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-ADA

DEFENDANTS ADVANCED MICRO DEVICES, INC. AND PENSANDO SYSTEMS, INC.'S OPPOSED MOTION FOR RECONSIDERATION

Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, Defendants Advanced Micro Devices, Inc. and Pensando Systems, Inc. (collectively, "Defendants") respectfully request that the Court reconsider the Order (Dkt. 89), which (i) vacated the Report and Recommendation of United States Magistrate Judge Mark Lane concerning Defendants' Motion to Transfer Venue; (ii) established a period during which the parties may conduct venue discovery; and (iii) ordered the parties to submit "corrected" opposition and reply briefs after the close of venue discovery.

Reconsideration is warranted in this case for two reasons. First, Plaintiffs expressly agreed to forego venue discovery—and thereby conceded venue discovery is unnecessary—after Defendants filed the motion to transfer. As such, Plaintiffs are not entitled to discovery at this late date—nearly 12 months after Defendants moved to transfer. Second, the Court incorrectly applied *de novo* review. The venue transfer findings of the Report and Recommendation concern a non-dispositive pretrial issue and, as such, could only be set aside upon a showing that those findings were clearly erroneous or contrary to law. As such, it was improper for the Court

to order venue discovery under the controlling standard of review.

I. PROCEDURAL BACKGROUND

Plaintiffs filed this lawsuit on March 29, 2024 accusing products developed by Pensando Systems, Inc. of infringing five patents. Dkt. 1 ("Compl."), ¶¶7, 19–26, 29. On August 9, 2024, Defendants moved to transfer venue to NDCA pursuant to 28 U.S.C. § 1404(a). Dkt. 33. In support of the venue motion, Defendants submitted sworn declarations from Diane Ramos, who "led [Defendants'] acquisition of Pensando from an HR Perspective." Dkt. 33-1, ¶2; *see also* Dkt. 44-1. Ramos explained that the witnesses and evidence relevant to this litigation are located predominantly in NDCA. *See* Dkt. Nos. 33-1, 44-1.

Shortly after Defendants moved to transfer venue, Plaintiffs stated that they intended to seek venue discovery. *See* Declaration of Christopher Ponder ("Ponder Decl."), Ex. A. Defendants opposed venue discovery as unnecessary. *See id.* Plaintiffs then made a strategic decision to forego discovery, informing Defendants that, **"[i]n an effort to reduce the number of disputes in front of the Court, [Plaintiffs] no longer intend to request venue discovery related to Defendants' motion to transfer**." *Id*., Ex. B. On August 30, 2024, Plaintiffs filed their opposition to the venue transfer motion. Dkt. 35. Having opted to forego discovery, Plaintiffs relied primarily on LinkedIn searches to argue that witnesses in Texas have knowledge relevant to the lawsuit. *Id*. at 3–8.

On October 17, 2024, Judge Pitman entered a Text Order referring the venue transfer motion to Magistrate Judge Mark Lane. Ponder Decl., Ex. C. On January 31, 2025, Judge Lane issued a Report and Recommendation finding that NDCA is a clearly more convenient forum for this dispute than WDTX. In reaching his determination, Judge Lane found that the evidence Defendants submitted concerning the relevance of witnesses in California and Texas was "far more credible tha[n] Plaintiffs." Dkt. 58 at 9 (finding Plaintiffs' evidence was not "reliable").

Judge Lane also found that it would be easier to access the sources of proof in California and that NDCA has a greater local interest in this case. *Id*. at 11.

On February 15, 2025, Plaintiffs filed Objections to the Report and Recommendation, arguing that "[t]he R&R's conclusion that five of the transfer factors weigh in favor of Defendants is contrary to law and clearly erroneous." Dkt. 62 at 1; *see also id.* at 2-4, 6, 8, 10 (arguing findings were clearly erroneous). Plaintiffs did not request *de novo* review of Judge Lane's findings, nor argue that Judge Lane erred in failing to require venue discovery.

On June 24, 2025, the Court vacated the Report and Recommendation. Dkt. 89. The Court stated that it "conducted a *de novo* review" of the venue transfer briefing and evidence. *Id*. at 2. In vacating Judge Lane's venue determination, the Court stated that its "practice is to allow venue discovery upon the filing of a venue motion." *Id*. The Court then set a schedule for venue discovery and ordered the parties to submit "corrected" briefing so that the Court can engage in *de novo* review of the venue transfer motion with the benefit of further evidence.

II. LEGAL STANDARD

Rule 54(b) "allows parties to seek reconsideration of interlocutory orders and authorizes the district court to 'revise[] at any time' 'any order or other decision . . . [that] does not end the action.'" *Austin v. Kroger Texas, L.P.*, 864 F.3d 326, 336 (5th Cir. 2017) (quoting Fed. R. Civ. P. 54(b)). Rule 54(b) "reflect[s] the inherent power of the rendering district court to afford such relief from interlocutory judgments as justice requires." *Id*. (internal quotation omitted). In accordance with this Rule, "the trial court is free to reconsider and reverse its decision for any reason it deems sufficient." *Id*.

III. ARGUMENT

Defendants respectfully request that the Court reconsider its Order vacating the Report and Recommendation for the reasons set forth below.

A. Plaintiffs Made a Conscious Decision to Forego Venue Discovery

Reconsideration is warranted in this case because, in vacating the Report and Recommendation, the Court was likely unaware that Plaintiffs had already made the decision to forego venue discovery in August 2024 after Defendants filed the motion to transfer. *See* Ponder Decl., Ex. B ("[Plaintiffs] no longer intend to request venue discovery related to Defendants' motion to transfer."). As a result, the venue motion was fully briefed in September 2024 and referred to Judge Lane in October 2024. Having made the express decision to forego venue discovery when Defendants filed the motion to transfer, Plaintiffs are not entitled to discovery now, nearly 12 months later. *See, e.g.*, *Knowles v. U.S., ex rel. F.B.I.*, 2009 WL 2882956, at *1 (E.D. Tex. Aug. 31, 2009) ("Plaintiffs cannot wait until after all briefing on the motion is completed and a decision is made on the motion to raise a request for discovery for the first time.").

The delay that will result from discovery and new venue briefing also supports reconsideration. The Fifth Circuit has emphasized that "disposition of a [§ 1404(a)] motion should [take] a top priority in the handling of a case." *In re TikTok, Inc.*, 85 F.4th 352, 362 (5th Cir. 2023); *see also, e.g.*, *In re Apple Inc.*, No. 2023-120, 2023 WL 2359699, at *2 (Fed. Cir. Mar. 6, 2023). Lengthy delays in deciding transfer motions can "frustrate 28 U.S.C. § 1404(a)'s intent" when "a motion to transfer lingers unnecessarily on the docket." *In re Google Inc.*, No. 2015-138, 2015 WL 5294800, at *1–2 (Fed. Cir. July 16, 2015).

Here, Defendants filed the venue motion on August 9, 2024, shortly after responding to the Complaint. Dkt. 33. Even if the Court were to immediately rule on the motion when "corrected" briefing is complete (*i.e.*, on October 1, 2025), that would still result in at least a 14-month delay in resolving the motion to transfer. Such an extensive delay contravenes precedent. *See, e.g., In re TikTok*, 85 F.4th at 363 ("A delay of this length [14 months] is a plain violation of

our instruction to give § 1404(a) motions 'a top priority in the handling of a case.'"). The delay is particularly prejudicial to Defendants here because the Patent Trial and Appeal Board has already exercised its discretion to deny one of Defendants' pending petitions for *inter partes* review on the basis that it is "speculative" that the case will be transferred to NDCA and assigned a new trial date. *See* Ponder Decl., Ex. D at 3. Further, Defendants will suffer prejudice because they will now be forced to incur the cost of responding to venue discovery that Plaintiffs previously conceded to be unnecessary.

Under these circumstances—where Plaintiffs made a strategic decision to forego venue discovery nearly 12 months ago and Defendants is suffering real-world prejudice from the extensive delay in resolving its motion—reconsideration is warranted. If Plaintiffs believed venue discovery was necessary to resolve Defendants' motion, they should have sought that discovery in August 2024 when the motion was filed. Having made a strategic decision to forego discovery, Plaintiffs are not entitled to further delay resolution of the transfer motion.

B. The Court Applied the Wrong Standard of Review

Reconsideration is also warranted in this case because the Court applied the wrong standard of review in vacating the Report and Recommendation and ordering submission of further evidence. Under 28 U.S.C. §636(b)(1), a district court judge may refer both dispositive and non-dispositive pretrial matters to a magistrate judge. The standard of review applied to a magistrate judge's decision depends on the nature of the matter referred. *Brown v. Bridges*, 2015 WL 410062, at *3 (N.D. Tex. Jan. 30, 2015) ("The proper standard of review instead results from the nature of the matter referred."). For dispositive matters, a magistrate judge's decision is subject to *de novo* review. *Id.*, § 636(b)(1)(B). In conducting *de novo* review, a district judge has wide latitude to "accept, reject, or modify, in whole or in part, the findings or recommendations." *Id.*, §636(b)(1)(C). The district judge also has discretion to order

submission of "further evidence" when reviewing dispositive determinations. *Id*. By contrast, a party objecting to a magistrate judge's decision on a non-dispositive matter must show that the magistrate judge's order "is clearly erroneous or contrary to law." *Id*., § 636(b)(1)(A). The distinction between the standard of review for dispositive and non-dispositive matters is also enshrined in Rule 72 of the Federal Rules of Civil Procedure. *Compare* Rule 72(a) *with* Rule 72(b).

Here, Judge Pitman referred two pretrial matters to Judge Lane—(i) Defendants' motion to dismiss (Dkt. 23); and (ii) Defendants' motion to transfer venue under 28 U.S.C. § 1404(a) (Dkt. 33). Ponder Decl., Ex. C. Magistrate Judge Lane's decision on the motion to dismiss addressed a dispositive matter and was therefore subject to *de novo* review. *See* 28 U.S.C. §636(b)(1); Fed. R. Civ. P. 72(b)(3); L. Civ. R., Appx. C, Rules 1(d), 4(b). By contrast, Magistrate Judge Lane's decision on the motion to transfer venue addressed a non-dispositive pretrial matter. *See, e.g.*, *Bracken Constr. Co., Inc. v. Liebherr-Am., Inc.*, 2025 WL 511117, at *2 (S.D. Miss. Feb. 14, 2025) ("A motion to transfer venue involves a non-dispositive pretrial matter, which a magistrate judge may determine pursuant to 28 U.S.C. § 636(b)(1)(A)").

To set aside Judge Lane's non-dispositive venue findings, Plaintiffs were required to establish that the Report and Recommendation was "clearly erroneous or is contrary to law." *See* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). Indeed, it is well-established that "[t]he ruling on the motion to transfer venue is a non-dispositive ruling. Non-dispositive rulings by magistrate judges are reviewed under a 'clearly erroneous' or 'contrary to law' standard." *R P Constr. LLC v. S M C Builders, Inc.*, 2016 WL 2858961, at *1 (W.D. La. May 12, 2016); *see also Evol, Inc. v. Supplement Servs., LLC*, 2010 WL 982564, at *1 (N.D. Tex. Mar. 16, 2010) ("A magistrate judge enjoys the authority to decide a motion to transfer venue under 28 U.S.C. §

636(b)(1)(A). A district court may reconsider matters decided by a magistrate judge under § 636(b)(1)(A) where a party shows that the magistrate judge's order is clearly erroneous or contrary to law.").

Indeed, during the parties' July 2, 2025 meet-and-confer pursuant to Local Rules CV-7(g), Plaintiffs did not dispute that the motion to transfer venue involves a non-dispositive pretrial issue. Tellingly, Plaintiffs recognized the applicable standard of review in filing their Objection to the Report and Recommendation. *See* Dkt. 62 at 1-4, 6, 8, 10 (objecting that the venue determinations were "clearly erroneous").

In vacating the Report and Recommendation, the Court applied the wrong standard of review. Rather than reviewing Judge Lane's findings for clear error, the Court stated that it had reviewed the venue transfer briefing and evidence "*de novo*." Dkt. 89 at 2–3. The Court also ordered discovery and "corrected" briefing—*i.e.*, the submission of "further evidence"—to facilitate further *de novo* review of the venue transfer motion. *Id*. This is impermissible when reviewing a magistrate judge's Report and Recommendation concerning a non-dispositive pretrial matter. *See, e.g.*, *Moore v. Ford Motor Co.*, 755 F.3d 802, 808 (5th Cir. 2014) ("At issue here is a non-dispositive order subject to Rule 72(a) clear error review. Because the district court's review of the magistrate judge's factual findings was limited to clear error review, there appears to be no basis for the district court to have received additional evidence.").

The substitution of *de novo* review for the clearly erroneous standard was material in this case because each of Judge Lane's findings was plausible based on the evidence submitted. *See Smith v. Smith*, 154 F.R.D. 661, 665 (N.D. Tex. 1994) ("If a magistrate judge's account of the evidence is plausible in light of the record viewed in its entirety, a district judge may not reverse it."); see also *Brown*, 2015 WL 410062, at *2 (holding the "clearly erroneous" standard of

review is "a highly deferential standard [that] requires the court to affirm the decision of the magistrate judge unless 'on the entire evidence [the court] is left with a definite and firm conviction that a mistake has been committed.'"). Judge Lane's determination that more relevant witnesses are located in California than Texas was based on declaratory evidence describing the witnesses in California and their knowledge and responsibilities compared with the witnesses in WDTX. *See* Dkt. Nos. 33-1, 44-1. Judge Lane's determination that sources of proof are easier to access in California was based on evidence that the relevant source code is located in NDCA and the relevant documents are predominantly accessed by custodians in NDCA. *See* Dkt. 33-1, ¶¶ 10–14. Judge Lane based his finding that NDCA has a greater local interest in this case on the evidence that the party that developed the accused products was founded in NDCA and is still based there. *See* Dkt. 33-1, ¶¶3, 9; Dkt. 44-1, ¶2. Given the evidentiary record supporting Judge Lane's decision, application of the correct standard of review required overruling Plaintiffs' Objections.

Further, during the parties' July 2, 2025 meet-and-confer, Plaintiffs reversed their prior position regarding the standard of review. Despite previously acknowledging that the correct standard for non-dispositive pretrial matters was "clearly erroneous" (*see* Dkt. 62 at 1–4, 6, 8, 10), Plaintiffs stated at the meet-and-confer that they "think it is" *de novo* review. When asked for their basis for this position, Plaintiffs refused to provide any explanation, statutory authority, or case law support, stating they were not obligated to and need only state their position and leave any explanation or support to their brief. This unexplained shift further highlights the absence of any legal basis for applying a *de novo* standard to the review of a magistrate judge's recommendation on a non-dispositive pretrial matter, and underscores the need for the Court to apply the well-established "clearly erroneous" or "contrary to the law" standard.

IV. CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court (i) reconsider its order vacating the Report and Recommendation (Dkt. 89); and (ii) overrule Plaintiffs' Objection (Dkt. 62).

DATED: July 3, 2025

/s/ Harper S. Batts

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2025, 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/ Harper S. Batts
Harper S. Batts

CERTIFICATE OF CONFERENCE

Pursuant to Local Rules CV-7(g), the undersigned certifies that counsel for Defendants conferred with counsel for Plaintiffs on July 2, 2025. During the meet-and-confer, Plaintiffs stated only that they "disagree" regarding the proper standard of review for this Court's consideration of the magistrate judge's recommendation on the motion to transfer, as well as with all other substantive aspects of this motion to reconsider. But Plaintiffs did not dispute that the motion to transfer venue involves a non-dispositive pretrial issue.

Plaintiffs stated during the meet-and-confer that they "think it is" *de novo* review. Defendants provided statutory support for their position regarding the standard of review. When Defendants requested the basis for Plaintiffs' position, Plaintiffs refused to provide any explanation, statutory authority, or case law support. Specifically, Plaintiffs' counsel stated that the meet and confer process only required providing a position about an issue, and that Defendants would have to wait for Plaintiffs' briefing to see what the basis and possible support for their positions may be.

/s/ Harper S. Batts
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