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

SK NEXILIS CO., LTD., Plaintiff, v. SOLUS ADVANCED MATERIALS CO., LTD., VOLTA ENERGY SOLUTIONS S.A.R.L., VOLTA ENERGY SOLUTIONS EUROPE KFT., VOLTA ENERGY SOLUTIONS HUNGARY KFT., AND VOLTA ENERGY SOLUTIONS CANADA INC. Defendants.	Civil Action No. 2:23-cv-00539-JRG-RSP [redacted]

OPPOSED MOTION OF DEFENDANTS VOLTA ENERGY SOLUTIONS S.A.R.L., VOLTA ENERGY SOLUTIONS EUROPE KFT., VOLTA ENERGY SOLUTIONS HUNGARY KFT., AND SOLUS ADVANCED MATERIALS CO., LTD. TO TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)

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2	Declaration of Myungho Jang
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4	Map showing distance between Marshall, TX and international airport
5	Travel from Budapest, Hungary to Dallas, TX
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7	Cost for car service from Dallas, TX to Marshall, TX
8	Plaintiff SK Nexilis's webpage (http://www.sknexilis.com/en/nexilis/sites.php)
9	Tesla Webpage listing offices (https://www.tesla.com/contact)
10	"Tesla to open global engineering HQ in Palo Alto," *Palo Alto Online* (Feb. 22, 2023).
11	Copper Foil Sample Shipment Order to Palo Alto
12	Copper Foil Shipment Orders to Austin
13	Travel from Budapest, Hungary to Austin, TX
14	Travel from Seoul, South Korea to Austin, TX

* All emphasis is added unless noted otherwise.

[redacted]

TABLE OF ABBREVIATIONS

Abbreviation	Meaning
Asserted Patents	U.S. Patent Nos. 10,480,090; 10,811,689; 11,346,014; 11,591,706; and 9,457,541
EDTX	Eastern District of Texas
NDCA	Northern District of California
SKN	SK Nexilis Co., Ltd.
Solus	Solus Advanced Materials Co., Ltd.
VES Canada	Volta Energy Solutions Canada Inc.
VES Europe	Volta Energy Solutions Europe KFT
VES Hungary	Volta Energy Solutions Hungary KFT
VES S.A.R.L.	Volta Energy Solutions S.A.R.L.
Volta	Volta Energy Solutions S.A.R.L., Volta Energy Solutions Europe KFT, and Volta Energy Solutions Hungary KFT
WDTX	Western District of Texas
’090 patent	U.S. Patent No. 10,480,090
’689 patent	U.S. Patent No. 10,811,689
’014 patent	U.S. Patent No. 11,346,014
’706 patent	U.S. Patent No. 11,591,706
’541 patent	U.S. Patent No. 9,457,541

I. INTRODUCTION

This case has absolutely no connection to EDTX and does not belong here. The case relates to Volta's sales of copper foil to its only customer in the United States—Tesla. Neither Volta, Solus, nor SKN has any offices or presence in EDTX. There are no relevant witnesses or any sources of evidence in EDTX; indeed, virtually all of the relevant evidence and facts are located in either NDCA or outside of the United States. Critically, the vast majority of the relevant third-party Tesla witnesses are in NDCA.

The private and public interest factors courts consider most important—witness convenience, compulsory process for third parties, and the location of evidence—all favor transfer. Outside of this case, no named party has ***any*** connection to EDTX whatsoever. SKN is a foreign corporation with its principal place of business in Korea. Volta and Solus are all foreign corporations with no employees or offices in the U.S. VES Canada is also a foreign company over whom this Court lacks personal jurisdiction, as set forth in its motion to dismiss. *See* Dkt. 25. The only nexus that this case has to the United States is Volta's sales to its only American customer, Tesla, and the Tesla employees who primarily interact with Volta (and at one time, Solus) are located at Tesla's offices in Palo Alto, in NDCA, or outside of the U.S.

