

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

RESONANT SYSTEMS, INC., D/B/A
REVELHMI,

Plaintiff,

v.

NINTENDO CO., LTD.,

Defendant.

Case No. 2:25-cv-00090-JRG

REDACTED - PUBLIC VERSION

**NINTENDO CO. LTD.'S MOTION TO TRANSFER VENUE
TO THE WESTERN DISTRICT OF WASHINGTON**

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2	Washington Corporations and Charities Filing System, Corporation Search Results for Resonant Systems, Inc., printed from https://ccfs.sos.wa.gov/#/BusinessSearch/BusinessInformation .
3	Robin Elenga's LinkedIn Profile, printed from https://www.linkedin.com/in/robinelenga .
4	Brian Pepin's LinkedIn Profile, printed from https://www.linkedin.com/in/brian-pepin-73a87312/ .
5	Glen Tompkins's LinkedIn Profile, printed from https://www.linkedin.com/in/glen-tompkins-81a43b8/ .
6	Laurie Lyford's LinkedIn Profile, printed from https://www.linkedin.com/in/laurie-lyford-254120/ .
7	Murray Vince's LinkedIn Profile, printed from https://www.linkedin.com/in/murrayvince/ .
8	Ronald Zink's LinkedIn Profile, printed from https://www.linkedin.com/in/ronzink/ .
9	Cory Von Arsdale LinkedIn Profile (https://www.linkedin.com/in/coryvanarsdale/).
10	Print out of Indiegogo webpage entitled "Revel Body: The World's Only Sonic Vibrator," from https://www.indiegogo.com/projects/revel-body-the-world-s-only-sonic-vibrator# .
11	Print out of an article from GeekWire entitled, "The vibrator of the future: Revel Body uses sonic tech to power new sex toy line," dated January 10, 2022, from https://www.geekwire.com/2012/vibrator-future-revel-body-sonic-technology-power-sex-toy-line/ .
12	Print out of a Google Flights time table for flights from Tokyo, Japan to Seattle, Washington, sorted by duration.
13	Print out of a Google Flights time table for flights from Tokyo, Japan to Longview, Texas, sorted by duration.
14	Print out of a Google Flights time table for flights from Kyoto, Japan to Longview, Texas, sorted by duration.
15	Print out of a Google Flights time table for flights from Tokyo, Japan to Dallas, Texas, sorted by duration.
16	Print out of Microsoft Bing search results showing that the distance from Tokyo, Japan to Seattle, Washington is 4,788 miles.
17	Print out of a Google Flights time table for flights from Kyoto, Japan to Dallas, Texas, sorted by duration.

Exhibit	Description
18	Print out from Google Maps showing the driving time and distance from the Dallas-Fort Worth International Airport to the Sam B. Hall, Jr. Federal Building and United States Court House.
19	Print out of Google search results showing that the distance between Marshall, Texas and Tokyo, Japan is 6,565 miles.
20	Print out from Google Maps showing the driving time and distance from Nintendo of America's headquarters in Redmond, Washington and the Western District of Washington Courthouse.
21	Print out of an article from dentistry.co.uk article by Gary Bissett, entitled "Sonicaring for 30 years," dated November 24, 2022, from https://dentistry.co.uk/2022/11/24/sonicaring-for-30-years/ .
22	Print out of a www.inknowvation.com webpage, entitled "The Sonicare story," from https://www.inknowvation.com/sbir/story/sonicare-story .
23	U.S. Patent No. 5,189,751 (Giuliani et al.).
24	U.S. Patent No. 5,378,153 (Giuliani et al.).
25	FCC ID report regarding Philips Oral Healthcare, Inc. HX68, printed from https://fcc.report/FCC-ID/2ADZNHX68 .
26	Print out for Nvidia's Contact Us: Americas Locations & Regional Office webpage from https://www.nvidia.com/en-us/contact/
27	<i>Intentionally omitted</i>
28	Print out of a nintendolife article by Marin Watts, entitled "Feature: Taking A Look Back At The Nintendo 64 Rumble Pak," dated July 11, 2013, from https://www.nintendolife.com/news/2013/07/feature_taking_a_look_back_at_the_nintendo_64_rumble_pak
29	Print out from Nintendo's Customer Support webpage entitled "What is the Rumble Feature," from https://en-americas-support.nintendo.com/app/answers/detail/a_id/2568/~/%7Bwhat-is-the-rumble-feature%3F
30	Federal Judicial Caseload Statistics, 2024 Caseload Profiles, for the United States District Court for the Eastern District of Texas and the Western District of Washington.
31	Excerpts from Lex Machina providing the statistics between April 19, 2021, and April 19, 2025, for the United States District Court for the Western District of Washington.
32	 [FILED UNDER SEAL]
33	Printout of a RevelHMI webpage entitled "Learn the history behind our vibration technology," printed from https://web.archive.org/web/20161105030240/http://revelhmi.com/history (<i>Resonant Sys., Inc. v. Sony Group Corp.</i> , Case No. 2:22-cv-424-JRG, Dkt 160-2)

