

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

COGMEDIA LLC,

Plaintiff,

v.

META PLATFORMS, INC.,

Defendant.

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CIVIL ACTION NO. 1:25-cv-12127

**ORAL ARGUMENT SCHEDULED
JANUARY 20, 2026**

PLAINTIFF'S BRIEF IN OPPOSITION
TO DEFENDANT'S MOTION TO TRANSFER VENUE
PURSUANT TO 28 U.S.C. § 1404(a)

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INTRODUCTION

Defendant's Motion attempts to bypass one of the foundational principles governing venue in patent litigation. Namely, rather than give the necessary and proper weight to the threshold question of whether venue is proper and thereby affording substantial deference to Plaintiff's choice of forum, Defendant tries to paint this case as fitting the mold of a forum-shopping, non-practicing entity seeking to gain an artificial or tactical advantage in a foreign venue.

But the facts tell a different story. This is not a case where Plaintiff is simply an "ephemeral" presence in Boston. One of the two named inventors of the Patents-in-Suit and the sole managing member of Plaintiff, Dr. Paul Keel, has deep and consistent ties to this District, having been a decades-long resident of the Boston area with a decades-long affiliation with MIT as a research scientist. The invention itself was developed here. Critically, third-party witnesses, going back decades, that have relevant knowledge to key legal issues in this case reside in this forum. All of these connections are substantial, not incidental, and are precisely the circumstances in which a plaintiff's chosen forum should be respected.

While Defendant's Motion attempts to minimize this substantial impact, it does not challenge whether venue in Boston is proper. In fact, Defendant's recently-filed Answer concedes venue is proper. But in downplaying the many local connections in this case and instead only touting its outsized presence in California, Defendant improperly asks this Court to reduce the venue analysis solely into a mathematical employee-counting contest amongst the parties. Setting aside the obvious fact that Defendant will not be calling thousands of employee witnesses for trial (or even subjecting them to deposition when the Parties have agreed to a limit of 56 total hours of deposition each for the entire litigation), Defendant's tallying effort should be given little weight because it focuses solely on its own witnesses while largely ignoring Plaintiff's witnesses and even more critically third-party witnesses, to whom the convenience factors give substantial weight.

As courts have routinely recognized, transfer is not appropriate where it will only serve to shift the balance of inconvenience from one party to the other. Defendant has not and cannot meet its heightened burden showing the transferee venue is *clearly more convenient*. As a result, the law has long-since remained settled that Plaintiff's choice of forum should be the determinative factor and transfer should be denied.¹

ARGUMENT AND MEMORANDUM IN SUPPORT

I. Developments in Patent Venue Law Provides Context for the Transfer Analysis

Before addressing the merits of Defendant's Motion, some context surrounding the legal development of patent litigation venue caselaw should help illuminate the distinction between the facts in this case and those present in the cases cited in support of Defendant's Motion. While Defendant fixates on cases involving plaintiffs with little connection to the as-filed venue, the correct legal analysis has always recognized the substantial deference afforded to plaintiff's filing at home so long as venue is proper.

Over the last several decades, patent venue law has evolved in response to various litigation practices. Prior to 2011 and the enactment of the Leahy-Smith American Invents Act ("AIA"), it was common practice for patent plaintiffs to aggregate large numbers of defendants in a single forum. This was possible because an accused infringer could be sued anywhere a company had minimum contacts. As a result, multiple defendants, many being direct competitors with one another, would be forced to litigate in a forum selected for perceived procedural or strategic advantages rather than a more robust connection to the suit's venue. Suder Decl. at ¶¶ 2-3, 6; *see also, Glob. Touch Sols., LLC v. Toshiba Corp.*, 109 F. Supp. 3d 882 (E.D. Va. 2015).

¹ This Response relies upon the Declarations of Jonathan Suder ("Suder Decl."), Paul Keel ("Keel Decl."), Bruce Sunstein ("Sunstein Decl.") and Kerry Timbers ("Timbers Decl."), all incorporated herein by reference.

This practice was curtailed by Congress through the AIA, which limited the joinder of unrelated defendants. Court decisions began focusing more heavily on the factual nexus between the suit venue, the defendant, and the accused acts of infringement. Nevertheless, some plaintiffs continued to file in districts that offered local patent rules believed to streamline cases and provide a quicker time to trial. Most notably amongst these forums were the Eastern District of Texas, the District of Delaware, and more recently the Western District of Texas, despite the fact that the plaintiff and defendant would often have little connection to those forums. Suder Decl. at ¶ 7. Then, the Supreme Court’s *TC Heartland* decision provided further limits on where a patent suit may be properly venued by tightening the requirements to forums where a domestic corporation has a regular and established place of business. *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258 (2017). The majority of cases cited in Defendant’s Motion follow the line of decisions tackling convenience issues when the plaintiff, and indeed the surrounding facts at issue in the matter, had a trivial connection to the as-filed venue. Suder Decl. at ¶ 8.

Despite these developments, relevant precedent has continued to emphasize and honor the long-standing rule governing cases where venue is proper and the plaintiff has genuine, localized ties to the forum. Suder Decl. at ¶ 9. In such circumstances, a plaintiff’s choice of forum is entitled to substantial deference, and transfer is warranted only if the movant can establish a strong showing that the proposed transferee forum is clearly more convenient. *Teva Pharms. Int’l GMBH v. Eli Lilly & Co.*, 2019 U.S. Dist. LEXIS 67575, at *10 (D. Mass. Apr. 22, 2019) (“To warrant transfer, the party seeking to litigate in another forum must establish that considerations of convenience and judicial efficiency strongly favor litigating the claim in the second forum.”). Many courts across the country use the phrase “*clearly* more convenient” in the transfer analysis which means “a movant 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.*, 2019 U.S. Dist. LEXIS

206019, at *15 (E.D. Tex. Nov. 27, 2019) (emphasis added). In sum, the evolution of patent venue law over the last twenty plus years was designed to prevent abuse, not to discount legitimate, home-forum litigation grounded in facts. That distinction governs the analysis here.

II. The Balance of Private and Public Factors Weighs Strongly Against Transfer

Defendant has conceded venue is proper. *See* Answer, Dkt. No. 56 at ¶ 13. Defendant’s Motion is based strictly on purported grounds of convenience under Section 1404. Therefore, the Court should begin with the agreed premise that this case is properly venued and it then should only consider transfer if Defendant meets its high burden to demonstrate that another venue would be “clearly more convenient.”

A. Factor 1: Plaintiff’s Choice of Forum is Determinative Particularly in Light of the Remaining Factors

Defendant raises two arguments as to the first factor, neither of which provide compelling grounds to justify transfer. The first argument, affording no weight to Plaintiff’s choice of forum, is willfully blind as to the facts and ignores the legal framework followed by courts within this District. Defendant’s second argument myopically focuses on the formation date of Cogmedia LLC at the expense of necessarily relevant facts. This is an obvious and improper attempt to downplay the deep connections the patentee, and by extension his inventions, have to Boston.

This is not a case of so-called “forum shopping” by a non-practicing entity, buttressed only by facts amounting to an artifact of litigation. Rather, the facts surrounding the Patents-in-Suit here, as well as a multitude of local Boston-area witnesses having relevant knowledge as to those facts, go back decades. And because this is a pre-AIA case (and thus involves patents under the “first to invent” rather than “first to file” standard), the testimony of witnesses located in this District is not merely relevant to the story of the invention, but instead is central to resolving core legal questions, *i.e.* the dates of conception and reduction to practice, and must be considered by

the Court in its venue analysis. Other key third party witnesses will provide testimony on the affirmative defenses (related to title and prosecution estoppel) raised in Defendant's Answer.

Defendant's Motion has already telegraphed that it intends to challenge the validity of the Patents-in-Suit, including through purported prior art disclosures and systems. This means the inventors, and also the individuals who knew the inventors and observed their activities at the time of invention, are uniquely positioned to speak to when the invention was conceived, how it was developed, and how it was ultimately reduced to practice. As such, their knowledge goes directly to the legally operative dates that determine priority of the Patents-in-Suit, which in turn plays directly into the legal decision that will define the scope of prior art and shape the validity analysis. All of this will be critical evidence that frames not only the story but key parts of the legal analysis, and thus the testimony of these witnesses must be considered in the transfer analysis.

Dr. Keel's background includes a Ph.D in Design and Computation from the Massachusetts Institute of Technology ("MIT") School of Architecture and Planning. Keel Decl. at ¶¶ 5-6. Going all the way back to 1994, Dr. Keel joined MIT's newly established Design and Computation program, where he specialized and directed his research efforts into computerized ways for collaborative knowledge building. *Id.* In approximately 1997, Dr. Keel's vision expanded when he began work on his Ph.D at MIT. *Id.* In working on his dissertation, Dr. Keel developed and converged some of his concepts and tools into a unified collaboration platform he named "EWall." *Id.* at ¶¶ 6-7. Then, in 2004, Dr. Keel filed for and ultimately received patent protection for his inventive improved computer method for managing and exchanging information using so-called information objects as set forth by the claims of the Patents-in-Suit. *Id.* In addition, Dr. Keel has continuously worked in consulting and research roles, including by way of example, consulting work for military intelligence processing. *Id.* at ¶ 8; *see also* Complaint (Dkt. No. 1) at ¶¶ 19-25.

