

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

CONCURRENT VENTURES, LLC AND  
XTREAMEDGE, INC.,

Plaintiffs,

v.

ADVANCED MICRO DEVICES, INC. AND  
PENSANDO SYSTEMS, INC.,

Defendants.

Civil Action No. 1:24-cv-335-DII

**DEFENDANTS ADVANCED MICRO DEVICES, INC. AND  
PENSANDO SYSTEMS, INC.'S OPPOSED MOTION TO TRANSFER VENUE  
PURSUANT TO 28 U.S.C. § 1404(a)**

**TABLE OF CONTENTS**

|                                                                                            | <b><u>Page</u></b> |
|--------------------------------------------------------------------------------------------|--------------------|
| I. Introduction.....                                                                       | 1                  |
| II. Statement of Facts.....                                                                | 2                  |
| A. Defendants’ Relevant Witnesses and Documents Are Predominantly<br>Located in NDCA ..... | 2                  |
| 1. Plaintiffs Accuse Pensando Products of Infringement.....                                | 2                  |
| 2. Pensando Was Founded in 2017 in NDCA.....                                               | 2                  |
| 3. AMD Acquired Pensando in 2022, but Pensando Personnel<br>Remain in NDCA.....            | 4                  |
| B. All Attendees of the 2014 Meeting Are Located in NDCA or Outside of<br>Texas .....      | 5                  |
| C. Plaintiffs’ Ties Are to Georgia and Delaware, Not WDTX.....                             | 6                  |
| D. Third-Party Witnesses Are Concentrated in NDCA.....                                     | 6                  |
| III. Legal Standard .....                                                                  | 7                  |
| IV. NDCA Is More Convenient Than WDTX .....                                                | 8                  |
| A. This Case Could Have Been Brought in NDCA.....                                          | 8                  |
| B. The Private Interest Factors Favor Transfer .....                                       | 9                  |
| 1. Convenience of Witnesses Strongly Favors Transfer .....                                 | 9                  |
| 2. Relative Ease of Access to Sources of Proof Strongly Favors<br>Transfer .....           | 12                 |
| 3. Availability of Compulsory Process Favors Transfer.....                                 | 14                 |
| 4. Other Practical Problems Are Neutral .....                                              | 17                 |
| C. The Public Interest Factors Favor Transfer .....                                        | 18                 |
| 1. Court Congestion Slightly Favors Transfer or Is Neutral.....                            | 18                 |
| 2. Local Interest Favors Transfer .....                                                    | 18                 |
| 3. Familiarity With the Governing Law and Conflicts of Law Are<br>Neutral.....             | 20                 |
| V. Conclusion .....                                                                        | 20                 |

**TABLE OF AUTHORITIES**

|                                                                                                                           | <b>Page(s)</b>     |
|---------------------------------------------------------------------------------------------------------------------------|--------------------|
| <b><u>Cases</u></b>                                                                                                       |                    |
| <i>In re Acer Am. Corp.</i><br>626 F.3d 1252 (Fed. Cir. 2010).....                                                        | 11, 13, 14         |
| <i>Aguilar-Ayala v. Ruiz</i><br>973 F.2d 411 (5th Cir. 1992) .....                                                        | 16                 |
| <i>In re Apple Inc.</i><br>979 F.3d 1332 (Fed. Cir. 2020).....                                                            | 10, 11, 14, 18, 19 |
| <i>In re Apple Inc.</i><br>No. 2021-181, 2021 WL 5291804 (Fed. Cir. Nov. 15, 2021) .....                                  | 16, 18             |
| <i>In re Apple Inc.</i><br>No. 2022-128, 2022 WL 1196768 (Fed. Cir. Apr. 22, 2022) .....                                  | 19, 20             |
| <i>In re Apple Inc.</i><br>581 F. App'x 886 (Fed. Cir. 2014) .....                                                        | 14                 |
| <i>Auto-Dril, Inc. v. Nat'l Oilwell Varco, L.P.</i><br>No. 6:15-CV-00091, 2016 WL 6909479 (W.D. Tex. Jan. 28, 2016) ..... | 8                  |
| <i>In re Cray Inc.</i><br>871 F.3d 1355 (Fed. Cir. 2017).....                                                             | 8, 9               |
| <i>Fintiv, Inc. v. AMD Inc.</i><br>No. 6:18-CV-00372-ADA, 2019 WL 4743678 (W.D. Tex. Sept. 13, 2019) .....                | 14                 |
| <i>In re Genentech, Inc.</i><br>566 F.3d 1338 (Fed. Cir. 2009).....                                                       | 9, 12, 14, 18      |
| <i>In re Google LLC</i><br>949 F.3d 1338 (Fed. Cir. 2020).....                                                            | 13                 |
| <i>In re Google LLC</i><br>No. 2023-101, 2023 WL 1425780 (Fed. Cir. Feb. 1, 2023) .....                                   | 15                 |
| <i>In re Haptic, Inc.</i><br>No. 2024-121, 2024 WL 3159288 (Fed. Cir. June 25, 2024).....                                 | 10, 13, 19         |
| <i>In re Hoffmann-La Roche Inc.</i><br>587 F.3d 1333 (Fed. Cir. 2009).....                                                | 15                 |

