

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

**PARUS HOLDINGS, INC.,  
Plaintiffs,**

**v.**

**APPLE, INC.**

**Defendant.**

**6:21-CV-00968-ADA**

**JURY TRIAL DEMANDED**

**MEMORANDUM OPINION AND ORDER**

Came on for consideration this date is Defendant Apple Inc.’s (“Apple”) Motion to Transfer Venue for *Forum Non Conveniens* to the Northern District of California (the “Motion”). ECF No. 44. Plaintiff Parus Holdings, Inc., (“Parus”) filed an opposition on September 22, 2022, ECF No. 83, to which Apple replied on October 6, 2022. ECF No. 89. After careful consideration of the Motion, the Parties’ briefs, and the applicable law, the Court **GRANTS** Apple’s Motion to Transfer Venue to the Northern District of California.

**I. BACKGROUND**

Parus filed this action against Apple on September 17, 2021, ECF No. 1, and filed a First Amended Complaint (“FAC”) on November 12, 2021. ECF No. 18. Apple responded to the FAC on December 13, 2021. ECF No. 35. Parus accuses Apple of infringing U.S. Patent Nos. 6,721,705; 7,516,190; 8,185,402; and 9,769,314. ECF No. 31-1 ¶ 2. The ’705 and ’402 patents both relate to “robust and highly reliable” systems for users to search the internet using voice-enabled devices. ECF No. 31-1 ¶ 16. Parus also states that the ’190 and ’314 patents created methods and systems for secure, reliable retrieval of information over the internet, where the information could be delivered over an audio device, using voice commands that could be personalized for each user. ECF No. 31-1 ¶ 22. Parus asserts Apple infringes through certain Apple products in conjunction

with Siri and that these products perform methods for retrieving information from web sites by uttering speech commands and for providing to users retrieved information in an audio form (the “Accused Technology”). ECF No. 31-1 ¶¶ 27, 41, 42, 54.

In its Motion, Apple claims that:

- The majority of individuals who are knowledgeable about the Accused Technology—and all of Apple’s likely trial witnesses on technical issues—are based in the NDCA. ECF No. 44 at 3.
- Apple witnesses knowledgeable about non-technical issues are also based in the NDCA. *Id.*
- Documents concerning sales and financial information for the accused Apple products with Siri primarily are on local computers or servers located in or around the NDCA or Mesa, Arizona. *Id.*
- The majority of engineers familiar with the Accused Technology are also based in the NDCA and thus the bulk of the design and development documents for the Accused Technology are being generated in the NDCA. *Id.*

On April 7, 2022, Apple filed its Motion to Transfer, citing, among others, those facts above. ECF No. 44. That Motion is now ripe for judgment.

## II. LEGAL STANDARD

In patent cases, motions to transfer under 28 U.S.C. § 1404(a)<sup>1</sup> are governed by the law of the regional circuit. *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008). Title 28

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<sup>1</sup> Section 1404(a) is merely a codification of the doctrine of *forum non conveniens* for the subset of cases in which the transferee forum is within the federal court system. *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas*, 571 U.S. 49, 60 (2013). Both § 1404(a) and the *forum non conveniens* doctrine from which it derives entail the same balancing-of-interests standard. *Id.*

U.S.C. § 1404(a) provides that “[f]or 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 or to any district or division to which all parties have consented.” “Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an ‘individualized, case-by-case consideration of convenience and fairness.’” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)).

“The preliminary question under § 1404(a) is whether a civil action ‘might have been brought’ in the [transfer] destination venue.” *In re Volkswagen, Inc.*, 545 F.3d 304, 312 (5th Cir. 2008) (“*Volkswagen IP*”). If the destination venue would have been a proper venue, then “[t]he determination of ‘convenience’ turns on a number of public and private interest factors, none of which can be said to be of dispositive weight.” *Action Indus., Inc. v. U.S. Fid. & Guar. Co.*, 358 F.3d 337, 340 (5th Cir. 2004). The private factors include: “(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive.” *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) (“*Volkswagen I*”) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1982)). The public factors include: “(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws of the application of foreign law.” *Id.* When analyzing these factors, courts may consider facts arising after plaintiff filed suit unless there is some suggestion that they arose primarily to affect the transfer analysis. *See Lynk Labs, Inc. v. Home Depot USA, Inc.*, No. 6:21-CV-00097-ADA, 2022

WL 1593366, at \*6 (W.D. Tex. May 19, 2022) (explaining how post-complaint facts must be disregarded when considering § 1404(a)'s preliminary question, but not when evaluating convenience). The weight the Court gives to each of these assorted convenience factors will necessarily vary from case to case. *See Burbank Int'l, Ltd. v. Gulf Consol. Int'l, Inc.*, 441 F. Supp. 819, 821 (N.D. Tex. 1977).

The burden to prove that a case should be transferred for convenience falls squarely on the moving party. *In re Vistaprint Ltd.*, 628 F.3d 1342, 1346 (Fed. Cir. 2010). The burden that a movant must carry is not that the alternative venue is more convenient, but that it is *clearly* more convenient. *Volkswagen II*, 545 F.3d at 314 n.10. While “clearly more convenient” is not explicitly equivalent to “clear and convincing,” the moving party “must show materially more than a mere preponderance of convenience, lest the standard have no real or practical meaning.” *Quest NetTech Corp. v. Apple, Inc.*, No. 2:19-cv-118, 2019 WL 6344267, at \*7 (E.D. Tex. Nov. 27, 2019). Yet, the Federal Circuit has clarified that, for a court to hold that a factor favors transfer, the movant need not show that factor *clearly* favors transfer. *In re Apple Inc.*, 979 F.3d 1332, 1340 (Fed. Cir. 2020).

### III. ANALYSIS

As an initial matter, the Court addresses Parus's contentions that Apple's Venue Declarant, Mark Rollins, lacks a credible evidentiary basis. *See* ECF No. 83 at 1. This Court has determined before that Mark Rollins lacks credibility based on his vague, incomplete, and generally unreliable declaration. *See Scramoge Tech. Ltd. v. Apple Inc.*, No. 6:21-CV-00579-ADA, 2022 WL 1667561, at \*2 (W.D. Tex. May 25, 2022). In *Scramoge*, the Court explained that Mr. Rollins repeatedly and frequently submitted unreliable and misleading declarations to this Court. *See id.* There, the Court found that Mr. Rollins reviewed attorney-selected documents and talked to attorney-selected witnesses to form his beliefs, that Mr. Rollins routinely offers information about topics a financial

manager would typically not know, and that the Rollins Declaration uses language that carefully limits the scope of declared facts to his personal, selectively fed knowledge. *See Scramoge*, 2022 WL 1667561, at \*3.

Here, the Rollins Declaration is similar. Mr. Rollins acknowledges that at least some witnesses he names were selected by legal counsel. ECF No. 83-1 at 87:24-89:12. He makes some qualified statements about location of witnesses and sources of proof. ECF No. 44-1 ¶¶ 7-9; 13-18; 19. Parus also provides evidence showing that Mr. Rollins did not ask whether, apart from the employees he named in his declaration, other teams at Apple were relevant to this litigation; nor did he review any documents reflecting the locations of employees on the specific teams referenced in his declaration. ECF No. 83 at 3 (citing ECF No. 83-1 at 32:20-33:9; 51:23-54:10; 55:2-10; 56:9-20). To be sure, the Court agrees that some of Mr. Rollins's declaration and testimony are problematic. Even still, if parties believe the opposing party failed to provide discovery that could change the Court's analysis in resolving a motion to transfer, the parties should timely and explicitly seek appropriate relief. The Court cannot now weigh the potentially missing information in its transfer analysis.

This case also differs from *Scramoge*, though, because Apple filed supplemental declarations to bolster Mr. Rollins's declaration. ECF Nos. 55-1; 55-2; 55-3; 55-4; 55-5; 56; 56-1; 56-2. Parus contends that these new declarations fail to strengthen Apple's case, as they only confirm that Apple engaged in "cherry-picked gamesmanship." ECF No. 83 at 5. But the Court finds that not all Parus's contentions have merit. Parus argues that the declarants merely relied on Mr. Rollins's word to "parrot the same baseless claims." ECF No. 83 at 5. But Apple rebuts this by explaining that it was, in fact, the other way around, as Mr. Rollins relied on the declarants, and the declarants provided the information based on their own personal knowledge. ECF No. 89 at 5.

Parus also alleges that the supporting declarations and designees contradict Mr. Rollins's testimony and declarations. *Id.* at 6. But the Court is not persuaded by this broad assertion. Parus further asserts that Apple limited its investigation and failed to investigate other potentially relevant teams. ECF No. 83 at 7. For example, Parus points to teams in Cambridge, Massachusetts; Seattle; and Chicago. ECF No. 83-9 at 17:5-15. Yet Apple counters that Mr. Rollins's declaration either disclosed other members of relevant teams or accounted for them. ECF No. 89 at 6.

The supplemental declarants swear that they have personal knowledge of the facts averred to in Mr. Rollins declaration, and that everything he attested to is true. *See* ECF Nos. 73–73-4. Accordingly, the Court finds Mr. Rollins's testimony, supported by the supplemental declarations, credible but limited.

#### **A. Venue and Jurisdiction in the Transferee Forum**

To satisfy § 1404(a)'s preliminary question, the movant must show that venue and jurisdiction would have been proper in the transferee forum when the plaintiff filed suit. *See Monolithic Power Sys., Inc. v. Meraki Integrated Cir. (Shenzhen) Tech., Ltd.*, No. 6:20-CV-00876-ADA, 2022 WL 958384, at \*5 (W.D. Tex. Mar. 25, 2022). The Court finds, and Parus does not contest, that venue would be proper in the NDCA. Apple is a California corporation headquartered in Cupertino, CA, which is in the NDCA. ECF No. 44-1 ¶3. Thus, venue is proper in the NDCA because the NDCA may exercise personal jurisdiction over Apple. *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). Because Parus could have filed this case in the NDCA, the Court must consider the private and public interest factors. *Volkswagen II*, 545 F.3d at 315.

#### **B. Private Interest Factors**

##### **1. Cost of Attendance and Convenience of Willing Witnesses**

The most important factor in the transfer analysis is the convenience of the witnesses. *See In re Genentech, Inc.*, 566 F.3d 1338, 1343 (Fed. Cir. 2009). The Fifth Circuit has established the

“100-mile rule,” providing that “[w]hen 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. Yet the Federal Circuit has refused to apply the rule “rigidly,” such as where it may “result in all identified witnesses having to travel away from their home and work in order to testify in Texas, which would ‘produce results divorced from’ the rule’s underlying rationale.” *In re Google LLC*, No. 2021-170, 2021 WL 4427899, at \*5 (Fed. Cir. Sept. 27, 2021) (quoting *In re TracFone Wireless, Inc.*, 852 F. App’x 537, 539 (Fed. Cir. 2021)). This has led the Federal Circuit to disregard distance altogether in favor of considering travel-time statistics. *See In re Google LLC*, 2021 WL 4427899, at \*12 (“[T]ime is a more important metric than distance.”). Or to simply disregard any difference in convenience between the relevant fora where it is comfortable concluding that a witness would have to travel a significant distance no matter if the action is transferred or not. *See In re Apple*, 979 F.3d at 1342 (discussing witnesses traveling from New York to either Texas or California venues); *In re Genentech, Inc.*, 566 F.3d at 1344 (stating that the 100-mile rule should not be “rigidly” applied in the context of foreign witnesses); *In re Pandora Media, LLC*, No. 2021-172, 2021 WL 4772805, at \*6 (Fed. Cir. Oct. 13, 2021). It has even gone as far as opining that “[t]he comparison between the transferor and transferee forum is not altered by the presence of other witnesses and documents in places outside both forums.” *In re Toyota Motor Corp.*, 747 F.3d 1338, 1340 (Fed. Cir. 2014); *In re Google LLC*, No. 2021-170, 2021 WL 4427899, at \*4 (Fed. Cir. Sept. 27, 2021).

*Witnesses in NDCA.* Apple asserts that the majority of the individuals knowledgeable about the Accused Technology- and all the witnesses it expects to call at trial- are based in the NDCA. ECF No. 44 at 3, 10. It alleges that most of the engineers involved in the design and development

of the Accused Technology are based in the NDCA, and that the Apple witnesses with knowledge about the financials, sales, marketing, and licensing of the Accused Technology are based in the NDCA. ECF No. 44 at 10. (citing ECF No.44-1 ¶¶ 11-17; 7-10). It further asserts that Apple witnesses knowledgeable about non-technical issues are also based in NDCA. *Id.* Apple, supported by Mr. Rollins’s declaration, specifically identifies the following Apple personnel in the NDCA as having relevant knowledge of the Accused Technology:

- Jamie de Guerre, Manager of Worldwide Product Marketing for Siri and Artificial Intelligence. ECF No. 44-1 ¶ 8.
- Brian Ankenbrandt, an attorney in Apple’s IP Transactions Group, and his potential trial testimony would likely focus upon Apple’s patent licensing. *Id.* ¶ 9.
- Mark Rollins is a Finance Manager and is knowledgeable about Apple’s sales and financial information concerning the Accused Products. *Id.* ¶¶ 1, 10.
- Greg Sampson is a Senior Engineering Manager in Apple’s Information Intelligence Group, which is responsible for managing most of Siri’s information-seeking domains (e.g., Sports and Weather), and other Siri customer facing features. *Id.* ¶ 11.
- Mahesh Krishnamoorthy is a Machine Learning Manager in the Siri and Language Technologies Group (“SaLT”) and is knowledgeable about Siri’s speech recognition. *Id.* ¶ 14.
- John Keesling is a Machine Learning/Natural Language Processing Engineer in Apple’s SaLT group and is knowledgeable about Siri’s natural language (“NL”) processing. *Id.* ¶ 15.

- Eduardo Jimenez is an Engineering Manager in Apple’s Information Intelligence Group and is knowledgeable about Applebot. *Id.* ¶ 16.
- Andrew Fandrianto is a Software Engineering Manager in Apple’s Information Intelligence Group and is knowledgeable about Web Answers. *Id.* ¶ 17.

Mr. Rollins alleges that these individuals are in the NDCA and that most, if not all, of their team members are in the NDCA. ECF No. 44-1 ¶¶ 7–17. Parus does not contest the relevancy of these witnesses; instead, it contends that they are “cherry-picked” for purposes of securing transfer. ECF No. 83 at 3. Parus also points to other Apple employees who “appear to be the more appropriate persons to testify” in this case. ECF No. 83 at 7. The Court is satisfied, though that these potential witnesses have “relevant and material information,” and that is all the Court can demand at this point. *See In re Hulu, LLC*, No. 2021-142, 2021 WL 3278194, at \*3 (Fed. Cir. Aug. 2, 2021); *see also In re Toyota Motor Corp.*, 747 F.3d 1338, 1340 (Fed. Cir. 2014).

Parus further argues that “regardless of where trial takes place, witnesses living outside of both the NDCA and this District will need to book flights and hotels and be away from their families and places of work.” ECF No. 83 at 15. Parus does not say specifically which witnesses it is referring to here. It does, however, allege that Mr. Rollins failed to investigate other Apple teams based in Cambridge, Massachusetts, Seattle, Dublin, and Cambridge, UK. ECF No. 83 at 7–8. So the Court is left to assume that Parus may be referring to potential witnesses in these locations. Regardless, the Court generally finds that witnesses living far from either district are too remote to have much effect under this factor. *See In re Apple*, 979 F.3d at 1342 (citing *In re Genentech*, 566 F.3d at 1344 (“the 100-mile rule ‘should not be rigidly applied’ where witnesses ‘will be required to travel a significant distance no matter where they testify’”); *see also In re Google, LLC*, 2021 WL 4427899, at \*4 (“Our cases have emphasized that when there are numerous

witnesses in the transferee venue and the only other witnesses are far outside the plaintiff's chosen forum, the witness-convenience factor favors transfer").

Accordingly, the Court finds that Apple names eight specific witnesses who likely have relevant and material knowledge located in the NDCA. Attending trial in the NDCA would be more convenient for them and most of their team members. Thus, the convenience of these potential witnesses favors transfer.

*Witnesses in the WDTX.* Parus argues that 7,000 Apple employees work in this District, including several members of relevant teams identified in Apple's Motion and Mr. Rollins's Declaration. ECF No. 83 at 13. Parus asserts that Ms. Korock and her team of grading analysts test the accused functionality and are based out of Apple's Austin campus. ECF No. 83 at 13. Parus supports this assertion with testimony from Ms. Korock that she works on that team and lives in Austin. *Id.* Apple downplays the relevancy of the witnesses through Mr. Rollins, who counters that Ms. Korock and her team have "nothing to do with" the accused "speech recognition side of [Siri]." ECF No. 89 at 5. Despite the Court finding Mr. Rollins's testimony limited, Ms. Korock herself asserts her work is limited to looking at transcripts, and the work related to training speech recognition is different from the work she and her team do. ECF No. 83-4 at 47:35-48:13. The Court finds that Ms. Korock and her team have questionable relevance.

Parus also alleges that a member of Mr. Jimenez's AppleBot team is based in Austin and has access to the AppleBot source code and relevant documents. ECF No. 83 at 13 (citing ECF No. 83-10 at 27:1-14). Mr. Jimenez counters that this person never worked on the internal designs. ECF No. 89 at 4. Given that his team leader asserts that this witness does not possess relevant knowledge, it is unclear whether this Apple employee is truly knowledgeable. ECF 83-5 at 29:1-30:25. That said, even if the Court would agree that Ms. Korock and the member of Mr. Jimenez's

team are relevant witnesses, the Court is persuaded that the Federal Circuit has already found that more witnesses in the NDCA should mark this factor in favor of transfer.

Parus names Alex Kurganov, an inventor of the Asserted Patents, as a willing witness. ECF No. 83 at 16. It also asserts that its CEO, Taj Reneau, is based in Austin and that Parus is looking to hire eight more employees in the months to come. ECF No. 83 at 2. But Mr. Kurganov is “in the process of relocating to this District.” *Id.* As of the time the lawsuit was filed, he resided in New Hampshire. ECF No. 83-2 at 101:8-12. Mr. Reneau, similarly, only arranged to move to Austin in “summer 2022,” ECF No. 83 at 2, but he appears to have relocated to this District as of June 1, 2022. ECF No. 83-2 at 48:23-49:2. Although somewhat unclear whether Mr. Kurganov is affirmatively in this District, the Court will accord some weight to the convenience of these witnesses. *See Lynk Labs, Inc.*, 2022 WL 1593366, at \*6 (explaining how post-complaint facts must be disregarded when considering § 1404(a)’s preliminary question, but not when evaluating convenience). The Court, though, accords no weight to Parus’s claim that it was “looking to hire eight more employees in the coming months,” as this is too speculative.

*Conclusion.* The Court is satisfied that Apple has identified eight willing witnesses located in the NDCA as having relevant and material knowledge. Two Apple employees with questionable knowledge on the Accused Products are in the WDTX. Parus identified Parus’s CEO and an inventor of the Asserted Patents as willing witnesses in this District, though whether they are affirmatively in this District is still somewhat unclear. Accordingly, this factor weighs heavily in favor of transfer.

## 2. Relative Ease of Access to Source of Proof

“In considering the relative ease of access to proof, a court looks to where documentary evidence, such as documents and physical evidence, is stored.” *Fintiv, Inc. v. Apple Inc.*, No. 6:18-cv-00372-ADA, 2019 WL 4743678, at \*5 (W.D. Tex. Sept. 10, 2019). This factor relates to the

relative—not absolute—ease of access to non-witness evidence. *See In re Radmax*, 720 F.3d at 288; *In re Apple*, 979 F.3d at 1339. “[T]he movant need not show that all relevant documents are located in the transferee venue to support a conclusion that the location of relevant documents favors transfer.” *In re Apple*, 979 F.3d at 1340; *In re Juniper Networks, Inc.*, 14 F.4th 1313, 1321 (Fed. Cir. 2021) (“We have held that the fact that some evidence is stored in places other than either the transferor or the transferee forum does not weigh against transfer.”).

The Fifth Circuit has held that, even in the context of electronic documents that can be accessed anywhere on earth, this factor is not superfluous. *See Volkswagen II*, 545 F.3d at 316; *see also In re Dish Network LLC*, No. 2021-182, 2021 WL 4911981, at \*6 (Fed. Cir. Oct. 21, 2021). Though having consistently characterized that holding as antiquated in the setting of a modern patent dispute, this Court will continue to analyze this factor with a focus on the location of: physical documents and other evidence; and the hardware storing the relevant electronic evidence. *See Def. Distributed v. Bruck*, 30 F.4th 414, 434 & n.25 (5th Cir. 2022) (giving weight to the location of servers hosting the electronic documents in dispute). The Federal Circuit has held, however, that it is error not to also consider: “the location of document custodians and location where documents are created and maintained, which may bear on the ease of retrieval.” *In re Google LLC*, No. 2021-178, 2021 WL 5292267, at \*2 (Fed. Cir. Nov. 15, 2021); *see also Def. Distributed*, 30 F.4th at 434 & n.25 (considering, under this factor, where the “research, design, development, manufacturing, and publishing” of the allegedly offending files occurred). Finally, evidence located at a party’s office that is not a “place of regular business” may be discounted. *See In re Google LLC*, No. 2022-140, 2022 WL 1613192, at \*4 (Fed. Cir. May 23, 2022).

Apple asserts that its sources of proof here are heavily located in the NDCA because the majority of the relevant technical teams responsible for designing and developing the Accused

Technology are based in NDCA, and so the bulk of relevant design and development documents were generated there. ECF No. 44 at 7; *see also* ECF No. 44-1 ¶¶ 11-17. It further claims the personnel responsible for financials, marketing, and licensing for the Accused Technology, as well as their documents, are heavily based in the NDCA. *Id.*; *see also* ECF No. 44-1 ¶¶ 7-10. Apple does not have any servers in Texas that host relevant source code associated with the Accused Technology. ECF No. 44-1 ¶ 7.

Parus argues that because Apple can access its documents stored in the cloud from anywhere, that means that “for all intents and purposes,” Apple’s documents are in the WDTX. ECF No. 83 at 10. Apple does not contest that its cloud documents can be accessed from this District. ECF No. 89 at 2. The Court acknowledges that due to technological advances, the idea of looking to the location of documents is becoming antiquated. The Fifth Circuit also recently affirmed that the location of evidence bears much more strongly on the transfer analysis when, as in *Volkswagen*, the evidence is physical in nature. *See In re Planned Parenthood Fed’n of Am., Inc.*, 52 F.4th 625 (5th Cir. 2022) (citing *In re Volkswagen*, 545 F.3d. at 316–17). All the same, the Federal Circuit has time and again reminded this Court to look to where the custodians of relevant electronic documentation is, as they may bear on the relative ease of access to sources of proof. It remains that the custodians of relevant electronic documentation are in the NDCA and not in this District.

Parus further asks the Court to recognize Apple’s attempt to “double count” witnesses when it alleges that relevant documents are generated by, and thus stored in the locations where its witnesses reside. ECF No. 83 at 10. Parus argues this based on evidence suggesting that Apple cannot determine with specificity the location of all relevant cloud documents because of the nature of cloud storage. *Id.* (citing ECF No. 83-12 at 36:17-20; 24:14-25:16). Apple need not show that

all relevant documents are in the transferee venue to support a conclusion that the location of relevant documents favors transfer. *In re Apple*, 979 F.3d at 1340. The Court accords weight to the location of document custodians and location where documents are created and maintained, as well as where the “research, design, development, manufacturing, and publishing” of the allegedly offending files occurred. *See In re Google LLC*, 2021 WL 5292267, at \*2; *see also Def. Distributed*, 30 F.4th at 434 & n.25. Apple provides sufficient evidence showing that this is in the NDCA.

Parus claims that its documents “are or will be in Austin, TX.” ECF No. 83 at 10. Parus’s CEO asserted that Parus began to move its documents to Texas beginning July 1, 2022. ECF No. 83-2 at 47:11-20. Parus identifies no specific material in the WDTX, and Mr. Reneau refers generally to Parus’s “corporate documents” being in Austin, while “5 percent” of the documents remained in Illinois while Parus’s Austin office was under construction. ECF No. 80-3 at 47:24-48:9. Though unclear whether its relevant documents are definitively in this District, the Court will accord some weight to the fact that Parus provides evidence indicating it is in the process of moving all documents to this District by the time of trial. *See Lynk Labs, Inc.*, 2022 WL 1593366, at \*6. The Court, though, accords Parus’s documents less weight. *See In re Genentech*, 566 F.3d at 1345. (“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.”).

*Conclusion.* Accordingly, this factor weighs heavily in favor of transfer.

### 3. Availability of Compulsory Process

Under the Federal Rules, a court may subpoena a witness to attend trial only (a) “within 100 miles of where the person resides, is employed, or regularly transacts business in person”; or (b) “within the state where the person resides, is employed, or regularly transacts business in

person, if the person . . . is commanded to attend a trial and would not incur substantial expense.” Fed. R. Civ. P. 45(c)(1)(A), (B)(ii); *Gemalto S.A. v. CPI Card Grp. Inc.*, No. 15-CA-0910, 2015 WL 10818740, at \*4 (W.D. Tex. Dec. 16, 2015). Under this factor, the Court focuses on non-party witnesses whose attendance may need to be secured by a court order. *Fintiv*, 2019 WL 4743678, at \*14 (citing *Volkswagen II*, 545 F.3d at 316). This factor “weigh[s] heavily in favor of transfer when more third-party witnesses reside within the transferee venue than reside in the transferor venue.” *In re Apple, Inc.*, 581 F. App’x 886, 889 (Fed. Cir. 2014). When “there are several witnesses located in the transferee forum and none in the transferor forum,” this factor favors transfer. *In re Google*, No. 2021-171, 2021 WL 4592280, at \*5 (Fed. Cir. Oct. 6, 2021). Further, this Court cannot “discount” third-party “entities” having pertinent information in the transferee venue “just because individual employees were not identified.” *In re Apple Inc.*, No. 2021-181, 2021 WL 5291804, at \*8 (Fed. Cir. Nov. 15, 2021) (quoting *In re HP Inc.*, 826 F. App’x 899, 903 (Fed. Cir. 2020)).

The Federal Circuit has held that, under Fifth Circuit law, “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); *see also In re Hulu, LLC*, No. 2021-142, 2021 WL 3278194, at \*4 (Fed. Cir. Aug. 2, 2021) (“[W]here . . . the movant has identified multiple third-party witnesses and shown that they are overwhelmingly located within the subpoena power of only the transferee venue, this factor favors transfer even without a showing of unwillingness for each witness”).

Apple identifies the Open Agent Architecture (“OAA”) system developed by SRI International—the organization that launched Siri Inc.—as promising system art that Apple will assert in this case. ECF No. 44 at 6. Apple attached an article entitled “Multimodal User Interfaces

in the Open Agent Architecture,” detailing OAA, authored by Douglas B. Moran, Adam J. Cheyer, Luc E. Julia, and David L. Martin. ECF No. 45-16. Apple claims that all four authors appear to be in the NDCA, using LexisNexis Public Records Report to support this claim. *See* ECF Nos. 45-19; 45-20; 45-21; 45-23. Parus acknowledges that Apple identifies several third-party prior art witnesses that may possess relevant information. ECF No. 83 at 12. Parus only challenges that the Court should give little weight to these witnesses because prior artists rarely appear at trial. *Id.* The Court acknowledges that it discounts prior art witnesses for that reason, but the Court will not categorically reject prior art witnesses without considering the facts of the case. *In re Hulu, LLC*, 2021 WL 3278194, at \*3. Thus, because Parus does not contest the relevancy of these witnesses, the Court will weigh these witnesses in the transfer analysis.

Apple also states that Parus’s former Chief Technology Officer (“CTO”) at the time Parus filed its first lawsuit against Apple, Salil Pradhan, is in the NDCA as well. ECF No. 44 at 6. Parus contends that Apple failed to show that Mr. Pradhan possesses any relevant information or documents. ECF No. 83 at 13. Parus’s CEO and corporate representative confirmed that Mr. Pradhan only provided part-time consulting services to Parus as CTO. ECF No. 83-2 at 93:34-94:16. Apple replies that Mr. Pradhan “certainly has recent knowledge regarding Parus’s technology and operations.” ECF No. 89 at 3. Apple provides no other evidence or explanation linking Mr. Pradhan to the Accused Technology. The Court is skeptical of Apple’s assertion that Mr. Pradhan has relevant knowledge, without any more specificity as to what testimony it expects to elicit from him. Thus, the Court will accord this witness only some weight.

Parus identifies three former Parus employees with knowledge of the company and software engineering that live in Texas. ECF No. 83 at 14. Pavel “Paul” Leonovich, a senior

software engineer familiar with the Webley<sup>2</sup> voice application development, resides in the Austin area. *Id.* John Ackelbein, former VP of sales at Webley, possesses knowledge of the features of the Webley personal assistant and was responsible for all business-to-business sales and resides in the Dallas area. *Id.* Hal Poel, former marketing executive of Webley, possesses relevant knowledge related to the telecom features of the Webley product and resides in Sugar Land.<sup>3</sup> *Id.* Parus also identifies six prior artists within the Dallas-Fort Worth Metroplex. *Id.*

Yet Parus cites only to LinkedIn to connect the named third-party witnesses with the Accused Products. *See* ECF Nos. 84-3; 84-4; 84-6; 84-8; 84-9; 84-10; 84-11; 84-12; 84-13. It provides no basis for its assertions that the Webley former employees or the potential prior art witnesses are relevant. *See id.* This is generally not enough to show that these witnesses possess knowledge relevant to the alleged infringement. *In re Google LLC*, 2021 WL 4427899, at \*7 (allocating no weight to a potential witness that the plaintiff found on LinkedIn because plaintiff “was not at all specific about what testimony it expected to elicit from [that witness], or even if he possesses knowledge of the facts relevant to this infringement action”); *see also Logantree LP v. Apple Inc.*, No. 6:21-CV-00397-ADA, 2022 WL 1491097, at \*20 (W.D. Tex. May 11, 2022) (explaining that gauging and articulating the relevance of a party’s personnel to a particular case based only on vague LinkedIn profiles is a challenge”).

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<sup>2</sup> Parus explains that Parus was originally called “Webley Systems, Inc.” and many of its earliest products carry that name. ECF No. 68 at 9 n.1.

<sup>3</sup> Parus alleges two of the former Parus employees, “will testify in Waco.” *See* ECF No. 83 at 14. Parus argues the relevancy of these witnesses under the “compulsory process” factor, so it is unclear whether those witnesses are willing or unwilling. *See id.* Because Parus claims that these witnesses are “located within this District’s subpoena power,” *Id.*, the Court will evaluate this argument under the “compulsory process” factor. That said, even if these witnesses are willing, the Court is satisfied that it would not change its opinion that the willing witness factor weighs heavily in favor of transfer.

Apple challenges that Parus is manufacturing third party trial witness. ECF No. 89 at 3. Given that Parus provides no evidence or explanation linking the prior artists to the alleged infringement, the Court is somewhat inclined to agree. Indeed, Parus includes only one sentence identifying the prior artists in its response. ECF No. 83 at 14. The Court will accord no weight to the prior artists identified only through LinkedIn profiles. But as with Mr. Pradhan, the Court will accord little weight to the former Webley employees given that Parus provides some explanation as to what relevant knowledge they possess.

*Conclusion.* Apple identifies four prior artists and Parus's former CEO, Mr. Pradhan, as third-party witnesses with potentially relevant knowledge in the NDCA. Parus identifies three former Webley employees as third-party witnesses with potentially relevant knowledge in the WDTX. The Court accords only some weight to Mr. Pradhan and the three former Webley employees, given their questionable relevancy. Accordingly, the Court finds this factor weighs in favor of transfer.

#### 4. Practical Problems

When considering the private interest factors, courts must consider "all other practical problems that make trial of a case easy, expeditious and inexpensive." *Volkswagen II*, 545 F.3d at 314. "[G]arden-variety delay associated with transfer is not to be taken into consideration when ruling on a § 1404(a) motion to transfer" but delay in already protracted litigation may account for some weight. *In re Radmax*, 720 F.3d at 289.

"Particularly, the existence of duplicative suits involving the same or similar issues may create practical difficulties that will weigh heavily in favor or against transfer." *PersonalWeb Techs., LLC v. NEC Corp. of Am., Inc.*, No. 6:11-cv-655, 2013 WL 9600333, at \*5 (E.D. Tex. Mar. 21, 2013). The interests of justice may be best served by transferring ancillary matters pending in other forums to the forum of the main action, particularly if the main action is complex. *Bank of*

*Texas v. Computer Stat., Inc.*, 60 F.R.D. 43, 45 (S.D. Tex. 1973). “[T]he ability to transfer a case to a district with numerous cases involving some overlapping issues weighs at least slightly in favor of such a transfer.” *In re Apple*, 979 F.3d at 1344. But district courts should not rely “on considerations of judicial economy arising after the filing of the lawsuit or the transfer motion,” such as suits filed in the transferor district after a request to transfer. *In re Netscout*, 2021 WL 4771756, at \*12. Further, “the mere co-pendency of infringement suits in a particular district” does not automatically tip transfer in one direction or the other. *Id.* at \*13.

This case has not proceeded to a *Markman* hearing and so has not yet matured to a stage where this factor biases toward transfer. Parus argues that the presence of three other Parus cases pending in this Court weighs against transfer. ECF No. 83 at 19.<sup>4</sup> But all three of the other Parus cases also have pending motions to transfer, so the Court will not rule that those cases weigh against transfer. *See In re Google*, 2021 WL 5292267, at \*3. (“copending suits are not to be overweighed if they are also subject to motions to transfer.”). Given that a lack of facts supporting or disfavoring transfer does not weigh against transfer, the Court will similarly not find that this scenario favors transfer either. *See Interactive Graphic Sols. LLC v. Microsoft Corp.*, No. W-21-CV-00462-ADA, 2022 WL 1314462, at \*4 (W.D. Tex. Apr. 20, 2022).

*Conclusion.* Accordingly, the Court finds this factor neutral.

### **C. Public Interest Factors**

#### **1. Court Congestion**

The relevant inquiry under this factor is “[t]he speed with which a case can come to trial and be resolved.” *In re Genentech*, 566 F.3d at 1347; *In re Apple*, 979 F.3d at 1343. A faster

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<sup>4</sup> *Parus Holdings Inc. v. Microsoft Corp.*, No. 6:21-cv-570; *Parus Holdings Inc. v. Google, LLC.*, No. 6:21-cv-571; *Parus Holdings Inc. v. Samsung Elecs. Co., Ltd.*, No. 6:21-cv-1073.

average time to trial means more efficient and economical resolutions of the claims at issue. That said, “[a] court’s general ability to set a fast-paced schedule is not particularly relevant to this factor.” *In re Apple*, 979 F.3d at 1344. Moreover, when other relevant factors weigh in favor of transfer or are neutral, “then the speed of the transferee district court should not alone outweigh all of those other factors.” *In re Genentech*, 566 F.3d at 1347.

The Federal Circuit has held that a difference in the number of pending cases between the transferor and transferee forums is “too tenuously related to any differences in speed by which these districts can bring cases to trial.” *Id.* In another case, it has opined that a “proper” analysis “looks to the number of cases per judgeship and the actual average time to trial.” *In re Juniper Networks*, 14 F.4th at 1321. It has further ruled that, if time-to-trial statistics favor one district over another, the court must “point to any reason that a more rapid disposition of the case that might be available in Texas is worthy of important weight.” *Id.* 1322; *In re Samsung Elecs. Co.*, 2 F.4th 1371, 1380–81 (Fed. Cir. 2021).

Apple argues that this Court currently has 874 pending patent cases, and by contrast, NDCA has 217 patent cases in the entire district. ECF No. 44 at 13. It acknowledges, though, that this Court provides a faster time to trial. *Id.* Parus also asserts that this Court’s average time to trial is faster than the NDCA. ECF No. 83 at 17. Apple argues this factor should at most be neutral because the faster time to trial should not outweigh other factors that favor transfer.

*Conclusion.* The Federal Circuit has concluded that the speed of the transferee district should not alone outweigh all other factors. Thus, the Court finds that this factor weighs only slightly against transfer.

## 2. Local Interest

Under this factor, the Court must evaluate whether there is a local interest in deciding local issues at home. *Volkswagen II*, 545 F.3d at 317. Local interests in a patent case “are not a fiction.”

*In re Samsung*, 2 F.4th at 1380. “This factor most notably regards not merely the parties’ significant connections to each forum writ large, but rather the ‘significant connections between a particular venue and *the events that gave rise to a suit.*’” *In re Apple*, 979 F.3d at 1344 (quoting *In re Acer Am. Corp.*, 626 F.3d 1252, 1256 (Fed. Cir. 2010)) (emphasis in original). The Federal Circuit has accorded significant weight under this factor to the location where the accused product or functionality was “designed, developed, and tested.” *In re Apple*, 979 F.3d at 1345. It has accorded no weight to the location of the sale of an accused product where that product is offered nationwide. *In re Hoffmann-La Roche Inc.*, 587 F.3d 1333, 1338 (Fed. Cir. 2009). Courts should not heavily weigh a party’s general presence in the forum. *In re Apple*, 979 F.3d at 1345. For example, the Federal Circuit recently attributed error to this Court for granting even *some* weight to Apple’s significant general presence in this District. *In re Apple Inc.*, No. 2022-137, 2022 WL 1676400, at \*2 (Fed. Cir. May 26, 2022) (“The court’s reliance on [the defendant’s Austin] offices, which lack such a connection to the locus of the events giving rise to the dispute, amounts to a clear abuse of discretion”).

“Important considerations include the location of the injury, witnesses, and the [p]laintiff’s residence.” *Def. Distributed*, 30 F.4th at 435. Yet the Federal Circuit has instructed that plaintiff’s residence in the transferor forum is owed no weight if it is “recent and ephemeral.” *In re Juniper Networks*, 14 F.4th at 1320 (quoting *In re Microsoft Corp.*, 630 F.3d 1361, 1365 (Fed. Cir. 2011)). The Federal Circuit has also clarified that a plaintiff’s residence is owed zero weight if it lies beyond the transferor judicial district, even if just so. *See In re Apple*, 2022 WL 1676400, at \*2 (granting little to no weight to the design, development, and testing of the claimed invention occurring just over 100 miles from the transferor court); *In re Google*, 2021 WL 4592280, at \*6

(finding error with district court’s reliance on plaintiff’s office in Texas, where the office was located outside this District).

Apple is headquartered in Cupertino, in the NDCA and the Accused Technology was primarily designed and developed there, and so it contends the NDCA has a stronger local interest in deciding the issues in this case. ECF No. 44 at 13; ECF No. 44-1 ¶¶ 3, 11-17. Yet Parus asserts that this District has a significant local interest in this case because Parus is in the midst of transferring all operations here and because Apple has a 7,000-employee campus here. ECF No. 83 at 18.

In regard to Parus’s move to Austin, the Federal Circuit has already instructed that the plaintiff’s residence in the transferor forum is owed no weight if it is “recent and ephemeral.” *In re Juniper Networks*, 14 F.4th at 1320 (quoting *In re Microsoft Corp.*, 630 F.3d 1361, 1365 (Fed. Cir. 2011)). Thus, this Court attributes no weight to the fact that Parus is in the midst of transferring all operations to the Austin area. The Court also agrees, and Apple does not contest, that Apple has a significant general presence in this District. ECF No. 83 at 18–19; ECF No. 89 at 8–9. But this factor does not focus on a parties’ general presence; instead, it focuses on the ‘significant connections between a particular venue and *the events that gave rise to a suit.*’” *In re Apple*, 979 F.3d at 1344 (quoting *In re Acer Am. Corp.*, 626 F.3d 1252, 1256 (Fed. Cir. 2010)) (emphasis in original). Parus contends that the Apple witnesses it identified in this District have connection to the Accused Functionality, and thus a local interest exists here. ECF No. 83 at 18. But the Court has already discussed that the relevancy of those witnesses to the Accused Technology is questionable. *See supra* III. B. 1.

*Conclusion.* The Court finds that the NDCA likely has a stronger local interest in deciding the issues in this case given that Apple is headquartered there, and the Accused Technology was

primarily designed and developed there. Apple's general presence in this District is not sufficiently tethered to the facts of this case. Thus, this factor weighs heavily in favor of transfer.

3. The Other Public Interest Factors are Neutral.

The other public interest factors are neutral.<sup>5</sup> This Court and the NDCA are both familiar with patent law. And to the extent any conflicts of law arise, both courts are equally capable of addressing them.

#### IV. CONCLUSION

Having considered the private and public interest factors, the Court's conclusions for each factor is summarized in the following table:

| <b>Factor</b>                                                                            | <b>The Court's Finding</b>           |
|------------------------------------------------------------------------------------------|--------------------------------------|
| Cost of attendance for willing witnesses                                                 | Weights heavily in favor of transfer |
| Relative ease of access to sources of proof                                              | Weights heavily in favor of transfer |
| Availability of compulsory process to secure the attendance of witnesses                 | Weights in favor of transfer         |
| All other practical problems that make trial of a case easy, expeditious and inexpensive | Neutral                              |
| Administrative difficulties flowing from court congestion                                | Weights slightly against transfer    |
| Local interest                                                                           | Weights heavily in favor of transfer |
| Familiarity of the forum with law that will govern case                                  | Neutral                              |
| Problems associated with conflict of law                                                 | Neutral                              |

The Court gives the "practical problems" factor less weight because the Federal Circuit has held that judicial economic considerations from related cases cannot "negate[] the significance of

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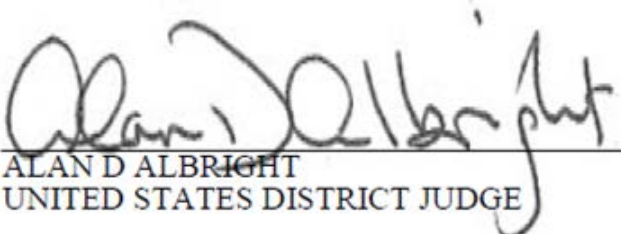
<sup>5</sup>Apple concedes that both the remaining factors- "familiarity of forum with governing law" and "conflict of laws"- are neutral. ECF No. 44 at 15. Parus concedes that the "conflict of laws" factor is not relevant. ECF No. 83 at 20. But Parus argues under the "familiarity of the forum with governing law" factor, that this Court should consider the pendency of Parus's related cases. ECF No. 83 at 19. Parus also states that "Federal patent law will apply regardless of where this case is litigated." *Id.* The Court does not interpret Parus's argument about co-pendency of related cases as a claim that either forum is not familiar with the relevant law.

having trial close to where most of the identified witnesses reside and where the other convenience factors clearly favor.” *In re Zimmer Holdings, Inc.*, 609 F.3d 1378, 1382 (Fed. Cir. 2010). Any judicial economy considerations would be insufficient to outweigh the clear benefits of transfer given the imbalance in the parties’ presentations on the other private-interest and public-interest factors. *See In re: NetScout Sys., Inc.*, 2021 WL 4771756, at \*5.

The Federal Circuit has also consistently told the Court to diminish the weight given to the docket-congestion factor. Apple has more sources of proof and willing witnesses in the NDCA. The NDCA likely has a stronger localized interest because of Apple’s headquarters there coupled with significant development and design there. Apple shows that the NDCA is a clearly more convenient venue.

**IT IS ORDERED** that Defendants’ Motion to Transfer Venue to the Northern District of California (ECF No. 44) is **GRANTED**. The Court’s Clerk is directed to transfer this Action to the U.S. District Court for the Northern District of California.

SIGNED this 29th day of November, 2022.



ALAN D ALBRIGHT  
UNITED STATES DISTRICT JUDGE