Dr. Keel still resides in Boston today and will be an essential witness at trial for all the reasons set forth above. *Id.* at ¶¶ 3, 11-15.

While Defendant acknowledges Dr. Keel is the managing member of Cogmedia LLC, its Motion fixates primarily on the date of Plaintiff's corporate formation. But whether Cogmedia was formed one day, one month, or one year before the filing of suit does not matter for purposes of the Court's analysis. What does matter is that Dr. Keel has been a resident within this District for decades. And because venue is proper here, Dr. Keel has every right to bring suit in this District and his decision to do so at home must be afforded significant deference to which it is entitled.

Even in the wake of *TC Heartland*, courts within this District have agreed with Plaintiff's approach and have denied motions to transfer where the factors do not outweigh the presumption in favor of a plaintiff's selected forum. In *Teva*, the Court duly noted "[t]he greatest degree of deference is afforded to plaintiffs who select their home forum." *Teva Pharms. Int'l GMBH v. Eli Lilly & Co.*, 2019 U.S. Dist. LEXIS 67575, at *11-12 (D. Mass. Apr. 22, 2019). Using this rationale, even under the facts presented in *Teva*, whereby the named plaintiff chose a foreign, non-home forum for filing, the Court was *still justified* in denying the requested transfer motion based on the deference afforded to the plaintiff. *Id.* at *13-14 (finding two factors neutral, and the remaining three factors including the relative convenience of the parties, the convenience of the witnesses and location of documents, and the connection between the forum and the issues, to not be clearly more convenient to thereby displace the plaintiff's choice of forum). In conclusion, the court noted it "must consider the convenience of both parties" and "[a]ny convenience [defendant] might gain from litigation in Indiana based on [defendant's] outsized presence in Indiana does not outweigh the presumption in favor of [plaintiff's] selected forum." *Id.* at *14.

The same result in *Teva* should apply here, particularly given the strong deference that Plaintiff should be afforded when choosing to file at home. *See OV Loop, Inc. v. Mastercard Inc.*,

2024 U.S. Dist. LEXIS 144639, at *6-8 (D. Mass. Aug. 14, 2024) (“[o]rdinarily, there is ‘a strong presumption in favor of the plaintiff’s choice of forum, which may be overcome only when the private and public interest factors clearly point towards trial in the alternative forum.’”), *citing Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 (1981); *see also id.* at *7, *citing Coady v. Ashcraft & Gerel*, 223 F.3d 1, 11 (1st Cir. 2000) (“The burden of proof rests with the party seeking transfer; there is a strong presumption in favor of the plaintiff’s choice of forum.”); *Sharkninja Operating LLC v. Dyson, Inc.*, 2023 U.S. Dist. LEXIS 184337, at *5-7 (D. Mass. Oct. 13, 2023) (“where, as here, a plaintiff has selected its home forum, that choice is afforded great deference.”).

Defendant’s reliance on *Global Touch*, a case hot-off-the-heels of the implementation of the AIA, is misplaced. At the time, as discussed above, courts were dealing with the administrative difficulties of a single patent owner serially filing individual suits against multiple disparate defendants. *Glob. Touch Sols., LLC v. Toshiba Corp.*, 109 F. Supp. 3d 882, 887 (E.D. Va. 2015). While the holding acknowledged “a court should rarely disturb a plaintiff’s choice of forum” and “a plaintiff’s choice of its home forum is given even more weight than its choice of a foreign forum,” the underlying facts of the case were that the plaintiff had “tenuous” connections at best to its chosen forum, had let its corporate registrations lapse, and had failed to offer any affidavit in the record from a representative of the plaintiff. *Id.* at 897-898. These facts stand in stark contrast to those before the Court here.

Defendant’s citation to *In re Juniper*, 14 F.4th 1313 (Fed. Cir. 2021) is likewise inapposite. There, the named plaintiff filed in a foreign forum, a state halfway across the country that was neither its primary place of business nor home to its corporate witnesses with relevant knowledge. The same can be said of the *Google* holding. *In re Google LLC*, 58 F.4th 1379, 1384-1385 (Fed. Cir. 2023). There, the named plaintiff was based in California but brought suit in Texas. *Id.* at 1382. Four of the six inventors were in California, and none were in Texas. *Id.* The technology

underlying the patents was developed and prosecuted in California. *Id.* And while the plaintiff had a recently opened office in Texas, said office had no personnel or associated witnesses, and to the extent documents were in Texas, it was apparent that said documents had merely been transported there for appearances-sake. *Id.* at 1384. The underlying facts in *Google* stand on the opposite end of the spectrum to those before the Court now.

Plaintiff's choice of forum, particularly in light of the analysis for the remaining factors set forth below, results in factor one weighing strongly against transfer.

B. Factor 2: Relative Convenience of the Parties Favors Plaintiff, or is at Best Neutral

Defendant overplays its hand with respect to the second factor. This is not a situation akin to the cited *TainoApp* decision, a case filed in Puerto Rico involving a Puerto Rican plaintiff and a defendant having no physical connections to that forum. *TainoApp, Inc. v. Amazon.com, Inc.*, 2014 U.S. Dist. LEXIS 177361 at *4-5 (D.P.R. Dec. 24, 2014). In fact, in making its bid based on inconvenience here, Defendant candidly concedes it has 1) offices in Boston; and 2) remote employees. Motion at p. 4. So with respect to the California employees that form the basis of the vast majority of Defendant's Motion, traveling to a city where the company already operates, in addition to having remote-work capabilities, does not result in any meaningful hardship. And, as discussed further in connection with factor three below, it is disingenuous for Defendant to list scores of California-based employee witnesses with no evidence that said witnesses are not cumulative of one another or that any witness has knowledge materially different than another. Under *ViaTech*, the nature and quality of witness testimony is an important consideration, and as such Defendant's cumulative listing of dozens of witnesses should be afforded little weight. *ViaTech Tech. Inc. v. Adobe Inc.*, 2020 U.S. Dist. LEXIS 43867 at *9 (D. Mass. Mar. 13, 2020).

Compare this to the greater inconvenience faced by Plaintiff's witnesses with no presence in California. Cogmedia is a single-member LLC (*i.e.*, Dr. Keel) that has no revenues and exists solely to own the patents. Dr. Keel is a small inventor in his sixties and with modest means. Travel from the East Coast to the West Coast would most certainly be a greater inconvenience to him/Cogmedia. Thus, factor two weighs in favor of Plaintiff. Such a conclusion is further emphasized when considering the financial status of the respective parties, a consideration courts within this District often analyze with respect to factor two. *See, e.g., Boateng v. Gen. Dynamics Corp.*, 460 F. Supp. 2d 270, 275 (D. Mass. 2006) (weighing this factor against transfer when the defendant was a "multi-national corporation" for the key reason that "the balance of convenience focuses on the comparative financial abilities of the parties and the cost of litigation should be borne by the party in the best position to absorb and spread it"), *citing Sigros v. Walt Disney World Co.*, 129 F. Supp. 2d 56, 71 (D. Mass. 2001).

The bottom line is the fact that each party may face inconvenience depending on the forum is precisely the reason why so many courts, including those within this District, give little weight to this factor. Take, for example the facts of *Sharkninja*, where Massachusetts was more convenient for the plaintiff and its witnesses, but the Northern District of Illinois was more convenient for defendant and its witnesses. *Sharkninja Operating LLC v. Dyson, Inc.*, 2023 U.S. Dist. LEXIS 184337, at *6-7 (D. Mass. Oct. 13, 2023). There, that court held "neither district is obviously more convenient" and therefore the defendant "has not shown that transfer is warranted" in light of the strong presumption afforded to the plaintiff's chosen venue. For this reason, at best, the facts here fall in line with cases finding this factor neutral and not having such weight as to tip the scales towards transfer. *OV Loop, Inc. v. Mastercard Inc.*, 2024 U.S. Dist. LEXIS 144639, *9-10 (D. Mass. Aug. 14, 2024) ("where transferring the case to New York would merely shift the

burden of litigation in a foreign forum from the defendant to the plaintiff, the court will not transfer the case on account of convenience of the parties.”).

C. Factor 3: Convenience of the Witnesses and Location of Documents Weigh Strongly in Favor of Plaintiff and Against Transfer

a. Defendant’s Motion fails to properly account for the convenience of third-party witnesses

Defendant’s argument on this factor is premised on an incomplete recitation of the law. Defendant states the “convenience of witnesses is probably the single most important factor in the analysis” yet largely ends the discussion there. This, of course, behooves Defendant’s ensuing argument because it allows Defendant to turn this factor into a tallying contest such that Defendant, with its thousands of employees, could only ever find convenience in its own backyard. But that is not the complete legal test. As courts have recognized, repeatedly, the inquiry with respect to this factor must account for the convenience of *non-party* witnesses as well. *See, e.g., Idenix Pharms., Inc. v. Gilead Scis., Inc.*, 2014 U.S. Dist. LEXIS 199627, at *13 (D. Mass. June 30, 2014). In fact, courts within this District have emphasized “[i]n analyzing this factor, the court is ordinarily concerned with the location of witnesses *who are not parties or employees of the party.*” *Blue Cross & Blue Shield of Mass., Inc. v. Regeneron Pharms., Inc.*, 633 F. Supp. 3d 385, 390 (D. Mass. 2022) (emphasis added) (further noting the “convenience of witnesses who are employees of a party is given less weight by the court because that party can obtain their presence at trial”). The weight given Defendant’s employee witnesses must be greatly diminished.

Here, Defendant cites to only three named third-party witnesses allegedly authoring a single prior art patent reference. First, Defendant has yet to serve its Invalidity Contentions or provide anything more than a conclusory allegation that any or all of the inventors of the so-called Moran patent are relevant witnesses. Second, the testimony regarding prior art in this case, as with virtually every case where a defendant relies on a printed publication as prior art, will be provided

by the parties' experts as opposed to the authors of the references themselves. Suder Decl. at ¶ 13. Prior art printed publications, as opposed to prior systems alleged to have been sold more than a year before the invention date, do not require the author to testify nor would such testimony be useful. What matters to the analysis is the disclosure made within the four corners of the printed publication and not what was in the mind of the author. In one of Defendant's own cited cases, the district court gave no weight to prior art authors, individuals who were clearly "hand-picked" given their connection to the transferee forum. *In re Qualcomm*, 2025 U.S. App. LEXIS 15497 at *4 (Fed. Cir. 2025). This conclusion was upheld on appeal because, as is the case here, defendant had made no attempt to allege let alone show that any witness would be unwilling to travel. *Id.*

Defendant's identification of unnamed witnesses allegedly connected to Friendster, Myspace or other so-called social media sites is even more tenuous. Defendant fails to identify any witness by name, and makes no showing as to the location of such witness. Such a threadbare argument must be afforded zero weight in the balance of convenience analysis.

b. Plaintiff has identified the overwhelming majority of third-party witnesses with substantial local connections

Defendant's scant identification of third-party witnesses is vastly outweighed by the witnesses Plaintiff has identified in its Initial Disclosures. *See* Suder Decl. at Ex. A, Plaintiff Cogmedia LLC's FRCP 26(a) Initial Disclosures. There, Plaintiff explicitly identified witnesses falling into multiple groupings, each with relevant knowledge as to legal issues present in this case.

i. Bruce Sunstein

Two different law firms, each providing multiple attorneys, were involved in the prosecution of the Patents-in-Suit, or patents related to the Patents-in-Suit. Up until this week, Sunstein LLP is located in Boston and Chapin Intellectual Property Law, LLC is believed to be

located in Southborough, Massachusetts.² While there were multiple attorneys involved in the prosecution, Bruce Sunstein, still a practicing lawyer in his eighties, played a vital role as it relates to Dr. Keel's invention.

As this Court is likely aware, Mr. Sunstein is a steadfast and enduring bedrock of the local Boston legal community. For decades he and his firm have provided wide-ranging intellectual property and business representation. Sunstein Decl. at ¶¶ 1, 2, 4. Even more uniquely, Mr. Sunstein has for many years served as a Mentor in MIT's Venture Mentoring Service ("VMS"). *Id.* at ¶ 5. The VMS program is a mentoring service for entrepreneurs in the MIT community.³ *Id.* at ¶ 6. It is through VMS that Mr. Sunstein was introduced to Dr. Keel, and by virtue of this relationship Mr. Sunstein was able to assist Dr. Keel in the advancement of patent claims that capture the full scope of Dr. Keel's invention. *Id.*

As is the case with Dr. Keel, Mr. Sunstein is not merely a peripheral storyteller. Instead, Mr. Sunstein has knowledge that will be relevant to, and important to the resolution of, a range of legal issues here. In addition to general knowledge of Mr. Keel's background patent prosecution efforts and prosecution before the U.S. Patent Office, Mr. Sunstein will have knowledge as to the efforts this patentee undertook to overcome patent prosecution-related defenses of estoppel, waiver, and prosecution laches. *Id.* at ¶ 7. These are legal defenses Defendant has set forth in its Answer. *See* Dkt. No. 56 (Third, Fifth and Sixth Affirmative Defenses). In addition, Mr. Sunstein has relevant knowledge regarding the ownership and assignments of the Patents-in-Suit. Sunstein Decl. at ¶ 8. Defendant's Answer expressly challenges title as its First Affirmative Defense. Dkt.

² Effective January 2, 2026 all full-time Sunstein LLP attorneys joined Merchant & Gould and now comprise its Boston office.

³ *See also* <https://vms.mit.edu>

No. 56. Mr. Sunstein is a critical third-party witness expected to provide compelling and highly relevant testimony at trial, and Boston is more convenient for Mr. Sunstein. *Id.* at ¶¶ 7-10.

ii. MIT witnesses

Other third-party witnesses include those currently or formerly associated with MIT. Given Dr. Keel's work around the time of his filing for his patents, these individuals have knowledge relating to the development of the invention, the conception and reduction to practice of the invention. As discussed above, conception and reduction to practice are key legal issues for pre-AIA patents, as they define, among other things, whether earlier publications qualify as prior art, whether another party can assert an earlier invention date, or whether certain defenses such as a statutory disclosure bar carry merit. As identified in Plaintiff's Disclosures, such persons include a corporate representative of MIT, as well as William Porter (residing in the Boston metro area), as having relevant knowledge as to Dr. Keel's academic work around the time of the invention, which subject matter is related to the patented inventions. *Suder Decl.* at Ex. A; *see also* Keel Decl. at ¶ 7. Plaintiff has also identified third party witnesses currently or formerly associated with MIT relating to MIT's waiver and disclaimer of rights to the subject invention. In addition to a corporate representative, Plaintiff has identified Jack Turner, Andrea Schievella, and/or Lesley Millar-Nicholson (each in the Boston metro area). *Id.*; *see also*, Keel Decl. at ¶ 7. Testimony from these identified witnesses will be relevant to, among other things, the legal determination of chain of title and ownership issues (Defendant's First Affirmative Defense). Ownership is a threshold, and vital, legal prerequisite and testimony from these individuals speak directly to this legal issue.

iii. Department of the Navy witnesses

Another category of third-party witnesses include persons currently or formerly associated with the United States Government and/or Department of the United States Navy. As mentioned in the Original Complaint, Dr. Keel consulted with the Navy in a professional capacity, and in

particular has ties with his work performed in collaboration with the Office of Naval Research located in Arlington, Virginia. Dkt. No. 1 at ¶ 24. For any such witness, including those with relevant knowledge as to the development of the invention, the conception and reduction to practice of the invention, the activities of Dr. Keel including the development of any prototypes of the invention, or relating to the Government's waiver and disclaimer of rights to the subject inventor, should be factored into the analysis. Suder Decl. at Ex. A; *see also*, Keel Decl. at ¶ 8 (discussing also witness testimony of Roman Lubynsky, another individual formerly associated with MIT VMS that has knowledge relevant to Dr. Keel's efforts with the Navy, residing in the Boston area). For the same reasons set forth above, testimony from these individuals will be directly relevant to the legal issues surrounding conception, reduction to practice, and chain of title for the Patents-in-Suit. And here, those individuals likely residing in or around Virginia will be afforded far greater convenience with the case being tried in Boston as opposed to California.

c. Defendant's Reliance on its Own Employees Must be Afforded Significantly Less Weight

Based on the above, the greater number of third-party witnesses identified by Plaintiff serves as a separate, and determinative, factor in denying transfer. But setting that aside, even Defendant's heavy reliance on its own party witnesses does little to change this conclusion.

First, from an evidentiary standpoint, Defendant's Motion lacks any evidence that the overwhelming majority of its identified party witnesses are anything more than cumulative witnesses listed out in large number simply to try and secure a favorable transfer result, or that they possess any meaningful knowledge separate and apart from one another. Defendant's Motion fails to establish why more than only one witness from each of its "Profile" and "Feed" teams should not be considered cumulative. A "mere listing of a large number of witnesses by a party is not a persuasive reason for granting a change of venue without some evidence as to their

necessity.” *In re BBC Int’l, Inc.*, 98 F.3d 1358 (Fed. Cir. 1996). A long list of witnesses should be discounted if “it appears likely that much of the testimony would be cumulative.” *Id.*

Second, the practical truth is that while Defendant can list dozens, hundreds, or even thousands of employees, that does not impact the analysis as heavily as Defendant would have the Court believe. At trial, there will only be a handful of witnesses called to testify live, and even a subset of those would be Defendant’s employees that will be required. Suder. Decl. at ¶ 13. Take, for example, a recent patent infringement case tried by Plaintiff’s lead counsel in the Northern District of California before The Honorable Raymond Chen. *Opticurrent, LLC v. Power Integrations, Inc.*, 2019 U.S. Dist. LEXIS 111683 (N.D. Cal. July 3, 2019); *Id.* at ¶ 14. In that trial the defendant, represented by Fish & Richardson, called two witnesses as part of its case, of which only one was a non-party witnesses. This was in response to plaintiff having put on two fact witnesses of its own (in addition to calling two of defendant’s employees). Other recent examples, this time for a case in Federal District Court in Oregon in May of 2021, are consistent with this common practice. *ADASA Inc. v. Avery Dennison Corp.*, 2021 U.S. Dist. LEXIS 239559 (D. Or. Dec. 15, 2021). In this trial, plaintiff called one fact witness (the client/inventor). The defendant called three party witnesses. *Id.* at ¶ 15; *see also, id.* at ¶ 16 referencing a case involving lead counsel currently set for a one week trial in Kansas this Spring).

Looking at cases within Massachusetts reveals the same practice. *See, e.g., Egenera, Inc. v. Cisco Systems, Inc.*, 1-16-cv-11613 (D. Mass. 2022) (plaintiff calling four non-expert witnesses live and defendant calling two non-expert witnesses); *Rasmussen Instruments, LLC v. DePuy Synthes Products, Inc.*, 1-20-cv-11807 (D. Mass. 2022) (plaintiff calling three non-expert witnesses live and defendant calling four non-expert witnesses); *see also* Timbers Decl. at ¶¶ 5-8 (detailing consistent experience in Massachusetts patent trials; note the table column for “Called Live” includes both expert and non-expert witnesses). Defendant’s own recent cases also confirm

the same. *See, e.g., Voxer, Inc. v. Meta Platforms*, 1-20-cv-00655 (W.D. TEX. 2022) (Meta identified 100 Facebook employees who supported the accused products in other states as a basis to transfer venue, but before trial Meta only identified seventeen will call witnesses and only called nine live witnesses, three of which were experts). Suder Decl. at ¶ 17 and Ex. D thereto.

Third, this factor focuses on the convenience of witnesses at trial, not for depositions. *See, e.g., Hammers v. Mayea-Chang*, 2019 U.S. Dist. LEXIS 213039, at *24 (E.D. Tex. Dec. 10, 2019) (“the Supreme Court has explained that ‘the purpose of statutorily specified venue is to protect the defendant against the risk that a plaintiff will select an unfair or inconvenient *place of trial*.’”) (emphasis in original), *citing Leroy v. Great W. United Corp.*, 443 U.S. 173 (1979). But even if one were to consider the inconvenience of persons to be deposed, while Defendant can list thousands of employees, the Scheduling Order in this litigation only allows for a total of fifty-six hours of deposition per side. And more importantly, the deposition of employee witnesses would take place where the witness resides, as is typical, thus negating inconvenience.

Fourth and finally, as both Plaintiff’s Complaint and Initial Disclosures state, there are also identified party witnesses that are employed by Defendant, in its Boston offices, that are believed to have information on the operation of the infringing instrumentalities and acts by Defendant. Suder Decl. at Ex. A. Such individuals (having job titles Software Engineer and QA Lead) include Vijay Claud Kliyara Philip; Ezequiel Gomez; Victor Nicolae Savu; Antoine Dubois-Randle; Ivan E.; Yao L.; Zhanpeng Wang; Lihan Bin; Dabeluchi Umeugwa; Qian Wu; Eli Fenton; Andrew Sciotti; JD McCormack; Greg Fletcher; Shali Cheng. *Id.* Defendant’s website further lists one of its Software Engineers, Lainey Z., on its website as a testimonial to the culture of the office and Meta’s local presence in the community. *Id.* Defendant’s Motion is silent as to these individuals explicitly identified by Plaintiff. Instead, Defendant simply argues that no employee in Boston is currently working on the accused instrumentalities. Such an argument sidesteps the possibility

that any of its current or former employees, including the specific individuals listed by Plaintiff, were previously working on the accused instrumentalities. Individuals having formerly worked on the accused instrumentalities are particularly relevant in a case like this, where the patents have recently expired and thus past (as opposed to current or future) knowledge of Defendant's activities will have a more important role than persons with post-expiration knowledge.

For all the above reasons, Defendant's reliance on its own party witnesses should be heavily discounted in the analysis and in any event does not serve to outweigh the number of identified third-party witnesses that weighs strongly in Plaintiff's favor.

d. Location of Documents

With respect to the location of documents, courts within this District have sided with the growing trend that places less weight on this factor in light of today's technological landscape. For example, in *ViaTech* the Court recognized that while many documents are likely located at one location or another of a defendant, "[t]oday, however, given that most records and documents now can be transported easily or exist in miniaturized or electronic form ... their location is entitled to little weight."), *ViaTech Tech. Inc. v. Adobe Inc.*, 2020 U.S. Dist. LEXIS 43867 (D. Mass. Mar. 13, 2020) *string citing, among others, Boateng v. Gen. Dynamics Corp.*, 460 F. Supp. 2d 270, 276 (D. Mass. 2006), *IMS Glob. Learning Consortium, Inc. v. Sch. Interoperability Framework Ass'n*, 2018 U.S. Dist. LEXIS 16570, at *10 (D. Mass. Feb. 1, 2018) (same). Furthermore, the fact that "the majority of evidence is already in defendant's possession ensures that they can produce it at trial, and negates any need to transfer the case in order to bring records within the subpoena power." *Boateng*, 460 F. Supp. 2d at 276.

While Defendant cites *ViaTech* (a Massachusetts District Court patent case) as the legal standard for venue transfer, Defendant relies on *In re Genentech*, 566 F.3d 1338 (Fed. Cir. 2009) under its discussion of the location of documents factor. Notably lacking from Defendant's Motion

is an acknowledgement that *ViaTech* both considers *In re Genentech* and elects not to follow its reasoning based on the electronic document rationale set forth above. *ViaTech Tech. Inc. v. Adobe Inc.*, 2020 U.S. Dist. LEXIS 43867 (D. Mass. Mar. 13, 2020).

In summary, considering the convenience of the witnesses (including third-party witnesses) and the location of documents, factor three weighs strongly against transfer.

D. Factor 4: Connection to the Issues Weighs in Favor of Plaintiff

For the many reasons already set forth above, there are meaningful and legitimate ties to the facts at play in this litigation and Massachusetts and particularly Boston. One other point bears underscoring with respect to this factor, namely the weight Defendant seeks to impart on the location of its headquarters. Such an argument once again goes back to the core concept of proper venue and plaintiff's choice of forum. The *Teva* holding summarized the issue succinctly:

Under [the defendant's] view, only one of the seven possible venues allowed under the statute, [defendant's] headquarters' location in Indiana, would be appropriate. That outcome is not contemplated by the patent venue statute, which allows a plaintiff to sue alleged infringers anywhere the infringer maintains a place of business and the alleged infringement has occurred, rather than restricting a plaintiff to the district where the alleged infringer's headquarters is located... Any convenience [defendant] might gain from litigating in Indiana based on [defendant's] outsized presence in Indiana does not outweigh the presumption in favor of *Teva's* selected forum.

Teva Pharms. Int'l GMBH v. Eli Lilly & Co., 2019 U.S. Dist. LEXIS 67575, *13 (D. Mass. Apr. 22, 2019). Here, just like *Teva*, Defendant has multiple office campuses including in Boston. Plaintiff's filing here satisfies the patent venue statute, and Defendant's alleged convenience does not outweigh Plaintiff's choice of venue in light of the multitude of connections to this District.

E. Factor 5: Applicable Law

Plaintiff agrees this factor should be given neutral weight.

F. Factor 6: Public Interest Factors

Defendant's rationale, namely that this case should be transferred so that a California court can resolve a dispute as to one of its residents, can be applied equally to justify denying transfer. Dr. Keel, having decades-long connections to Boston, should be afforded the same opportunity to receive resolution in his home district. Further, Defendant's Motion repeatedly downplays its connection to Boston, contrary to media coverage highlighting Defendant's heavy presence in the area. See, e.g., Suder Decl. at Ex. B (article detailing Meta "recently signed a lease that will triple its office footprint in Kendall Square"). Defendant hosts a portion of its company website dedicated to the Boston office, highlighting local employment opportunities. *Id.* at Ex. C.

Defendant's rationale is also undercut by the fact that it filed its F.R.C.P. 12(b)(6) motion seeking dismissal on grounds of joint infringement. As the Court is aware, it recently denied Defendant's motion, but only after full briefing and oral argument was held. See Electronic Order dated December 23, 2025. In other words, based in part on Defendant's strategy to litigate this case here in Boston right out of the starting blocks, the Court has already spent significant time and expense learning the patents, the claims, and the technology at issue.

With respect to issues related to timing, the average time to trial statistics for Massachusetts as compared to California do not provide any meaningful weight favoring transfer. According to Defendant's own cited statistics, average time to trial between the two venues only amounts to a difference in two months. Such a small discrepancy should not be weighed in favor of transfer. See, e.g., *In re Google*, 58 F.4th 1379 (Fed. Cir. 2023); see also *SVV Tech. Innovations, Inc. v. Micro-Star Int'l Co., Ltd.*, 2023 U.S. Dist. LEXIS 58874, at *25-26 (W.D. Tex. Apr. 4, 2023). In addition, the fact the parties here are not direct competitors and further that the Patents-in-Suit are expired, negates any weight that Defendant advocates relating to administrative timing analysis. *Id.* at 1383 (non-competitors do not present a situation threatening the market in a way that would add urgency to case resolution; thus, this factor is "most speculative" and at best neutral).

CONCLUSION

For the foregoing reasons, Defendant's motion must be denied. The following table summarizes the transfer analysis of the private and public interest factors:

1: Plaintiff's choice of forum	Strongly disfavors transfer
2: Relative convenience of the parties	Disfavors transfer
3: Convenience of witnesses and location of documents	Strongly disfavors transfer
4: Connection between the forum and the issues	Disfavors transfer
5: Law to be applied	Neutral
6: Public interest factors	Disfavors transfer

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Plaintiff respectfully requests oral argument, currently scheduled for January 20, 2026.

Date: January 8, 2026

Respectfully submitted,

/s/ Jonathan T. Suder

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of January 2026, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court for the District of Massachusetts using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Jonathan T. Suder