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

CYANDIA, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 2:24-CV-00096-JRG
	§	
SAP AMERICA, INC. AND SAP SE,	§	
	§	
Defendants.	§	

ORDER

I. INTRODUCTION

Before the Court is the Motion to Transfer Venue to the Northern District of California (the "Motion") filed by Defendants SAP America, Inc. and SAP SE (collectively, "Defendants" or "SAP") (Dkt. No. 18) and the Cross-Motion to Transfer Venue to the District of Delaware in the Alternative (the "Cross-Motion") filed by Plaintiff Cyandia, Inc. ("Plaintiff"). (Dkt. No. 45.) Both the Motion and Cross-Motion seek transfer on convenience grounds pursuant to 28 U.S.C. § 1404(a). Having considered the Motion, Cross-Motion, and related briefing, the Court finds that both the Motion and Cross-Motion should be **DENIED**.

II. BACKGROUND

On February 12, 2024, Plaintiff filed a Complaint accusing Defendants of directly and indirectly infringing U.S. Patent No. 8,499,250, U.S. Patent No. 8,578,285, U.S. Patent No. 8,595,641, and U.S. Patent No. 8,751,948 (collectively, the "Asserted Patents"). (Dkt. No. 1 at ¶ 10.) On May 13, 2024, Defendants filed the Motion. (Dkt. No. 18.) Plaintiff subsequently filed the Cross Motion on August 08, 2024. (Dkt. No. 45.)

III. LEGAL STANDARD

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it may have been brought." 28 U.S.C. § 1404(a). The question of whether a suit "might have been brought" in the transferee forum encompasses subject matter jurisdiction, personal jurisdiction, and propriety of venue. *Viking Techs., LLC v. Assurant, Inc.*, 2021 WL 3520756, at *1 (E.D. Tex. June 21, 2021) (quoting *Hoffman v. Blaski*, 363 U.S. 335, 343–44 (1960)). If this threshold burden is satisfied, the party seeking transfer must then establish that transfer is warranted in the interest of convenience.

In evaluating a motion to transfer pursuant to § 1404(a), the Court considers the Fifth Circuit's non-exhaustive list of private and public interest factors. *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) (*Volkswagen I*). The private interest factors include: (1) "the relative ease of access to sources of proof," (2) "the availability of compulsory process to secure the attendance of witnesses," (3) "the cost of attendance for willing witnesses," and (4) "all other practical problems that make trial of a case easy, expeditious and inexpensive." (*Id.*) The public interest factors include: (1) "the administrative difficulties flowing from court congestion," (2) "the local interest in having localized interests decided at home," (3) "the familiarity of the forum with the law that will govern the case," and (4) "the avoidance of unnecessary problems of conflict of laws or the application of foreign law." (*Id.*)

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

however, the plaintiff's choice is to be respected. (*Id.*) "When deciding a motion to transfer under § 1404(a), the Court may consider undisputed facts outside of the pleadings, such as affidavits or declarations, but must draw all reasonable inferences and resolve factual conflicts in favor of the non-moving party." *Hammers v. Mayea-Chang*, 2019 WL 6728446, at *4 (E.D. Tex. Dec. 11, 2019) (collecting cases).

IV. DISCUSSION

A. Whether This Case Could Have Been Brought in the NDCA

The threshold inquiry is "whether the judicial district to which transfer is sought would have been a district in which the claim could have been filed." *Volkswagen I*, 371 F.3d at 203. The parties do not dispute that Plaintiff could have filed this action in the Northern District of California (the "NDCA") because SAP has three offices within that district. (Dkt. No. 18 at 4.) The Court therefore finds that Plaintiff could have brought this case in the NDCA.

B. Private Interest Factors

1. The Relative Ease of Access to Sources of Proof

Defendants argue that this factor "favors transfer" for at least two reasons. (Dkt. No. 18 at 8.) First, Defendants assert that the presence of relevant document custodians and employees who develop and maintain the Accused Products in the NDCA bear on the ease of access to electronic sources of proof. (*Id*. at 7 (citing Dkt. No. 18-2 at ¶ 9; Dkt. No. 51 at 1.) Second, SAP has an office that is only two miles from the San Francisco courthouse, whereas its closest office to this Court is 168 miles away. (Dkt. No. 18 at 7-8.) According to Defendants, office proximity makes the NDCA "significantly more convenient" for transporting documents. (*Id.*)

In response, Plaintiff argues this factor is neutral because "'SAP's documents are almost exclusively available electronically, and are available from any SAP location, including the location of an employee that is working remotely from his or her home.'" (Dkt. No. 45 at 2 (citing

Dkt. No. 18 at 2).) Given the digital form of such documents, Plaintiff also downplays the significance of the location of SAP document custodians and employees who maintain and develop the Accused Products. (Dkt. No. 45 at 2-5.) Plaintiff points out that Defendants did not name any evidence "specifically in the possession of individual custodians located in California." (Dkt. No. 53 at 2.) Plaintiff further asserts that Defendants have not "explain[ed] the methodology [] used to conclude that activities related to the design and development occurred in California," rather than primarily in Germany. (Dkt. No. 45 at 4; Dkt. No. 53 at 2-3.) According to Plaintiff, Defendants failure to put forward any explanatory basis to establish the design and development occurred in California is well below of "enough [] to meet its burden." (Dkt. No. 45 at 3.)

Defendants did not identify any specific documents the custodians keep, and, therefore, the location of document custodians is given less weight. *See C&J Spec Rent Servs., Inc. v. Leam Drilling Sys. LLC, et al.*, 2019 WL 3017379, at *5 (E.D. Tex., Jul. 10, 2019) ("This argument is entitled to lesser weight because Defendants do not specifically identify any documents or physical evidence and instead provide largely conclusory statements"). On the other hand, Plaintiff has failed to identify any relevant documents within this District. Accordingly, the Court finds this factor to weigh in favor of transfer but only slightly.

The Court also notes that the vast majority of the evidence in this case will likely be electronic. If "the movant has identified no sources of proof that cannot be transferred electronically," the Court may "diminish[] the importance of this factor in the overall transfer analysis." *See id.; In re Planned Parenthood Fed'n of Am., Inc.*, 52 F.4th 625, 630 (5th Cir. 2022) ("The location of evidence bears much more strongly on the transfer analysis when, as in *Volkswagen*, the evidence is physical in nature"). Here, the parties agree that "most, if not all," evidence will likely be electronic in nature. (Dkt. No. 18 at 6; Dkt. No. 45 at 2.) Moreover, neither

party has identified any physical evidence unable to be electronically produced. The Court therefore finds that the importance of this factor is diminished in the transfer analysis.

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

Defendants argue this factor favors transfer or is neutral at best because no third-party witnesses are within the EDTX. (Dkt. No. 18 at 8.) Defendants assert that the non-party co-inventors are not subject to this District's subpoena power since they reside in Syracuse, New York and the United Kingdom. (*Id*. (citing Ex. E).)

In response, Plaintiff argues this factor weighs against transfer or is, at worst, neutral because Defendants concede that it "is unaware of any non-party unwilling witness identified within the Northern District." (Dkt. No. 45 at 5 (citing Dkt. No. 18 at 8).) Plaintiff also disputes Defendant and argues that non-party witnesses are located within this District. (Dkt. No. 45 at 6.) Specifically, Plaintiff identifies 9 non-party integrators and 2 non-party customers within this District. (*Id*.) According to Plaintiff, the integrators and customers have relevant information related to infringement and secondary considerations of non-obviousness via their use of the Accused Products. (*Id*. at 7).

In reply, Defendants assert that the third parties identified by Plaintiff "do not tip the scales toward the Eastern District" because more customers and integrators of Defendants are located in California as compared to Texas. (Dkt. No. 51 at 3.) California (43,550) has almost double the SAP customers than Texas (24,125). (*Id*. (citing Dkt. No. 44-1 at 18).) Defendants also note that the NDCA has more integrators (ten) than this District (nine). *(Id*. at fn. 5.)

The Court finds this factor to be neutral. Defendants do not specify any non-party unwilling witnesses in the NDCA. *In re TikTok*, 85 F.4th 352, 361 (5th Cir. 2023) ("[W]e cannot say that the district court committed a clear abuse of discretion in holding that this factor is neutral when petitioners have failed to identify any unwilling non-party witness"). Moreover, neither this

District's nor the NDCA's compulsory processes are available against the co-inventors of the Asserted Patents as they reside in Syracuse, New York, and the United Kingdom. *See id.* at 360. Additionally, the presence of third-party customers and integrators in both California and Texas do not tip the balance in either direction. Therefore, the Court finds that this factor is neutral.

3. The Cost of Attendance of Willing Witnesses

Defendants argue "this factor favors transfer because the substantial majority of witnesses will be less inconvenienced traveling to the Northern District." (Dkt. No. 18 at 13.) Specifically, SAP asserts that three former employees and five current employees residing in the Northern District of California would, if required to travel to the Court, "incur a real and significant burden … that would otherwise be avoided in the Northern District." (*Id*. at 9-11.; Dkt. No. 51 at 5.) Defendants further identify Sven Nommensen (former Chief of Staff) who resides in Reno, Nevada, a location "which is much closer to the [NDCA]." (Dkt. No. 18 at 10.) Additionally, Defendants note that five Germany-based employees must fly for about 11.5 hours and drive for 13.8 miles to reach the San Francisco courthouse but must fly for about 11 hours and drive for 170 miles to reach this District. (*Id*. at 11 (citing Dkt. Nos. 18-11, 18-12, 18-14).)

In response, Plaintiff argues this factor weighs against transfer because "many of the most important witnesses are located on the East Coast or in Europe, which [are] both closer to this District than California." (Dkt. No. 45 at 8.) Plaintiff notes that Mike Wetzer (an inventor and Plaintiff's CEO) and three co-inventors are hundreds of miles closer to Marshall than San Francisco since they reside on the East Coast and in the United Kingdom. (*Id*. at 8-9.) Plaintiff identifies four SAP Labs, Inc. employees and four SAP America, Inc. employees in Plano, Texas who are within this District. (*Id*. at 10-11.) Plaintiff also contends that the Germany-based SAP employees weigh against transfer because Germany is more proximate to this District (5,090

miles) than the NDCA (5,733 miles) and because international flights to Dallas cost less than to San Francisco. (*Id*. at 9, 12.)

In reply, Defendants maintain that this factor weighs against transfer. (Dkt. No. 51 at 4.) First, Defendants argue that the eight Plano-Based employees identified by Plaintiff are not relevant because their LinkedIn pages do not "indicate a connection to Fiori." (*Id.* at 4-5 (citing Dkt. No. 51-4).) Second, Defendants contend that the three co-inventors should not be considered under this factor as Plaintiff identified them as "unwilling witnesses." (*Id*.at 4.)

In sur-reply, Plaintiff asserts that Defendants did not show how the four former SAP employees have testimony which is not essentially duplicative of their current employees. (Dkt. No. 53 at 5.) Plaintiff also states it selected the eight Plano-based employees based on titles (e.g., Chief Product Expert and Senior Developer), noting that each of the employees has one or two decades of experience working at SAP. (*Id*. at 5-6.)

The Court finds this factor weighs slightly against transfer. Plaintiff identified eight SAP employees within this District, whereas Defendants identified eight SAP employees within the Northern District of California. Although the parties dispute the relevancy of the eight SAP employees within this District, the Court "must draw all reasonable inferences and resolve factual conflicts in favor of the non-moving party." *Hammers*, 2019 WL 6728446, at *4 (E.D. Tex. Dec. 11, 2019) (collecting cases). While Germany-based employees and Mr. Wetzer "will be required to travel a significant distance no matter where they testify," the delta from Germany as between East Texas and Northern California is significant. *In re Genentech, Inc.*, 566 F.3d 1338, 1344 (Fed. Cir. 2009); *but see In re Tik Tok, Inc.*, 85 F.4th at 361 ("The district court determined that this factor was neutral primarily because 'the key witnesses and the employee at the heart of the

misappropriation claim are in China' … That conclusion ignores out 100-mile test") (internal citation omitted). Accordingly, the Court finds that this factor weighs slightly against transfer.

Additionally, the Court notes that it elects not double-count the three co-inventors under this factor. Either witnesses require compulsory process to secure their attendance (assessed under the second private interest factor) or they are willing witnesses (assessed under the third private interest factor), but they should not be both. *See In re DISH Network L.L.C.*, 2021 WL 4911981, at *3 (Fed. Cir. Oct. 21, 2021) ("[W]hen 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.") (internal quotation omitted); *see also Enovsys LLC v. T-Mobile USA, Inc.*, 2022 WL 2161028, at *5 (E.D. Tex. June 14, 2022) ("The non-party witnesses identified by T-Mobile in this factor were also identified by T-Mobile in the previous factor. The Court is perplexed as to why compulsory process would be required for a willing witness. Further, T-Mobile has not submitted any declarations showing that any non-party witness would be willing or unwilling. This Court has repeatedly cautioned litigants not to conflate the two factors and the necessary showing required to demonstrate willingness or unwillingness."). This Court has already analyzed Plaintiff's co-inventors under the second private interest factor—as Plaintiff stated it should. Accordingly, the Court intentionally avoids improperly double counting the impact of these witnesses under this factor. *See In re Apple Inc.*, 979 F.3d at 1340 (cautioning against "inappropriately count[ing] twice" the convenience of witnesses under multiple factors).

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

Defendants argue this factor is neutral as this case remains in its early stages and no problems with judicial economy exist. (Dkt. No. 18 at 13.) Defendants note that the Court has not entered a scheduling order setting a trial date and Plaintiff has not served its infringement

contentions. (*Id*.) Defendants also assert that any delay that may occur with transfer would merely be "garden-variety delay." (*Id*. (citing *In re Radmax, Ltd*., 720 F.3d 285, 289 (5th Cir. 2013)).)

In response, Plaintiff argues this factor disfavors transfer because the litigation history of Defendants in this District establishes that Defendants have no practical issues with trying cases in this District. (Dkt. No. 45 at 13.) Plaintiff notes that Defendants have tried 42 cases to a conclusion in this District, including a case specifically relating to enterprise software. ((*Id*.; Dkt. No. 53 at 7 (citing *Versata Software, Inc. v. SAP America, Inc.*, No. 2:07-cv-153-DF, Dkt. 1 (E.D. Tex. Apr. 20, 2007)).)

In reply, Defendants emphasize that its previous litigation in this District does not weigh against transfer because the matter at hand "is an unrelated case, with an unrelated plaintiff, and different patents involving significantly different discovery and evidence." (Dkt. No. 51 at 5-6.)

The Court finds this factor to be neutral. Neither party has alleged that transfer will result in serious delay, and this case is still in its early stages.

C. Public Interest Factors

1. The Administrative Difficulties Flowing from Court Congestion

Defendants argue that this factor is neutral. (Dkt. No. 18 at 14.) Defendants reason that, while the NDCA historically has a longer median time to trial on average, the NDCA had a 2.1 months-faster median time to disposition that that of this District in 2023. (*Id*.; Dkt. No. 51 at 7.) Defendants also assert that the Court should afford this factor "little weight" because this factor is "the most speculative." (Dkt. No. 18 at 14.)

In response, Plaintiff argues this factor weighs against transfer because the NDCA would take longer and is more congested than the EDTX. (Dkt. No. 45 at 13-14.) Specifically, this District reached trial on average one to two years faster than the NDCA in 2022 and 2023. (*Id*. at 14 (citing Dkt. No. 18 at 14).) Judges within the NDCA also had "close to 25% more cases per

judge" than the EDTX during the same timeframe. (*Id.*) According to Plaintiff, transfer of this dispute to the NDCA could only result in delay. (Dkt. No. 53 at 7.)

The Court finds that this factor weighs against transfer. "The speed with which a case can come to trial and be resolved is a factor in the transfer analysis." *Fujitsu Ltd. v. Tellabs, Inc.*, 639 F. Supp. 2d 761, 768-769 (E.D. Tex. July 7, 2009) (finding that this factor weighed against transfer when the transferor venue had a median time to trial of 18.5 months and the transferee venue had a median time to trial of 27.5 months). The parties do not dispute that the EDTX has reached the trial of cases, not months but, years faster than the NDCA. Additionally, and although this factor has been called the "most speculative" factor in the transfer analysis, "the district court is in a better position to estimate the efficiency of its own docket." *In re Clarke*, 94 F.4th 502, 515 (5th Cir. 2024). While this factor is far from dispositive standing alone, the differences in time to trial should not be unduly discounted. Accordingly, this factor, in this case, weighs against transfer. [1]

2. ***The Local Interest in Having Localized Interests Decided at Home***

Defendants argue this factor "favors transfer" for at least two reasons. (Dkt. No. 18 at 14-15). First, Defendants assert that the NDCA has an interest in this dispute because at least a portion of the research, design, and development of the Accused Products occurred there. (*Id*. at 14; Dkt. No. 51 at 6). Second, Defendants contend that this District does not have a "meaningful connection" to the case at hand. (*Id.*) Defendants reason that "no events surrounding this dispute took place" in the EDTX and "the fact that the Asserted Products are available generally throughout the nation does not establish an interest in this District." (*Id.*; Dkt. No. 51 at 6-7).

[1] The Court notes that Defendants have not argued that Plaintiff "is not engaged in product competition in the marketplace and is not threatened in the market in a way that, in other patent cases, might add urgency to case resolution." *In re Google*, 58 F.4th 1379, 1383 (Fed. Cir. 2023). Defendants have not met their burden to show that the Court should refrain from assigning weight against transfer under *In re Google*. *Id*.

In response, Plaintiff argues that this factor weighs against transfer because a part of the accused conduct (sales) occurred within this District. (Dkt. No. 45 at 15.) Plaintiff notes that Defendants have offices, employees, and customers in the EDTX. (*Id.*; Dkt. No. 53 at 7.) According to Plaintiff, "California has no greater interest in this dispute than this District." (Dkt. No. 45 at 16.)

The Court finds that this factor favors transfer. This factor focuses on the location of the events giving rise to the suit, not the parties' connection to each forum. *See, e.g., In re TikTok*, 85 F.4th at 364 ("We look not to 'the parties' significant connection to each forum … but rather the significant connections between a particular venue and the events that gave rise to a suit") (citation omitted). Plaintiff alleges patent infringement, which imposes liability on anyone that "makes, uses, offers to sell, or sells any patented invention within the United States." 35 U.S.C. § 271(a). Here, the parties provide that Defendants "made" the Accused Products in the NDCA and "sold" the Accused Products in both the NDCA and the EDTX. Both venues therefore have a local interest in this dispute; however, the NDCA has a larger local interest. The Court accordingly finds this factor to favor transfer.

3. The Familiarity of the Forum with the Law that Will Govern the Case

The parties agree that this factor is neutral. (Dkt. No. 18 at 15; Dkt. No. 45 at 17.) The Court agrees and accordingly finds this factor be neutral.

4. The Avoidance of Unnecessary Problems of Conflict of Laws or the Application of Foreign Law

The parties agree that this factor is neutral. (Dkt. No. 18 at 15; Dkt. No. 45 at 17.) The Court agrees and accordingly finds this factor be neutral.

V. CONCLUSION

In view of the foregoing factors, the Court must determine whether the NDCA is "clearly more convenient" than this District. The Fifth Circuit has been careful to emphasize that district courts should not merely engage in a "raw counting" exercise which tallies up the factors favoring transfer and the factors weighing against transfer. *In re Radmax*, 720 F.3d 285, 290 n.8 ("We do not suggest—nor has this court held—that a raw counting of the factors in each side, weighing each the same and deciding transfer only on the resulting 'score,' is the proper methodology."). Instead, the Court must make factual determinations to ascertain the degree of actual convenience to be achieved, if any, and whether such rises to the level of "clearly more convenient." *See id.* Where the present and proposed forums are both roughly similar in terms of convenience, courts should not conclude that the proposed transferee forum is "clearly more convenient." *Volkswagen II*, 545 F.3d at 315. While this Court does not hold that "clearly more convenient" is equal to "clear and convincing," a movant must show materially more than a mere preponderance of convenience, lest the standard have no real or practical meaning. *See id.* When carefully applying the convenience factors and the related factual arguments in each unique case, courts should be careful not to lose sight of the plaintiff's choice of forum and its historical significance in our jurisprudence. *Id.* ("[W]hen the transferee venue is not clearly more convenient than the venue chosen by the plaintiff, the plaintiff's choice should be respected.").

Having found that only one factor favors transfer, one factor slightly favors transfer, four factors are neutral, one factor weighs against transfer, and one factor weighs slightly against transfer, the Court concludes that, on balance, the NDCA has not shown to be a "clearly more convenient" forum for this dispute.

In conclusion and considering the individualized weight of the specific factors, the Court is of the opinion that Defendants' Motion (Dkt. No. 18) should be and hereby is **DENIED**. For the same reasons, the Court also finds that the Cross Motion (Dkt. No. 45) should be and hereby is **DENIED**.

So ORDERED and SIGNED this 26th day of March, 2025.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE