

4–10. On December 9, 2020, CCI filed a response to Apple’s Mot. to Transfer, opposing transfer to NDCA and asking the Court to transfer to the Galveston Division of the Southern District of Texas in the alternative. Pls.’ Resp. in Opp’n to Defs.’ Mot. to Transfer Venue. (hereinafter “Resp.”), ECF No. 26. On December 16, 2020, Apple filed a reply. Def’s. Reply in Supp. of Def’s. Mot. to Transfer Under 28 U.S.C. § 1404(a) (hereinafter “Reply”), ECF No. 27.

Legal Standard

Whether to transfer venue is a preliminary issue that must be addressed at the outset of a federal action and must take “top priority in the handling of this case.” *In re Horseshoe Ent.*, 337 F.3d 429, 433 (5th Cir. 2003). The Court may transfer an action to any district or division where it might have been brought if that transfer serves “the convenience of parties and witnesses” and “the interest of justice.” 28 U.S.C. § 1404(a). Section 1404(a)’s threshold inquiry is whether the case could initially have been brought in the proposed transferee forum. *In re Volkswagen AG*, 371 F.3d 201, 202–03 (5th Cir. 2004) [*Volkswagen I*]. If that inquiry is satisfied, the Court determines whether transfer is proper by analyzing and weighing various private and public interest factors. *Humble Oil & Ref. Co. v. Bell Marine Serv.*, 321 F.2d 53, 56 (5th Cir. 1963); *In re Apple Inc.*, 979 F.3d 1332, 1338 (Fed. Cir. 2020) (applying Fifth Circuit law).

The private interest factors are “(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 the case; and (4) the avoidance of unnecessary problems of conflict of laws [or in] the application of foreign law.” *Id.* (quoting *Volkswagen I*, 371 F.3d at 203) (alterations in original). The public interest factors are “(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 [or in] the application of foreign law.” *Id.* (quoting *Volkswagen I*, 371 F.3d at 203) (alterations in original). The factors are neither exclusive nor exhaustive, and no one factor is dispositive. *Id.* In applying these factors, the court enjoys considerable discretion and assesses the case “on an ‘individualized, case-by-case consideration of convenience and fairness.’” *In re Vistaprint Ltd.*, 628 F.3d 1342, 1346 (Fed. Cir. 2010) (quotation omitted). The burden to prove that a case should be transferred for convenience falls squarely on the moving party. *See id.* Although the plaintiff’s choice of forum is not a separate factor entitled to special weight, respect for the plaintiff’s choice of forum is encompassed in the movant’s elevated burden to “clearly demonstrate” that the proposed transferee forum is “clearly more convenient” than the forum in which the case was filed. *Id.* at 314–15. While “clearly more convenient” is not necessarily 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).

Discussion

I. The *Volkswagen* Private and Public Interest Factors Favor Transfer to the Northern District of California.

In order to determine whether Apple has demonstrated good cause, the Court must weigh the private and public interest factors cataloged in *Volkswagen II*. The private interest factors include: “(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive.”

Volkswagen II, 545 F.3d at 315 (quoting *Volkswagen I*, 371 F.3d at 203). The public interest factors are “(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 [or in] the application of foreign law.” *Id.* (quoting *Volkswagen I*, 371 F.3d at 203) (alterations in original). If, when added together, the relevant private and public interest factors are in equilibrium, or even if they do not clearly lean in favor of the transferee venue, the motion must be denied. *Volkswagen II*, 545 F.3d at 315. Once again, the Court’s ultimate inquiry is which forum will best serve the convenience of the parties and the interests of justice. *Koster v. Am. Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 527 (1947). Here, when weighing the *Volkswagen* private and public interest factors, the Court finds that Apple has shown that the NDCA is “clearly more convenient” than the Western District of Texas (“WDTX”).

a. The Private Interest Factors Clearly Establish that the Northern District of California is a More Convenient Venue.

In considering private factors, the Court necessarily engages in a comparison between the hardships the defendant would suffer through the retention of jurisdiction and the hardships the plaintiff would suffer from transferring the action to the transferee venue. *Cf. Iragorri v. United Technologies Corp.*, 274 F.3d 65, 74 (2d Cir. 2001) (stating courts engage in such a comparison for *forum non conveniens* analyses). The Court will assess each of these factors in turn.

i. The Relative Ease of Access to Sources of Proof

In considering “the relative ease of access to sources of proof,” a court looks to where documentary evidence, such as documents and physical evidence, is stored. *Volkswagen II*, 545 F.3d at 316. Parties must “describe with specificity the evidence they would not be able to

obtain if trial were held in the [alternate forum].” *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 258 (1981).

In its motion, Apple, relying upon a previous copyright case, *Carruth v. Michot*, No. A-15-CA-189-SS, 2015 WL 6506550, at *15 (W.D. Tex. Oct. 26, 2015), alleges that this action should be treated similarly to patent infringement actions in that the accused infringer maintains the sources of proof relevant to the action. Mot. to Transfer at 5. Under this assumption, Apple argues that this factor must thus favor transfer since all of the documents “concerning Apple’s development, design, and implementation of emoji with skin-tone variation were generated and are stored in the NDCA, where the teams responsible for emoji-related work are based,” and it is where Apple’s financial documents will be located which Apple argues is relevant for CCI’s damages claim. *Id.* at 6.

CCI counters that “while Apple asserts that a majority of its documents and evidence are located in California, Apple has an actual office ... in the District with computer access such that access to the documents from the District is not difficult.” Resp. at 6. This is undoubtedly true, but accessibility alone is not the test. *See, e.g., Wet Sounds, Inc. v. Audio Formz, LLC*, 2017 WL 4547916, at *2 (W.D. Tex. Oct. 11, 2017). The fact that documents may be stored electronically does not undermine the import of their location as “the Fifth Circuit [has] clarified that despite technological advances that make the physical location of documents less significant, the location of sources of proof remains a ‘meaningful factor in the analysis.’” *Wet Sounds, Inc. v. Audio Formz, LLC*, No. A-17-CV-141- LY, 2017 WL 4547916, at *2 (W.D. Tex. Oct. 11, 2017), *rep. & rec. adopted*, No. 1:17-CV-141-LY, 2018 WL 1219248 (W.D. Tex. Jan. 22, 2018) (quoting *Volkswagen II*, 545 F.3d at 315).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.