Exhibit	Description
34	Print out from Google Maps showing the driving time and distance from East Texas Regional Airport in Longview, Texas and the Sam B. Hall, Jr. Federal Building and United States Court House.
35	Print out of Microsoft Bing search results showing that the distance between Marshall, Texas and Kyoto, Japan is 6,746 miles.
36	Print out of Microsoft Bing search results showing that the distance between Seattle Washington and Kyoto, Japan is 4,968 miles.
37	Print out of a Google Flights time table for flights from Seattle, Washington to Longview, Texas, sorted by duration.
38	Print out of a Google Flights time table for flights from Seattle, Washington to Dallas, Texas, sorted by duration.
39	[REDACTED] [FILED UNDER SEAL]
40	Print out of Olympic Patent Works, PLLC webpage from https://www.olympicpatentworks.com/ .
41	Print out of an CNET article by David Rudden, entitled “Nintendo DS Rumble Pak review: Nintendo DS Rumble Pak,” dated July 23, 2006, from https://www.cnet.com/reviews/nintendo-ds-rumble-pak-review/
42	[REDACTED] [FILED UNDER SEAL]
43	[REDACTED] [FILED UNDER SEAL]
44	[REDACTED] [FILED UNDER SEAL]

I. INTRODUCTION

This patent infringement suit should have been brought in the Western District of Washington (“WDWA”). The plaintiff, Resonant Systems, Inc. (“Resonant”), is a Washington corporation with a principal place of business in WDWA. Robin Elenga, Resonant’s President, sole employee, and an inventor of the sole asserted patent (U.S. Patent No. 8,850,337, “the ’337 patent”), lives in WDWA. Prosecution counsel were and are in WDWA. Resonant’s allegedly practicing product was developed in WDWA. Although Resonant is no longer an operating business, former employees—including another inventor of the ’337 patent—have remained in WDWA. These third-party witnesses have information relevant to this case including, for example, the lack of demand for the practicing product, Resonant’s failure to mark that product, and Resonant’s failure to disclose material Sonicare prior art during prosecution.

The defendant, Nintendo Co. Ltd. (“NCL”), is a Japan-based corporation that conducts no relevant activity in the United States. Based on Resonant’s complaint, any alleged infringing activity would be performed by NCL’s U.S. subsidiary, Nintendo of America, Inc. (“NOA,” and collectively with NCL, “Nintendo”). NOA’s headquarters are in WDWA. The sales, marketing, and financial witnesses relevant to this case are NOA witnesses in WDWA. Nintendo’s technical witnesses are in Japan, from which travel to WDWA is far more convenient than to Marshall. Nintendo’s source code is accessible by WDWA-based employees but not from the Eastern District of Texas (“EDTX”). A third-party component supplier and product prior art are in WDWA.

[REDACTED]

[REDACTED] In contrast, Resonant has not demonstrated any particularized connection between it or Nintendo and EDTX.

The Court should transfer this case. Transfer is even more warranted here than in *In re Nintendo*, 589 F.3d 1194 (Fed. Cir. 2009), which mandated transfer from EDTX to WDWA.

II. BACKGROUND

A. **Nintendo Co. Ltd. is founded in Kyoto, Japan in 1889, and Nintendo of America is founded in 1980. NOA operates Nintendo’s U.S.-based business from its headquarters in Redmond, WA.**

The company now known as Nintendo Co. Ltd. (“NCL”) was founded in Kyoto, Japan in 1889. LaCombe Decl. ¶ 3. Nintendo of America, Inc. (“NOA”), a wholly owned subsidiary of NCL, was established as a Washington corporation in the early 1980s. *Id.* ¶ 4. NCL is responsible for the technical development and design of Nintendo’s products and does so in Japan. NOA is responsible for the marketing, sales, and distribution of Nintendo products in the United States, and does so from its Redmond headquarters. *Id.* ¶¶ 4, 6. NOA imports the Nintendo products into the United States and sells them to distributors. *Id.* ¶ 5. NOA personnel also manage any licensing of U.S. patents. *Id.* ¶ 6.

B. **Resonant, a Washington corporation, obtains patent claims on linear vibration modules and starts an operating business in Seattle. That business fails and Resonant sues Nintendo.**

Founded in 2010, Resonant is a Washington corporation with a principal place of business in Seattle, Washington. Ex. 2. Resonant’s ’337 patent lists three inventors: Robin Elenga, Brian Marc Pepin, and Glen Tompkins. Ex. 1. Robin Elenga is Resonant’s founder, President, and sole remaining employee. *Resonant Sys. Inc. v. Apple, Inc.*, Case No. 7:23-cv-77 (W.D. Tex.) (“Apple Action”), Dkt. 83, at 8. Mr. Elenga lives in Seattle. Ex. 3. Mr. Pepin lives in northern California. Ex. 4. Mr. Tompkins lives in Woodinville, WA (within WDWA). Ex. 5.

Resonant launched a product allegedly attempting to commercialize the technology claimed by the ’337 patent. Exs. 10-11. Resonant appears to have had at least 6 employees “in Seattle.” Ex. 10. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Resonant’s product was ultimately unsuccessful in the market and Resonant laid off all of its employees except for Mr. Elenga. Apple Action, Dkt. 44, at 4. Today, Resonant is led by five governors (including Mr. Elenga), all of whom appear to live in the Seattle area. Exs. 2-3, and 7-9.

On January 31, 2025, Resonant sued NCL alleging that the Nintendo Switch (the “Switch”) infringes the ’337 patent. Dkt. 1. Resonant also alleges that NCL willfully infringed the ’337 patent based on allegations that “Nintendo’s acts of infringement ... were undertaken after rejecting Plaintiff’s attempts to license its technology in good faith.” *Id.* ¶ 13; *see also id.* ¶ 10 (alleging “pre-filing communications from Plaintiff”).

On May 7, 2025, Nintendo moved to stay this case pending resolution of an instituted IPR filed by Apple Inc. on the ’337 patent. Dkt. 18. Nintendo’s motion to stay remains pending.

III. LEGAL STANDARDS

A district court may transfer a civil action “[f]or the convenience of parties and witnesses [and] in the interests of justice” to any other district “where it might have been brought.” 28 U.S.C. § 1404(a). “A motion to transfer venue should be granted upon a showing that the transferee venue is ‘clearly more convenient’ than the venue chosen by the plaintiff.” *In re Nintendo Co.*, 589 F.3d 1194, 1197 (Fed. Cir. 2009) (citing *In re Genentech, Inc.*, 566 F.3d 1338, 1342 (Fed. Cir. 2009)). The analysis of relevant factors need not show that the transferee forum is “far more convenient.” *In re Toyota Motor Corp.*, 747 F.3d 1338, 1341 (Fed. Cir. 2014). In determining the convenience of the two venues, this Court considers both “private” and “public” factors. *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235,

241 n.6 (1981)).

As the Federal Circuit previously held in addressing transfer of a case involving Nintendo to WDWA, “in a case featuring most witnesses and evidence closer to the transferee venue with few or no convenience factors favoring the venue chosen by the plaintiff, the trial court should grant a motion to transfer.” *Nintendo*, 589 F.3d at 1198.

IV. ARGUMENT

A. Resonant Could Have Brought This Action In WDWA

Resonant’s complaint purports to establish personal jurisdiction over NCL (a Japan-domiciled corporation) based on a stream-of-commerce theory.¹ Dkt. 1 ¶ 5. That theory, if accepted as true, applies with equal force to personal jurisdiction in WDWA. Indeed, Resonant cannot dispute that the Nintendo Switch is sold in WDWA. What’s more, the record evidence shows that the conduct that Resonant alleges infringes—that is, importing the Nintendo Switch into the United States or selling it in the United States—is performed by NOA, NCL’s wholly-owned subsidiary based in WDWA. LaCombe Decl. ¶ 5. Because this alleged “activity gives rise to the cause of action in this lawsuit,” WDWA has jurisdiction over NCL. *See Resonant Sys., Inc. v. Sony Group Corp.*, Case No. 2:22-cv-424-JRG (“Sony Action”), Dkt. 55 at 4. Moreover, NCL is a foreign company for which venue is proper in “any judicial district.” 28 U.S.C. § 1391(c)(3).

B. WDWA Is A Clearly More Convenient Venue Than EDTX For This Case

Resonant’s presence is centered in WDWA, Nintendo’s U.S. presence is centered in WDWA, the interactions underlying Resonant’s willfulness allegations occurred in WDWA, and WDWA is more convenient for both parties’ witnesses. Three categories of highly relevant third

¹ NCL has not yet responded to Resonant’s complaint and has not waived an objection to personal jurisdiction. However, based on the allegations in Resonant’s complaint, personal jurisdiction is at least as proper in WDWA as it is in EDTX.

parties are based in WDWA. And neither party has a meaningful connection to EDTX. On these facts, WDWA is clearly more convenient than EDTX.

1. The Private Interest Factors Heavily Favor Transfer to WDWA

a) Willing-Witnesses Convenience Heavily Favors Transfer

The willing-witness factor “is probably the single most important factor in a transfer analysis.” *In re Google Inc.*, No. 2017-107, 2017 WL 977038, at *3 (Fed. Cir. Feb. 23, 2017) (citation omitted). The Fifth Circuit assesses this factor under a “100-mile” test: “[w]hen the distance between an existing venue for trial ... and a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to the witnesses increases *in direct relationship* to the additional distance to be traveled.” *In re TikTok, Inc.*, 85 F.4th 352, 361 (5th Cir. 2023) (citing *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008)) (emphasis added). Here, every potential willing witness is either in WDWA or can more conveniently travel to Seattle than to Marshall. Nintendo is not aware of any willing witness in EDTX.

Robin Elenga. Mr. Elenga, Resonant’s President, sole remaining employee, first named inventor of the asserted patent, and one of Resonant’s governors, lives in WDWA. Ex. 3.

Resonant’s other governors. Washington law defines a “governor” to include a “person ... under whose direction the activities and affairs of the entity are managed.” Wash. Rev. Code Ann. § 23.95.105(12). Resonant has four governors besides Mr. Elenga: Laurie Lyford, Murray Vince, Ronald Zink, and Corey Van Arsdale. Ex. 2. Each of these governors is based in WDWA and is likely to have material information regarding Resonant’s governance, technology, and lack of commercial success. Exs. 6-9. [REDACTED]

[REDACTED] Ex. 32, at 4.

Matt LaCombe. Mr. Lacombe is NOA’s Financial Controller and has worked for NOA for thirty-five years. LaCombe Decl. ¶ 7. He is expected to testify about Nintendo’s founding,

business, structure, innovation, and financial information. *Id.* Mr. LaCombe is based in WDWA at NOA’s Redmond headquarters. *Id.*

[REDACTED] for the U.S. Market. *Id.* She is expected to testify about the sales, marketing, advertising, usage of, and consumer demand for the Nintendo Switch. *Id.* [REDACTED] is based in WDWA at NOA’s Redmond headquarters. *Id.*

[REDACTED] *Id.* He is expected to testify about Nintendo’s patent license agreements and patent licensing practices. *Id.* [REDACTED] is based in WDWA at NOA’s Redmond headquarters. *Id.*

Nintendo’s technical witnesses. Nintendo expects that its technical witnesses will be based at NCL locations in Japan. *Id.* ¶ 3. For Nintendo’s Japan-based witnesses, travel to Seattle will be clearly more convenient than travel to Marshall. The travel time and distance for these witnesses to Seattle will be substantially shorter than to Marshall; whereas it takes approximately 9 hours (flying and driving) to travel from a Tokyo airport to the Seattle federal courthouse, it takes over 50% longer (14.5 hours flying then driving) to travel from a Tokyo airport to the Marshall federal courthouse. *See* Exs. 12-20, 34-38 (showing distance and travel times between Tokyo/Kyoto to Marshall/Dallas and Seattle). WDWA will also be more convenient for Nintendo witnesses because they can work from Nintendo’s Redmond headquarters in a more convenient, secure setting. LaCombe Decl. ¶¶ 8-11. By contrast, Nintendo has no offices in EDTX—let alone near Marshall—for its witnesses to work. *Id.* ¶¶ 4-5; *In re Google LLC*, No. 2021-170, 2021 WL 4427899, at *4 (Fed. Cir. Sept. 27, 2021) (the transfer inquiry considers “inconvenience imposed on the witnesses by requiring them to ... be away from their ... work”).

Although Resonant may contend that Nintendo’s Japan-based witnesses weigh neutrally in

the transfer analysis, that contention would be in error. Both the Fifth Circuit and the Federal Circuit have held that an East Asia witness can more conveniently travel to the West Coast than to Texas. For example, in *TikTok*, the district court had held that the willing-witness factor was neutral between California and Texas because “the key witnesses ... [were] in China.” *TikTok*, 85 F.4th at 361. The Fifth Circuit reversed, holding that this reasoning “ignore[d] our 100-mile test.” *Id.* It explained that even “[a]ccepting the court’s finding that the ‘bulk of relevant witnesses are in China,’ it is indisputable that the Northern District of California is clearly more convenient for these witnesses than the Western District of Texas.” *Id.* Like in *TikTok*, concluding that Japan-based witnesses here are equally inconvenienced by travel to Washington and to Texas “ignores [the Fifth Circuit’s] 100-mile test.” *Id.* Indeed, the Fifth Circuit cited approvingly the Federal Circuit’s decision in *Nintendo*, which applied Fifth Circuit law to hold that the willing-witness factor “clearly favored transfer” where, like here, “key witnesses were from Japan and ‘would have to travel an additional 1756 miles or 7 hours by plane to Texas as compared with Washington State.’” *Id.* at 361 n.8 (quoting *Nintendo*, 589 F.3d at 1199); Exs. 12-20, 34-38.

* * *

Where, as here, “‘a substantial number of material witnesses reside within the transferee venue ... and no witnesses reside within the’ transferor venue, a district court ‘clearly err[s] in not determining’ the convenience of willing witnesses ‘to weigh substantially in favor of transfer.’” *In re Google LLC*, 2021 WL 4427899, at *4 (quoting *Genentech*, 566 F.3d at 1345).

b) The Availability Of Compulsory Process in WDVA Heavily Favors Transfer

Relevant here, a court may “command a person to attend a trial, hearing, or deposition,” or produce documents, “within 100 miles of where the person resides, is employed, or regularly transacts business in person.” Fed. R. Civ. P. 45(c). The compulsory-process factor “weighs the

heaviest for the forum that has ‘absolute subpoena power,’” that is, “subpoena power for both depositions and trial.” *Gemalto S.A. v. HTC Corp.*, No. 6:10cv561 LED-JDL, 2011 WL 5838212, at *4 (E.D. Tex. Nov. 18, 2011). “[T]he Eastern District of Texas’s own cases have held that, when there is no indication that a non-party witness is willing, the witness is presumed to be unwilling and considered under the compulsory process factor.” *In re HP Inc.*, No. 2018-149, 2018 WL 4692486, at *3 n.1 (Fed. Cir. Sept. 25, 2018).

Because WDWA commands absolute subpoena power over former Resonant personnel, key prior art documents and witnesses, and the supplier of a potentially relevant third-party component, the compulsory-process factor heavily favors transfer.

(1) Former Resonant Personnel and Prosecution Counsel in WDWA Weigh Strongly In Favor Of Transfer

Glen Tompkins. Mr. Tompkins is a named inventor of the ’337 patent and lives in Woodinville, WA. Ex. 5. Mr. Tompkins is likely to have material information regarding the invention of the ’337 patent, the state of the art at the time of the patent’s invention, its alleged incorporation into Resonant’s product, and Resonant’s lack of commercial success. Mr. Tompkins is also the best witness to testify about the lab notebooks that he kept at Resonant. *Resonant Sys. Inc. v. Samsung Elec. Co. Ltd., et al.*, Case No. 2:22-cv-423 (E.D. Tex.) (“Samsung Action”), Dkt. 64 ¶ 75. Mr. Tompkins’ testimony may be particularly probative because he does not have the same degree of financial interest in the outcome of this case as Mr. Elenga, who is Resonant’s “largest shareholder.” Apple Action, Dkt. 44-20 ¶ 3. Importantly, Mr. Tompkins appears to be an **unwilling** witness; Resonant admits that he “will likely require compulsory process.” Sony Action, Dkt. 44 at 10. Thus, Mr. Tompkins’ presence in WDWA “weighs heavily in favor of transfer.” *Geotag, Inc. v. Fred’s, Inc.*, No. 2:12-cv-478, 2013 WL 12063915, at *3 (E.D. Tex. Jan. 14, 2013).

Other former Resonant employees. Although it was once an operating business, Resonant

has laid off all of its employees except for Mr. Elenga. Apple Action, Dkt. 44, at 4. These former employees (including [REDACTED]) are likely to have material information regarding Resonant's product, the degree to which it incorporated the '337 patent, Resonant's compliance the marking statute (or lack thereof), and Resonant's lack of commercial success (which is relevant to both validity and damages). Exs. 10, 42, 39, 43, 44. These Resonant employees were in WDWA and at least some (including [REDACTED]) still are. *Id.* [REDACTED]

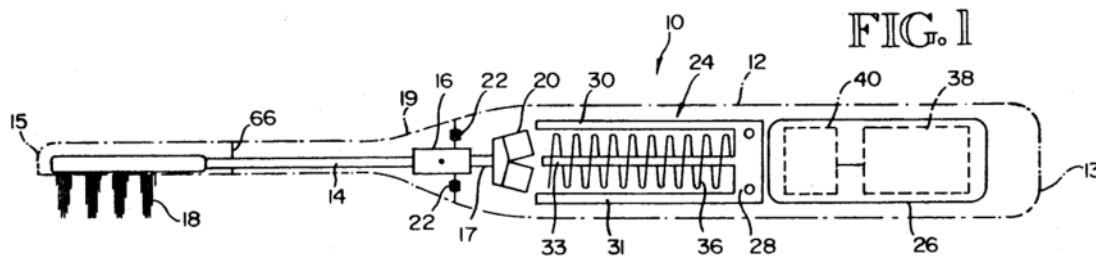
[REDACTED] As with Mr. Tompkins, these witnesses are not cumulative of Mr. Elenga at least because they lack the same financial interest in the outcome of this case. Although Nintendo is unable at this stage to identify all "individual employees" and make a "showing of unwillingness for each witness," this Court "cannot 'discount' [these] third-party entities" on that basis. *XR Commc'ns, LLC v. Google LLC*, No. 6:21-cv-00625-ADA, 2022 WL 3702271, at *5 (W.D. Tex. Aug. 26, 2022).

Resonant's prosecution counsel. In light of Resonant's potential inequitable prosecution conduct (see below), prosecution counsel's location in Washington weighs in favor of transfer. Ex. 1, Cover (listing Olympic Patent Works); Ex. 40; *KT Imaging USA, LLC v. HP Inc.*, No. 4:20-cv-337, 2021 WL 734979, at *4 (E.D. Tex. Feb. 25, 2021).

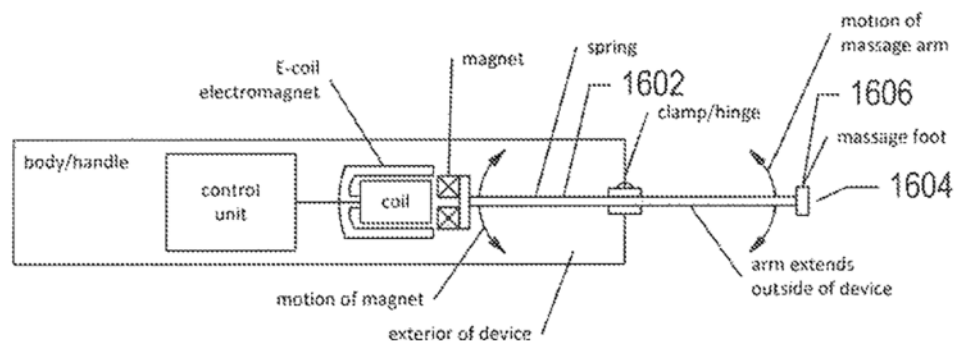
(2) Philips Sonicare Personnel and Evidence In WDWA Weigh In Favor Of Transfer

In the late 1980s and early 1990s, professors at the University of Washington found that acoustic energy (that is, vibrations) could be used to remove bacteria from teeth. Ex. 21. Together with two UW professors, engineer David Giuliani developed the product that would ultimately become the Philips Sonicare toothbrush. *Id.*; Ex. 22.

As shown by patent applications filed in the early 1990s, Mr. Giuliani's company (based in Mercer Island, WA) used electromagnets to create vibration through linear motion—the technology claimed by the '337 patent. *Id.*, Exs. 23-24. Indeed, a figure from one of Mr. Giuliani's patents includes essentially the same components (e.g., a “magnet assembly 20”, a “coil 36,” and a “pivot member 16”) as those included in the '337 patent over fifteen years later (e.g., a “coil,” a “magnet,” and a “clamp/hinge”):



U.S. Patent No. 5,189,751, Figure 1



Ex. 1 ('337 patent), Figure 16

The resemblance between Resonant's technology and that of Sonicare is no coincidence. Per a news article in 2012, Resonant's “idea actually originated ... after [Mr.] Elenga spoke to workers at Sonicare toothbrush maker Optiva.” Ex. 11. Indeed, Resonant's website stated that “[t]he most promising technology we could find was the same resonating motor technology that is found in the Sonicare toothbrush.” Ex. 33. Sonicare is therefore highly material prior art. Mr. Elenga's failure to disclose Sonicare to the Patent Office may raise issues of inequitable conduct.

Although Philips acquired Optiva in 2000 and Mr. Giuliani passed away in 2022, Sonicare

continues to develop toothbrushes at its campus in Bothell, WA. Ex. 25. Sonicare witnesses, documents, prototypes, and commercial devices, which are within WDWA’s absolute subpoena power, weigh heavily in favor of transfer.

(3) The Locations Of The Nintendo Switch’s Third-Party Suppliers Weigh In Favor Of Transfer

Although not especially likely,² Resonant’s allegations may potentially implicate a third party that supply components for the Switch: Nvidia. Resonant alleges that “the Switch includes a Tegra X1-based SoC [system on a chip].” Dkt. 1-1, at 15. The Tegra X1 is designed by third party Nvidia, which has two offices in WDWA (in Seattle and Redmond) but no office in EDTX. Ex. 26. That Nvidia’s offices are within the absolute subpoena power of WDWA but not EDTX “heavily favor[s]” transfer. *Geotag*, 2013 WL 12063915, at *3.

c) The Relative Ease of Access to Sources of Proof Heavily Favors Transfer³

The relative ease of access to sources of proof heavily favors a transfer to WDWA. Both the plaintiff and the defendant’s U.S. operations are centered in WDWA. Here, as in *Nintendo*, transfer to WDWA is “heavily” favored because “most evidence reside[s] in Washington or Japan with none in Texas.” 589 F.3d at 1199-1200.

(1) Resonant Sources of Proof Are Centered in WDWA

First, evidence in Resonant’s possession is in WDWA. Resonant’s principal place of business is at 3420 10th Ave W, Seattle, WA, within WDWA. Ex. 2 (Washington Secretary of State record for Resonant). Resonant documents, including financial information and marketing

² Resonant’s allegations primarily relate to the “Nintendo API” (Nintendo source code) which supports transfer to WDWA for reasons explained below. LaCombe Decl. ¶ 3; § IV.B.1.c)(2).

³ To avoid double-counting evidence, Nintendo discusses third-party sources of proof together with third-party witnesses in the compulsory-process factor instead of this factor.

materials, are relevant to invalidity (secondary considerations of commercial success) and damages (Georgia-Pacific Factor 8, established profitability of a practicing product). *Id.*, Ex. 10 (Indiegogo article) (suggesting that Resonant practiced its patent). And Resonant’s physical evidence is relevant to this case; its prototypes and products are relevant not just to the invalidity and damages issues just mentioned, but also to determine whether Resonant complied with the marking requirement. This evidence, which is “physical in nature,” “bears much more strongly on the transfer analysis.” *In re Planned Parenthood Fed’n of Am., Inc.*, 52 F.4th 625, 630 (5th Cir. 2022).

Second, documents in Mr. Elenga’s possession are in WDWA. Mr. Elenga has represented in a related case that he maintains relevant electronic files on his laptop. Apple Action, Dkt. 83, at 8. It is clearly more convenient for the documents in Mr. Elenga’s custody to remain within WDWA than it is for those documents to be transported outside that district, such as to EDTX.

Third, Resonant documents and physical evidence in its attorneys’ possession support transfer to WDWA. Resonant represented in a related case that its attorneys maintain “patent prosecution files, original handwritten notes, and samples of ‘vibrators, boards, or related equipment’ in [its] counsel’s possession in their Dallas offices.” Apple Action, Dkt. 83, at 8. This evidence may be relevant to the patent’s priority date, marking, and commercial success. But, as the Court in that case noted, “[a]ttorneys may not manipulate the transfer analysis simply by moving documents to their offices.” *Id.* at 8 n.54 (quoting *RLI Ins. Co. v. Allstate Cnty. Mut. Ins. Co.*, No. 3:07-CV-1256-M, 2008 WL 2201976, at *2 (N.D. Tex. May 28, 2008)). “Because the **original location** of the documents [and] physical evidence” now in counsel’s possession is WDWA, this evidence “weighs in favor of transfer.” *RLI*, 2008 WL 2201976, at *2 (emphasis added); *Planned Parenthood*, 52 F.4th at 630 (physical evidence entitled to more weight).

By contrast, no Resonant sources of proof exist within this District.

(2) Nintendo Sources Of Proof Are Centered In, Or More Convenient To, WDWA

First, evidence in NOA’s custody favors transfer. Documents relating to finances, sales, marketing, advertising, and manuals are in NOA’s possession in WDWA. LaCombe Decl. ¶ 6. What’s more, Nintendo’s product-based prior art defense will likely rely on evidence in WDWA. Nintendo used vibration modules in their game consoles well before the priority date of the ’337 patent. For example, the Nintendo 64 included a “Rumble Pak” attachment in 1997, the Nintendo DS included a similar module, and the Nintendo Wii also included a vibration feature at its release in 2006. Exs. 28, 29, 41. Any versions of these products that exist in NOA’s custody would be located at NOA facilities in WDWA. LaCombe Decl. ¶ 6.

Second, Nintendo source code weighs in favor of transfer. With this case involving accused software functionality, Nintendo source code is likely to be important non-infringement evidence. Dkt. 1-2 (accusing source code). Like in *TikTok*, Nintendo’s source code is restricted but accessible by Nintendo employees in the transferee district (WDWA). LaCombe Decl. ¶ 3. And, like in *TikTok*, Nintendo’s source code can be accessed in the transferor district (EDTX) “only by bringing far-flung individuals.” *TikTok*, 85 F.4th 352, 359 (5th Cir. 2023); LaCombe Decl. ¶ 3. Thus, it would be error here, as it was in *TikTok*, to conclude that source code is “equally accessible” in WDWA and EDTX. *See id.*; *see also In re Haptic, Inc.*, No. 2024-121, 2024 WL 3159288, at *1 (Fed. Cir. June 25, 2024) (location of code properly given weight where access to it was restricted); *In re DoDots Licensing Sols. LLC*, No. 2024-100, 2023 WL 8642716, at *2 (Fed. Cir. Dec. 14, 2023) (same).

Third, Nintendo’s Japan-based sources of proof weigh in favor of transfer. As explained above, both the Fifth Circuit and the Federal Circuit have rejected the notion that Japan is equally

convenient to WDWA and to EDTX, and that is underscored by the fact here that Nintendo has an office in WDWA but not in EDTX. § IV.B.1.a).

d) There Are No Practical Problems with Transferring This Case

Nintendo filed the present motion while the case remains in its infancy, with no contentions having been exchanged, no trial date being set, and no Docket Control Order having been entered. Thus, the stage of this case presents no barrier to transfer. *Auto. Body Parts Ass'n v. Ford Glob. Techs., LLC*, No. 4:13-CV-705, 2015 WL 123852, at *6–7 (E.D. Tex. Jan. 7, 2015).

Although this Court has a pending case involving Resonant, the Federal Circuit has “rejected ... that the mere co-pendency of infringement suits in a particular district automatically tips the balance in the non-movant’s favor.” *In re DISH Network L.L.C.*, No. 2021-182, 2021 WL 4911981, at *3 (Fed. Cir. Oct. 21, 2021).⁴ The *Resonant v. Samsung* case before this Court “involves different defendants[,] different accused products,” and different patents aside from the ’337 patent. *In re Apple Inc.*, No. 2021-181, 2021 WL 5291804, at *4 (Fed. Cir. Nov. 15, 2021). The only other two pending cases involving the ’337 patent are not in this Court, but in the Western District of Texas. “Thus, any ‘incremental gains in keeping [this] case in ... [EDTX]’ are insufficient ‘to justify overriding the inconvenience to the parties and witnesses.’” *Id.*

2. The Public Interest Factors Heavily Favor Transfer to WDWA

WDWA’s local interest weighs heavily in favor of transfer. This is a case involving a WDWA-based company (Resonant) asserting a patent with two WDWA-based inventors (Messrs. Elenga and Tompkins) against a company (Nintendo) whose U.S. operations are headquartered in WDWA. [REDACTED]

⁴ This Court has dismissed the *Resonant v. Sony* case, which involved the ’337 patent. Sony Action, Dkt. 180.

WDWA is where Resonant may have committed inequitable conduct by failing to disclose Sonicare prior art, which was developed in WDWA. WDWA also includes third-party-supplier offices and former Resonant employees and prosecuting attorneys. In contrast, there is no particularized local interest in EDTX. “[T]he record leaves only the conclusion that the local interest in Washington clearly favors transfer.” *Nintendo*, 589 F.3d at 1198.

Court congestion favors transfer. In 2024 EDTX had 825 weighted filings per judgeship, far more than WDWA’s 471. Ex. 30. It is perhaps no surprise, then, that WDWA’s median time to trial is 623 days, fewer than this Court’s 651 days. Ex. 31. In all events, the Federal Circuit has instructed that “this factor should not weigh against transfer when,” as here, “the patentee ‘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 Meta Platforms, Inc.*, No. 2023-143, 2023 WL 7118786, at *2 (Fed. Cir. Oct. 30, 2023).

All other factors are neutral. Neither WDWA nor EDTX have a special familiarity with applicable law or in resolving conflicts of laws, so the remaining public-interest factors are neutral.

V. CONCLUSION

This Court should grant Nintendo’s motion to transfer.

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CERTIFICATE OF CONFERENCE

I hereby certify that on April 29, 2025, counsel for the Plaintiff and counsel for the Defendant engaged in a meet and confer pursuant to Local Rule CV-7(h). Plaintiff's counsel indicated that Plaintiff will oppose. As such, this issue has come to an impasse requiring the Court's intervention.

/s/ Jason Lang
Jason Lang

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

The undersigned certifies that this document and attachments thereto are filed under seal pursuant to Nintendo's Unopposed Motion for Leave to File Documents Under Seal.

/s/ Jason Lang
Jason Lang

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2025, I electronically filed the foregoing NINTENDO CO. LTD.'S MOTION TO TRANSFER VENUE TO THE WESTERN DISTRICT OF WASHINGTON with the Clerk of the Court using the CM/ECF system which will send notification of such filing via electronic mail to all counsel of record. I further certify that all counsel of record were served a copy of all sealed documents via email.

/s/ Jason Lang
Jason Lang