All other factors governing transfer to a more convenient venue either weigh in favor of transfer to NDCA or are neutral. Under the circumstances, the maintenance of this case here is an impossibility. *See In re TikTok, Inc.*, 85 F.4th 352, 358 (5th Cir. 2023) ("Indeed, we have found an abuse of discretion even where a majority of factors are neutral. . . . That is because *Volkswagen* [*II*] recognized that a district court abuses its discretion by denying transfer when 'not a single relevant factor favors the [plaintiff's] chosen venue.'" (quoting *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 318 (5th Cir. 2008) ("*Volkswagen II*"))); *see also In re Samsung Elecs.*

[redacted]

Co., No. 2023-146, 2023 WL 8642711, at *3 (Fed. Cir. Dec. 14, 2023) ("Because several factors favor NDCA and 'not a single relevant factor favors [DoDots'] chosen venue,' *TikTok*, 85 F.4th at 358 (citation omitted), we grant mandamus and direct the district court to transfer to NDCA."). Accordingly, the Court should transfer this case to NDCA pursuant to 28 U.S.C. § 1404(a). If the Court does not transfer the case to NDCA, Volta and Solus respectfully ask, in the alternative, that the Court transfer this case to WDTX (Austin Division), where Tesla's Gigafactory is located.

II. STATEMENT OF FACTS

A. Nature of this Case

SKN filed this patent infringement suit on November 21, 2023, later amending its Complaint on May 15, 2024. Dkt. 1, 9. SKN now alleges infringement of five patents: U.S. Patent Nos. 10,480,090; 10,811,689; 11,346,014; 11,591,706; and 9,457,541. Dkt. 9, ¶ 2.

SKN's infringement allegations target certain properties of Volta's copper foil products used in the manufacture of batteries, such as those used in electric vehicles in the U.S. These properties include "peak count roughness Rpc" for the '090 patent (Dkt. 9, ¶ 51); "a coefficient of thermal expansion of the electrolytic copper foil," "tensile strength," "weight deviation," and "a peak count (Pc)" for the '689 patent (*id.*, ¶ 65); "a binding coefficient of the electrolytic copper foil," "peak height," "peak density," and "amount of attachment of Cr (mg/m^2)" for the '014 patent (*id.*, ¶ 82); "a texture coefficient of (220) plane of the electrolytic copper foil" and "peak density" for the '706 patent (*id.*, ¶ 96); and "a ratio of a sum of texture coefficients," "weight deviation," and "tensile strength" for the '541 patent (*id.*, ¶ 112). SKN also alleges that the accused copper foil is particularly beneficial for battery manufacture (thus implicating Volta's U.S. customer, Tesla). *Id.*, ¶ 70; *see also id.*, ¶¶ 42 (stating the products "[c]ontribut[e]

[redacted]

to yield improvement by upgrading processability within the battery production process with ***high strength properties before heat treatment*** and increasing the life and stability of cylindrical and square batteries with ***high elongation properties after heat treatment***"), 43, 46, 54, 70, 85, 99.

SKN's complaint directly targets Volta's sales to Tesla. Indeed, SKN alleges both direct and indirect infringement, including inducement of infringement within the United States that could be done by only Tesla. *See* Dkt. 9, ¶¶ 48, 58-60, 75-77, 89-91, 105-107, 120-122. Given that Tesla is Volta's sole U.S. customer, *see* Ex. 1, ¶ 7, SKN's allegations specifically relate to Tesla. *See* Dkt. 9, ¶ 13 ("Defendants have offered for sale and sold the Accused Products to EV manufactures [sic], such as Tesla, Inc[.], located in Texas."). Although Tesla has a factory in Texas—specifically, WDTX—Volta's (and previously Solus's) primary Tesla contacts are in Palo Alto, CA. *See* Ex. 1, ¶¶ 8-9. They have no contacts with EDTX whatsoever. *Id.*, ¶¶ 4-6; Ex. 2, ¶¶ 3-12.

B. Relevant Activities and Witnesses Are Not Located in EDTX, but in NDCA

None of the named parties are organized, exist, or have their principal places of business located in Texas. *See* Dkt. 9, ¶¶ 3-8.

SKN Has No Connection to EDTX: SKN identifies no ties to EDTX. SKN is located in South Korea, and the five Asserted Patents list inventors in South Korea. *See* Dkt. 9-5, 9-6, 9-7, 9-8, 9-10 (asserted patents).

Volta and Solus Have No Connection to EDTX: Volta and Solus have no connection to EDTX whatsoever. Volta's and Solus's employees are all located outside of the United States, primarily in Europe or South Korea. *See* Dkt. 9, ¶¶ 4-8; Ex. 1, ¶ 3; Ex. 2, ¶ 4. Volta's and Solus's employees' business trips to the U.S. have been focused on its customer Tesla, including several trips to Palo Alto in NDCA, working with Tesla employees residing in that district. Ex.

[redacted]

1, ¶¶ 9-12. For example, Volta's (and previously Solus's) employees ordinarily travel to Palo Alto [redacted] *Id.*, ¶ 10. Since 2022, Volta and/or Solus employees have made [redacted] *Id.*, ¶ 10. Volta has made [redacted] at Tesla's Gigafactory in WDTX. *Id.*, ¶ 16. Not once has a Volta or Solus employee traveled to EDTX on business. *Id.*, ¶ 5; Ex. 2, ¶ 9.

Relevant Third-Party Witnesses Are All in NDCA: The only relevant witnesses located in the U.S. are Tesla employees based in Tesla's Palo Alto location, in NDCA. Ex. 1, ¶ 11-12. In particular, Volta's (and previously Solus's) business activities regarding copper foil products have focused on [redacted] *See id.*

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 might have been brought." 28 U.S.C. § 1404(a). In analyzing a motion to transfer under § 1404(a), the law of the regional circuit applies. *In re Samsung Elecs. Co.*, 2 F.4th 1371, 1375 (Fed. Cir. 2021); *In re Apple Inc.*, 979 F.3d 1332, 1336 (Fed. Cir. 2020). Under § 1404(a), the moving party must first show that the claims "might have been brought" in the proposed transferee district. *Volkswagen II*, 545 F.3d at 312. Second, the movant must show "good cause" by demonstrating that the "transferee venue is clearly more convenient" than the transferor district. *Id.* at 315.

In evaluating convenience, courts weigh both private and public interest factors. *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) ("*Volkswagen I*"). The private factors include: "(1) the relative ease of access to sources of proof; (2) the availability of compulsory

[redacted]

process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive." *Id*. The public interest factors include: "(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws of the application of foreign law." *Id*. No factor is dispositive, and a finding that most factors are neutral still warrants granting a motion to transfer. *See TikTok*, 85 F.4th at 358 (recognizing that "where a majority of factors are neutral . . . . a district court abuses its discretion by denying transfer when 'not a single relevant factor favors the [plaintiff's] chosen venue.'" (quoting *Volkswagen II*, 545 F.3d at 318)).

IV. NDCA Is Clearly the More Convenient Venue

A. SKN Could Have Brought This Action in NDCA

Under § 1404(a), the moving party must first show that the claims "might have been brought" in the proposed transferee district. *Volkswagen II*, 545 F.3d at 312. SKN could have brought this case in NDCA.[1] A patent infringement case may be brought in "the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400(b); *see also Samsung*, 2 F.4th at 1376. Additionally, foreign corporations "are subject to venue in any district." *Id.* at 1376 n.1. Because Volta and Solus consist of foreign corporations, venue is proper in any judicial district

[1] VES Canada is a foreign company over whom this Court lacks personal jurisdiction, as set forth in its motion to dismiss. *See, e.g.*, *B/E Aerospace, Inc. v. Zodiac Aerospace, et al.*, No. 2:16-CV-01417-JRG-RSP, 2018 WL 7140299, at *5 (E.D. Tex. Nov. 29, 2018), *adopted* 2019 WL 354883 (E.D. Tex. Jan. 18, 2019). To the extent the Court finds it has personal jurisdiction over VES Canada, the only potential contacts with the United States are the same as those of Volta and Solus, and for the same reasons discussed herein, the Court should transfer any claim against VES Canada to NDCA.

[redacted]

with personal jurisdiction over Volta and Solus, under 28 U.S.C. § 1391(c)(3). Here, NDCA has jurisdiction over Volta and Solus by virtue of Volta's and Solus's specific contacts, [redacted] Ex. 1, ¶¶ 9-10. Moreover, [redacted] *Id.*, ¶ 13; Ex. 11. SKN, therefore, could have brought this action in NDCA. *Samsung,* 2 F.4th at 1376; *see also Unicorn Energy GMBH v. Tesla, Inc.*, No. 2:20-CV-00338-JRG, 2021 WL 4034515, at *5 (E.D. Tex. Sept. 3, 2021) (granting motion to transfer to NDCA where Tesla products were accused of infringement).

B. The Private Interest Factors Favor Transfer

The private interest factors favor transfer here because none of the sources of proof or witnesses are located in EDTX, and many are in NDCA.

1. Relative Ease of Access to Sources of Proof

The ease of access to sources of proof favors transfer. This factor supports transfer "where the current district lacks any evidence relating to the case." *TikTok*, 85 F.4th at 358. Importantly, "the movant need not show that all relevant documents are located in the transferee venue to support a conclusion that the location of relevant documents favors transfer." *Apple*, 979 F.3d at 1340.

Here, there are no sources of proof in EDTX. SKN's complaint centers on Volta's sales to its only U.S. customer, Tesla. *See, e.g.*, Dkt. 9, ¶¶ 56, 73, 87, 103; *see also id.*, ¶ 44. Volta's contacts with Tesla are focused in NDCA (as have Solus's past contacts), which Volta and Solus employees have visited [redacted] *See* Ex. 1, ¶¶ 10-11. Tesla's headquarters for engineering is in NDCA. Ex. 10 ("Tesla Motors has announced

[redacted]

that it is going to base its global engineering and AI headquarters in Palo Alto[.]"). Volta and Solus have no evidence in EDTX—all of their relevant documents are outside of the U.S., in Europe, where the accused products are developed, made, and sold, or South Korea, where Solus is located. *See* Ex. 1, ¶¶ 3-6; Ex. 2, ¶ 10. Because Volta and Solus do not have any documents in the U.S., and Tesla has relevant sources of proof in NDCA, this factor supports transfer. *Cf. Apple*, 979 F.3d at 1340 ("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.").

[redacted] Ex. 1, ¶¶ 13, 15; Ex. 11. Indeed, Volta's primary contacts with Tesla are centered in NDCA. Ex. 1, ¶¶ 10-12; *cf. Wireless Recognition Techs. LLC v. A9.com, Inc.*, No. 2:10-CV-364-JRG, 2012 WL 506669, at *4 n.7 (E.D. Tex. Feb. 15, 2012) (transferring to NDCA, despite the inventor and prosecuting attorney being in Austin).

NDCA thus has easier access to sources of proof relating to the accused products. *See, e.g.*, *Tesla*, 2021 WL 4034515, at *2 (finding this factor favored transfer where "research, development, design, and engineering documentation related to the Accused Products" were in NDCA); *Wireless Recognition*, 2012 WL 506669, at *4 (transferring to NDCA where some witnesses and sources of proof were located there, and the plaintiff "failed to identify ***any*** witnesses or evidence located in the Eastern District of Texas" (emphasis in original)).

2. Availability of Compulsory Process

The availability of compulsory process factor also weighs in favor of transfer because relevant non-party witnesses with knowledge of the allegedly infringing activities are in NDCA.

The ability to compel live trial testimony is crucial for evaluating a witness's testimony. *Aguilar-Ayala v. Ruiz*, 973 F.2d 411, 419 (5th Cir. 1992). Because "[p]arty witnesses are

[redacted]

generally deemed to be willing witnesses, . . . this factor is directed more to third-party witnesses." *Tesla*, 2021 WL 4034515, at *2; *see also In re Apple, Inc.*, 581 F. App'x 886, 889 (Fed. Cir. 2014) (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."). Where "the movant has identified multiple third-party witnesses and shown that they are overwhelmingly located within the subpoena power of only the transferee venue, this factor favors transfer even without a showing of unwillingness . . . ." *In re Hulu, LLC*, No. 2021-142, 2021 WL 3278194, at *4 (Fed. Cir. Aug. 2, 2021).

Here, Volta has identified several "non-party witnesses . . . outside [EDTX]'s subpoena power," and "a proper venue that does enjoy absolute subpoena power for both depositions and trial" is available. *Volkswagen II*, 545 F.3d at 315-16. [redacted] Because SKN relies on Volta's sales to Tesla as allegedly infringing acts, and because Tesla is Volta's only U.S. customer, these individuals are potential witnesses who can speak to sales, requirements, and testing for the accused products. *Id.*, ¶¶ 7, 11; *see also* Dkt. 9, ¶ 13. To support transfer, "it is not necessary to do more at this point in the litigation than to show that the potential witnesses have relevant and material information." *In re Pandora Media, LLC*, No. 2021-172, 2021 WL 4772805, at *5 (Fed. Cir. Oct. 13, 2021). EDTX does not have trial subpoena power over these Tesla employees, who are presumed to be unwilling to travel to Texas, but NDCA does. *Id.* at *3 ("[W]e have held that when there is no indication that a non-party witness is willing, the witness is presumed to be unwilling." (citation omitted)).

Thus, this factor favors transfer to NDCA, which has absolute subpoena power over the above-identified witnesses. *See Uniloc USA, Inc. v. Apple Inc.*, No. 2:17-CV-00258-JRG, 2017 WL 11553227, at *6-7 (E.D. Tex. Dec. 22, 2017) (finding this factor weighed in favor of transfer where third-party witnesses resided in NDCA and none resided in EDTX); *Wireless Recognition*, 2012 WL 506669, at *4 (finding this factor weighed in favor of transfer).

3. Attendance of Willing Witnesses

The attendance of willing witnesses factor favors transfer. Although no factor is dispositive, "[t]he convenience of the witnesses is probably the single most important factor in a transfer analysis." *Wireless Recognition*, 2012 WL 506669, at *4 (citation omitted). "The convenience of the witnesses is an important consideration for both party witnesses and non-party witnesses," and "the fact that a witness is affiliated with a party 'does not negate the inconvenience and cost to those individuals to travel a significant distance to testify.'" *Pandora Media,* 2021 WL 4772805, at *3 (citation omitted).

Because Volta's witnesses are located in Europe and Solus's witnesses are located in South Korea, travel to NDCA is more convenient than travel to EDTX. For example, relevant Volta and Solus employees have made business trips to Palo Alto to visit with Tesla employees and to address quality control issues, obtain product approvals from Tesla, and promote future products. *See* Ex. 1, ¶¶ 10-11. NDCA is also more accessible for Volta and Solus than EDTX. There are direct, international flights between Hungary (where the majority of Volta's witnesses are located) and NDCA, which Volta's employees take for business trips. *See id.* Additionally, there are direct, international flights between South Korea and NDCA. In contrast, none of Volta's nor Solus's employees travel to EDTX for business, and no direct international flights are available—the closest international airport to EDTX is more than 100 miles away. Ex. 4 (distance between Marshall and closest international airport). For example, travel to Marshall

requires flying to Dallas, followed by a three-hour drive (or a connecting flight to Shreveport, and a drive). *See* Ex. 5 (travel to Dallas, TX from Budapest, Hungary); Ex. 6 (travel to Dallas, TX from Seoul, South Korea); Ex. 7 (travel to Marshall, TX from Dallas, TX). In contrast, travel to a courthouse in NDCA can be accomplished by a direct flight to San Francisco.

Notably, SKN has not identified any relevant witnesses in EDTX. Indeed, SKN has no location in Texas. *See* Ex. 8 (identifying business sites in Poland, Malaysia, Korea, and Georgia). Moreover, SKN's employees appear to be located in South Korea and all of the Asserted Patents list inventors there. *See* Dkt. 9-5, 9-6, 9-7, 9-8, 9-10. NDCA would therefore also be a closer, more convenient location for the SKN employees and the named inventors. *Cf. Wireless Recognition*, 2012 WL 506669, at *5 (acknowledging "it would be more convenient and less expensive for Amazon to bring its witnesses to [NDCA] from Seattle, than to [EDTX]"); *see also TikTok*, 85 F.4th at 362 ("[T]he district court's analysis of this factor should have ended with its recognition that the bulk of relevant witnesses [are] in China . . . . Under Volkswagen's 100-mile threshold, the Northern District of California is a clearly more convenient venue for most relevant witnesses in this case." (citation omitted)); *Samsung*, 2023 WL 8642711, at *2 (finding the district court "abused its discretion by not weighing this factor in favor of transfer" when "most of the potential witnesses here are in Korea and NDCA.").

EDTX is not a convenient venue for any named party or relevant third parties (as discussed in Section IV.B.2), and this factor favors transfer. *See, e.g.*, *Tesla*, 2021 WL 4034515, at *4 (finding this factor supports transfer "given the particular identification of Tesla witnesses located in [NDCA] and the absence of [plaintiff] witnesses here"); *Uniloc USA*, 2017 WL 11553227, at *9 (finding this factor supports transfer when movant named multiple party and non-party witnesses residing within NDCA and plaintiff named only one employee who resided

[redacted]

part-time in EDTX); *Wireless Recognition*, 2012 WL 506669, at *5 (finding this factor supports transfer when "the number of witnesses residing in Texas, and any relevant information which they may provide, pales in comparison to the number of party and non-party witnesses with relevant information residing in [NDCA]").

Indeed, in cases where some witnesses and evidence are closer to the transferee venue and no convenience factors favor the plaintiff's chosen venue, the case should be transferred. *See In re Juniper Networks, Inc.*, 14 F.4th 1313, 1323 (Fed. Cir. 2021) ("*Juniper I*") (holding district court erred in denying transfer when "several of the most important factors bearing on the transfer decision in this case strongly favor the transferee court, and no factor favors retaining the case in the transferor court"); *see also, e.g.*, *Tesla*, 2021 WL 4034515, at *4 (granting Tesla's motion to transfer where sources of proof, willing witness, and localized interest factors favored NDCA where plaintiff "ha[d] not identified any willing witnesses in [EDTX]"). Here, because it is more convenient for ***all*** of the relevant witnesses to travel to NDCA than EDTX, and EDTX is not convenient for ***any*** of the identified witnesses, the Court should transfer to NDCA.

4. All Other Practical Problems

The "all other practical problems" factor is neutral and does not weigh against transfer. Volta and Solus filed this motion early in this litigation, before the start of fact discovery. *See In re Planned Parenthood Fed'n of Am., Inc.*, 52 F.4th 625, 631 (5th Cir. 2022) (holding that this factor weighs against transfer when a party is "inexcusably delayed" and moves for transfer "late in the litigation"). Given the early stage of this case and the fact that SKN has filed no other case asserting these patents, SKN can advance no legitimate argument that transfer would hinder judicial economy or implicate other practical concerns related to managing this litigation.

C. The Public Interest Factors Favor Transfer

1. Local Interests

[redacted]

The local interests factor favors a transfer. "Local interests are not a fiction" and deserve due consideration in the transfer analysis. *See Samsung*, 2 F.4th at 1380. "Indeed, the place of the alleged wrong is one of the most important factors in venue determinations." *TikTok*, 85 F.4th at 364 (citation omitted). This factor weighs heavily in favor of a transfer when "there is no relevant factual connection to the [transferor district]." *Id*. (quoting *Volkswagen II*, 545 F.3d at 317-18). Tesla has a strong presence in NDCA, and Volta's and Solus's contacts with Tesla have been centered in NDCA. *See* Ex. 9 (Tesla webpage listing Palo Alto office); Ex. 3 (Fang Decl.), ¶ 4 ("Tesla has more than 2,000 employees at its headquarters in Palo Alto alone. Tesla occupies 52 physical locations in N.D. Cal."). For example, Volta and/or Solus employees have met with Tesla [redacted] Ex. 1, ¶¶ 10-12. Tesla's headquarters for global engineering—where decisions related to sourcing of battery components are likely made—is located in NDCA. Ex. 10. NDCA also has a strong local interest in this matter because it is the primary location where Volta has sold, marketed, supported, and met with its U.S. customer, Tesla, regarding the accused products. *See* Ex. 1, ¶¶ 9-12. This factor, therefore, weighs in favor of transfer. *Cf. Tesla*, 2021 WL 4034515, at *5 (finding factor favors transfer where "the design, development, management, and decision making related to the Accused Products have historically been centered there").

2. Court Congestion

The court congestion factor is neutral given its speculative nature. *See, e.g.*, *Wireless Recognition*, 2012 WL 506669, at *6 ("Given the speculative nature of this factor, the court finds it to be neutral."). "[T]he prospective speed with which [a] case might be brought to trial" is not "of particular significance" in the transfer analysis. *Samsung*, 2 F.4th at 1380; *Hulu*, 2021 WL 3278194, at *5. Further, this factor appears to be the most speculative, and "when, as here,

several relevant factors weigh in favor of transfer and others are neutral, then the speed of the transferee district court should not alone outweigh all of those other factors." *In re Genentech, Inc.*, 566 F.3d 1338, 1347 (Fed. Cir. 2009).

3. Familiarity with the Governing Law and Conflicts of Law

These factors are both neutral. There are no perceived conflicts of law, and NDCA is familiar with patent law and equally qualified to apply it. *See In re TS Tech USA Corp.*, 551 F.3d 1315, 1320-21 (Fed. Cir. 2008).

V. In the Alternative, WDTX Is a More Convenient Venue than EDTX

Although NDCA is the most appropriate venue for this case, WDTX is also clearly more convenient than EDTX. Whereas EDTX has no connection whatsoever to this case—with no evidence or witness in the District—WDTX includes a Tesla factory that makes batteries incorporating the accused copper foil. Thus, if the Court does not transfer to NDCA, Volta and Solus respectfully ask, in the alternative, that the Court transfer to WDTX (Austin Division).

A. The Private Interest Factors Favor Transfer

The first factor, the relative ease of access to sources of proof, makes WDTX a clearly more convenient forum than EDTX. As discussed above, SKN's complaint involves some allegations the accused copper foil products have properties that are particularly beneficial for battery manufacture. *See, e.g.*, Dkt. 9, ¶¶ 54, 68, 70, 85, 99; *see also id.*, ¶¶ 42, 43, 46. [redacted] WDTX is thus more convenient than EDTX under the sources of proof factor (and this case could have been brought in WDTX at least in view of these shipments).

The second factor, the availability of the compulsory process, shows that WDTX is more

convenient than EDTX to the extent that any non-party Tesla witnesses in WDTX were to be needed for trial. EDTX therefore does not have absolute trial subpoena power over these Tesla employees located in Austin, but WDTX does. *See* Fed. R. Civ. P. 45(c) (explaining a court may compel a person to attend trial "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***").

The third factor, the convenience of willing witnesses, also shows that WDTX is more convenient than EDTX. As discussed above, most of Volta's and Solus's relevant party witnesses are located in Europe and South Korea, *see* Ex. 1, ¶ 3; Ex. 2, ¶ 4, and it is easier and cheaper to travel between Hungary (where the majority of Volta's witnesses are located) or South Korea and Austin (WDTX) than it is to travel between Hungary or South Korea and Marshall (EDTX). *Compare* Exs. 5-7, *with* Exs. 13-14.

The fourth factor, all other practical problems, is neutral. As discussed above in Section IV.B.4, Volta and Solus filed this motion early in this litigation, before the start of fact discovery, and SKN can advance no legitimate argument that transfer would hinder judicial economy or implicate other practical concerns related to managing this litigation.

B. The Public Interest Factors Favor Transfer

The first factor, local interests, shows that WDTX is clearly more convenient than EDTX.

[redacted]

WDTX has a stronger local interest in this matter than EDTX because it is the location [redacted] *See* Ex. 1, ¶ 15. The second factor, court congestion, is neutral because, "under a proper analysis that looks to the number of cases per judgeship and the actual average time to trial rather than aggressively scheduled trial dates, 'the [EDTX] and the [WDTX] show no significant differences in caseload or time-to-trial statistics.'" *In re Juniper Networks, Inc.*, No. 2021-156, 2021 WL 4519889, at *3 (Fed. Cir. Oct. 4, 2021) (citing *Juniper I,* 14 F.4th at 1322); *see also Apple*, 979 F.3d at 1343. Therefore, transferring this case to WDTX will not materially affect the speed at which this case is brought to trial. Finally, the third and fourth factors, familiarity with the governing law and conflicts of law, are both neutral. There are no perceived conflicts of law, and WDTX is equally qualified to apply patent law. *See TS Tech USA*, 551 F.3d at 1320-21.

VI. CONCLUSION

As summarized below, because three of the private factors and one of the public factors favor transfer and because the remaining factors are neutral, this case should be transferred to NDCA pursuant to 28 U.S.C. § 1404(a). If the Court does not transfer the case to NDCA, Volta and Solus respectfully ask, in the alternative, that the Court transfer to WDTX (Austin Division).

Factor	**Weight**
Relative ease of access to sources of proof	Favors transfer
Availability of compulsory process	Favors transfer
Attendance of willing witnesses	Favors transfer
All other practical problems	Neutral
Local interests	Favors transfer
Court congestion	Neutral
Familiarity with the governing law	Neutral
The avoidance of unnecessary problems of conflict of laws of the application of foreign law	Neutral

[redacted]

Date: June 13, 2024

Respectfully submitted,

By *<u>/s/ Michael J. McKeon</u>*

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[redacted]

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on June 13, 2024 to all counsel of record via email.

/s/ Michael J. McKeon

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(G), counsel for the parties met and conferred telephonically on June 10, 2024. Harrison Rose and Brianne Straka attended for Plaintiff. Jacqueline Tio and Daniel Tishman attended for Defendants. The parties discussed their positions on this motion. The discussions conclusively ended in an impasse, leaving an open issue for the court to resolve. Counsel for Plaintiff indicated that they oppose this motion.

/s/ Michael J. McKeon

[redacted]

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[redacted]

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