

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

DDC TECHNOLOGY, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 3:22-CV-1263-B
	§	
GOOGLE LLC and ORORA	§	
PACKAGING SOLUTIONS,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Google LLC’s Motion to Transfer Venue and Sever (Doc. 94). Because the Court finds that convenience and justice favor transfer and otherwise outweigh concerns of judicial efficiency, the Court **GRANTS** the Motion, **SEVERs** Plaintiff DDC Technology, LLC (“DDC”)’s claims against Google, and **TRANSFERS** the claims against Google to the United States District Court for the Northern District of California. DDC’s claims against Defendant Orora Packaging Solutions (“OPS”) remain before this Court.

I.

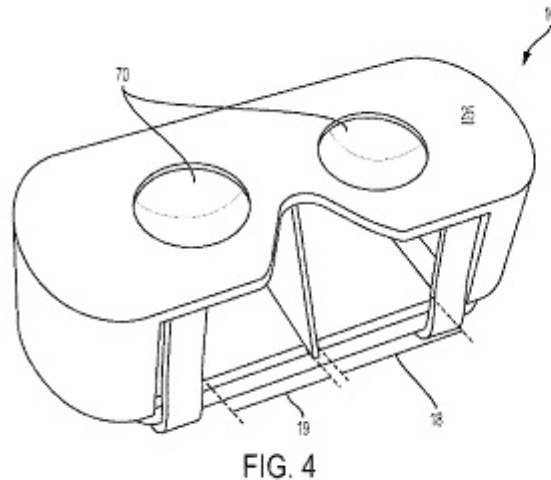
**BACKGROUND**

This is a patent infringement case. DDC originally sued six different entities for direct and indirect infringement of patents (collectively, the “Asserted Patents”)<sup>1</sup> relating to a

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<sup>1</sup>The patents include United States Patent No. 9,420,075, entitled “Virtual Reality Viewer and Input Mechanism,” which issued on August 16, 2016 (“the ‘075 Patent”); United States Patent No. 9,811,184, entitled “Virtual Reality Viewer and Input Mechanism,” which issued on November 7, 2017 (“the ‘184 Patent”); United States Patent No. 10,528,199, entitled “Virtual Reality Viewer and Input Mechanism,” which issued on January 7, 2020 (“the ‘199 Patent”); United States Patent No. 11,093,000, entitled “Virtual Reality Viewer and Input Mechanism,” which issued on August 17, 2021 (“the ‘000 Patent”); and United States Patent No. 11,093,001, entitled “Virtual Reality Viewer and Input Mechanism,” which issued on August 17, 2021 (“the ‘001 Patent”). Doc. 123, Am. Compl., ¶ 3.

cardboard virtual reality viewer. See generally Doc. 1, Orig. Compl. In short, in lieu of an expensive virtual reality headset, a user equipped with the cardboard viewer can insert their smartphone into the viewer to create a makeshift virtual reality headset:



Doc. 1-1, Ex. A, 5 (depicting the '075 Patent).

In June 2014, Google presented its first version of a cardboard viewer at an annual conference. Doc. 123, Am. Compl., ¶ 24. Around that time, a separate company, DODOcase, Inc., owned in part by Patrick Buckley, contacted Google regarding a potential business relationship. See *id.* ¶¶ 4, 27. Specifically, Buckley emailed several Google employees—Andrew Nartker, Alex Kauffman, and Clay Bavor—regarding a “conductive tap button” for the virtual viewer that could improve its functionality. See *id.* ¶¶ 27–29. DODOcase shortly thereafter filed its first provisional application to which the Asserted Patents are related. *Id.* ¶ 30.

Around March 2015, Google created the “Works With Google Cardboard” Program (“WWGC Program”). *Id.* ¶ 38. The idea underlying the WWGC Program was that Google would disseminate manufacturing and marketing guidelines to third parties to create their own cardboard viewers. See *id.* ¶¶ 43–45. See generally Doc. 123-15, Ex. O. Google also provided

software development guidelines for developers to create compatible applications. Doc. 123-15, Ex. O, 2. Together, the WWGC Program would function as an ecosystem where users could utilize the cardboard viewers on a host of compatible applications. Doc. 123, Am. Compl., ¶ 43

For manufacturers to be a part of the WWGC Program, they had to submit samples of their cardboard viewers for Google’s approval and evaluation. *See id.* ¶¶ 41, 43–44. Once Google approved, the manufacturers could then indicate their viewer worked with the WWGC Program by printing a WWGC badge and QR code on the viewer. *Id.*; *see also* Doc. 123-15, Ex. O, 2. DODOcase’s virtual viewer was a part of the WWGC Program. Doc. 123, Am. Compl., ¶ 40. In May 2015, Google launched a second version of its viewer, the Google Cardboard V2 Viewer. *Id.* ¶¶ 46, 48. Around this time, DODOcase filed a second provisional application relating to the Asserted Patents now at issue. *Id.* ¶ 47.

In 2016, however, after several years of selling its products, DODOcase suffered “price pressures resulting from infringers importing competitive products” and was forced stop sales and production. *Id.* ¶¶ 6–7. In 2018, weary of litigation, DODOcase assigned the Asserted Patents to DDC under an agreement that DODOcase would “retain[] a financial interest [in] recoveries from enforcement of the Asserted Patents.” *Id.* ¶ 8.

As the successor in interest, DDC filed suit in June 2022 against six different entities who allegedly violated the Asserted Patents. Doc. 1, Orig. Compl. DDC sued Google for direct infringement of the Asserted Patents based on the Google Cardboard V2 Viewer or other “substantively similar” products. *Id.* ¶¶ 21, 74. DDC also sued several third-party manufacturers for their virtual viewers. *See id.* ¶¶ 16–20. And finally, DDC sued Google for indirect patent infringement by inducing third-party manufacturers—including the other defendants—to

infringe the Asserted Patents through the WWGC Program and by advertising the viewer as “open source.” *E.g., id.* ¶¶ 251–52.

DDC however, eventually dismissed most of the defendants from suit. That is, within seven months of filing suit, DDC had filed notices or stipulations of dismissal on four of the six defendants.<sup>2</sup> A fifth defendant—Landsberg Orora—was dismissed by Court order on December 19, 2022, for lack of personal jurisdiction after the Court determined, in short, that DDC had seemingly “sued the wrong entity within the broader corporate family.” Doc. 103, Mem. Op. & Order, 4. Google was the single remaining defendant in the suit, with a pending motion to sever and transfer venue. *See* Doc. 94, Mot. Transfer.

In February 2023, however, DDC filed an amended complaint. Doc. 123, Am. Compl. DDC added a new Landsberg entity—OPS—in Landsberg Orora’s place. *See id.* The allegations in the new complaint are similar. DDC sues Google for direct infringement for the Google Cardboard V2 Viewer, but it also includes direct infringement claims for other WWGC Program viewers that Google advertised and linked on its site. *E.g., id.* ¶¶ 76, 116. DDC also maintains its indirect infringement suits against Google for inducing the other—now former—defendants to directly infringe the Asserted Patents. *E.g., id.* ¶ 159.

DDC sues OPS for direct infringement for (1) allegedly manufacturing the Google Cardboard V2 Viewer on Google’s behalf and (2) manufacturing its own OPS cardboard viewer, which directly infringes the Asserted Patents. *E.g., id.* ¶¶ 20, 138.

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<sup>2</sup> Defendant HMD TECH SARL (d/b/a Homido) was dismissed on October 6, 2022. Doc. 73, Not. Dismissal. Emerge Technologies, Inc. (d/b/a Utopia 360) was dismissed on October 24, 2022. Doc. 82, Joint Stip. Dismissal. Pyrite VR LTD (d/b/a Maxbox VR) and DDC reached a confidential settlement agreement on December 21, 2022. Doc 107, Stip. Final Consent J. & Perm. Inj. And Structural Graphics, LLC (d/b/a Red Paper Plane) was dismissed on January 6, 2023. Doc 109, Joint Stip. Dismissal.

In its Motion to Transfer Venue and Sever the Case (Doc. 94), Google argues that joinder of the (now dismissed) defendants was improper and, in any event, DDC's case against it should be severed and transferred to the Northern District of California. Doc. 94, Mot. Transfer. Though Google's Motion preceded the dismissal of several defendants and the amended complaint, Google's arguments still apply, and the Motion is ripe before the Court.

## II.

### LEGAL STANDARD

#### A. *Transfer of Venue*

Even when venue is proper, a district court may transfer a civil action to another district or division if (1) the plaintiff could have brought that action there originally and (2) the transfer would be for “the convenience of parties and witnesses, in the interest of justice.” 28 U.S.C. § 1404(a). The movant must clearly establish both elements to “show good cause” for transfer. See *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 314–15, 314 n.10 (5th Cir. 2008) (en banc) [hereinafter *Volkswagen II*].

As to the first prong, a plaintiff may initially bring “any civil action for patent infringement . . . in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.” 28 U.S.C. § 1400(b).

For the second prong, to determine if transfer would be for “the convenience of parties and witnesses, in the interest of justice,” courts balance eight private- and public-interest factors. See *Def. Distributed v. Bruck*, 30 F.4th 414, 433 (5th Cir. 2022) (internal quotation omitted). “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

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