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

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| **S.M.R INNOVATIONS LTD et al,**<br><br>***Plaintiff*,**<br>v.<br>**APPLE INC.,**<br>***Defendant*.** | **6-23-CV-00479** |

**AMENDED ORDER GRANTING MOTION TO TRANSFER VENUE**

## I) SUMMARY

After a careful consideration of the parties' briefing, the relevant facts, and the applicable law, this case would be clearly more convenient to try in the Northern District of California ("NDCA") than in the Western District of Texas ("WDTX"). **THEREFORE**, **IT IS ORDERED** that Apple's Motion to Transfer Venue be **GRANTED**.

## II) BACKGROUND

### A. PROCEDURAL HISTORY

S.M.R. Innovations LTD et al ("SMR") filed its complaint on July 1, 2023. ECF No. 1. The complaint alleges patent infringement by the Defendant in this case, Apple Inc. ("Apple"). *Id*. Defendant Apple filed a Motion to Transfer on September 27, 2023. ECF No. 18. Plaintiff SMR opposed the motion and filed an opposition on January 17, 2024. ECF No. 28. Defendant Apple replied on January 31, 2024. ECF No. 37. This case was then transferred to Judge Albright on March 27, 2024. Plaintiff SMR then filed a supplemental brief regarding Kayla Christie's deposition on July 10, 2024. ECF No. 56. Apple filed a supplemental brief concerning the same deposition on the same day. ECF. No 60.



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## B. REQUESTED RELIEF

Apple asserts that the Northern District of California would be a more convenient venue than the Western District of Texas. Accordingly, Apple requests that, under 28 U.S.C. § 1404(a), this case be transferred to the Northern District of California.

# III) LEGAL OVERVIEW

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) [hereafter *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 Air-craft Co.*



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*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. This is because "the Court must give some weight to the plaintiffs' choice of forum." *In re Chamber of Com. of United States of Am.*, 105 F.4th 297, 302 (5th Cir. 2024) (citing *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 62 n.6, 134 S.Ct. 568, 187 L.Ed.2d 487 (2013). 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). In addition, the "movant must show (1) that the marginal gain in convenience will be significant, and (2) that its evidence makes it plainly obvious—i.e., clearly demonstrated—that those marginal gains will actually materialize in the transferee venue." *In re Clarke*, 94 F.4th 502, at 503 (5th Cir. 2024). Yet, the Federal Circuit has clarified that, for a court to hold that a factor favors transfer, the movant need not show any individual factor clearly favors transfer. *In re Apple Inc.*, 979 F.3d 1332, 1340 (Fed. Cir. 2020).

## IV) ANALYSIS

### A. PROPER VENUE AND JURISDICTION IN TRANSFER VENUE

To consider the transfer for convenience Apple must show that venue and jurisdiction would have been proper in the proposed transferee forum, here the NDCA. Apple has satisfied this burden by showing that it is headquartered in the NDCA.

### B. PRIVATE INTEREST FACTORS

#### 1. The Cost of Attendance and Convenience for Willing Witnesses

##### *i. Legal Overview*

The most important factor in the transfer analysis is the convenience of the witnesses. *In re Genentech, Inc.*, 566 F.3d 1338, 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. However, it is unclear when the 100-mile rule applies, as the Federal Circuit has stated that courts should not apply the rule "rigidly" in cases where 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); *In re Genentech, Inc.*, 566 F.3d 1338, 1345 (finds that little weight should be given when regardless the witnesses ""will be traveling a great distance no matter which venue the case is tried in."). Instead, "the 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 weighed more heavily as a metric than distance. *Id.* However, as noted above, the



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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.

***ii. Apple's Argument***

Apple believes that NDCA is clearly more convenient "for all plausible witnesses located in the United States." ECF No. 18 at 5. Apple argues about travel time to Midland, Pecos, or Waco and points out that Courthouses in NDCA are 50 miles from Apple's headquarters. Apple makes clear that it would be more convenient for their employees located in NDCA to have the case tried there. Apple argues that the convenience of their employees as parties cannot be discounted due to that employment status with a party in the suit. Apple further argues that no **relevant** witnesses are located in any part of Texas and that the location for foreign travelers does not influence this factor.

