

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

ALMONDNET, INC. and INTENT IQ, LLC,
Plaintiffs

-VS-

**SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC.,
and ADGEAR TECHNOLOGIES INC.,**
Defendant

W-21-CV-00891-ADA

**ORDER GRANTING DEFENDANT’S MOTION TO TRANSFER
TO THE NORTHERN DISTRICT OF CALIFORNIA**

Before the Court is Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and AdGear Technologies, Inc., (“Samsung’s”) Motion to Transfer Venue to the Northern District of California, or Alternatively, to the Austin Division of the Western District of Texas. ECF No. 35. Plaintiffs AlmondNet, Inc. and Intent IQ, LLC (“AlmondNet”) oppose the motion. ECF No. 48. Samsung filed a reply to further support its motion. ECF No. 54. After careful consideration of the parties’ briefs and the applicable law, the Court **GRANTS** Samsung’s motion to transfer venue to the Northern District of California.

I. FACTUAL BACKGROUND

In its complaint, AlmondNet claims Samsung infringed on U.S. Patent Nos. 7,979,307 (the “307 Patent”), 8,200,822 (the “822 Patent”), 8,244,582 (the “582 Patent”), 8,566,164 (the “164 Patent”), 8,671,139 (the “139 Patent”), 8,677,398 (the “398 Patent”), 8,959,146 (the “146 Patent”), 10,321,198 (the “198 Patent”), and 10,715,878 (the “878 Patent”) (collectively, the “Asserted Patents”), which relate to internet-based advertising systems and methods. ECF No. 11 ¶ 1. AlmondNet, the owner of the Asserted Patents, is a corporation organized under the laws of

the state of Delaware with a place of business in Long Island City, New York. *Id.* ¶ 2. Intent IQ, LLC is a limited liability company organized under the laws of the state of Delaware with a place of business in Long Island City, New York. *Id.* Samsung Electronics Co., Ltd. is a corporation organized under the laws of South Korea with its principal place of business in South Korea. *Id.* ¶ 3. Samsung Electronics America, Inc. is a corporation organized under the laws of the state of New York with its principal place of business in New Jersey. *Id.* ¶ 4. AdGear Technologies Inc. is a corporation organized under the laws of Canada with its principal place of business in Montreal, Canada. *Id.* ¶ 5. According to AlmondNet, Samsung makes, uses, offers for sale, sells, and imports certain infringing products and services, including Samsung’s advertising platform. *Id.* ¶ 16. The Court will refer to these products collectively as the “Accused Products.”

In addition to this case, AlmondNet filed four other cases in this District alleging infringement of the Asserted Patents. *AlmondNet, Inc. v. Roku, Inc.*, No. 6:21-cv-00876-ADA (W.D. Tex. Aug. 20, 2021); *AlmondNet, Inc. v. Meta Platforms, Inc.*, No. 6:21-cv-00896-ADA (W.D. Tex. Aug. 27, 2021); *AlmondNet, Inc. v. Microsoft Corp.*, No. 6:21-cv-00897-ADA (W.D. Tex. Aug. 27, 2021); *AlmondNet, Inc. v. Amazon.com, Inc.*, No. 6:21-cv-00898-ADA (W.D. Tex. Aug. 27, 2021).

After responding to AlmondNet’s complaint, Samsung filed the instant motion to transfer. ECF No. 35. Samsung does not argue that the Western District of Texas (“WDTX”) is an improper venue for this case; instead, it argues that the Northern District of California (“NDCA”) is a more convenient forum, pointing to the location of potential witnesses and the location of relevant records. *Id.* at 1. AlmondNet contends that the case should remain in the WDTX, pointing to, among other factors, the ease of accessing electronic records in either forum, witnesses in or near this District, and the co-pending litigation in this Court. ECF No. 48 at 1.

II. LEGAL STANDARD

In patent cases, motions to transfer under 28 U.S.C. § 1404(a) are governed by the law of the regional circuit—here, the Fifth Circuit. *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008). 28 U.S.C. § 1404(a) provides in part that “[f]or the convenience of parties and witnesses, . . . a district court may transfer any civil action to any other district or division where it might have been brought . . .” *Id.* “Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an ‘individualized, case-by-case consideration of convenience and fairness.’” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)).

The preliminary question under § 1404(a) is whether a civil action “‘might have been brought’ in the destination venue.” *In re Volkswagen, Inc.*, 545 F.3d 304, 312 (5th Cir. 2008) [hereinafter *Volkswagen II*]. If the destination venue would have been a proper venue, then “[t]he determination of ‘convenience’ turns on a number of public and private interest factors, none of which can be said to be of dispositive weight.” *Action Indus., Inc. v. U.S. Fid. & Guar. Co.*, 358 F.3d 337, 340 (5th Cir. 2004) (footnote omitted). 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.” *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) [hereinafter *Volkswagen I*] (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1982)). The public 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.* Courts evaluate these factors based on the situation which existed at the time of filing, rather than relying on

hindsight knowledge of the defendant’s forum preference. *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960).

The moving party has the burden to prove that a case should be transferred for convenience. *Volkswagen II*, 545 F.3d at 314. The burden is not simply that the alternative venue is more convenient, but that it is clearly more convenient. *Id.* at 314–15. While “clearly more convenient” is not the same as the “clear and convincing” standard, the moving party must still show more than a mere preponderance. *Quest NetTech Corp. v. Apple, Inc.*, No. 2:19-cv-118, 2019 WL 6344267, at *7 (E.D. Tex. Nov. 27, 2019). Yet, the Federal Circuit has clarified that, for a court to hold that a factor favors transfer, the movant need not show an individual factor *clearly* favors transfer. *In re Apple Inc.*, 979 F.3d 1332, 1340 (Fed. Cir. 2020).

III. DISCUSSION

The threshold determination in the § 1404(a) analysis is whether this case could initially have been brought in the destination venue—the NDCA. Neither party disputes that venue could be proper in the NDCA. Samsung Electronics America, Inc. operates a regular and established place of business in the NDCA. ECF No. 35 at 5. Samsung Electronics Co., Ltd. and AdGear Technologies Inc. are foreign corporations. *Id.* This Court therefore finds that venue would have been proper in the NDCA had the suit originally been filed there. Thus, the Court now analyzes the private and public interest factors to determine whether the NDCA is a clearly more convenient forum than the WDTX.

A. The Private Interest Factors

i. *The Cost of Attendance and Convenience for Willing Witnesses*

The most important factor in the transfer analysis is the convenience of the witnesses. *In re Genentech, Inc.*, 566 F.3d 1388, 1342 (Fed. Cir. 2009). According to Fifth Circuit law, if the distance between a current venue and a proposed venue is more than 100 miles, the inconvenience

to witnesses increases in direct relationship to the additional distance they must travel if the matter is transferred. *Volkswagen II*, 545 F.3d at 317. But it is unclear when the 100-mile rule applies, as the Federal Circuit has stated that courts should not apply the rule “rigidly” when witnesses would be required to travel a significant distance no matter what venue they testify in. *In re Apple*, 979 F.3d at 1342 (discussing witnesses traveling from New York) (citing *Volkswagen II*, 545 F.3d at 317). “[T]he inquiry should focus on the cost and inconvenience imposed on the witnesses by requiring them to travel to a distant forum and to be away from their homes and work for an extended period of time.” *In re Google, LLC*, No. 2021-170, 2021 WL 4427899, at *4 (Fed. Cir. Sept. 27, 2021). According to the Federal Circuit, time is a more important metric than distance. *Id.* However, the Federal Circuit has also held that when willing witnesses will have to travel a significant distance to either forum, the slight inconvenience of one forum in comparison to the other should not weigh heavily on the outcome of this factor. *In re Apple*, 979 F.3d at 1342. When analyzing this factor, the Court should consider all potential witnesses. *Alacritech Inc. v. CenturyLink, Inc.*, No. 2:16-CV-00693, 2017 WL 4155236, at *5 (E.D. Tex. Sept. 19, 2017).

According to Samsung, “significant members” of its engineering team that designed the Accused Products are located in the NDCA. ECF No. 35 at 9. Samsung also identified an employee in southern California with relevant knowledge. *Id.* at 10. AlmondNet identified Samsung employees in Texas. ECF No. 48 at 9. Samsung also identified other Samsung employees in Canada, Korea, and New York. ECF No. 35 at 10. And AlmondNet identified one Samsung employee in Kentucky and another in Oregon. ECF No. 48 at 8. Lastly, AlmondNet identified one inventor that will testify on its behalf. *Id.* at 9. Each group of witnesses will be discussed below.

1. Samsung Employees in the NDCA and Southern California

According to Samsung, many of the significant members of the engineering team for the Accused Products are located in its offices in the NDCA. ECF No. 35 at 9. Samsung has specifically identified three key witnesses: (1) [REDACTED], who is a product domain lead for the [REDACTED], (2) [REDACTED], who is a product domain lead for [REDACTED] and the [REDACTED] in Samsung Ads, and (3) [REDACTED], who is the [REDACTED] [REDACTED] for Samsung Ads. ECF No.35-1 ¶ 10. Samsung has also identified one witness in southern California: [REDACTED], who is a product domain lead responsible for the [REDACTED]. ECF No. 35-1 ¶ 11. Samsung argues that the NDCA would be a more convenient forum for these employees than the WDTX. ECF No. 35 at 10. In response, AlmondNet argues that these witnesses are “cherry-picked.” ECF No. 48 at 8. AlmondNet argues that none of these witnesses wrote any of the relevant source code for the Accused Products. *Id.* It also claims that these employees are unlikely to testify at trial because they lack relevant technical knowledge. *Id.* Lastly, AlmondNet argues that any inconvenience this Court may pose is negated because these witnesses can use Samsung’s facilities in this District. *Id.* at 9.

The Court disagrees with AlmondNet that the NDCA-based employees are irrelevant because they did not write the relevant source code. In a deposition, Samsung’s representative, Mr. Marcellini, acknowledged that [REDACTED], Mr. [REDACTED], and Ms. [REDACTED] do not write source code. ECF No. 48-2 at 45–47. But Mr. Marcellini explained that [REDACTED] [REDACTED]. *Id.* at 45. Mr. Marcellini also explained that Mr. [REDACTED] is a project manager and “work[s] closely with the engineers and engineering leads.” *Id.* at 50. Based on Mr. Marcellini’s deposition transcript, the Court finds that Ms. [REDACTED] and Messrs. [REDACTED] and [REDACTED] likely have

relevant knowledge. They manage engineers working on components of the Accused Products, and they have at least a high-level understanding of how the source code operates. While other witnesses based elsewhere may have more specific knowledge of the source code, Ms. [REDACTED] and Messrs. [REDACTED], [REDACTED], and [REDACTED] may still be called to testify at trial. Thus, their convenience is relevant to the Court's analysis. The Court concludes that these California-based witnesses support transfer. Even if these witnesses can use Samsung's facilities in this District, they would have to spend a significant amount of time away from their homes and work to testify at trial. *In re Google, LLC*, 2021 WL 4427899, at *4.

2. Samsung Employees in Texas

AlmondNet identifies [REDACTED] employees in Texas that may have relevant knowledge of the Accused Products. ECF No. 48 at 9. [REDACTED] of these employees are in Austin and [REDACTED] are in Plano, Texas. *Id.* AlmondNet claims that this group includes "Senior Professional" product managers, staff engineers, and a designer. *Id.* AlmondNet argues that Samsung's declarant, Mr. Marcellini, overlooked these employees when he drafted his declaration in support of the present motion. *Id.* In response, Samsung argues that these employees were not identified because they did not possess relevant knowledge or were hired or moved to Texas after Mr. Marcellini submitted his declaration. ECF No. 54 at 3.

The Court finds that the presence of certain Samsung Ads employees in the WDTX weighs slightly against transfer. With regard to the [REDACTED] employees in the WDTX, in his deposition, Mr. Marcellini acknowledged that he did not recall looking for Samsung employees "in or near Austin." ECF No. 48-2 at 37. But Mr. Marcellini explained why some of the employees based in the WDTX were not included in his declaration. ECF No. 54-1 at 69–74. [REDACTED] employees, [REDACTED], do not work on the allegedly infringing

functionalities of the Accused Products. *Id.* at 69–71, 73. One employee, [REDACTED], recently moved to this District. *Id.* at 73. And one of Austin-based employee, [REDACTED], was included in Mr. Marcellini’s declaration. *Id.* at 71–72. Based on Mr. Marcellini’s declaration and deposition transcript, it seems that Messrs. [REDACTED] and [REDACTED] may possess relevant knowledge. The Court concludes that the presence of these two Samsung employees in the WDTX weighs slightly against transfer. However, the Court acknowledges that these employees are relatively new to Samsung. Mr. [REDACTED] started at Samsung in February 2022. ECF No. 35-1 ¶ 17. Mr. [REDACTED] started at Samsung in July 2022. ECF No. 48-2 at 73. Because they are new to Samsung, these employees likely possess less relevant knowledge than their counterparts in the NDCA.

As for Samsung’s employees in Plano, Texas, Mr. Marcellini never stated that he overlooked these employees when preparing his declaration. ECF No. 48-2 at 37 (stating that when he submitted the declaration he was unaware of employees who “live in or near Austin”). Further, AlmondNet does not identify any Samsung employee from Plano that possesses relevant knowledge for trial. While the Court agrees with AlmondNet that these employees could be relevant to the outcome of this factor, AlmondNet has not identified any reason to assume that these Samsung employees would be relevant witnesses. As far as the Court can tell, AlmondNet did not ask Mr. Marcellini about the employees in Plano. ECF No. 48-2. Because there is no evidence showing these employees may be relevant, the Court does not give great weight to the presence of Samsung employees in Plano.

3. Samsung Employees in Canada, Korea, New York, Kentucky, and Oregon

Samsung argues that the NDCA is a more convenient forum for its employees in Canada, Korea, and New York because the time and cost of attendance will be lower in the NDCA than in Waco. ECF No. 25 at 10. AlmondNet further identifies Samsung employees in Oregon and

Kentucky. ECF No. 48 at 8. AlmondNet argues that the WDTX is closer and therefore more convenient for Samsung's employees in Kentucky and New York. *Id.* at 8–9.

The Court finds that neither forum is convenient for Samsung's employees in Canada, Korea, New York, and Kentucky. While Samsung cites *In re Atlassian Corp.* for the proposition that this factor weighs in favor of transfer because Waco lacks a major airport, the Federal Circuit did not endorse that position in that case. No. 2021-177, 2021 WL 5292268, at * 3 (Fed. Cir. Nov. 15, 2021). Instead, the Federal Circuit has held that when willing witnesses will have to travel a significant distance to either forum, the slight inconvenience of one forum in comparison to the other should not weigh heavily on the outcome of this factor. *In re Apple*, 979 F.3d at 1342. Here, witnesses from Canada, Korea, New York, and Kentucky would have to travel a significant distance to either forum. The slight inconvenience of one forum in comparison to another does not weigh in the analysis of this factor.

The Court does not consider the one identified Samsung employee in Oregon. While the presence of this employee in Oregon would likely weigh at least slightly in favor of transfer, Samsung has stated that this employee does not work on the allegedly infringing functionality of the Accused Products. ECF No. 54 at 3.

4. AlmondNet Employees

AlmondNet only identifies one potential witness: Roy Shkedi. ECF No. 48 at 9. AlmondNet argues that this Court is a more convenient forum for Mr. Shkedi because he is willing to testify in this Court and he will have to travel to this District for other cases here. *Id.* Samsung argues that the NDCA is a more convenient forum for Mr. Shkedi because he is based in New York and it is easier to travel from New York to the NDCA than to Waco. ECF No. 35 at 10.

The Court rejects AlmondNet’s argument that Waco is a more convenient forum for AlmondNet’s witness Mr. Shkedi because Mr. Shkedi is willing to travel to Waco. As this Court has held, “the Court will not weigh the convenience of a plaintiff’s witnesses against transfer under this factor merely because the plaintiff attests that travel to this District would not represent an inconvenience upon witnesses with no apparent connection to this District.” *XR Communications, LLC v. Google LLC*, No. 6:21-cv-00625-ADA, 2022 WL 3702271, at *4 (W.D. Tex. Aug. 26, 2022). Even though Mr. Shkedi is willing to testify in Waco, Waco is not necessarily a more convenient forum for him. AlmondNet cannot push this factor to weigh against transfer simply because it chose this venue. AlmondNet’s “choice of venue is already baked into the movant’s burden.” *Id.* Mr. Shkedi’s willingness to testify in Waco does not weigh in the analysis of this factor. The Court also rejects Samsung’s argument that Mr. Shkedi would find the NDCA a more convenient forum. As discussed above, witnesses from New York would have to travel for a significant amount of time regardless of whether this case is transferred. Thus, Mr. Shkedi’s presence in New York does not impact the analysis of this factor.

5. Conclusion

Samsung has identified four key witnesses in the NDCA and southern California. A couple of relevant Samsung employees may be based in the WDTX. However, the California-based employees are likely more relevant because they have been employed at Samsung for longer. Thus, the Court finds this factor weighs in favor of transfer.

ii. The Relative Ease of Access to Sources of Proof

“In considering the relative ease of access to proof, a court looks to where documentary evidence, such as documents and physical evidence, is stored.” *Fintiv Inc. v. Apple Inc.*, No. 6:18-cv-00372, 2019 WL 4743678, at *2 (W.D. Tex. Sept. 10, 2019). “[T]he question is *relative* ease of access, not *absolute* ease of access.” *In re Radmax*, 720 F.3d 285, 288 (5th Cir. 2013) (emphases

in original). “In patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer. Consequently, the place where the defendant’s documents are kept weighs in favor of transfer to that location.” *In re Apple Inc.*, 979 F.3d at 1340 (citing *In re Genentech*, 566 F.3d at 1345).

Samsung argues that this factor favors transfer because document custodians are located in the NDCA. ECF No. 35 at 6. Samsung explains that documents regarding Samsung Ads are “normally created and maintained by the employees working on those products and services.” *Id.* Samsung argues that relevant physical evidence is also located in the NDCA because Samsung states that the Accused Products are routinely tested in the NDCA [REDACTED]. *Id.*

In response, AlmondNet argues that the relevant evidence is accessible in either district because it is primarily electronic. ECF No. 48 at 3. AlmondNet argues that Samsung’s declarant, Mr. Marcellini, stated that Samsung’s electronic documents [REDACTED]. *Id.* AlmondNet also argues that much of Samsung’s relevant evidence is likely created and maintained by employees outside the NDCA, such as South Korea, Canada, New York, and Los Angeles. *Id.* AlmondNet further argues that the relevant inquiry is the location of the hardware storing the electronic information. *Id.* at 5. AlmondNet complains that Samsung failed to disclose the location of the servers storing its electronic information. *Id.* With respect to the physical evidence identified by Samsung, AlmondNet argues that Samsung failed to explain what kind of physical evidence is available in the NDCA. *Id.*

To start, the Court notes that the Fifth Circuit has recently agreed with a district court that concluded that this factor is neutral because electronic evidence is equally accessible in either forum. *In re Planned Parenthood Fed’n of Am., Inc.*, No. 22-11009, 2022 WL 16549164, at *3 (5th Cir. Oct. 31, 2022). The Fifth Circuit held that “[t]he location of evidence bears much more

strongly on the transfer analysis when . . . the evidence is physical in nature.” *Id.* But the Federal Circuit has held that it is an error to conclude this factor is neutral because electronic documents are easily accessible in both forums. *In re Apple, Inc.*, No., 2022 WL 1196768, at *4 (Fed. Cir. Apr. 22, 2022). To the extent that these two holdings can be reconciled, the Court concludes that the location of physical evidence is more important to this analysis than the location where electronic documents are typically accessed. But the Court still considers the location of document custodians of electronic documents in its analysis of this factor. *In re Google LLC*, No. 2021-178, 2021 WL 5292267, at *2 (Fed. Cir. Nov. 15, 2021).

The Court agrees with Samsung that at least some of its electronic evidence is likely maintained and created by Samsung employees in the NDCA. The Federal Circuit has held that it is an error for the Court not to consider “the location of document custodians and [the] location where documents are created and maintained” within the analysis of this factor. *Id.* As the Court discussed above in analyzing the willing witness factor, there are likely Samsung employees with relevant knowledge in and near the NDCA. However, because Samsung has failed to provide the Court with any specifics of the documents these employees create and maintain, the Court is only able to conclude that it is likely that at least some relevant electronic documents are created and maintained in the NDCA.

Based on the same rationale, the Court agrees with AlmondNet that some electronic documents are also likely created and maintained by Samsung employees in the WDTX. As discussed above, AlmondNet has established that at least a few Samsung employees are located in the WDTX. These employees likely create and maintain electronic documents related to the Accused Products that may be relevant. Thus, the Court concludes that it is likely that at least some relevant Samsung documents are created and maintained in the WDTX. However, because the

Samsung employees are relatively new, the Court finds that these employees likely create and maintain fewer documents than the identified employees in the NDCA.

Turning to Samsung's physical evidence, Samsung claims that physical evidence is located in the NDCA. ECF No. 35 at 7. However, Samsung only explains that this physical evidence relates to testing of the Accused Products. Samsung does not explain why this evidence is relevant. Because Samsung has provided minimal information about this physical evidence, it is difficult to weigh the importance of this evidence. However, the Court concludes that the presence of this physical evidence in the NDCA weighs slightly in favor of transfer.

The Court sympathizes with AlmondNet's frustration regarding the physical location of Samsung's electronic evidence.¹ The Court agrees with AlmondNet that the physical location of electronic information is relevant to the Court's analysis of this factor. However, the Court is unable to conclude that the relevant electronic documents are stored in or near this District. *In re Google LLC*, No. 2021-170, 2021 WL 4427899, at *6 (Fed. Cir. Sept. 27, 2021) ("Nor does the fact Google stores documents in electronic form at data centers around the country weigh in favor of holding trial in Texas."). Thus, the physical location of Samsung's electronic evidence is not included in the analysis of this factor.

Because more document custodians likely reside in the NDCA rather than the WDTX and some physical evidence may exist in the NDCA, the Court finds that this factor weighs in favor of transfer.

¹ Samsung explains that it notified AlmondNet regarding the location of the servers running Samsung Ads and that [REDACTED]. ECF No. 54 at 2 n.1. However, the Court believes AlmondNet was seeking the location of servers storing the electronic documents created and maintained by Samsung employees. The Court believes this may include more electronic documents than those involved in running Samsung Ads.

iii. The Availability of Compulsory Process to Secure the Attendance of Witnesses

Under the Federal Rules, a court may subpoena a witness to attend trial only (a) “within 100 miles of where the person resides, is employed, or regularly transacts business in person”; or (b) “within the state where the person resides, is employed, or regularly transacts business in person, if the person . . . is commanded to attend a trial and would not incur substantial expense.” FED. R. CIV. P. 45(c)(1)(A), (B)(ii). Under this factor, the Court focuses on non-party witnesses whose attendance may need to be secured by a court order.” *Fintiv Inc.*, 2019 WL 4743678, at *14 (citing *Volkswagen II*, 545 F.3d at 316). This factor “weigh[s] heavily in favor of transfer when more third-party witnesses reside within the transferee venue than reside in the transferor venue.” *In re Apple*, 581 F. App’x 886, 889 (Fed. Cir. 2014) (citing *In re Genentech*, 566 F.3d at 1345). The Federal Circuit has held that “when there is no indication that a non-party witness is willing, the witness is presumed to be unwilling and considered under the compulsory process factor.” *In re HP Inc.*, No. 2018-149, 2018 WL 4692486, at *3 n.1 (Fed. Cir. Sept. 25, 2018).

Samsung argues that this factor weighs in favor of transfer because it has identified nineteen third-party witnesses in the NDCA. ECF No. 35 at 8. Further, Samsung points to Google, which acquired the prior art system DoubleClick and is based in the NDCA. *Id.* Samsung also points to [REDACTED], who is the co-founder of the prior art system Jumbo Networks and is located in the NDCA. *Id.* Samsung argues that it needs the NDCA’s subpoena power over these witnesses to put on its full defense. *Id.* at 9. Samsung claims that there are only three relevant prior art witnesses in the WDTX. *Id.* at 8–9. Samsung also identifies prior art witnesses in New York and Washington State. *Id.* at 9.

In response, AlmondNet accuses Samsung of “cherry-pick[ing]” prior art witnesses without explaining why these individuals have relevant knowledge. ECF No. 48 at 6. AlmondNet also argues that Samsung has failed to provide reliable evidence that these individuals are actually

located in the NDCA. *Id.* at 7. AlmondNet claims that LinkedIn is not a reliable source of evidence. *Id.* With respect to DoubleClick, AlmondNet argues that Samsung has failed to identify any witnesses in the NDCA with relevant knowledge of the prior art system. *Id.* AlmondNet also points out that the other co-founder of Jumbo Networks, [REDACTED], is located in the WDTX. *Id.* at 7–8. AlmondNet also identifies two other prior art inventors in Texas: [REDACTED] and [REDACTED]. *Id.*

The Court agrees that the nineteen prior art witnesses identified by Samsung may be relevant at trial. While the Court agrees with AlmondNet that prior art witnesses are unlikely to testify at trial, the Federal Circuit has held it is an error to disregard prior art witnesses simply because prior art witnesses are generally unlikely to testify at trial. *In re Hulu, LLC*, No. 2021-142, 2021 WL 3278194, at *3 (Fed. Cir. Aug. 2, 2021). The Court concludes that the prior art witnesses have relevant knowledge of the prior art references and systems that Samsung may rely on in its invalidity defense. While the Court would be able to give these witnesses more weight if Samsung explained their relevance further, the Court does not fully discount the presence of these prior artists in the NDCA. The Court also agrees that the presence of Jumbo Networks co-founder, [REDACTED], in the NDCA weighs in favor of transfer.

The Court also agrees with AlmondNet that the prior art witnesses in Texas weigh against transfer. Samsung identified three prior art inventors in this District. ECF No. 35 at 8. AlmondNet also identified another co-founder of Jumbo Networks, [REDACTED], who resides in this District. ECF No. 48 at 7–8. Lastly, AlmondNet identified another two prior art inventors: [REDACTED] and [REDACTED]. *Id.* at 8. Samsung argues that these witnesses are not within this Court’s compulsory power because they do not reside within 100 miles of Waco. ECF No. 54 at 2 n.2. However, Rule 45 provides that a person can be subpoenaed to testify at a trial “within

the state where the person resides, is employed, or regularly transacts business in person” so long as the person “is a party or parry officer” or “is commanded to attend a trial and would not incur substantial expense.” FED. R. CIV. P. 45(c)(1)(B). Because these witnesses reside within the state of Texas, they may fall within this Court’s subpoena power. Thus, the Court concludes that all six of these prior art witnesses weigh against transfer.

The Court does not consider the Google’s acquisition of the prior art system DoubleClick in the analysis of this factor. Samsung has not identified any employees from Google or DoubleClick that would be called to testify at trial. Further, AlmondNet points out that DoubleClick was developed in New York. ECF No. 48 at 7. Lastly, the Court does not consider the prior art witnesses located in New York and Washington State that were identified by Samsung. These prior art witnesses are not within the subpoena power of either forum.

Because a greater number of prior art witnesses are located within the subpoena power of the NDCA, the Court concludes that this factor at least weighs slightly in favor of transfer. The Court declines to conclude that it weighs strongly in favor of transfer because Samsung did not provide any information regarding the relevancy of the identified third-party witnesses.

iv. All Other Practical Problems That Make Trial of a Case Easy, Expeditious, and Inexpensive

When considering the private interest factors, courts must also consider “all other practical problems that make trial of a case easy, expeditious and inexpensive.” *Volkswagen II*, 545 F.3d at 314. “Particularly, the existence of duplicative suits involving the same or similar issues may create practical difficulties that will weigh heavily in favor or against transfer.” *PersonalWeb Techs., LLC v. NEC Corp. of Am., Inc.*, No. 6:11-cv-655, 2013 WL 9600333, at *5 (E.D. Tex. Mar. 21, 2013). “[W]here there is a co-pending litigation before the trial court involving the same patent-in-suit, and pertaining to the same underlying technology and accusing similar services, [the

Federal Circuit] cannot say the trial court clearly [abuses] its discretion in denying transfer.” *In re Vistaprint Ltd.*, 628 F.3d 1342, 1346 n.3 (Fed. Cir. 2010).

Samsung argues that this factor is neutral because the practical considerations, including the convenience of the witnesses and the convenience of the attorneys, favor transfer to the NDCA. ECF No. 35 at 11 & n.5. Further, Samsung argues that this factor does not weigh against transfer despite five co-pending cases in this District. *Id.* at 11. Samsung argues that this case only has two overlapping patents with the other co-pending cases. *Id.* Further, Samsung argues that because there are pending motions to transfer venue in three of the cases, two requesting transfer to the NDCA, this factor weighs in favor of transfer. *Id.*

AlmondNet argues this factor weighs strongly against transfer because the five co-pending cases involving the Asserted Patents “will involve substantial overlap in issues of fact and law.” ECF No. 48 at 10. AlmondNet argues that keeping these cases together will promote judicial efficiency because the Court can coordinate common issues of claim construction and invalidity. *Id.* AlmondNet argues that transferring the case to another court will cause delay and waste judicial resources. *Id.* AlmondNet argues that the Court should not consider the convenience to the witnesses and the parties’ counsel in the analysis of this factor. *Id.* at 11 & n.6.

The Court agrees with AlmondNet that the convenience of the witnesses and the parties’ counsel is irrelevant to this factor. The relevant consideration under this factor is *other* practical considerations, outside of the previous factors discussed above. Further, the Fifth Circuit has stated that it is an abuse of discretion to consider the location of counsel under § 1404(a). *Volkswagen I*, 371 F.3d at 206. Thus, the Court does not consider the convenience of willing witnesses or the convenience of counsel under this factor.

The Court agrees with AlmondNet that maintaining this action in the WDTX would improve judicial efficiency. The other co-pending cases involve the same Asserted Patents and the same technology. This Court would be able to handle overlapping issues more expeditiously than if the cases were divided among various district courts. And while two of the other co-pending cases have pending motions to transfer venue to other districts, one does not have a pending motion to transfer venue and another has a motion to transfer venue within the WDTX. *AlmondNet, Inc. v. Roku, Inc.*, No. 6:21-cv-00876-ADA (W.D. Tex. Oct. 20, 2021), ECF No. 13 (Motion to Transfer Venue to the District of Delaware); *AlmondNet, Inc. v. Meta Platforms, Inc.*, No. 6:21-cv-00896-ADA (W.D. Tex. May 20, 2022), ECF No. 32 (Motion to Transfer Venue to the Northern District of California); *AlmondNet, Inc. v. Microsoft Corp.*, No. 6:21-cv-00897-ADA (W.D. Tex. Aug. 27, 2021) (no pending motion to transfer venue); *AlmondNet, Inc. v. Amazon.com, Inc.*, No. 6:21-cv-00898-ADA (W.D. Tex. June 23, 2022), ECF No. 36 (Motion to Transfer Venue to the Austin Division of the Western District of Texas). Thus, regardless of the outcome of the transfer motions in the other co-pending cases, two co-pending cases will remain in this District. At most, one other co-pending case involving the Asserted Patents may be transferred to the NDCA. Judicial efficiency would be best served if the five co-pending cases remained in this District.

The Court concludes this factor weighs against transfer.

B. The Public Interest Factors

i. Administrative Difficulties Flowing from Court Congestion

This factor concerns “whether there is an appreciable difference in docket congestion between the two forums.” *In re Adobe Inc.*, 823 Fed. App’x 929, 932 (Fed. Cir. 2020). It considers the “[t]he speed with which a case can come to trial and be resolved.” *In re Genentech, Inc.*, 566 F.3d at 1347. In this analysis, court congestion is considered “the most speculative” factor, and

when “relevant factors weigh in favor of transfer and others are neutral, then the speed of the transferee district court should not alone outweigh all those other factors.” *Id.*

Samsung argues that this factor favors transfer because this Court is congested. ECF No. 35 at 12. In the alternative, Samsung argues that this factor is neutral because the time-to-trial statistics are similar for both forums. *Id.* Samsung points to statistics for the 12-month period ending on December 31, 2021, which suggests that the median time to trial is the similar for the two forums. *Id.* In response, AlmondNet argues that this factor weighs against transfer because this Court is able to reach trial faster than the NDCA. ECF No. 48 at 11. AlmondNet points to data that suggests that this Court reaches trial within 737 days on average and the NDCA reaches trial within 1,196 days on average. *Id.*

While the Federal Circuit has previously held that there are “no significant differences in caseload or time-to-trial statistics” between the WDTX and the NDCA, *In re Juniper Networks, Inc.*, 14 F.4th 1313, 1322 (Fed. Cir. 2021), recent statistics show that this Court has been able to bring cases to trial within two years.² Data from AlmondNet suggests that the average time to trial

² See, e.g., *MV3 Partners v. Roku, Inc.*, 6:18-cv-00308-ADA (W.D. Tex., filed Oct. 16, 2018) (23.7 months from case filing to trial); *CloudofChange, LLC v. NCR Corp.*, No. 6:19-cv-00513-ADA (W.D. Tex., filed August 30, 2019) (20.3 months from case filing to trial); *VLSI Tech. LLC v. Intel Corp.*, No. 6:21-cv-00057-ADA (W.D. Tex., filed Apr. 11, 2019) (22.4 months from case filing to trial); *Freshub, Inc. v. Amazon.Com Inc.*, No. 6:21-cv-00511-ADA (W.D. Tex., filed Jun. 24, 2019) (23.7 months from case filing to trial); *ESW Holdings, Inc. v. Roku, Inc.*, No. 6:19-cv-00044-ADA (W.D. Tex., filed Feb. 8, 2019) (25.9 months from case filing to trial); *Profectus Tech. LLC v. Google LLC*, 6:20-cv-00101-ADA (W.D. Tex., filed Feb. 10, 2020) (19.6 months from case filing to trial); *Jiaxing Super Lighting v. CH Lighting Tech.*, 6:20-cv-00018-ADA (W.D. Tex., filed Jan. 10, 2020) (21.7 months from case filing to trial); *VideoShare LLC v. Google LLC*, 6:19-cv-663-ADA (W.D. Tex., filed Nov. 15, 2019) (23.8 months from case filing to trial); *NCS Multistage Inc. v. Nine Energy Serv. 's, Inc.*, No. 6:20-cv-00277-ADA (W.D. Tex., filed Mar. 24, 2020) (21.8 months from case filing to trial); *EcoFactor, Inc. v. Google LLC*, No. 6:20-cv-00075-ADA (W.D. Tex., filed Jan. 31, 2020) (24 months from case filing to trial); *Densys Ltd. v. 3Shape Trio A/S*, 6:19-cv-00680-ADA (W.D. Tex., filed Nov. 26, 2019) (28.3 months from case filing to trial); *Appliance Computing III, Inc. v. Redfin Corp.*, No. 6:20-cv-00376-ADA (W.D. Tex., filed May 11, 2020) (24 months from case filing to trial); *Caddo Sys. Inc. v. Microchip Tech. Inc.*, No. 6:20-cv-00245-ADA (W.D. Tex., filed March 27, 2020) (26.5 months from case filing to trial); *SunStone Information Def., Inc. v. International Bus. Machines Corp.*, No. 6:20-cv-1033-ADA (W.D. Tex., filed Nov. 9, 2020) (21.0 months from case filing to trial); *NCS Multistage Inc. v. TCO Products Inc.*, No. 6:20-cv-00622-ADA (W.D. Tex., filed Sept. 9, 2020) (23.4 months from case filing to trial); *Ravgen, Inc. v. Lab. Corp. of Am. Holdings*, No. 6:20-cv-00969-ADA (W.D. Tex. filed Nov. 16, 2020) (23.1 months from case filing to trial).

for the NDCA is over three years. ECF No. 49-14. And Samsung's data is limited to only 2021, which provides limited information about the long-term time-to-trial statistics. ECF No. 36-31. The Federal Circuit has emphasized the importance of rapid disposition of patent cases. *Kahn v. Gen. Motors Corp.*, 889 F.2d 1078, 1080 (Fed. Cir. 1989). It has even acknowledged Congress's interest in the "quick" resolution of patent disputes. *See, e.g., Ethicon Endo-Surgery, Inc. v. Covidien LP*, 826 F.3d 1366, 1367 (Fed. Cir. 2016). In view of Federal Circuit law and the available time-to-trial statistics, the Court finds this factor weighs at least slightly against transfer.

ii. Local Interest in Having Localized Interests Decided at Home

Under this factor, the Court must evaluate whether there is a local interest in deciding local issues at home. *Volkswagen II*, 545 F.3d at 317. Local interests in patent cases "are not a fiction." *In re Samsung Elecs. Co.*, 2 F.4th 1371, 1380 (Fed. Cir. 2021). "A local interest is demonstrated by a relevant factual connection between the events and the venue." *Word to Info, Inc. v. Facebook, Inc.*, No. 3:14-CV-04387-K, 2015 WL 13870507, at *4 (N.D. Tex. Jul. 23, 2015). "[T]he sale of an accused product offered nationwide does not give rise to a substantial interest in any single venue." *In re Hoffmann-La Roche Inc.*, 587 F.3d 1333, 1338 (Fed. Cir. 2009). "This factor most notably regards not merely the parties' significant connections to each forum writ large, but rather the 'significant connections between a particular venue and *the events that gave rise to a suit.*'" *In re Apple*, 979 F.3d at 1344 (emphasis in original) (quoting *In re Acer Am. Corp.*, 626 F.3d 1252, 1256 (Fed. Cir. 2010)). Courts should not heavily weigh a party's general contacts with a forum that are untethered from the lawsuit, such as a general presence. *Id.* Moreover, "little or no weight should be accorded to a party's 'recent and ephemeral' presence in the transferor forum, such as by establishing an office in order to claim a presence in the district for purposes of litigation." *In re Juniper Networks, Inc.*, 14 F.4th at 1320 (quoting *In re Microsoft Corp.*, 630 F.3d 1361, 1365

(Fed. Cir. 2011)). To determine which district has the stronger local interest, the Court looks to where the events forming the basis for infringement occurred. *Id.* at 1319.

Samsung argues that the local interest factor favors transfer because the design and development of the Accused Products took place in the NDCA. ECF No. 35 at 13. Samsung also points out that it has a regular and established place of business in the NDCA. *Id.* Samsung argues that the WDTX does not have a significant interest in the litigation because Samsung's presence in Austin involves its semiconductor fabrication business, Samsung Austin Semiconductor, which is not related to this lawsuit. *Id.* Samsung argues that even if its general presence gives rise to some nominal local interest in this District, the localized interest in the NDCA is greater. *Id.* at 14 n.7.

AlmondNet argues that this District has a strong local interest because Samsung has a substantial presence in this District. ECF No. 48 at 12. AlmondNet points to [REDACTED] employees in Texas that work in the Samsung Ads group and prior artists in this state. *Id.* at 13. AlmondNet argues that Samsung overstates the NDCA's local interest because the design and development likely took place in Canada, Kentucky, and New York. *Id.* AlmondNet also points to the prior artists in the WDTX. *Id.* Additionally, AlmondNet argues that this District has an interest because the technology involves targeted ads delivered to customers in the WDTX. *Id.*

The Court agrees with Samsung that its presence in the NDCA weighs in favor of transfer. More employees that work on Samsung Ads are located in the NDCA than the WDTX. While AlmondNet complains that more of the design and development likely took place elsewhere, the issue here is the relative local interests between the NDCA and WDTX. *In re Juniper Networks, Inc.*, 14 F.4th at 1319 (holding that a "greater" localized interest in the dispute favors transfer). Because the Accused Products were at least partially developed in the NDCA, many of the events that gave rise to the suit likely occurred in that district.

But the Court agrees with AlmondNet that Samsung's presence in the WDTX weighs slightly against transfer. Samsung has a significant presence in this District. Importantly, a few employees who work on the Accused Products reside in this District. Because these employees work in the WDTX, at least some of the events that gave rise to this suit may have occurred here. However, the Court disagrees with AlmondNet that the WDTX has a local interest because the case involves targeted ads delivered to customers in the WDTX. This case also involves targeted ads delivered to customers in the NDCA. Thus, both the NDCA and the WDTX have a local interest with respect to costumers in their districts.

Because the NDCA likely has a greater local interest in this litigation than the WDTX, the Court finds that this factor weighs at least slightly in favor of transfer.

iii. Familiarity of the Forum with the Law That will Govern the Case

Samsung argues that to the extent that AlmondNet seeks user data during discovery, this factor weighs in favor of transfer because the NDCA is more familiar with California's Consumer Privacy Act, which could be implicated. ECF No. 35 at 14. AlmondNet argues that this factor is neutral because it is mere speculation that the Consumer Privacy Act would even apply. ECF No. 48 at 14. Based on the circumstances of the case, the Court agrees with AlmondNet. There is no evidence that California's Consumer Privacy Act will be implicated. Further, even if the Act is applicable, "the thorough briefing and arguments that will be present by the very competent counsel on both sides would assist the Court to understand the relevant law and rule on the issue correctly." *Demaray LLC v. Samsung Electronics Co., Ltd.*, No. 6:20-cv-00636-ADA, 2021 WL 5316455, at *6 (W.D. Tex. July 29, 2021).

The Court finds that this factor is neutral.

iv. Avoidance of Unnecessary Problems of Conflict of Laws or in the Application of Foreign Law

Samsung and AlmondNet agree that this factor is neutral—there are no potential conflicts here. ECF No. 35 at 14; ECF No. 48 at 13. The Court agrees.

IV. CONCLUSION

Having considered the private and public interest factors, the Court finds that four of the factors favor transfer, two disfavor transfer, and two factors are neutral. A decision to uproot litigation and transfer is not the consequence of a simple math problem. Instead, a moving party must show that the transferee forum is a clearly more convenient forum. Here, practical considerations and court congestion weigh against transfer. The sources of proof, compulsory process, willing witness, and local interest factors weigh in favor of transfer to the NDCA. The Court finds that Samsung has met its burden of showing that the NDCA is a clearly more convenient forum. The Court's conclusions for each factor are summarized in the following table:

Factor	The Court's Finding
Relative ease of access to sources of proof	Favors transfer
Cost of attendance for willing witnesses	Favors transfer
Availability of compulsory process to secure the attendance of witnesses	Slightly favors transfer
All other practical problems that make trial of a case easy, expeditious and inexpensive	Against transfer
Administrative difficulties flowing from court congestion	Slightly against transfer
Local interest	Slightly favors transfer
Familiarity of the forum with law that will govern case	Neutral
Problems associated with conflict of law	Neutral

IT IS THEREFORE ORDERED that Samsung's Motion to Transfer Venue to the Northern District of California is **GRANTED** (ECF No. 35).

SIGNED this 28th day of November, 2022.