|                                                                         |                    |
|-------------------------------------------------------------------------|--------------------|
| <i>In re Hulu LLC</i>                                                   |                    |
| No. 2021-142, 2021 WL 3278194 (Fed. Cir. Aug. 2, 2021) .....            | 15                 |
| <i>InfoGation Corp. v. Google LLC</i>                                   |                    |
| No. 6:20-CV- 00366-ADA, 2021 WL 5547070 (W.D. Tex. Apr. 29, 2021) ..... | 11                 |
| <i>In re Juniper Networks, Inc.</i>                                     |                    |
| 14 F.4th 1313 (Fed. Cir. 2021) .....                                    | 8                  |
| <i>Magic Cross Ranch, L.P. v. Manion</i>                                |                    |
| No. 3:12-CV-00541-P, 2012 WL 13027449 (N.D. Tex. Sept. 25, 2012).....   | 20                 |
| <i>In re NetScout Sys., Inc.</i>                                        |                    |
| No. 2021-173, 2021 WL 4771756 (Fed. Cir. Oct. 13, 2021).....            | 11                 |
| <i>In re Nintendo Co., Ltd.</i>                                         |                    |
| 589 F.3d 1194 (Fed. Cir. 2009).....                                     | 8                  |
| <i>Parus Holdings, Inc. v. Microsoft Corp.</i>                          |                    |
| No. 6:21-CV-00570-ADA, 2022 WL 17420391 (W.D. Tex. Nov. 29, 2022).....  | 19                 |
| <i>Polaris Innovations Limited v. Dell, Inc.</i>                        |                    |
| No. SA-16-CV-451-XR, 2016 WL 7077069 (W.D. Tex. Dec. 5, 2016) .....     | 11                 |
| <i>In re Samsung</i>                                                    |                    |
| No. 2023-146, 2023 WL 8642711 (Fed. Cir. Dec. 14, 2023).....            | 19                 |
| <i>In re TikTok, Inc.</i>                                               |                    |
| 85 F.4th 352 (5th Cir. 2023) .....                                      | 12                 |
| <i>Uniloc 2017 LLC v. AMD Inc.</i>                                      |                    |
| No. 6-19-CV-00532-ADA, 2020 WL 3415880 (W.D. Tex. June 19, 2020) .....  | 16                 |
| <i>Universal Connectivity Techs. Inc. v. HP Inc.</i>                    |                    |
| No. 1:23-CV-1177-RP, 2024 WL 3305724 (W.D. Tex. July 3, 2024)           |                    |
| .....                                                                   | 12, 13, 17, 18, 20 |
| <i>USTA Tech., LLC v. Google LLC</i>                                    |                    |
| No. W-22-CA-01214-XR, 2023 WL 4833481 (W.D. Tex. Jul. 26, 2023).....    | 14, 17, 20         |
| <i>In re Volkswagen AG</i>                                              |                    |
| 371 F.3d 201 (5th Cir. 2004) .....                                      | 7, 8, 9, 10, 18    |
| <i>In re Volkswagen of Am., Inc.</i>                                    |                    |
| 545 F.3d 304 (5th Cir. 2008) (en banc) .....                            | 7, 11              |
| <i>XR Commc'ns, LLC v. Google LLC</i>                                   |                    |
| No. 6:21-CV-00625-ADA, 2022 WL 3702271 (W.D. Tex. Aug. 26, 2022).....   | 20                 |

*XY, LLC v. Trans Ova Genetics, LC*

No. W-16-CA-00447-RP, 2017 WL 5505340 (W.D. Tex. Apr. 5, 2017) .....13

Statutes

28 U.S.C. § 1400(b) .....8

28 U.S.C. § 1404(a) .....1, 7, 9, 14

## **I. Introduction**

Defendants request the transfer of this action under 28 U.S.C. § 1404(a) to the Northern District of California, which is clearly the more convenient forum because the accused products in this case are Pensando products. Pensando was founded and headquartered in NDCA, where all its products were created, designed, researched, and developed. While Pensando was recently acquired by AMD in 2022, NDCA continues to be the center of gravity of Pensando product development, and both AMD and Pensando are likewise headquartered in NDCA today. The connections between this case and the Western District of Texas remain minimal at best.

Critical factors in the transfer analysis, including the convenience of witnesses and access to sources of proof, strongly favor transfer. The relevant Pensando engineers are primarily located in NDCA and Bangalore, India. Additionally, other employees with relevant knowledge, including sales, marketing, and financials regarding the accused products, are based in NDCA. Relevant documents in this case are kept in, or accessed from, NDCA and Bangalore, including the source code for the accused products. Moreover, relevant third parties that Defendants have thus far identified in establishing defenses are also in NDCA.

Meanwhile, Plaintiffs' connections to this district are limited, and do not outweigh the significant connections to NDCA. Plaintiff Concurrent Ventures, LLC is a company organized and existing under the laws of the State of Georgia and claims as its principal place of business a residential home in Johns Creek, Georgia. Plaintiff XstreamEdge, Inc. also has its principal place of business in Johns Creek, Georgia. As to the alleged June 2014 meeting at AMD, none of the alleged attendees of that meeting are located in this district—they are instead located in NDCA and Georgia. Moreover, the alleged meeting cannot be relevant to Plaintiffs' claims, including any allegations of willful infringement, because both the asserted patents and the accused products did not exist when the meeting was allegedly held. The asserted patents did not issue

until after the alleged meeting took place. The accused products were developed by Pensando, a company that did not exist when the meeting allegedly took place (it was founded in 2017) and was not acquired by AMD until 2022.

In short, any ties to this district are insufficient to shift the center of gravity of this case away from NDCA to WDTX. Because all factors either favor transfer or are neutral, and no factor favors keeping this case in WDTX, this case should be transferred to NDCA.

## **II. Statement of Facts**

### **A. Defendants’ Relevant Witnesses and Documents Are Predominantly Located in NDCA**

#### **1. Plaintiffs Accuse Pensando Products of Infringement**

Plaintiffs filed this lawsuit alleging infringement of U.S. Patent Nos. 8,924,596, 10,873,753, 10,985,943, 10,944,634, 9,529,767 by Pensando products. Compl. ¶¶7, 19–26. Specifically, Plaintiffs accuse “all products including or related to AMD’s Pensando Data Processing Unit, the Capri Data Processing Unit, and future versions, such as the announced Salina Data Processing Unit, the AMD Pensando Distributed Services Card, the AMD Pensando Distributed Services Platform, the AMD Pensando DPU system, the AMD Pensando SmartNIC, the AMD Pensando SmartSwitch, the AMD Pensando Software-In-Silicon Development Kit (‘SSDK’) and reference pipelines, as well as any products incorporating those items.” *Id.* ¶29.

#### **2. Pensando Was Founded in 2017 in NDCA**

Pensando was founded in 2017 by CEO Prem Jain and several others in Silicon Valley (Declaration of Diane Ramos, ¶3), which is in NDCA (Declaration of Christopher Ponder, ¶3). Pensando’s products were primarily developed at Pensando’s headquarters in Milpitas, California (Ramos Decl. ¶3), which is also in NDCA (Ponder Decl. ¶3), along with contributions

from employees in Pensando's other office in Bangalore, India. Pensando did not have any other offices. Ramos Decl. ¶3.

The engineers who worked on researching, designing, and developing Pensando products were primarily located in Milpitas, with the remainder in Bangalore. Ramos Decl. ¶4. For example, Francis Matus was Vice President of Engineering, Michael Galles was ASIC Architect & Designer, and Krishna Doddapaneni was Vice President of Software Engineering—and all three were located in NDCA and based out of Pensando's Milpitas office. *Id.* Mr. Galles, Mr. Matus and Mr. Doddapaneni were part of the Pensando team from inception. *Id.*

Pensando's source code was also maintained in Milpitas. *Id.*, ¶5. Because of its value to Pensando, the source code was maintained securely, with access to it controlled. *Id.* Other technical documents relating to Pensando products were also kept mainly at Pensando's offices in Milpitas, with the remainder in Bangalore. *Id.*

Pensando had marketing, sales, and finance personnel in NDCA. *Id.*, ¶6. For example, Eddie Tan was Vice President of Technical Product Management at Pensando. *Id.* He was (and is) responsible for product management of Pensando products and located in NDCA. *Id.*

As another example, Stuart Stammers was Vice President of Business Development at Pensando. *Id.*, ¶7. He was one of Pensando's first sales employees, joining Pensando in February 2019. *Id.* He was responsible for sales and marketing of Pensando products and located in NDCA. *Id.*

As a further example, Randy Pond was Chief Financial Officer and Vice President of Operations at Pensando. *Id.*, ¶8. His team included Yelena Fadeyeva, Controller at Pensando, who worked on the accounting side of Pensando products. *Id.* Both were (and are) responsible

for financials of Pensando products and located in NDCA. *Id.* Pensando's finance documents were kept primarily in Milpitas. *Id.*

**3. AMD Acquired Pensando in 2022, but Pensando Personnel Remain in NDCA**

AMD was founded in 1969, and since its founding has been headquartered in Santa Clara, California (Ramos Decl. ¶9), which is in NDCA (Ponder Decl. ¶3). As mentioned above, AMD acquired Pensando about two years ago, in 2022. *Id.* All the individuals identified above continued on at AMD after the acquisition, and continued to work on Pensando products. *Id.* Specifically, at AMD:

- Mr. Jain became Senior Vice President and General Manager, departing in April 2024.
- Mr. Matus is now Corporate Vice President, Engineering.
- Mr. Galles is now Senior Fellow Engineer.
- Mr. Doddapaneni is now Corporate Vice President, Software Development.
- Mr. Tan is now Senior Director, Product Management for Pensando products.
- Mr. Stammers is now Corporate Vice President, Commercial Sales and is responsible for sales of the Pensando products to hyperscale and OEM customers.
- Mr. Pond is now Corporate Vice President, Finance.
- Ms. Fadeyeva is now Director, Finance.

*Id.*

Mr. Matus now resides in Georgia but is assigned to the Santa Clara office. *Id.*, ¶9.

Otherwise, all these individuals are still located in the San Francisco Bay Area. *Id.*

The source code relating to Pensando products is now stored in AMD's Santa Clara data center. *Id.* ¶10. Access to the Pensando source code is on a need-to-know basis, and individuals who need to know are primarily located in NDCA and Bangalore. *Id.*

The technical documents for the Pensando products are primarily accessed from NDCA and Bangalore. *Id.*, ¶11. Marketing documents for the Pensando products are primarily accessed from NDCA. *Id.*, ¶12. The financial leadership team for the Pensando products is located in NDCA. *Id.*, ¶13. The engineers working on the accused products today are primarily located in NDCA and Bangalore. *Id.*, ¶14.

**B. All Attendees of the 2014 Meeting Are Located in NDCA or Outside of Texas**

Plaintiffs allege “detailed technical discussions” occurred between Concurrent’s commercialization agent, HellaStorm, Inc., and AMD in June 2014 (the “June 2014 Meeting”). Compl. ¶30. The meeting could not have related to or involved Pensando, which did not yet exist and would not be acquired by AMD until almost a decade later, in 2022. *See* Compl. ¶5 n.3 (citing TechCrunch article stating Pensando was founded in 2017); Ramos Decl. ¶9. Nor could the asserted patents have been discussed at the alleged meeting because none had issued at the time of the meeting.<sup>1</sup> *See* Compl. Exs. 1–5. Plaintiffs have not alleged that any patents, accused products, or infringement were discussed at the meeting. *See* Compl. ¶¶30–31.

Moreover, all alleged attendees of the June 2014 Meeting are located outside of Texas. Plaintiffs allege that Concurrent’s CEO Jesse Beeson and AMD employees Anil Rao and Dhiraj Mallick attended the June 2014 meeting. Compl. ¶30. Mr. Rao and Mr. Mallick both left AMD

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<sup>1</sup> The '596 patent issued on December 30, 2014, the '753 patent on December 22, 2020, the '943 patent on April 20, 2021, the '643 patent on March 9, 2021, and the '767 patent on December 27, 2016.

in 2015 and are now third parties who reside in NDCA. Ramos Decl. ¶15, Exs. 1–2. Mr. Beeson is located in Georgia. *See* Section II.C, *infra*. None of these individuals are located in Texas.

### **C. Plaintiffs’ Ties Are to Georgia and Delaware, Not WDTX**

Concurrent is a company organized and existing under the laws of the State of Georgia and claims as its principal place of business a residential home in Johns Creek, Georgia. *See* Compl. ¶9; Ponder Decl., Exs. 6–7. Concurrent’s CEO and registered agent is Mr. Beeson, who is also located in Georgia. Compl., ¶30; Ponder Decl., Ex. 6. Plaintiff XstreamEdge, Inc. is incorporated in Delaware and also has its principal place of business in Johns Creek, Georgia. *See* Compl., ¶8. XstreamEdge’s LinkedIn profile page identifies only one person associated with the company, which is Mr. Beeson, located in Georgia. Ponder Decl., Ex. 8.

Any work leading up to the asserted patents appears to have taken place in Georgia, not WDTX. *See* Dkt. 1, Exs. 1–5 (listing Georgia as location for both inventors on face of asserted patents). Other than the purported June 2014 meeting (which is irrelevant, as explained above), the Complaint does not identify any other sources of proof in WDTX. Plaintiffs’ ties are to Georgia and Delaware, not WDTX.

### **D. Third-Party Witnesses Are Concentrated in NDCA**

Pensando co-founder and CEO Prem Jain is a former employee, now third party, who is based in NDCA. *See* Ramos Decl. ¶9. Mr. Jain possesses relevant testimonial information because of his role as co-founder and CEO of Pensando before it was acquired by AMD.

Meanwhile, the AMD employees who allegedly attended the June 2014 Meeting, Anil Rao and Dhiraj Mallick, are no longer with AMD and also third parties. Ramos Decl. ¶15. Both reside in NDCA. Ramos Decl. ¶15, Exs. 1–2. Both have information that Plaintiffs allege is relevant (it is not, for reasons discussed above). In particular, Mr. Rao and Mr. Mallick are

alleged to have personal knowledge regarding the alleged June 2014 Meeting. Compl. ¶¶ 30–31. HellaStorm, Plaintiffs’ apparent affiliate (and a third party to this case) that was “present” at the 2014 meeting, is not based in NDCA, but also has no ties to WDTX. HellaStorm is incorporated in Delaware with a corporate office in Alpharetta, Georgia. Ponder Decl., Exs. 9–10. Mr. Beeson, who identifies on his LinkedIn as HellaStorm’s former Chief Operating Officer and Chief Technical Officer, is located in Georgia. Ponder Decl., Ex. 11. Plaintiffs do not allege any other HellaStorm representatives were present at the 2014 meeting. *See* Compl. ¶¶ 30–31.

The prosecuting attorney for all the asserted patents, Michael L. Gencarella, is a third party located in NDCA. Ponder Decl., Exs. 12–17. He has relevant information related to the asserted patents’ prosecution, validity, and enforceability. *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). The movant must show “good cause” by demonstrating that the “transferee venue is clearly more convenient” than the transferor district. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) (en banc) (“*Volkswagen I*”).

In evaluating convenience, the district court weighs both 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 of the application of foreign law.” *Id.*

The convenience of the witnesses is the most important factor. *See Auto-Dril, Inc. v. Nat’l Oilwell Varco, L.P.*, No. 6:15-CV-00091, 2016 WL 6909479, at \*7 (W.D. Tex. Jan. 28, 2016) (“convenience of the witnesses is probably the single most important factor in [the] transfer analysis”).<sup>2</sup> Thus, the proposed transferee forum is “clearly more convenient” where (as here) most potential witnesses and relevant evidence are in the transferee district and few or none are in the transferor venue. *See In re Nintendo Co., Ltd.*, 589 F.3d 1194, 1197–98 (Fed. Cir. 2009) (granting mandamus petition seeking transfer where several witnesses resided in transferee district, but none in transferor district); *In re Juniper Networks, Inc.*, 14 F.4th 1313, 1323 (Fed. Cir. 2021) (granting mandamus petition seeking transfer where more witnesses resided in transferee district compared to transferor district).

#### **IV. NDCA Is More Convenient Than WDTX**

NDCA is by far the most convenient forum for this case. Defendants are headquartered there, and the bulk of the witnesses and evidence relevant to this case are located in NDCA. Accordingly, the private and public interest factors favor transfer to NDCA.

##### **A. This Case Could Have Been Brought in NDCA**

Under 28 U.S.C. § 1400(b), a claim for patent infringement may be brought “where the defendant has committed acts of infringement and has a regular and established place of business.” The regular and established place of business must be a physical place in the district, and must be the place of the defendant. *In re Cray Inc.*, 871 F.3d 1355, 1360 (Fed. Cir. 2017). Here, Plaintiffs allege that Defendants have committed acts of infringement, and Defendants

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<sup>2</sup> Citations and internal quotation marks omitted throughout brief.

have a regular and established place of business that is a physical place in NDCA, namely Defendants’ headquarters in Santa Clara, California. *See* Section II.A, *supra*. Indeed, before Pensando was acquired by AMD in 2022, Pensando was likewise headquartered in NDCA (in Milpitas, California). *See id.*

## **B. The Private Interest Factors Favor Transfer**

The private interest factors strongly favor transfer because the relevant witnesses and evidence are overwhelmingly in NDCA.

### **1. Convenience of Witnesses Strongly Favors Transfer**

The convenience of witnesses is “probably the single most important factor in [the] transfer analysis[.]” *In re Genentech, Inc.*, 566 F.3d 1338, 1343 (Fed. Cir. 2009). “When the distance between an existing venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled.” *Volkswagen I*, 371 F.3d at 204–05.

The convenience of witnesses strongly favors transfer in this case, as Defendants’ relevant witnesses are in NDCA. *See* Section II.A, *supra*. Defendants have identified the following party witnesses with specific knowledge regarding the accused Pensando products (*see id.*):

| <b>Name and Location</b>   | <b>Title</b>                                                                            | <b>Relevancy</b>                                                                                   |
|----------------------------|-----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| Francis Matus<br>(Georgia) | Vice President of Engineering at Pensando; Corporate Vice President, Engineering at AMD | Mr. Matus has technical knowledge regarding research, design, and development of Pensando products |
| Michael Galles<br>(NDCA)   | ASIC Architect & Designer at Pensando; Senior Fellow Engineer at AMD                    | Mr. Galles has technical knowledge regarding Pensando products, particularly as to hardware        |

|                            |                                                                                                                              |                                                                                                     |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| Krishna Doddapaneni (NDCA) | Vice President of Software Engineering at Pensando; Corporate Vice President, Software Development at AMD                    | Mr. Doddapaneni has technical knowledge regarding Pensando products, particularly as to software    |
| Eddie Tan (NDCA)           | Vice President of Technical Product Management at Pensando; Senior Director, Product Management for Pensando products at AMD | Mr. Tan has knowledge regarding marketing of Pensando products                                      |
| Stuart Stammers (NDCA)     | Vice President of Business Development at Pensando; Corporate Vice President, Commercial Sales at AMD                        | Mr. Stammers has knowledge regarding sales of Pensando products                                     |
| Randy Pond (NDCA)          | Chief Financial Officer and Vice President of Operations at Pensando; Corporate Vice President, Finance at AMD               | Mr. Pond has knowledge regarding financials of Pensando products                                    |
| Yelena Fadeyeva (NDCA)     | Controller at Pensando; Director, Finance at AMD                                                                             | Ms. Fadeyeva has knowledge regarding financials of Pensando products, particularly as to accounting |
| Diane Ramos (WDTX)         | Senior Director HR Business Partner at AMD                                                                                   | Ms. Ramos has knowledge regarding Pensando's personnel, products, and acquisition by AMD            |

As shown above, the Pensando engineers involved in the research, design, development, and implementation of the accused products are concentrated in NDCA, with some also located in Bangalore. *See id.* Moreover, Pensando personnel with relevant knowledge about marketing, finance, sales, and licensing of the accused products are also in NDCA. *See id.* That one witness (Ramos) is in Texas and a few others are elsewhere (e.g., Georgia) does not change the calculus. *See In re Apple Inc.*, 979 F.3d 1332, 1341–42 (Fed. Cir. 2020) (granting AMD's mandamus petition seeking transfer where the district court concluded that "the greater balance of witnesses . . . are located within NDCA"); *In re Haptic, Inc.*, No. 2024-121, 2024 WL 3159288, at \*2 (Fed.

Cir. June 25, 2024) (finding that “on balance, the burden on potential witnesses would be materially less if the case were transferred to NDCA”); *Polaris Innovations Limited v. Dell, Inc.*, No. SA-16-CV-451-XR, 2016 WL 7077069, at \*9 (W.D. Tex. Dec. 5, 2016) (granting transfer to NDCA despite the presence of potential witnesses in WDTX and Texas); *InfoGation Corp. v. Google LLC*, No. 6:20-CV-00366-ADA, 2021 WL 5547070, at \*4 (W.D. Tex. Apr. 29, 2021) (granting transfer where “[t]he majority of both party and non-party witnesses will be located either within the [transferee district] or in the [transferee state]” despite the presence of witnesses in Texas, Washington, and South Korea).

Defendants’ witnesses based in NDCA are a short car ride from a NDCA courthouse but more than 1,000 miles from Austin, Texas. *See* Ponder Decl., Ex. 3. If this case proceeds and goes to trial in WDTX, testifying will require all of Defendants’ NDCA witnesses to spend days away from home and work, as opposed to less than one day if the trial takes place in NDCA. *See, e.g., In re NetScout Sys., Inc.*, No. 2021-173, 2021 WL 4771756, at \*3 (Fed. Cir. Oct. 13, 2021) (“convenience of the witnesses is best served if the court can ‘minimize the time when [witnesses] are removed from their regular work or home responsibilities’”).

This travel burden is not insignificant and has been cited as a key reason transfer is often appropriate. *See, e.g., Volkswagen II*, 545 F.3d at 317 (noting witnesses may suffer “personal costs associated with being away from work, family, and community”); *In re Acer Am. Corp.*, 626 F.3d 1252, 1255 (Fed. Cir. 2010) (noting that multiple employees of a party would “incur significant expenses for airfare, meals, and lodging, as well as losses in productivity from time spent away from work” if required to travel from NDCA to Texas); *Apple*, 979 F.3d at 1341–42 (“Furthermore, the task of scheduling fact witnesses so as to minimize the time when they are removed from their regular work or home responsibilities gets increasingly difficult and

complicated when the travel time from their home or work site to the court facility is five or six hours one-way as opposed to 30 minutes or an hour.”).

The Complaint points to AMD’s Austin office. However, the Complaint accuses Pensando products, which originated and were developed by Pensando for years in NDCA (as well as Bangalore) before its recent acquisition by AMD. *See Universal Connectivity Techs. Inc. v. HP Inc.*, No. 1:23-CV-1177-RP, 2024 WL 3305724, at \*7 (W.D. Tex. July 3, 2024) (noting the Federal Circuit has found that a “‘court’s reliance on [in-district] offices, which lack such a connection to the locus of the events giving rise to the dispute, amounts to a clear abuse of discretion’”) (citation omitted). Today, the relevant engineers who work on the accused products are still primarily in NDCA.

The Fifth Circuit’s recent decision in *TikTok* is instructive. There, the court found that this factor favored transfer from WDTX to NDCA despite TikTok’s “large presence in the Western District of Texas in the form of a 300-person office in Austin.” *In re TikTok, Inc.*, 85 F.4th 352, 357 (5th Cir. 2023). Even though “one of the engineers who implemented the [accused] functionality lives . . . only 113 miles from the Waco federal courthouse,” the court ordered transfer because “most relevant witnesses are in China or California.” *Id.* at 361. The same reasoning applies here, as most of the relevant engineers are in NDCA, and not in WDTX.

In sum, the most important factor in the transfer analysis, i.e., the convenience of the witnesses, clearly favors transfer to NDCA.

## **2. Relative Ease of Access to Sources of Proof Strongly Favors Transfer**

“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.” *Genentech*, 566 F.3d at 1345. “In determining the ease of access to sources of proof, the Court will look to the location where the allegedly infringing

products were researched, designed, developed and tested.” *XY, LLC v. Trans Ova Genetics, LC*, No. W-16-CA-00447-RP, 2017 WL 5505340, at \*13 (W.D. Tex. Apr. 5, 2017). Here, NDCA is the primary location where the relevant Pensando engineers developed the accused products. *See* Section II.A, *supra*. Moreover, evidence relevant to the case is stored in NDCA. *Id.* For example, source code for the accused Pensando products is maintained in a Santa Clara data center, which is located in NDCA. *Id.* Access to the source code is on a need-to-know basis, and individuals who need to know are primarily located in NDCA and Bangalore. *Id.*; *In re Haptic*, 2024 WL 3159288, at \*1 (finding “district court here reasonably could conclude under Fifth Circuit law that the sources of proof are more easily accessible from NDCA than WDTX” where access to source code “was restricted on a need-to-know basis to Apple employees located in NDCA and areas outside WDTX”). Likewise, technical, financial, and marketing documents for the accused Pensando products are primarily accessed from NDCA. *See* Section II.A.3, *supra*.

In addition, the prosecuting attorney, Mr. Gencarella, is located in NDCA, and has relevant information related to the asserted patents’ prosecution, validity, and enforceability. *See* Section II.D, *supra*; *Acer*, 626 F.3d at 1256 (directing transfer to NDCA where a “significant portion of the evidence” was located, including “records of the prosecuting patent attorneys); *In re Google LLC*, 949 F.3d 1338, 1385 (Fed. Cir. 2020) (weighing location of prosecuting attorneys in favor of transfer). Accordingly, relevant sources of proof are in NDCA.

There is no physical evidence in Texas that would warrant keeping this case in WDTX. The accused products were not created and developed in AMD’s Austin office. *See* Section II.A.2, *supra*. Indeed, Pensando was only acquired about two years ago, in 2022. *See* Section II.A.3, *supra*. Moreover, Defendants’ headquarters are in NDCA. *See Universal Connectivity*,

2024 WL 3305724, at \*4 (“[I]t is more likely that information will be made available in a company’s headquarters than its satellite office”).

Meanwhile, Plaintiffs have shown no ties to this district and therefore cannot overcome the “bulk of the relevant evidence” that is in NDCA. *See Genentech*, 566 F.3d at 1345. Even if the alleged June 2014 meeting is somehow relevant to this case, it would not be enough to overcome the fact that most of the relevant evidence is in or accessed from NDCA. *See Apple*, 979 F.3d at 1340 (“[M]ovant 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.”); *USTA Tech., LLC v. Google LLC*, No. W-22-CA-01214-XR, 2023 WL 4833481, at \*5 (W.D. Tex. Jul. 26, 2023) (“The mere presence of records in both the NDCA and the WDTX does not render this factor neutral. The quantity and substance of [defendant]’s documents bearing on the accused instrumentalities, which are created and maintained in the NDCA, are of significantly greater importance to the transfer analysis.”). Given that NDCA is the focal point of the relevant sources of proof and WDTX has limited sources of proof, this factor clearly favors transfer.

### **3. Availability of Compulsory Process Favors Transfer**

The availability of compulsory process, an important factor in the transfer calculus, also favors transfer in this case. *See Acer*, 626 F.3d at 1255 (stating a court’s ability to compel testimony and the production of documents through its subpoena power is “an important factor in the § 1404(a) calculus”). The compulsory process factor focuses on “non-party witnesses whose attendance may need to be secured by a court order.” *Fintiv, Inc. v. AMD Inc.*, No. 6:18-CV-00372-ADA, 2019 WL 4743678, at \*5 (W.D. Tex. Sept. 13, 2019) (citing *Volkswagen II*, 545 F.3d at 316). In fact, where “the transferee venue is a venue with usable subpoena power,” this “weighs in favor of transfer, and not only slightly.” *Genentech*, 566 F.3d at 1345; *see also In re*

*Apple, Inc.*, 581 F. App’x 886, 889 (Fed. Cir. 2014) (finding 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 Hoffmann-La Roche Inc.*, 587 F.3d 1333, 1336–38 (Fed. Cir. 2009) (granting transfer where transferee forum had subpoena power over a greater number of non-party witnesses).

Here, the availability of compulsory process favors transfer because relevant non-party witnesses are concentrated in NDCA. *See* Section II.D, *supra*; *In re Hulu LLC*, No. 2021-142, 2021 WL 3278194, at \*4 (Fed. Cir. Aug. 2, 2021) (finding this factor favors transfer where “multiple third-party witnesses” are “located within the subpoena power of only the transferee venue”); *In re Google LLC*, No. 2023-101, 2023 WL 1425780, at \*3 (Fed. Cir. Feb. 1, 2023) (finding that eleven witnesses in the transferee district versus three witnesses in the transferor district weighs “firmly” in favor of transfer).

Defendants have identified the following non-party witnesses with relevant knowledge (*see* Section II.D, *supra*):

| Name and Location  | Title                                                                               | Relevancy                                                                                              |
|--------------------|-------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| Prem Jain          | (Former) CEO at Pensando; (Former) Senior Vice President and General Manager at AMD | Mr. Jain, as former CEO of Pensando, has broad knowledge of Pensando’s business and products           |
| Michael Gencarella | Attorney                                                                            | Mr. Gencarella has knowledge regarding the asserted patents’ prosecution, validity, and enforceability |

As shown above, at least two relevant non-party witnesses (Mr. Jain and Mr. Gencarella) are located in NDCA. Moreover, the Complaint contends the June 2014 meeting is relevant to show knowledge of the asserted patents and infringement. Compl. ¶¶30–32. Even if it were (it

is not), none of the attendees are located in Texas, and two of them, Mr. Rao and Mr. Mallick, are located in NDCA (*see* Section II.D, *supra*):

| Name and Location | Title                                                        | Relevancy                                                                                                         |
|-------------------|--------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| Anil Rao          | (Former) Corporate Vice President, Products at AMD           | Plaintiffs contend Mr. Rao is relevant based on his alleged attendance at a June 2014 meeting with HellaStorm     |
| Dhiraj Mallick    | (Former) General Manager and Corporate Vice President at AMD | Plaintiffs contend Mr. Mallick is relevant based on his alleged attendance at a June 2014 meeting with HellaStorm |

These four NDCA witnesses are subject to the subpoena power of the NDCA district court. *See In re Apple Inc.*, No. 2021-181, 2021 WL 5291804, at \*3 (Fed. Cir. Nov. 15, 2021) (noting that third parties with offices in California are subject to NDCA’s subpoena power). This is significant because “the ability to compel live trial testimony is crucial for evaluating a witness[’s] testimony.” *Uniloc 2017 LLC v. AMD Inc.*, No. 6-19-CV-00532-ADA, 2020 WL 3415880, at \*10 (W.D. Tex. June 19, 2020); *Aguilar-Ayala v. Ruiz*, 973 F.2d 411, 419 (5th Cir. 1992) (“Only through live [testimony] can the jury fully appreciate the strength or weakness of the witness’ testimony”).

Furthermore, Plaintiffs accuse components and features that comply with the NVME (non-volatile memory express) standard for at least the ’596 and ’767 patents. *See, e.g.*, Compl. ¶¶39 (accusing an “NVME initiator” and “NVMe commands” for the ’596 patent), ¶¶89 & 93 (accusing “NVMe virtualization and transport” for the ’767 patent). The NVME standard is administered by a standard-setting organization called NVM Express located in Oregon. *See* <https://nvmexpress.org/about/> (“NVM Express is an open collection of standards and information to fully expose the benefits of non-volatile memory in all types of computing environments from

mobile to data center.”); <https://nvmexpress.org/contact-us/> (showing its address is in Oregon).<sup>3</sup> That the NVM Express SSO is located in Oregon—closer to California—favors transfer. *See Universal Connectivity*, 2024 WL 3305724, at \*5 (“[T]he location of Standards Setting Organizations (‘SSOs’) favor transfer” because the relevant “SSOs are headquartered in Oregon, closer to the Northern District of California than Texas.”)

This factor thus weighs in favor of transfer.

#### **4. Other Practical Problems Are Neutral**

The “other practical problems” factor is neutral to this transfer analysis. This factor assesses whether a transfer would impact judicial efficiency. Here, there are no practical considerations favoring either venue because “neither [] WDTX nor [] NDCA has any previous experience with the asserted patent[s]” and “there are no related lawsuits pending in either district.” *See USTA*, 2023 WL 4833481, at \*6.

On a practical level, litigating this case in NDCA will make trial easier, more expeditious, and less costly for everyone involved. Along with the vast majority of relevant witnesses, lead counsel for the Defendants are also located in NDCA. By contrast, lead counsel for Plaintiffs are located in New York, and would have to fly to attend hearings and trial whether the case proceeds in WDTX or NDCA (with flights to Austin being only somewhat shorter than to San Francisco). *See Ponder Decl.*, Exs. 4–5 (4 hours versus 6 hours, respectively). Having trial in NDCA will lower the burden on witnesses and Defendants’ lead counsel by enabling participation in hearings and trial without leaving their home state.

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<sup>3</sup> Printouts of these webpages are also attached as Exhibits 18 and 19 to the Ponder declaration.

### **C. The Public Interest Factors Favor Transfer**

The public interest factors favor transfer because NDCA has a strong local interest in this matter, and court congestion slightly favors transfer or is neutral.

#### **1. Court Congestion Slightly Favors Transfer or Is Neutral**

The relevant inquiry under the court congestion factor is the “speed with which a case can come to trial and be resolved[.]” *Genentech*, 566 F.3d at 1347; *Apple*, 979 F.3d at 1343 (same). This factor is “the most speculative” and is given little weight compared to the other transfer factors. *Genentech*, 566 F.3d at 1347. The Federal Circuit has “noted that ‘the Western District of Texas and the Northern District of California show no significant differences in caseload or time-to-trial statistics.’” *AMD*, 2021 WL 5291804, at \*4; *see also Apple*, 979 F.3d at 1343–44 (similar). However, the pending assignment of this case to “Judge Docket II - Austin” suggests some current congestion in this Court. Moreover, Judge Pitman has been signing orders for this case (*see, e.g.*, Dkts. 13–15, 24–26), and is the “sole active federal judge in Austin.” *Universal Connectivity*, 2024 WL 3305724, at \*6. If assigned to this case, Judge Pitman “has a particularly busy caseload, with over 900 pending civil cases.” *Id.*

This factor therefore slightly weighs in favor of transfer or is neutral. *See id.* (“Although this factor likely weighs in [defendant’s] favor, the speculative nature of court congestion as well as the similar disposition times between the two courts suggest that the factor should not decisively move the needle in either direction.”).

#### **2. Local Interest Favors Transfer**

The local interest factor strongly favors transfer. “[J]ury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation.” *Volkswagen I*, 371 F.3d at 206. This factor looks to the location(s) of “events that gave rise to [the] suit,” such as where “the accused products were designed, developed, and tested.” *Apple*,

979 F.3d at 1345; *see also In re Apple Inc.*, No. 2022-128, 2022 WL 1196768, at \*3 (Fed. Cir. Apr. 22, 2022) (finding local interest where “research, design, and development of the accused functionality occurred in that district”). It does not look for “connections to each forum writ large.” *Apple*, 979 F.3d at 1345. This factor recognizes a local interest where the accused products were designed and developed, and where persons reside whose ““work and reputation”” the lawsuit ““calls into question.”” *See Apple*, 979 F.3d at 1345 (citation omitted); *In re Samsung*, No. 2023-146, 2023 WL 8642711, at \*2 (Fed. Cir. Dec. 14, 2023) (transfer proper where “accused functionality was in part researched, designed, and developed in NDCA”).

NDCA has strong local interests in this matter because: (1) Pensando’s development, research, and design of the accused products took and takes place there; (2) Defendants’ headquarters is there; (3) the bulk of Defendants’ likely witnesses and evidence is there; and (4) multiple persons whose “work and reputation” are at issue (such as the founders and engineers who developed the accused products) reside there. *See* Section II.A, *supra*; *In re Haptic*, 2024 WL 3159288, at \*2 (finding “local interest factor favors transfer, given at least part of the design and development of the accused products took place in NDCA”); *Parus Holdings, Inc. v. Microsoft Corp.*, No. 6:21-CV-00570-ADA, 2022 WL 17420391, at \*10 (W.D. Tex. Nov. 29, 2022) (finding this factor “heavily favors transfer” because Defendants’ “headquarters are in [transferee district] and the teams that designed and developed the Accused Products are primarily located [there]”). The prosecuting attorney with knowledge regarding the asserted patents’ validity and enforceability is also located there. *See* Section II.D, *supra*. NDCA has the stronger local interest in litigation relating to the asserted patents.

The Complaint points generally to AMD’s locations in Austin (¶¶10–11, 24), but the Federal Circuit has rejected this as a cognizable tie to WDTX. The Federal Circuit has held that

with respect to the local interest factor, “a party’s ‘general presence in a particular district’ does not alone ‘give that district a special interest in the case.’” *See Apple*, 2022 WL 1196768, at \*3; *USTA*, 2023 WL 4833481, at \*6 (same); *XR Commc’ns, LLC v. Google LLC*, No. 6:21-CV-00625-ADA, 2022 WL 3702271, at \*2 (W.D. Tex. Aug. 26, 2022) (“Google has a general presence in this District but this Court would clearly abuse its discretion in according any weight to it.”). Moreover, although AMD has a substantial Austin office, Defendants’ headquarters are in NDCA (as was Pensando’s headquarters before the acquisition). *See Universal Connectivity*, 2024 WL 3305724, at \*7 (noting the “location of a company’s headquarters generally has a ‘greater local interest in cases’ than the location of its smaller satellite office”).

Finally, Plaintiffs’ lack of presence in Austin (both having their principal place of business in Georgia, for example) further weakens any local interest in WDTX. *See Universal Connectivity*, 2024 WL 3305724, at \*7 (finding local interest factor favors defendant where “[plaintiff] is a non-practicing entity incorporated in Delaware with a parent company in Canada—in other words, [plaintiff] has no ties to this District”).

The local interest factor thus strongly favors transfer.

### **3. Familiarity With the Governing Law and Conflicts of Law Are Neutral**

Finally, the last two public interest factors—familiarity with the governing law and conflicts of law—are neutral. There are no perceived conflicts of law, and both districts are qualified to apply patent law. *See USTA*, 2023 WL 4833481, at \*6; *Magic Cross Ranch, L.P. v. Manion*, No. 3:12-CV-00541-P, 2012 WL 13027449, at \*3 (N.D. Tex. Sept. 25, 2012).

## **V. Conclusion**

Defendants respectfully request a transfer of this case to NDCA, the clearly more convenient forum. The Court should grant this motion.

Dated: August 9, 2024

/s/ Christopher Ponder

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 9, 2024 a true and correct copy of the foregoing was served on all counsel of record who have appeared in this case via the Court's CM/ECF system pursuant to Local Rule CV-5.

*/s/ Christopher Ponder*

\_\_\_\_\_  
Christopher Ponder

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies pursuant to Local Rules CV-7(g), that the relief requested in this motion is opposed. I conferred with Plaintiffs' lead counsel Michael Matulewicz-Crowley by telephone on July 25, 2024 and the parties could not agree to transfer this case to NDCA.

*/s/ Christopher Ponder*

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Christopher Ponder