In their reply, Apple asserts that three key California based witnesses are undisputed as relevant to this suit. Apple concedes that the lawyers in Boulder, Colorado might be better equipped as witnesses but that there is a lack of evidence for that assertion. Further, they point out that travel time from Boulder to WDTX or NDCA is roughly similar. Regarding actual witnesses in Texas, Apple states that both the specific listed individuals and general retail employees have no knowledge that makes them likely to appear as witnesses in the case. Apple additionally points out that NDCA has Apple retail employees available with the same knowledge as WDTX retail employees.

***iii. SMR's Arguments***

As discussed further below in Section IV.B.4.iii, SMR believes that the cost to Dr. Shmueli and Mr. Yehezkel, the sole owners of S.M.R Innovations and Y.M.R Tech, would be

much greater than Apple employees as they could face rising antisemitism in NDCA. SMR also believes that a number of Austin based employees have represented on their LinkedIn that they have interacted with the accused products. Separately, SMR argues that two attorneys in Boulder, Colorado would be better equipped as a witness than the witness from NDCA put forward by Apple. SMR also debates whether one of the five witnesses put forward by Apple from NDCA, Catherine Spevak, will possess any specialized knowledge for this case.

#### *iv. Analysis*

The Court finds that this factor leans in favor of transfer. While the Court understands the concerns raised by the Plaintiff, this factor does not account for individuals' preferences or potential fears of attending trial in a different venue. The analysis to be considered here are the geographical and time-based constraints for willing witnesses that may impose a burden. Regardless of the degree of speculation on how likely Apple's witnesses' involvement in this case may be, there are a number of potential key witnesses situated in NDCA and it appears unlikely that this case will involve any witnesses located near WDTX. The Boulder IP attorneys may potentially be key witnesses for this litigation. However, in the argument surrounding their involvement in this case, there is only a marginal improvement in time and distance in traveling from Boulder to Waco when compared to NDCA. Ultimately, the abundance of willing witnesses from NDCA— some of which are likely to play a role in this litigation—make this favor lean towards a transfer to NDCA.

### 2. The Relative Ease of Access to Sources of Proof

#### *i. Legal Overview*

"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). "[W]hile electronic storage of documents makes them more widely accessible than was true in the past, that does not make the sources-of-proof factor irrelevant." *In re Juniper Networks, Inc.*, 14 F.4th 1313, 1321 (Fed. Cir. 2021) (citing Volkswagen II, 545 F.3d at 316). The Court acknowledges that the Fifth Circuit's decision in *In re Planned Parenthood* indicates a shift in the analysis of this factor. 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.*, 52 F.4th 625, 630 (5th Cir. 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 only because electronic documents are easily accessible in both forums. *In re Apple, Inc.*, No. 2022-128, 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 of where electronic documents are typically accessed. However, the Court still considers physical locations of document electronic documents in its analysis of this factor. *In re Google LLC*, 2021 WL 5292267, at *2 (Fed. Cir. Nov. 15, 2021). "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).

***ii. Apple's Arguments***

Apple argues that this factor strongly favors transfer. Apple argues that relevant source code is stored on servers in California or is "accessible" to Apple employees in California. Apple's

key documents relevant to the accused features are in California. The research, development, and testing of the accused products all occurred in California. Contrasting that with Texas, Apple has offices in Austin but there are no documents, and no development was conducted in those offices for the accused product.

In their reply brief, Apple argues that it is immaterial for analysis that the relevant evidence can be accessed electronically. Apple also asserts that it has a NDCA data center and lacks a data center in the great state of Texas.

#### *iii. SMR's Arguments*

SMR argues that the vast majority of data is stored on shared repositories, such as cloud-based storage options. SMR disputes Apple's assertion that a meaningful number of relevant documents are only available on individual computers in California. SMR argues that because Apple primarily uses cloud-based storage, concerns about the ease of access to proof are greatly alleviated.

#### **iv.** *Analysis*

This Court understands SMR's concern regarding the weight placed in analyzing the physical storage location of universally available data. However, precedent directly guides this issue. Source code and physical storage for some undefined portion of the electronically stored documents are in NDCA. Juxtaposed to the original venue, there are no Apple data centers present in Texas. While Apple has not presented information about which specific documents are stored in which data center, nor where exactly each data center is located, this Court understands that this is likely for security concerns. Ultimately, if there are no data centers in Texas, then there is no related data physically stored in Texas that would be relevant here. This stands in direct contrast to the source code which Apple claims is stored in NDCA. While recent rulings

have reduced the impact felt by the physical location of documents that are universally available, they are still considered in this analysis. *See In re Google LLC*, 2021 WL 5292267, at *2. Due to a lack of sources of proof in WDTX, this factor does favor transfer. However, due to the reduced consideration for Apple's electronically stored documents, the factor only leans towards transfer.

### 3. Availability of Compulsory Process to Secure Attendance of Witnesses.

#### *i. Legal Overview*

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). This factor focuses on "non-party witnesses whose attendance may need to be secured by a court order." *WirelessWerx IP, LLC v. Google, LLC*, No. 6:22-CV-1056-RP, 2023 WL 11921792, at *3 (W.D. Tex. Apr. 14, 2023) (collecting cases). "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." *Id*. (citing *In re HP Inc.*, No. 2018-149, 2018 WL 4692486, at *3 n.1 (Fed. Cir. Sept. 25, 2018)). However, the Fifth Circuit has clarified that "the availability of compulsory process 'receives less weight when it has not been alleged or shown that any witness would be unwilling to testify.'" *In re Planned Parenthood Fed'n of Am. Inc.*, 52 F.4th 625, 630−31 (5th Cir. 2022) (quoting *Hefferan v. Ethicon Endo-Surgery Inc.*, 828 F.3d 488, 499 (6th Cir. 2016)). To note, 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).

#### *ii. Apple's Arguments*

Apple argues that this factor is neutral. Apple points out that neither venue will need to have compulsory process to secure any witnesses.

#### *iii. SMR's Arguments*

SMR points to several individuals in WDTX who have some general experience of using Apple Airplay listed on their LinkedIn profiles. Separately, SMR requested further information via discovery for individuals at Apple who might be in WDTX and who are previously or currently working on the accused products.

#### *iv. Analysis*

This Court agrees with Apple that this factor is neutral. Neither party has identified third party witnesses that would likely need to be subpoenaed for this case. *See Moskowitz Fam. LLC. v. Globus Med., Inc.,* No. 6:19-CV-00672-ADA, 2020 WL 4577710, at *4 (W.D. Tex. July 2, 2020). The Court also agrees with Apple that SMR has failed to demonstrate the relation of this case to the individuals listed in pages 9-10 of their response brief. Nor does this Court believe that SMR has shown why those individuals are likely to be subpoenaed for an appearance in this case. Therefore, it appears unlikely that this Court would need to exercise its subpoena power in this case, and the factor is neutral.

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

#### *i. Legal Overview*

"When considering the private interest factors, courts must also consider all other practical problems that make trial of a case easy, expeditious and inexpensive." *WirelessWerx IP, LLC v. Google, LLC*, No. 6:22-CV-1056-RP, 2023 WL 11921792, at *4 (W.D. Tex. Apr. 14, 2023) (citing *Volkswagen II*, 545 F.3d at 315.) "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).

***ii. Apple's Arguments***

Prior to the current case being transferred to Waco, Apple had argued that the previous SMR case in WDTX was inapplicable. Apple pointed out that the previous SMR case was assigned to Judge Albright and that due to the early dismissal of the prior case, this factor should still be neutral. Apple, in their original motion, also argued that the Court had not yet invested resources into this case, granted that was now several months ago. In their reply, Apple rebuts SMR's statement regarding the admission of their counsel in WDTX.

***iii. SMR's Arguments***

The Court will also address SMR's appeal to the interest of justice under this prong. SMR argues that Dr. Shmueli and Mr. Yehezkel will face extreme prejudice in the San Francisco area if this case is transferred to NDCA. These individuals are citizens of Israel, and Plaintiffs believe that mounting tensions towards the Isreal and Gaza conflict will result in a miscarriage of justice should this case be tried in NDCA. SMR also states that they would have to retain local counsel in NDCA, unlike WDTX where their lead counsel is admitted.

***iv. Analysis***

Because of this Court's previous dealings with the patents, this factor leans slightly against a transfer in this case. The other practical problems— such as location of counsel— are immaterial to this consideration standing alone; however, the situation does reflect that both parties and this Court have invested resources into the case, which has followed WDTX rules thus far. SMR's appeal to deny transfer due to antisemitism is one that should be appropriately dealt with during voir dire. During that voir dire, the parties and court can determine if the jurors are unbiased and can properly hear the case. This Court does not believe that SMR would be unable to find a jury composed of individuals who are not antisemitic, nor does this Court believe that a federal judge would proceed with a trial with a juror that is biased against a party based on race or religion. Based on prior experience in this Court, patent infringement claims are one of the least politically charged claims brought in federal court. This Court has faith in the justice system in any venue to not prejudice the Plaintiff based on their ideology or where they call home. Ultimately, due to SMR's previous case in this Court, this factor leans marginally against transfer.

## C. PUBLIC INTREST FACTORS

### 1. Administrative Difficulties Flowing from Court Congestion

#### *i. Legal Overview*

This factor concerns "whether there is an appreciable difference in docket congestion between the two forums." *In re Adobe Inc.*, 823 F. App'x 929, 932 (Fed. Cir. 2020). It considers "[t]he speed with which a case can come to trial and be resolved." *In re Genentech*, 566 F.3d at 1347; *see Smart Mobile Techs. LLC v. Apple Inc.*, 2023 WL 5540152, at *9 (W.D. Tex. Aug. 28, 2023).

#### *ii. Apple's Arguments*

Before this case was transferred to Judge Albright, Apple argued that there was no evidence that WDTX can process cases more expeditiously than NDCA. Apple continues by stating that since the factor is largely speculative, it should be awarded little weight. Apple further argued that court congestion should be awarded no weight since SMR was "not engaged in product competition." ECF No. 18 at 14.

***iii. SMR's Arguments***

SMR argues that WDTX has nearly a one-year faster time from filing to trial when compared to NDCA. SMR also points out that Apple's metrics concerning first court action and pretrial resolution are not indicative of the expediency of trial.

***iv. Analysis***

In attempting to apply binding precedent, the Court finds that this factor is neutral. The Federal Circuit has instructed that court congestion cannot weigh against transfer in a patent case where an entity like SMR "is not engaged in product competition in the marketplace." *See In re Meta Platforms, Inc.*, No. 2023-143, 2023 WL 7118786, at *2 (Fed. Cir. Oct. 30, 2023); *Zentian Ltd. v. Apple Inc.*, No. W-22-CV-00122-ADA, 2023 WL 4167746, at *10 (citing *In re Google*, 58 F.4th 1379, 1383 (Fed. Cir. 2023)). However, this presents a conflict with Fifth Circuit decisions. For example, in *In re Planned Parenthood Federation of America, Inc.*, 52 F.4th 625, 631–32 (5th Cir. 2022), the Fifth Circuit held that it was not an abuse of discretion for the district court to weigh court congestion against transfer based on just two rationales: 1) that its docket was less congested than the transferee venue's; and 2) that the case "appear[ed] to be timely proceeding to trial" before the transferor venue. *See also U.S. v. Planned Parenthood Fed. of Am., Inc.*, No. 2:21-CV-022-Z, 2022 WL 19006361, at *4–5 (N.D. Tex. Sept. 20, 2022). Further, the Fifth Circuit later defined this case progression factor as follows: "This factor normally weighs against

transfer when the case appears to be timely proceeding to trial before the transferee [*sic*] district." *In re TikTok, Inc.*, 85 F.4th 352, 363 (5th Cir. 2023) (cleaned up). This conflict is dispositive here—SMR only argues that the public interest in speedy resolution of disputes causes this factor to weigh against transfer. SMR does not allege that it competes with Apple in the marketplace. SMR's arguments about the difference in case speed between NDCA and this Court appear valid when considered in light of subsequent Fifth Circuit caselaw weighing time to trial as a factor against transfer, such as *In re TikTok*. *See* 85 F.4th 352, 363–64 (5th Cir. 2023). While concerns with analyzing time to trial began over this court congestion factor being given "particular significance" or "significant weight," *see In re Morgan Stanley*, 417 F. App'x at 950, precedent seems to now categorically prejudice specific groups of plaintiffs by preventing court congestion from being assigned *any* weight against transfer in circumstances like the one that SMR finds themselves in. *See In re Meta*, 2023 WL 7118786, at *2; *Zentian Ltd. v. Apple Inc.*, No. W-22-CV-00122-ADA, 2023 WL 4167746, at *10. Regardless, this Court ultimately aims to follow precedence on this matter. Accordingly, non-competing entities in patent cases will be prejudiced relative to other plaintiffs. Court congestion will be awarded no weight when there is a non-competing plaintiff in a patent case. Therefore, this factor is neutral. Should a petition for mandamus be filed, SMR may raise any arguments to clear up potential misapprehensions in precedent towards differential treatment of certain plaintiffs. Alternatively, if district courts are best situated to evaluate their own docket efficiency, as was held in *In re Clarke*, this court believes that the demonstrated docket efficiency of the Western District, and of this Court in particular, weighs against transfer. *See In re Clarke*, 94 F.4th at 510.

**2. Local Interest**

***i. Legal Overview***

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) (per curiam)). 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. "We focus on the *events*—not the *parties*. We do not consider the parties' connections to the venue because the local interest analysis is a public interest factor. Accordingly, the local-interest inquiry is concerned with the interest of *non-party citizens* in adjudicating the case." *In re Clarke*, No. 24-50079 at *5 (5th Cir. Mar. 1, 2024) (emphases in original).

***ii. Apple's Arguments***

Apple's position is that this factor strongly favors transfer. Apple relies on the Leyfman, Circosta, and Lee declarations to claim that most of the work integrating the accused functionalities in the U.S. was performed by workers in the NDCA. Apple also notes that Texas— and the foreign based plaintiffs— have no local interest in the suit.

***iii. SMR's Arguments***

SMR's stance relies on a deep dive into the tax breaks that Apple has received from the city of Austin and from Williamson County as demonstrative of WDTX choosing Apple over other businesses to receive these benefits.

***iv. Analysis***

The Court agrees with Apple that this factor leans in favor of transfer. The Fifth Circuit's recent *In re Clarke* decision, 2024 WL 886953, focuses our inquiry. Apple did not conduct specific events related to this litigation in WDTX that it did not conduct nationally, aside from tax breaks that lead to increased involvement by Apple in WDTX. The infringement allegations at the core of this lawsuit relate to Apple products sold throughout the United States. Conversely, there are specific acts related to the development of the accused products that occurred in NDCA. The tax breaks Apple received from WDTX do provide a minimal local interest in WDTX, as it demonstrates an event that in some small, disconnected manner is concerning this litigation. Non-party citizens in Texas are ultimately footing the bill or missing out on potential taxes that could be applied to public infrastructure. These potential benefits to the public are instead being utilized to create tax-break incentives for Apple in WDTX. The tax breaks provide some public and local interest in having this case decided in WDTX, however, it is strenuously tied to this case at best. Alternatively, the events in developing the accused

products in NDCA are much more directly tied to the infringement allegations that make up this claim. Therefore, this factor is in favor of transfer.

### 3. Familiarity of the Forum with the Law That will Govern the Case And Avoidance of Unnecessary Problems of Conflict of Laws or in the Application of Foreign Law.

#### *i. Analysis*

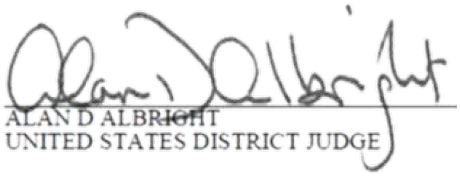
The Court agrees with the parties that these two factors are neutral. There is no reason to believe that the excellent federal courts in NDCA would be unfamiliar with federal law. Additionally, there are no issues involving conflicts of foreign laws. These two factors are neutral.

## V) CONCLUSION

After considering the relevant factors for this analysis, the Court believes that it would be clearly more convenient to have this case tried in the Northern District of California, as compared to the Western District of Texas. **THEREFORE, IT IS ORDERED** that the Motion to Transfer Venue to the Northern District of California is **GRANTED**.

| FACTOR | THE COURT'S FINDING |
|---|---|
| Relative ease of access to sources of proof | Leans in favor of transfer. |
| Cost of attendance for willing witnesses | Transfer. |
| Availability of compulsory process to secure the attendance of witnesses | Neutral. |
| All other practical problems that make trial of a case easy, expeditious, and inexpensive | Leans against transfer. |
| Administrative difficulties flowing from court congestion | Neutral, see above as potentially against transfer. |
| Local interest | Leans in favor of transfer. |
| Familiarity of the forum with law that will govern case | Neutral |
| Problems associated with conflict of law | Neutral |

So **ORDERED** this 14th of November 2024.



ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE