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

MULTIMODAL MEDIA LLC, Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD. and SAMSUNG ELECTRONICS AMERICA, INC., Defendants.	§ § § § § § § § § §	No. 2:22-cv-00462-JRG-RSP JURY TRIAL DEMANDED [redacted]

DEFENDANTS' MOTION TO TRANSFER VENUE TO THE
NORTHERN DISTRICT OF CALIFORNIA UNDER 28 U.S.C. § 1404(a)

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Defendants Samsung Electronics Co., Ltd. ("SEC") and Samsung Electronics America, Inc. ("SEA") (collectively, "Samsung") respectfully move to transfer this action filed by Multimodal Media LLC ("Multimodal") to the Northern District of California ("NDCA") pursuant to 28 U.S.C. § 1404(a).

Multimodal's infringement theories are based almost entirely on software—Google Messages and Google Meet—developed by third-party Google. Google engineers knowledgeable about the accused Messages and Meet features are located in the NDCA, where Google is based. And Samsung has already identified multiple prior art patents and systems for which the inventors and relevant companies are also located in California, including Cisco, Smith Micro Software, and at least seven inventors of prior art patents and systems. Because the central issues of alleged infringement and invalidity depend on evidence and testimony from third parties, many of whom are in California, and none of whom are in Texas, this case should be transferred to the NDCA.

Conversely, Multimodal's ties to Texas are ephemeral, at best. Multimodal's managers and its parent company are in New York, not Texas. The sole inventor of one asserted patent resides in San Francisco, California, in the NDCA. The inventors of the three other patents are in New Jersey and India, not Texas. And all of the asserted patents were originally developed and assigned by a New Jersey company. Although the Court has familiarity with the asserted patents from other lawsuits filed by Multimodal, this related litigation experience alone cannot override the convenience factors that favor transfer.

I. BACKGROUND

A. Multimodal Accuses Google Functionality Of Infringement

On November 29, 2022, Multimodal filed its Complaint against Samsung alleging infringement of U.S. Patent Nos. 7,929,949 ("'949 Patent"), 8,107,978 ("'978 Patent"), 9,185,227 ("'227 Patent"), and 10,552,030 ("'030 Patent") (collectively, "Asserted Patents"). D.I. 1. The

Asserted Patents generally relate to audio recording, messaging, and call completion functionality for mobile devices. *See, e.g.*, '949 Patent, Abstract (system and method for interactive multimodal messaging); '978 Patent, Abstract (system and method for voice SMS messaging); '227 Patent, Abstract (system and method for completing an incomplete call by a calling party); '030 Patent, Abstract (system and method for gesture-based audio recording).

In its Complaint, Multimodal alleges that Samsung devices directly infringe the Asserted Patents because they run Google-developed software applications. D.I. 1 ¶¶ 20, 24, 35, 46, 55. Multimodal's infringement contentions, served on May 30, 2023, accuse Google Messages (for the '949, '978, and '030 Patents) and Google Meet (for the '227 Patent) of infringing, citing almost exclusively to either Google documentation or evidence of Samsung devices running Google Messages or Google Meet. Exs. 1-4 (Infringement Contentions, Appx. A-D).

B. Plaintiff Multimodal Has Minimal Ties To This District

While Multimodal alleges that it is a Texas limited liability company, D.I. 1 ¶ 1, it lacks any genuine ties to this District. Multimodal's two Managers, Jon Scahill and Timothy Scahill, are New York residents and the CEO and CTO, respectively, of Multimodal's parent corporation, Quest Patent Research Corporation ("Quest"). D.I. 3; Exs. 5-9. Quest is a Delaware Corporation, with a principal place of business in New York, and its website explains that its main business is "IP monetization." Exs. 10-12.

Moreover, Multimodal's alleged principal place of business was, until recently, the offices of its own local counsel, Truelove Law Firm, PLLC. In its 2021 Complaints against ZTE Corporation ("ZTE") and Guangdong OPPO Mobile Telecommunications Corp., Ltd. ("OPPO"), Multimodal identified Truelove's office as its principal place of business. *Multimodal Media LLC v. Guangdong OPPO Mobile Telecomms. Corp.*, No. 2:21-cv-00436 (E.D. Tex.), D.I. 1 ¶ 1; *Multimodal Media LLC v. ZTE Corp.*, No. 2:21-cv-00437 (E.D. Tex.), D.I. 1 ¶ 1. Even now,

[redacted]

Truelove's office is identified as (i) Multimodal's contact address in its Initial Disclosures, (ii) Multimodal's mailing address with the Office of the Comptroller of Texas, and (iii) Multimodal's Registered Agent. Exs. 5, 7. While Multimodal now claims to have its own office at 505 East Travis Street, Suite 208, Marshall, Texas (D.I. 1 ¶ 1), there appear to be no public records supporting Multimodal's putative move to this location. Moreover, that exact address also appears to be the office of Dr. Gerald E. Nissley, Jr., a licensed psychologist. See Ex. 13.

In addition to its lawsuits against Samsung, ZTE, and OPPO, Multimodal has filed suit in this District against TCL Technology Group Corporation ("TCL") asserting the same Asserted Patents. *See Multimodal Media LLC v. TCL Tech. Grp. Corp.*, No. 2-22-cv-00463 (E.D. Tex.).

C. Samsung Party Witnesses And Documents Relevant To The Accused Functionalities Are In Korea

SEC is a Korean corporation with its principal place of business in Suwon, Korea. SEC Decl. ¶ 5. SEA is a subsidiary of SEC and a New York corporation with its principal place of business in Ridgefield Park, NJ. SEA Decl. ¶¶ 4-5. SEA maintains corporate offices across the United States, including in Mountain View, CA, [redacted]

[redacted]

[redacted]

D. Third-Party Google's Witnesses And Documents Are Located In The NDCA

The applications identified in Multimodal's infringement allegations—Google Messages and Google Meet—were developed by Google. Numerous Google employees with relevant technical knowledge about the accused Google applications are based in California or Washington state, as identified in the table below. *See* Exs. 1-4 (Multimodal's infringement claim charts); Messages PM Decl. ¶¶ 2-3; Meet PM Decl. ¶¶ 2-3.

Accused Application and Feature	Location Of Relevant Witnesses
Google Messages ('978 Patent) – accused audio messaging functionality (Messages PM Decl. ¶¶ 2, 3a-b)	[redacted]
Google Messages – accused audio recording user interface ('030 Patent) (*Id.* ¶ 3c)	[redacted]
Google Messages – accused multimedia and/or audio messaging functionality ('949, '978, and '030 Patents) (*Id.* ¶ 3d-e)	[redacted]
Google Meet – accused recorded video messages ('227 Patent) (Meet PM Decl. ¶¶ 2, 3a-b)	[redacted]

Documents regarding the design, development, and implementation of Google Messages and Google Meet are typically created and maintained by the engineers working on those applications, including the engineers in the NDCA and Washington. Messages PM Decl. ¶ 4; Meet PM Decl. ¶ 4. Google has identified no employees in Texas who worked on the design, development, implementation, or testing of the relevant Google Messages or Google Meet functionality. Messages PM Decl. ¶¶ 3-4; Meet PM Decl. ¶¶ 3-4.

E. Other Relevant Third Parties Are In California

In addition to Google, at least two companies with relevant prior art products and at least seven authors or inventors of prior art are located in California, as summarized below:

[redacted]

Prior Art	Inventor/Company	Location
Cisco Unified IP Phone ('227 prior art system)	Cisco Systems, Inc.	San Jose, CA (Ex. 14)
Vnotes ('949 prior art system)	Core Mobility Inc., acquired by Smith Micro Software, Inc. (Ex. 15)	Aliso Viejo, CA (Ex. 16)
	Sani El-Fishawy	Redwood City, CA (Ex. 17)
US 8,812,041 ('030 prior art)	Justin V. Lee	Berkeley, CA (Ex. 18)
US 8,5751,584 ('949 prior art)	Sani El-Fishawy	Redwood City, CA (Ex. 17)
US 2008/0182603 ('949 prior art)	David Barnes Still	San Francisco, CA (Ex. 19)
	Thyagarajapuram S. Ramakrishnan	Saratoga, CA (Ex. 20)
	Chintamani Patwardhan	Saratoga, CA (Ex. 21)
	Adrian Chan	Cupertino, CA (Ex. 22)
US 7,317,929 ('978 prior art)	Sani El-Fishawy	Redwood City, CA (Ex. 17)
US 6,781,962 ('978 prior art)	Tim A. Williams	Danville, CA (Ex. 23)

See also Exs. 24-30 (invalidity contention claim charts for the foregoing prior art references).

The sole inventor of the '030 Patent is in San Francisco, California, while other inventors of the Asserted Patents are in New Jersey, or India, as summarized below.

Asserted Patent	Inventor	Location
'949 Patent	Ewald Anderl (deceased)	Middleton, New Jersey (Ex. 31)
'978 Patent	Ewald Anderl (deceased)	Middleton, New Jersey (*Id.*)
	Ajay Kumar Thapar	India (Ex. 32)
	Chinna Marudha Pandian Chockalingam	India ('978 Patent, Cover)
'227 Patent	Inderpal Singh Mumick	Berkeley Heights, New Jersey (Ex. 33)
	Surinder Singh Anand	Highland Park, New Jersey (Ex. 34)
	Raja N. Moorthy	India (Ex. 35)
'030 Patent	Kieraj Singh Mumick	San Francisco, California (Ex. 36)

Kirusa, Inc., the original assignee of the Asserted Patents, is a New Jersey company. Ex. 37.

II. LEGAL STANDARDS

The first question under Section 1404(a) is whether a civil action "might have been brought" in the proposed transferee district. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 312 (5th Cir. 2008) ("*Volkswagen II*"). If the threshold inquiry is met, courts consider eight private and

public factors. 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. *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) ("*Volkswagen I*"). 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. *Id*.

III. THE NDCA IS CLEARLY MORE CONVENIENT

A. This Case Could Have Been Brought In The NDCA

A patent infringement case 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); *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 265 (2017). SEA has offices in the NDCA. SEA Decl. ¶ 9. SEC is a foreign corporation, so venue is proper in any district. *See* 28 U.S.C. § 1391(c)(3). Thus, this case could have been brought in the NDCA.

B. The Private Interest Factors Favor Transfer To The NDCA

1. Availability Of Compulsory Process Strongly Favors Transfer

The compulsory process factor strongly favors transfer because at least 20 fact witnesses relevant to the central issues of infringement and invalidity are third parties located in California—namely, Google, Google employees, prior art authors, and the sole named inventor of one asserted patent—while no likely third-party witnesses are in Texas.

The compulsory process factor "will weigh heavily in favor of transfer when more third-party witnesses reside within the transferee venue than reside in the transferor venue." *In re*

[redacted]

Netflix, Inc., No. 2022-110, 2022 WL 167470, at *4 (Fed. Cir. Jan. 19, 2022) (quoting *In re Apple, Inc.*, 581 F. App'x 886, 889 (Fed. Cir. 2014)).

Here, Multimodal's infringement theories are premised on the operation of Google Messages and Google Meet running on Samsung devices. Google Messages and Google Meet are developed by third-party Google. *See supra* §§ I.A and I.D; Messages PM Decl. ¶¶ 2-3; Meet PM Decl. ¶¶ 2-3. [redacted] No members of these Google Messages and Google Meet teams are in Texas. *Id*.

Moreover, Kieraj Singh Mumick, the sole inventor on the '030 Patent, currently resides in San Francisco, and will have information relevant to the development and prosecution of that patent. *See supra* § I.E. Multimodal itself identified Mr. Mumick in its initial disclosures, confirming that he is a relevant witness.[1] See Ex. 5.

As to invalidity, at least seven prior art witnesses are located in the NDCA and are, therefore, subject to the subpoena power of the NDCA but not that of this District. *See supra* § I.E. Samsung has also identified two relevant prior art systems with ties to California—the Vnotes

[1] To the extent Mr. Mumick is a willing witness, his presence in the NDCA supports transfer under the willing witness prong, analyzed below.

system and the Cisco Unified IP Phone. Vnotes, developed by Core Mobility, Inc. (acquired by Smith Micro Software, Inc.), is a service that lets mobile phone users send instant voice messages to any mobile phone without dialing, and is prior art to at least the '978 Patent, which relates to transmission of voice messages. Ex. 30. Both Smith Micro Software and one of the leading developers of Vnotes, Sami El-Fishawy, are located in California. *See supra* § I.E. The Cisco Unified IP Phone, developed by Cisco Systems, Inc., is a phone with a variety of call completion features that is prior art to at least the '227 Patent, which relates to selecting a follow-up option when a call is incomplete. Ex. 31. Cisco is headquartered in San Jose, in the NDCA. *See supra* § I.E; see also Exs. 24-30 (invalidity contention claim charts).

By contrast, neither Multimodal's Complaint nor its Initial Disclosures identify any third parties located in Texas. *See supra* § I.B; Ex. 5 (Initial Disclosures). The remaining named inventors are located in India or New Jersey. *See supra* § I.E.

Thus, deciding the merits of non-infringement and invalidity will turn on testimony and information that only these third-party witnesses in California can provide. This case is therefore analogous to *AGIS Software Development LLC v. Samsung Electronics Co.*, No. 2:19-cv-362-JRG (E.D. Tex.), which was transferred to the NDCA because that is where third-party Google engineers for the accused software applications running on accused Samsung devices were located. *In re Google LLC ("AGIS")*, No. 2022-140, 2022 WL 1613192, at *1 (Fed. Cir. May 23, 2022). Similarly, in *In re Samsung Electronics Co.*, the case was transferred to the NDCA because—like here—the accusations were predicated on third-party Google applications running on Samsung devices, and the NDCA was where "over a dozen third-party individuals" reside, while "not a single witness[, including third parties,] has been identified as residing in or near the [transferor forum]." 2 F.4th 1371, 1379 (Fed. Cir. 2021). And recently in *Jawbone Innovations, LLC v.*

[redacted]

Amazon.com, Inc., this Court determined that this factor weighed in favor of transfer because fourteen third-party witnesses were in the NDCA, while only one was in Texas. 2:21-cv-435-JRG, D.I. 60 at 11-12 (E.D. Tex. Sept. 21, 2022). In this case, Samsung has identified 20 third-party individuals and entities in the NDCA, while not even a single potentially relevant third-party witness is located in Texas. This factor weighs heavily in favor of transfer.

2. Cost Of Attendance For Willing Witnesses Is Neutral

This factor is neutral because the NDCA and EDTX are equally inconvenient for key party witnesses. However, the NDCA is significantly more convenient than the EDTX for potential third-party witnesses.

Party witnesses for both Samsung and Multimodal relating to the core issues of infringement and invalidity—SEC employees in Korea and Multimodal's managers in New York—will be inconvenienced by travel to either forum, as significant travel would be required to reach either. *See, e.g.*, *In re Genentech, Inc.*, 566 F.3d 1338, 1344 (Fed. Cir. 2009). Any marginal difference in convenience for these individuals does not compare to the inconvenience of hailing witnesses from the NDCA to Texas. *In re Google LLC ("Sonos")*, No. 2021-170, 2021 WL 4427899, at *4 (Fed. Cir. Sept. 27, 2021). Although named-defendant SEA has offices and employees in Texas, SEA's activities are focused on commercialization, sales, and marketing for Samsung devices; [redacted]. SEA Decl. ¶ 8. Any non-technical witnesses from SEA's Texas offices do not outweigh the far greater number of technical witnesses needing to travel from the NDCA and Korea. As such, the Federal Circuit and this District have repeatedly directed transfer of other cases filed against SEA where, as here, the technical information will come from third-party Google and its witnesses in the NDCA. *See, e.g.*, *AGIS*, 2022 WL 1613192, at *1; *Samsung*, 2 F.4th at 1379; *Porto Tech. Co. v. Samsung Elecs. Am., Inc.*, No. 2:15-cv-00456-

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JRG-RSP, 2016 WL 937388 (E.D. Tex. Mar. 11, 2016); *Fujinomaki v. Google Inc.*, No. 2:15-cv-1381-JRG-RSP, 2016 WL 2807798 (E.D. Tex. May 13, 2016).

"[T]he convenience of non-party witnesses [] is the more important factor and is accorded greater weight" than the convenience of party witnesses. *Uniloc USA, Inc. v. Chief Architect, Inc.*, No. 6:15-CV-1003-RWS-KNM, 2016 WL 9229319, at *4 (E.D. Tex. Dec. 2, 2016); *see Gonzalez v. Soc. Concepts, Inc.*, No. 2:14-cv-650-JRG-RSP, 2015 WL 1387831, at *2 (E.D. Tex. Mar. 25, 2015). And, as discussed above with respect to the compulsory process factor, key non-party witnesses—numerous Google employees, prior art inventors, and Kieraj Singh Mumick, the sole inventor on the '030 Patent—are located in the Bay Area. Allowing these witnesses to "remain in their home state . . . significantly minimiz[es] the cost, time, and expense of travel to attend trial, which is the very purpose of § 1404(a)." *Realtime Data LLC v. Teradata Operations, Inc.*, No. 6:15-CV-463-RWS-JDL, 2016 WL 235183, at *5 (E.D. Tex. Jan. 20, 2016) (internal quotation marks omitted). Samsung does not seek to "double-count" these witnesses who were also identified with respect to the compulsory process factor; however, the convenience of such witnesses located in the NDCA who are potentially willing favors transfer. *See AGIS*, 2022 WL 1613192, at *3 (finding that the convenience of relevant Google employees and prior art witnesses favored transfer).

Accordingly, this factor is neutral with respect to key party witnesses; however, the NDCA is significantly more convenient than the EDTX for key third-party witnesses.

3. Relative Ease Of Access To Sources Of Proof Favors Transfer

The relative ease of access to sources of proof also favors transfer because the vast majority of relevant documentary evidence relating to the core issue of infringement is with third-party Google in the NDCA. Ordinarily, "[i]n patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer," so "the place where the defendant's documents are

kept weighs in favor of transfer to that location." *Genentech*, 566 F.3d at 1345. Where, as here, "third-party companies [] provide certain accused functionality for the accused products," then sources of proof from those third parties also matter to the transfer analysis. *In re Google LLC ("Jawbone")*, 58 F.4th 1379, 1385 (Fed. Cir. 2023). The electronic nature of documents does not render this factor irrelevant. *In re Juniper Networks, Inc.*, 14 F.4th 1313, 1321 (Fed. Cir. 2021). This is particularly true where the personnel who created and can access the relevant documents, electronic or otherwise, are located in one jurisdiction but not the other. *See, e.g.*, *In re Apple Inc.*, No. 2022-128, 2022 WL 1196768, at *4 (Fed. Cir. Apr. 22, 2022).

In this case, the bulk of relevant evidence for deciding infringement will come from third-party Google, who developed the accused Google Messages and Google Meet applications. Technical documents and source code relating to those products are in Google's possession and were created and maintained by the Google employees responsible for working on them, many of whom are located in the NDCA. *See supra* § I.D; *see also Ho Keung Tse v. Google, Inc.*, No. 6:12-CV-356, 2012 WL 6497124, at *3 (E.D. Tex. Dec. 13, 2012) (finding that "Google . . . will have the majority of relevant documents and witnesses in th[e] case," given that the plaintiff's allegations against co-defendants Samsung and HTC were based on those companies "selling devices running [the accused Google software]").

The seven prior art authors discussed in Section III.B.1 above are likely also to have documentary evidence relating to their prior art references in California. And Cisco and Smith Micro Software, along with Mr. El-Fishawy and other current and former employees who worked on the prior art systems identified in Section I.E above, are likely to have documents, source code, prototypes, or samples in California. The likely presence of such physical evidence in California favors transfer. *See, e.g.*, *Jawbone*, 58 F.4th at 1385 (determining this factor favors the NDCA

when physical prototypes are located only there).

By contrast, documents from Multimodal, the prior assignee, and the inventors are likely in New York, New Jersey, and California, not in Texas. While Multimodal claims to have its principal place of business in Marshall (D.I. 1 ¶ 1), it does not appear to have any meaningful, sustained connection to this District. *See supra* § I.B. Until recently, Multimodal's only putative place of business in Texas was its counsel's offices. *Id*. And its newly alleged office appears to share an address with the office of a licensed psychologist. *Id.* On the other hand, Multimodal has strong connections to the Northeast and a meaningful connection to California: (1) Multimodal's two Managers, Jon Scahill and Timothy Scahill, are New York residents who are also the CEO and CTO, respectively, of Multimodal's New York-based parent, Quest, *id*.; (2) the original assignee of the Asserted Patents, Kirusa Inc., is located in New Jersey along with several inventors; and (3) the sole inventor of the '030 Patent resides in the NDCA. *See supra* § I.E. As such, documents relating to the development of the alleged inventions, prosecution of the patents, and assignments of patents are likely to be found in the NDCA and in the Northeast, not in Multimodal's alleged Texas location. Even if Multimodal has patent-related documents that it moved to its new Texas location, such documents hold little weight in analyzing transfer. *See AGIS*, 2022 WL 1613192, at *4 (finding that a plaintiff's storage of "patent-related documents and corporate records" only served to "establish a presence for forum selection for patent cases" and should not be "given significant weight"). Any such documents will pale in volume and importance to the technical documents and source code from third-party Google, in the NDCA. *See, e.g.*, *Ho Keung Tse*, 2012 WL 6497124, at *3.

Because much of the evidence relating to the core issues of infringement and invalidity is in the NDCA, this factor favors transfer.

[redacted]

4. All Other Practical Problems Slightly Disfavor Transfer

This case is in its early stages, so transfer would not prejudice Multimodal. The *Markman* hearing is still six months away, and fact discovery closes almost a month after that. Trial is scheduled for October 2024, twelve months from now. This District has granted transfer under similar facts where the case remained "in its early stages" in discovery and there was "no improper delay" by either party. *See, e.g.*, *Auto. Body Parts Ass'n v. Ford Glob. Techs., LLC*, No. 4:13-CV-705, 2015 WL 123852, at *6 (E.D. Tex. Jan. 7, 2015).

Multimodal may argue that judicial economy favors keeping this case with Multimodal's other cases in this District against ZTE, OPPO, and TCL. But Multimodal recently reached settlements with both ZTE and OPPO. *ZTE*, No. 2:21-cv-00437, D.I. 41 (notice of settlement prior to claim construction hearing); *OPPO*, No. 2:21-cv-00436, D.I. 74 (order granting joint motion to dismiss). And in the single, remaining co-pending case against TCL, Multimodal has yet to serve the complaint, rendering the impact of that case minimal. *TCL*, No. 2:22-cv-00463, D.I. 22; *see Groupchatter, LLC v. Itron, Inc.*, No. 6:15-CV-900-JRG-JDL, 2016 WL 2758480, at *5 (E.D. Tex. May 12, 2016) (finding "minimal benefits of judicial economy" from "co-pending suit in this District that was in its infancy").

Furthermore, because the other factors strongly favor transfer, the District's prior experience construing certain claim terms in the *OPPO* case should not tip the scales against transfer. This case is analogous to *AGIS*, where the Federal Circuit held that prior familiarity gained "from a prior claim construction in a different case brought by [plaintiff], [was] clearly insufficient . . . to outweigh the other factors that clearly favor transfer." 2022 WL 1613192, at *4 (stating that prior litigation of a patent in a forum is not "a free pass to maintain all future litigation involving that patent in that [forum]"). *Id.* A finding to the contrary "would [] effectively inoculat[e] a plaintiff against convenience transfer under § 1404(a) simply because it filed related

suits against multiple defendants in the transferor district." *In re Google Inc. ("Eolas")*, No. 2017-107, 2017 WL 977038, at *2-*3 (Fed. Cir. Feb. 23, 2017) ("allowing [] co-pending litigation to dominate" the court's transfer analysis was "clear error"). Such a result would be contrary to Federal Circuit precedent. *In re Verizon Bus. Network Servs. Inc.*, 635 F.3d 559, 562 (Fed. Cir. 2011) ("To interpret § 1404(a) to hold that any prior suit involving the same patent can override a compelling showing of transfer would be inconsistent with the policies underlying § 1404(a).").

C. The Public Interest Factors Favor Transfer To The NDCA

1. The NDCA's Strong Local Interest Favors Transfer

The NDCA has a strong local interest in this case "because the cause of action calls into question the work and reputation of several individuals residing in or near that district." *In re Hoffmann-La Roche Inc.*, 587 F.3d 1333, 1336 (Fed. Cir. 2008). For this factor, courts focus on where the accused functionality is "research[ed], design[ed], and develop[ed]." *Juniper*, 14 F.4th at 1320. Here, Google and the engineers who researched, designed, and developed Google Messages and Google Meet are in the NDCA. *See supra* § I.D; *Samsung*, 2 F.4th at 1380 (finding a local interest in the case where "third parties [including Google] researched, designed, and developed most of [the accused] applications in Northern California").

Conversely, this District has little or no local interest in this case. The Asserted Patents have no ties to this District. To the contrary, the '030 Patent has strong ties to the NDCA, where the sole named inventor resides. *See supra* § I.E. And the other three Asserted Patents list inventors from New Jersey and India, and all Asserted Patents were originally assigned to Kirusa, a New Jersey company. *See id*. Similarly, while Multimodal is a Texas company, it is controlled by officers of its parent Quest in New York, and its activities in Marshall (if any) appear limited to attempting to monetize the Asserted Patents. *See supra* § I.B. On similar facts in *Juniper*, the Federal Circuit refused to give any weight to a non-practicing plaintiff's office in the transferor

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forum, where the "activities of the office are largely tied to bringing lawsuits" and the office had only two employees, one of whom was an "attorney responsible for litigation." 14 F.4th at 1320. Likewise here, Multimodal's ephemeral, litigation-driven connection to Marshall does not give this District a local interest.

Finally, given that SEA did not develop the accused Google Messages and Google Meet applications, SEA's "general presence in [this] district does not give that district a special interest in the case." *In re Google LLC ("Jenam")*, No. 2021-171, 2021 WL 4592280, at *5 (Fed. Cir. Oct. 6, 2021). This factor thus favors transfer.

2. The Remaining Three Public Interest Factors Are Neutral

The court congestion factor is entitled to little weight here. There is no urgent need for disposition of this matter because Multimodal does not allege that it currently manufactures or sells products that practice the Asserted Patent, and its parent Quest describes its business as "IP monetization." *See* D.I. 1; Ex. 12; *Jawbone*, 58 F.4th at 1383 (holding that "it was a clear abuse of discretion to accord this factor any weight," where plaintiff "is not engaged in product competition in the marketplace and is not threatened in the market"). Further, the Federal Circuit has long regarded the court congestion factor as "the most speculative." *Genentech*, 566 F.3d at 1347. This factor is neutral.

The last two factors also are neutral. Familiarity with the governing law is neutral, as both the NDCA and this District are well versed in patent law. And because there is no prospect for any conflict of laws, the last public interest factor is also neutral.

IV. CONCLUSION

Because three factors favor transfer and only one factor slightly disfavors transfer, with the remaining factors neutral, this case should be transferred to the NDCA.

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Respectfully submitted,

By: */s/ Melissa R. Smith*

Darin W. Snyder (*Pro Hac Vice*)
dsnyder@omm.com
Luann L. Simmons (*Pro Hac Vice*)
lsimmons@omm.com
Mark Liang (*Pro Hac Vice*)
mliang@omm.com
Bill Trac (*Pro Hac Vice*)
btrac@omm.com
Nathaniel Legum (*Pro Hac Vice*)
nlegum@omm.com
O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
Telephone: 415 984-8700
Facsimile: 415-984-8701

Laura Burson (Tex. Bar No. 24091995)
lburson@omm.com
O'MELVENY & MYERS LLP
400 S. Hope Street, 17th Floor
Los Angeles, CA 90071
Telephone: 213-430-6000
Facsimile: 213-430-6407

Melissa Smith (Tex. Bar No. 24001351)
melissa@gillamsmithlaw.com
GILLAM AND SMITH LLP
303 South Washington Avenue
Marshall, TX 75670
Telephone: 903-934-8450
Facsimile: 903-934-9257

Jin-Suk Park (*Pro Hac Vice*)
jin.park@arnoldporter.com
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave., NW
Washington, DC 20001-3743
Telephone: (202) 942-5000
Facsimile: (202) 942-5555

Patrick C. Reidy (*Pro Hac Vice*)
patrick.reidy@arnoldporter.com

[redacted]

Arnold & Porter Kaye Scholer LLP
70 West Madison Street, Suite 4200
Chicago, IL 60602-4231
312-583-2424
Fax: 312-583-2360

Attorneys for Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.

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CERTIFICATE OF CONFERENCE

On September 20, 2023, pursuant to Local Rule CV-7(h), counsel Bill Trac for Defendants met and conferred with counsel Joseph Mercadante for Plaintiff, and counsel for Plaintiff indicated that Plaintiff is opposed to the relief sought by this Motion.

/s/ Bill Trac
Bill Trac

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service and are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on October 13, 2023.

/s/ Melissa R. Smith
Melissa R. Smith

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