persuaded that the declaration of DBS’s own founder, Mr. Fitzsimmons, should carry material weight when it opines on the location and maintenance of DISH’s documentary evidence, especially given that venue discovery was not conducted in this case. Mr. Fitzsimmons’s declaration does not explain how he would have personal and reliable information on this topic.

2. Availability of Compulsory Process

This factor instructs the Court to consider the availability of compulsory process to secure the attendance of witnesses, particularly non-party witnesses whose attendance may need to be

secured by a court order. *Volkswagen II*, 545 F.3d at 316. A district court’s subpoena power is governed by Federal Rule of Civil Procedure 45. For purposes of § 1404(a), there are three important parts to Rule 45. See *VirtualAgility, Inc. v. Salesforce.com, Inc.*, 2014 WL 459719, at *4 (E.D. Tex. Jan. 31, 2014) (explaining 2013 amendments to Rule 45). First, a district court has subpoena power over witnesses that live or work within 100 miles of the courthouse. Fed. R. Civ. P. 45(c)(1)(A). Second, a district court has subpoena power over residents of the state in which the district court sits—a party or a party’s officer that lives or works in the state can be compelled to attend trial, and non-party residents can be similarly compelled as long as their attendance would not result in “substantial expense.” Fed. R. Civ. P. 45(c)(1)(B)(i)–(ii). Third, a district court has nationwide subpoena power to compel attendance of a nonparty witness at a deposition within 100 miles of where the witness lives or works. Fed. R. Civ. P. 45(a)(2), 45(c)(1).

In its Motion, DISH identifies Steve Casagrande as a “critical” non-party witness relevant to this case. (Dkt. No. 20 at 8.) Mr. Casagrande is a “former DISH employee who resides in Colorado and likely has relevant knowledge.” (*Id.*) Specifically, “Mr. Casagrande worked for DISH as a Director of Systems Engineering for 16 years and retired in 2019.” (*Id.*) He is a “named inventor on a DISH patent that is prior art to the patents asserted in this matter...and has deep knowledge of the accused products and services.” (*Id.* at 8–9.) In addition, “because the development of the accused products and features occurred in Colorado, not Texas,” DISH contends that “it is far more likely that any other witnesses with relevant knowledge that come to light during discovery will be in Colorado and not in Texas.” (*Id.* at 9.)

In response, DBS contends that this factor is neutral “because DISH only identifies one third-party witness in Colorado with relevant information.” (Dkt. No. 27 at 8.) DBS does not argue that Mr. Casagrande’s testimony is unimportant or irrelevant to the case. (*Id.*) Rather, DBS

contends that DISH “admitted,” in a California litigation from 2015, that there are “at least six individuals who developed the Sling technology” incorporated into the Accused Products who are “no longer affiliated” with DISH. (*Id.* (quoting *Qurio Holdings, Inc. v. Dish Network Corp.*, 2015 U.S. Dist. LEXIS 89406, at *14 (N.D. Cal. July 9, 2015)).) DBS contends that the testimony of those “Sling” individuals “may be particularly relevant here because DBS alleges that DISH had pre-suit knowledge” of one of the Asserted Patents based on the prosecution of a patent by Sling, a DISH subsidiary. (Dkt. No. 27 at 8.) Further, citing the *Fox Broadcasting* case, DBS posits that “there are likely additional non-party witnesses located in Jacksonville, Florida, Kentucky, Pittsburgh, Pennsylvania, and Cheyenne, Wyoming.” (*Id.* at 9 (citing *Fox Broadcasting*, 723 F.3d 1067).)

DISH represents that one of its most “crucial” witnesses in this case is a non-party witness located in Colorado. (Dkt. No. 20 at 8.) DBS contends that witnesses involved in earlier DISH litigation will also be relevant to this case. (*See generally* Dkt. No. 27 at 8–9.) While Mr. Casagrande appears to be a relevant witness, DISH rests on only this single individual. While DBS has a less definite relevance hook on this issue,⁴ it proffers several more individuals outside Colorado’s subpoena range who have some apparent level of knowledge.

3. Cost of Attendance for Willing Witnesses

The third private interest factor focuses on the cost of attendance for willing witnesses. When considering this factor, the court should consider all potential material and relevant witnesses. *See Alacritech Inc. v. CenturyLink, Inc.*, 2017 WL 4155236, at *5 (E.D. Tex. Sept. 19, 2017). “When the distance between an existing venue for trial of a matter and a proposed venue

⁴ While the DBS witnesses have a relevance hook related to willfulness and pre-suit knowledge, their composite knowledge is of a narrower scope than Mr. Casagrande standing alone. In short, DISH named one strong third-party witness while DBS has named several, albeit less relevant, third-party witnesses. The parties’ proffered third-party witnesses for whom compulsory process might be necessary effectively cancel each other out.

under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be travelled.” *Id.* at 1343 (citing *Volkswagen II*, 545 F.3d at 317). However, as courts applying Fifth Circuit precedent have noted, the convenience of party witnesses is given little weight. *See ADS Sec. L.P. v. Advanced Detection Sec. Servs., Inc.*, 2010 WL 1170976, at *4 (W.D. Tex. Mar. 23, 2010), *report and recommendation adopted in* A-09-CA-773-LY (Dkt. No. 20) (Apr. 14, 2010); *see also Frederick v. Advanced Fin. Sols., Inc.*, 558 F. Supp. 699, 704 (E.D. Tex. 2007) (“The availability and convenience of party-witnesses is generally insignificant because a transfer based on this factor would only shift the inconvenience from movant to nonmovant.”).

DISH contends that this factor is the “most critical factor in any transfer analysis.” (Dkt. No. 20 at 9 (citing *In re Google Inc.*, 2017 WL 977038, at *3 (Fed. Cir. Feb. 23, 2017) (applying Fifth Circuit law)).) According to DISH, attending trial in Colorado “will be far less burdensome for willing witnesses, including the members of DISH’s Colorado-based engineering and product development teams,” the “key engineers who developed the[] products and prior art patents associated with DISH’s PrimeTime Anytime and AutoHop technology, as well as those who are responsible for issuing ongoing software updates for these products.” (Dkt. No. 20 at 10.) DISH argues that for many of the witnesses relevant to this case, Colorado is their “home district” and transferring the case to DCO would “minimiz[e] both monetary costs and ‘the personal costs associated with being away from work, family, and community.’” (*Id.* at 11 (citing *Volkswagen II*, 545 F.3d at 317).) The same is true for DISH employees who may need to come from outside of Colorado, because “they will be able to use DISH’s offices near Denver to minimize the inconveniences caused by being away from their home DISH offices[.]” (Dkt. No. 20 at 11.) DISH also notes that “there are no relevant witnesses anywhere near 100 miles of Marshall, so witnesses

for both sides will suffer...inconveniences” from remaining in EDTX. (*Id.* at 10.) As Denver is a major hub for several airlines, DISH contends that it will be easier for all out-of-state witnesses to travel to DCO than to EDTX, which has fewer airports and public transit options than Denver and the DCO. (*Id.* at 10–11.)

DBS concedes that DISH “identifies five current Colorado employees with relevant knowledge,” but notes that Mr. Fitzsimmons is located in California and “also works in Texas, including in this [D]istrict.” (Dkt. No. 27 at 9.) DBS is a “smaller company than DISH,” so DBS contends that it would be “more financially burdened and inconvenienced by travel” than DISH. (*Id.* at 10.) DBS thus contends that “[t]ransferring the case to Colorado would simply shift convenience from some witnesses to the other party and its witnesses.” (*Id.*)⁵ Accordingly, DBS argues this factor is neutral. (*Id.*)

DBS also notes that in a recent patent infringement case “involving substantially similar accused products,” DISH “did not contest” the propriety of venue in EDTX. (Dkt. No. 20 at 10 (citing *American Patents*, Case No. 4:20-cv-00905, Dkt. No. 27).) DBS argues that DISH’s “failure to challenge venue in *American Patents* indicates that DISH is willing and apparently unburdened by litigating in a forum away from its headquarters and to require its willing witness[es] to travel to Texas.” (Dkt. No. 27 at 10.) DISH dismisses this point as irrelevant and pertaining to a wholly separate case.” (Dkt. No. 37 at 4.)

It is undisputed that most, if not all, of DISH’s witnesses relevant to this case are located in Colorado. Indeed, DBS concedes that there are at least five DISH witnesses in Colorado that possess relevant information. However, DBS seems to argue that the convenience of its own witness, who lives in *California*, should outweigh the convenience of DISH’s several named

⁵ DISH responds that this is inapposite because it was DBS that chose to file suit outside of the state in which Mr. Fitzsimmons resides. (Dkt. No. 37 at 4.)

witnesses who have actual knowledge related to the Accused Products and should result in this case staying in EDTX. DBS names *no* witness, willing or unwilling, located in Texas.

The Court notes, however, that all of the willing witnesses named by DISH are DISH employees. Therefore, although it might be more convenient for those witnesses to remain in Colorado, they will ultimately go wherever DISH instructs them to go, and with no financial impact or personal cost to them. Further, DISH would require only a tiny fraction of its employee base to be involved in this case, while Mr. Fitzsimmons is one hundred percent of DBS's employee base, and he is clearly willing to be in EDTX.

4. All Other Practical Problems

The fourth private interest factor addresses concerns rationally based on judicial economy. *Quest NetTech Corp. v. Apple, Inc.*, 2019 WL 6344267, at *6 (E.D. Tex. Nov. 27, 2019); *see also In re Vistaprint Ltd.*, 628 F.3d 1342, 1346 (Fed. Cir. 2010). The “early stage” of a case “favors transfer.” *Farmobile LLC v. Farmers Edge Inc.*, 2022 WL 2653893, at *5 (E.D. Tex. Jul. 7, 2022).

DISH contends that this factor favors transfer because there are no other pending lawsuits in this District related to the Asserted Patents and because “nothing significant has so far happened in this case.” (Dkt. No. 20 at 12.) DBS argues that this factor is “neutral and does not weigh in favor of transfer” because the case is in its infancy. (Dkt. No. 27 at 11.)

c. Public Interest Factors

1. Administrative Difficulties Flowing from Court Congestion

DISH contends that this factor is neutral. (Dkt. No. 20 at 12.) DBS contends that this factor weighs against transfer because “the median time for filing to disposition in civil cases in this Court is 10 months faster than Colorado.” (Dkt. No. 27 at 11.) This factor appears to weigh slightly against transfer.

2. Local Interest in Having Localized Interest Decided at Home

The Fifth Circuit has explained that “[j]ury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation.” *Volkswagen I*, 371 F.3d at 206. DISH contends that it is “one of Colorado’s largest private employers, with more than 4,000 employees and 4,000 contractors in the Denver metropolitan area alone.” (Dkt. No. 20 at 7.) DISH contends the “work that was done by DISH engineers in Colorado and the success of DISH as a Colorado company directly led to the claims asserted here,” which gives Colorado courts an interest in resolving this dispute. (*Id.*) In contrast, DISH argues that the EDTX “is not home to DBS... or its principals, much less DISH” and the Accused Products “were not developed or designed in Texas.” (*Id.* at 13.) Indeed, DBS’s “only principal and the only named inventor, Mr. Fitzsimmons, resides in California.” (*Id.*)

DBS argues this factor is neutral because DISH’s Motion “improperly discounts the fact that this Court has an interest in this litigation because allegedly infringing products are sold to residents of the Eastern District of Texas, just as they are sold to Colorado residents, and potential acts of infringement affect the residents of both states.” (Dkt. No. 27 at 12 (citing *Network-1 Sec. Solutions, Inc. v. D-Link Corp.*, 433 F. Supp. 2d 795, 801 (E.D. Tex. 2006))) (citations and quotations omitted). DISH does not dispute that its products end up in this District. (Dkt. No. 20 at 13.) However, DISH contends that the “Fifth Circuit has unequivocally rejected the argument that citizens of the venue chosen by the plaintiff have a ‘substantial interest’ in adjudicating a case locally because some allegedly infringing products found their way into the Texas market.” (*Id.* at 13–14 (citing *In re Nintendo Co.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009))). In the case where the accused products are distributed throughout the United States, DISH argues that the “citizens of the venue chosen by the plaintiff have no more or less of a meaningful connection to the case than any other venue.” (Dkt. No. 20 at 14 (citing *Nintendo*, 589 F.3d at 1198).)

DBS also argues that “other sworn evidence from DISH in other cases suggests that the design and development work took place in locations far from Colorado” and contends that DISH’s “significant local presence and activities in the Eastern District of Texas—including 14 regular and established places of business—further renders this factor neutral.” (Dkt. No. 27 at 12.) DISH contends that even if its facilities in this District were relevant—which DISH argues they are not—more “recent appellate case law” than was cited by DBS (relying upon a case from 2006) “confirms a party’s general presence in a particular district does not alone “give that district a special interest in the case” and that “sale of the accused products in the district does not confer a local interest either.” (Dkt. No. 37 at 5 (citing *In re Apple Inc.*, 2022 WL 1196768, at *3 (Fed. Cir. Apr. 22, 2022)).)

Large corporate defendants with thousands of employees at their headquarters are too often tempted to use this factor to insulate them from suit elsewhere—even when their accused products are ubiquitous throughout the nation. This should not be the intended effect of this factor. Instead, this factor is about the rights and interests of the broader communities in the competing venues, not just the corporate campus neighborhood. While DISH has many employees in Englewood, they are a small part of the greater Denver metropolitan area. The Court is persuaded that the presence of DISH in Texas is not unimportant merely because the Accused Products were not developed here. The community where suit is filed and where the population is subject to the use and impact of the Accused Products should be taken into account even if a defendant does not have its own employees based there.

3. Familiarity of the Forum with Governing Law and Avoidance of Unnecessary Problems of Conflicts of Law

The parties agree these factors are neutral. (Dkt. No. 20 at 14; Dkt. No. 27 at 13.) The Court does not dispute this agreement.

IV. CONCLUSION

On balance, and in light of the foregoing, the Court is persuaded that the parties and the Court would benefit from targeted venue discovery in this case. Accordingly, it is **ORDERED** that venue discovery shall be undertaken herein and completed within seventy-five (75) days of this Order. Upon completion of venue discovery, DISH is **ORDERED** to file a supplemental brief not to exceed ten (10) pages explaining how the venue discovery supports its Motion, and DBS is **ORDERED** to file a reply to such supplement, not to exceed ten (10) pages, within ten (10) days of the filing of DISH's supplement, explaining how the venue discovery strengthens their opposition. Thereafter, the Court will revisit these matters.

So ORDERED and SIGNED this 19th day of January, 2023.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE