IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

WACO DIVISION

PROXENSE, LLC, *Plaintiff,*	§	
	§	**W-23-CV-00319-ADA**
v.	§	
MICROSOFT CORPORTATION, *Defendants.*	§	

ORDER DENYING DEFENDANT'S MOTION TO TRANSFER

I. INTRODUCTION

Before the Court is Defendant Microsoft Corporation's Motion to Transfer Venue to the Western District of Washington. ECF No. 29. Plaintiff Proxense, LLC filed its opposition brief on November 13, 2023 (ECF No. 35) and Microsoft replied in support of the Motion on November 27, 2023. ECF No. 40. After carefully considering the parties' briefing, the relevant facts, and the applicable law, the Motion is **DENIED**.

II. BACKGROUND

Proxense originally filed suit against Microsoft on May 2, 2023. ECF No. 1. Proxense accuses Microsoft of infringing U.S. Patent Nos. 8,352,730; 9,298,905; 8,886,954; 8,646,042; 9,679,289; and 10,073,960. *Id.* Proxense has previously filed suit in this Court in *Proxense, LLC v. Samsung Elecs. Co.,* No. 21-cv-00210-ADA (W.D. Tex.), which settled on the day of jury selection and involved the same technology at issue here. There is also a co-pending case in this Court against Google involving the same asserted patents. *Proxense, LLC v. Google, LLC*, No. 6:23-cv-320-ADA.

III. LEGAL STANDARD

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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).

IV. ANALYSIS

A. Threshold Matters

The threshold determination in the § 1404(a) analysis is whether this case could first have been brought in the destination venue—the WDWA. The Court and the parties agree that the threshold is met because Microsoft is headquartered in the WDWA. 28 U.S.C. § 1400(b); *see* ECF No. 1 at ¶ 3.

B. Private Interest Factors

The private interest factors are (1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive. See *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) (*Volkswagen II*) (citing *Volkswagen I*, 371 F.3d at 203).

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 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. But 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). "[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.* Yet 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. More recently, the Fifth Circuit has noted that it is improper to ignore the rule, the implication being that it should always apply. *In re TikTok*, 85 F.4th at 361–2.

Microsoft specifically identifies seven willing witnesses in WDWA: Peter Dawoud, Robert Gilbert, Samir Shah, Chris Kaler, Hervey Wilson, Michael Allen, and Kathryn Griffith. ECF No. 29. at 5, 8, 10–11. Several witnesses filed declarations in support of Microsoft's motion to transfer. The declarations state where the employee works, which team within Microsoft the declarant works, their role, and their unawareness of any Microsoft activities within WDTX. *See, e.g.,* ECF Nos. 29-1, 29-2, 29-3; *see also* ECF No 29 at 10. Microsoft explains that there are three Microsoft

teams implicated here (Microsoft Entra ID, Windows Hello, and Microsoft Authenticator applications), and that one employee out of those three teams resides in Texas. Microsoft then also identifies Eduardo Barrera Isla who lives and works in Round Rock, Texas on Microsoft's Passwordless Core Development team. *Id.* at 11. The products that the Passwordless Core Development team work on include Windows Hello, Windows Hello for 7 Business, FIDO, and Passkey Authentication. ECF No. 35 at 9. Each of those products is implicated in the alleged infringement. Despite Microsoft arguing that each of its teams who work on the accused products, it admits that Mr. Barrera Isla's "responsibilities directly overlap with those in the WDWA" and that he accesses documents the same relevant documents from his position in Texas. ECF No. 29 at 11.

Proxense's argument against transfer focuses on Mr. Barrera Isla and Ratchpak Pongmongkol. Mr. Pongmongkol works and resides in College Station, Texas (a mere 80 miles from the Waco Federal Courthouse) and serves as a Senior Software Engineer on the Microsoft Identity Team. ECF No. 35 at 9. Proxense highlights the relevance of Mr. Pongmongkol by stressing that "he ranked in the *top four* contributors of code commits to the Microsoft Azure AD repository on GitHub between October 29, 2017 and October 23, 2023." *Id*. at 9–10 (emphasis in original). Microsoft characterizes Mr. Pongmongkol as knowing "little about the accused passwordless authentication methods" and Proxense's use of his knowledge as "rank speculation." ECF No. 40 at 3 (citing *In re TikTok,* No. 23-50575 at *11 n.9). The Court disagrees.

While Microsoft charges Proxense of engaging in speculation, it asks the Court to do the same speculation in its favor, but with far less evidence. The Court cannot assess the likelihood of required travel of the seven witnesses identified by Microsoft though their vague declarations. Microsoft has put before the court a few Microsoft employees who do not know of Microsoft

employees or activities in Texas. The tactic of pointing to teams and employees in WDWA while asking the Court to accept these witnesses without scrutiny does not help the Court's ultimate determination. It is true that Microsoft has provided the "witness's title, the title of the team they belong[] to, and the technology that team supports." *VoIP-Pal.com, Inc. v. Meta Platforms, Inc.*, No. 2022 WL 3021522, *7 (W.D. Tex. July 28, 2022). But the Court must also decide, in the face of witnesses with overlapping knowledge in both forums, whether the witnesses in Microsoft's preferred forum are likely to testify at all. To that end, Microsoft has not given the Court evidence that would lead it to believe the witnesses in or near the WDTX would be less likely to appear in this case than those identified in the WDWA.

The Court understands that more relevant teams and team members reside in or near the proposed transferee forum. But Microsoft's presentation of this factor does not convey why the Microsoft witnesses in the WDWA would not be saved the expense of travel to WDTX, especially when there are witnesses residing in or near the WDTX whose "responsibilities directly overlap with those in the WDWA." ECF No. 29 at 11. On the other hand, Proxense has established with precision that Mr. Barrera Isla has relevant knowledge of and experience with the accused products such that he would be both likely to testify at trial and find this district clearly more convenient. As for Mr. Pongmongkol, the evidence shows that he has substantial knowledge of the accused products, and that his experience in developing these products at Microsoft is extensive. As for the technical witnesses, the two witnesses specifically identified who reside within in or near the WDTX have overlapping knowledge with those who reside in the WDWA.

Microsoft also presents its in-house counsel with knowledge of Microsoft licensing practices—Michael Allen, Assistant General Counsel at Microsoft—is a relevant willing witness. ECF No. 29 at 10. Mr. Allen resides in the WDWA. *Id*. To the extent his knowledge will be used

during depositions, the Plaintiff has already conceded to depose him remotely. Although Microsoft devotes just one sentence in its Motion to Mr. Allen, the Court finds that his knowledge would likely be necessary at trial and highly relevant to damages.

The Parties also identify several non-party willing witnesses. Fist, Microsoft points to Micheal Perla and Michael Jones who are both former Microsoft employees living in WDWA. *Id*. Proxense identifies David Brown, the named inventor of the asserted patents, who resided in Chattanooga, Tennessee. ECF No. 35 at 10–11.

In sum, the parties have identified several Microsoft witnesses in the WDWA that possess relevant knowledge. Proxense's argument that these witnesses' relevance is blunted by the fact that two witnesses with overlapping knowledge reside in or near the WDTX. Further, Proxense identified Mr. Brown, who would find travel from Chattanooga to Waco more convenient than to WDWA. Although the Court finds that Microsoft has not adequately explained why witnesses with the overlapping knowledge in the WDTX should be disregarded simply because other witnesses reside in WDWA, this factor still slightly favors transfer. This finding is based on the Fifth Circuits ruling in *TikTok*, which mandates that this factor should favor transfer where "the bulk of the relevant witnesses," as is the case here, are closer to the transferee forum. *In re TikTok, Inc.*, 85 F.4th at 362. The strength of this factor is in the Court's ultimate determination is less because of the witnesses in this district with overlapping knowledge and the named inventor, David Brown, who would find this district to be more convenient.

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). The Court acknowledges that the Fifth Circuit's decision in *In re Planned Parenthood* suggests 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 because electronic documents are easily accessible in both forums. *In re Apple, Inc.*, No., 2022 WL 1196768, at *4 (Fed. Cir. Apr. 22, 2022). As much as 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. Even so, 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).

Microsoft contends this factor favors transfer because, although most of the relevant sources of proof are available electronically in the WDTX, those sources are stored in shared locations that can only be accessed by people with proper credentials who are all located in WDWA, "except for Mr. Barrera Isla." ECF No. 29 at 8. Proxense rebuts this blanket assertion by showing that the deposed Microsoft employees testified that all software they use in the normal course of business is fully accessible remotely. ECF No. 35 at 13 (citing ECF No 35-2, Ex. E at

15:6-8, 20-22; Ex. F at 12:19-25.) Finally, the Court understands source code will be a key issue in this case. While Microsoft argues that this source code's creation and storage in locations in the WDWA tips this factor in transfer, Proxense demonstrates otherwise. Proxense provided the Court with an email chain between counsel of record showing that Microsoft intends to make source code available for inspection in *Washington, D.C*, not Washington state. ECF No. 35-17 at 2. Microsoft's reply brief does not respond to this glaring contradiction. Instead, it simply asserts that the relevant sources of proof are "in shared locations that can only be accessed by people with proper credentials/access rights, who are all located outside of the WDTX except for Mr. Barrera Isla." ECF No. 40 at 4.

In *Planned Parenthood,* this factor weighed against transfer because "the vast majority of the evidence was electronic, and therefore equally accessible in either forum*." In re Planned Parenthood*, 52 F.4th 630. In *TikTok,* it was "undisputed that only certain of petitioners' employees [could] access the source code because petitioners have placed it behind a security clearance." *In re TikTok, Inc.*, 85 F.4th at 359. Thus, the Court found abuse of discretion in finding this factor was neutral because there were "no employees in the Western District of Texas who can access the source code." *Id.*

This case is more like *Planned Parenthood* than *TikTok*. The record before the Court shows that Microsoft's documents, software, and source code is accessible electronically anywhere—and in both forums. Despite Microsoft asserting that extra security clearance is needed to access some of the relevant proof, it concedes that there are employees in the WDTX who can access that information—Mr. Barrera Isla. Since there is an employee who can access relevant proof here in WDTX, *TikTok* is not on point. *See In re TikTok, Inc.*, 85 F.4th at 359. Further, Microsoft's email admission that source code review will be conducted in D.C.—which is closer to the WDTX—

shows that Microsoft's assertion that accessing that source of proof anywhere, but WDWA, would be difficult or expensive is tenuous at best. Microsoft's failure to respond to that obvious contradiction is also considered by the Court. The presentation of this factor by the parties shows that the sources of proof are mostly, if not entirely, accessible electronically. Further, at least one person with the requisite security clearance to access sensitive information resides in this district. The Court finds that this factor weighs against transfer. *See In re Planned Parenthood*, 52 F.4th 630 (sources of proof factor weighed against transfer because "the vast majority of the evidence was electronic, and therefore equally accessible in either forum"); *See also Rafqa Star, LLC v. Google, LLC*, 2023 WL 6050593 (W.D. Tex. Sept. 15, 2023) ("When most of the evidence is electronic and equally accessible in either forum, this factor weighs against transfer.")

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). Fifth Circuit law dictates that "the availability of the 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 at 630−31 (quoting *Hefferan v. Ethicon Endo-Surgery Inc.*, 828 F.3d 488 (6th Cir. 2016)); *see also In re TikTok, Inc.*, 85 F.4th at 360 (confirming that "*Planned Parenthood* allows district courts to afford

this factor less weight when it has not been alleged or shown that any witness would be unwilling to testify"); *contra In re Pandora Media, LLC*, 2021-172, 2021 WL 4772805, at *3 (Fed. Cir. 2021) ("witness is presumed to be unwilling" when there is no indication that he or she is willing.).

Microsoft has identified two non-party witnesses who are in the WDWA. Mr. Perla, who interacted with Proxense while employed at Microsoft around 2010, and Mr. Jones, who was involved in drafting and authoring certain portions of the Open ID Connect and FIDO 2 standards, including the WebAuthn standard. ECF No. 29 at 10. Both witnesses are former Microsoft employees and have conveyed to Microsoft's counsel that they are unwilling to travel to the WDTX to provide testimony. ECF No. 29-7 (Declaration of Betty Chen); ECF No. 29-9 (Declaration of Michael Perla). Microsoft uses these two witnesses to support its contention that this factor supports transfer.

Proxense, on the other hand, argues this factor should weigh against transfer because an important part of their case will involve third parties in this district that use the accused products. ECF No. 35 at 12. They specifically point to two companies in this district—Dell and Edgile. *Id.* It is disputed whether this Court's subpoena power over Edgile would be more effective than that of the WDWA, but Microsoft does not dispute Dell's presence in this district. *See* ECF No. 40 at 4. Proxense also urges the Court to discount the relevance of Mr. Jones and Mr. Perla because Mr. Jones's "declaration shows sparse details as to his knowledge of the infringing architecture" and "Microsoft has failed to show that Mr. Perla offers any unique knowledge that a 30(b)(6) witness may not also provide." *Id.*

While Microsoft has point to two third party witnesses in WDWA who are also unwilling to testify, Proxense has also shown that potentially important third-party witnesses exist in the WDTX. Though Proxense hasn't demonstrated Dell or Edgile's unwillingness, it has shown the unwilling witnesses in WDWA proffered by Microsoft are only slightly relevant to this action or would be

unnecessary considering a 30(b)(6) representative testifying to the same knowledge. Since there are third party witnesses in both forums, the Court concludes that this factor is neutral.

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

When considering the "practical problems that make trial of a case easy, expeditious and inexpensive" factor, courts analyze whether transfer would serve the interest of judicial economy. *Affinity Labs of Tex., LLC v. Samsung Elecs. Co*, No. 6:13-CV-364, 2014 WL 12570501, at *7 (W.D. Tex. June 11, 2014); *In re Vistaprint Ltd.*, 628 F.3d 1342, 1346 (Fed. Cir. 2010).

Proxense argues that this factor weighs heavily against transfer because there is co-pending litigation involving the same patents and that this Court has already considered the patents in a prior action. ECF No. 35 at 3–8; *see Proxense, LLC v. Google, LLC*, No. 6:23-cv-320-ADA (W.D. Tex.); *Proxense, LLC v. Samsung Elecs. Co.,* No. 6:21-cv-00210-ADA (W.D. Tex.) ("*Proxense-Samsung*"). Microsoft argues this factor is neutral. ECF No. 35 at 14.

Most of the argument Microsoft makes against this factor disfavoring transfer revolve around the other patents asserted against Microsoft than those that were asserted against Samsung. Further, Microsoft correctly mentions that co-pendency of another action in this Court involving the same patents should not "automatically tip the balance in non-movant's favor regardless of the existence of co-pending transfer motions and their underlying merits." *In re Google Inc.*, 2017 WL 977038, at *2 (Fed. Cir. Feb. 23, 2017).

As stated in this Court's order denying Google's motion to transfer, however, the Court conducted claim construction on 12 claims on two of the patents-in-suit here and considered multiple summary judgment motions, *Daubert* motions, and motions *in limine* in the prior *Proxense-Samsung* litigation. Upon review of that order, the Federal Circuit stated, "the district

court reasonably found that judicial economy considerations disfavor transfer in light of the trial court's familiarity with the patents and technology from its substantial involvement with prior litigation." *In re Google LLC*, No. 2024-117, 2024 WL 1460003 (Fed. Cir. Apr. 4, 2024). Since this motion was filed, the Court has conducted claim construction in the Google case. Although Microsoft argues that the "infringement analysis in *Samsung* is unlikely to overlap with the facts here," it cannot plausibly maintain that judicial economy would be best served by sending this case to a new court, where a new judge would have to get up to speed on patents and technologies this Court is intimately familiar with. The Court finds this factor disfavors transfer.

C. 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 F. 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*. The Court notes that the Federal Circuit recently concluded that this factor should not weigh against transfer when 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 LLC*, 58 F.4th 1379, 1383 (Fed. Cir. 2023). This factor normally weighs against transfer when the "case appears to be timely proceeding to trial before the" transferee district. *In re TikTok,* 85 F.4th at 364. Microsoft argues this factor is neutral. Proxense points to this Court's average time-to-trial is two months faster than the WDWA to say this factor should disfavor transfer. Since the parties

did not present evidence of market competition, and the Court has already delayed the case by granting a stay (albeit a stay for less than one month) pending the resolution of this motion, the Court finds this factor is neutral.

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)).

This factor is hotly disputed by the parties. Microsoft intuitively argues that this factor supports transfer because Microsoft is headquartered in the WDWA, and "research, design, development, and implementation of the products identified in the Complaint occurred in the WDWA." ECF No. 29 at 14. Proxense responds by pointing to the large disparity in sales that occurred in this District as compared to the WDWA. ECF No. 36 at 14 ("Microsoft's resellers and distributors. . . located in Texas

outnumber those located in Washington by more than double. . . . [and] Microsoft's list of customers produced in this action shows that about 1,400,000"). Still, "the sale of an accused product offered nationwide does not give rise to a substantial interest in any single venue." *In re Hoffmann-La Roche*, 587 F.3d at 1338. But, according to Proxense, an important aspect of the case will be Microsoft's relationship to the third-party developers mentioned above. *See* ECF No. 1 at ¶ 51. Microsoft's large presence in the WDWA is undisputed, but Proxense has shown that this district also has far more instances of sales of the accused product than the WDWA, and Texas-based third-party companies' relationships with Microsoft will be relevant at a trial. Given the information provided by the parties, the Court finds this factor is neutral.

iii. Familiarity of the Forum with the Law That Will Govern the Case; Avoidance of Unnecessary Problems of Conflict of Laws or in the Application of Foreign Law

Microsoft contends the remaining factors are neutral. ECF No. 29 at 15. Proxense contends these factors slightly disfavor transfer because of a choice-of-law provision in Proxense's Settlement and License agreement with Samsung from the resolution of the prior litigation. The Court finds that any interest in administering and interpreting that agreement in this forum rather than the WDWA is so speculative as to render it unimportant in this decision. Thus, the Court agrees with Microsoft and finds the remaining factors neutral.

V. CONCLUSION

The Court finds that two private interest factors—practical problems that make trial of a case easy, expeditious, and inexpensive, and access to sources of proof—weighs against transfer because the co-pendant case and this Court's experience and effort expended in the same patents. The Court also finds that the willing witnesses factor weighs slightly in favor of transfer. The remaining private interest factors are neutral. Further, each public interest factor is neutral. Despite the importance of the willing witness factor, the evidence and argument advanced by Microsoft

failed to show that the WDWA is clearly more convenient. Accordingly, the Motion to Transfer is **DENIED**. It is **FURTHER ORDERED** the stay is lifted, and the parties shall file an updated proposed scheduling order within 14 days of the issuance of this order.

SIGNED this 18th day of April, 2024.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE