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

UNILOC 2017 LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 2:18-cv-00504-JRG-RSP
	§	
GOOGLE LLC,	§	
	§	
Defendant.	§	

MEMORANDUM ORDER

Before the Court is the Motion to Transfer Venue to the Northern District of California under 28 U.S.C. § 1404 ("Motion"), filed by Defendant Google LLC.[1] Dkt. No. 94. After consideration, the Court **GRANTS** Google's Motion. It is therefore **ORDERED** that the case be transferred to the Northern District of California.

I.   BACKGROUND

Plaintiff Uniloc 2017 LLC ("Uniloc") is a Delaware limited liability company with offices in Tyler, Texas, and Newport Beach, California. Dkt. No. 1 at 1. Defendant Google LLC ("Google") is a California corporation with its principal place of business in the Northern District of California. On November 17, 2018, Uniloc filed multiple patent infringement suits against Google in this Court.[2]

A few months later, Google filed a motion pursuant to 28 U.S.C. § 1404(a) to transfer the cases to the Northern District of California.[3] Google argues that its financial witnesses and key Google employees who worked on the accused functionality are located in the Northern District,

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[1] A similar motion was filed in all the *Uniloc v. Google* cases, Case Nos. 2:18-cv-491–-493, -496–-497, -499, -501–-504, -548, -550–-553. Although some minor facts differ, the result is the same in every case.

[2] Uniloc filed some of the suits on December 30, 2018. *See* Case Nos. 2:18-cv-548, -550–-553.

[3] Google filed a renewed motion to transfer, which is the present motion, after some targeted discovery.

with the majority of the other witnesses also residing in California. Google further argues that the majority of the evidence is located in the Northern District or is accessible through the cloud.

Uniloc opposes transfer, contending that this District is the proper venue. Uniloc argues that both it and Google have extensive ties to this District and Texas in general. It also argues that this District would be more convenient for non-party witnesses, especially willing witnesses. Finally, Uniloc argues that a denial of transfer could prevent a waste of judicial resources by avoiding the need for the Northern District to restart a series of cases nearing trial.[4]

II.   LEGAL STANDARD

"For 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 . . . ." 28 U.S.C. § 1404(a); *see also In re Toyota Motor Corp.*, 747 F.3d 1338, 1339 (Fed. Cir. 2014). "A motion to transfer venue should be granted upon a showing that the transferee venue 'is clearly more convenient' than the venue chosen by the plaintiff." *In re Genentech, Inc.*, 566 F.3d 1338, 1342 (quoting *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) (en banc) ("*Volkswagen II*")); *see also In re Nintendo Co., Ltd.*, 589 F.3d 1194, 1197 (Fed. Cir. 2009); *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Circ. 2008). The first inquiry when analyzing a case's eligibility for § 1404(a) transfer is "whether the judicial district to which transfer is sought would have been a district in which the claim could have been filed." *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) ("*Volkswagen I*").

Once that threshold is met, courts analyze a number of private and public interest factors. *Id.* (citations omitted). The private factors include: "(1) the relative ease of access to sources of

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[4] Google's motions to transfer were filed timely but their consideration was delayed by venue discovery and developments in related litigation. The Court notes that, despite an invitation to do so (*see* Dkt. No. 289), Uniloc did not brief the effect of *In re Google LLC*, 949 F.3d 1338 (Fed. Cir. 2020), *reh'g denied*, No. 19-00126 (Fed. Cir. May 15, 2020).

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." *Id.* (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981)). 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.*

The plaintiff's choice of venue is not a factor in this analysis. *Volkswagen II*, 545 F.3d at 314–15. Rather, the plaintiff's choice of venue contributes to the defendant's burden of proving that the transferee venue is "clearly more convenient" than the transferor venue. *Id.* at 315. Furthermore, though the factors apply to most transfer cases, "they are not necessarily exhaustive or exclusive" and no single factor is dispositive. *Id.* (citation omitted).

III.   ANALYSIS

a.   Northern District of California is a Proper Venue

The first inquiry when analyzing a case's eligibility for § 1404(a) transfer is "whether the judicial district to which transfer is sought would have been a district in which the claim could have been filed." *Volkswagen I*, 371 F.3d at 203 (citation omitted). The parties do not dispute that this action could have been brought in the Northern District of California. The Court therefore assumes that venue would be proper in the Northern District.

b.   Private Interest Factors

i.   Cost of Attendance for Willing Witnesses

"The convenience of the witnesses is probably the single most important factor in a transfer analysis." *Genentech*, 566 F.3d at 1343 (citation omitted). Under the Fifth Circuit's 100-mile rule,

"[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.

Google argues that most non-party witnesses likely to be called to testify in this case reside or work in or near the Northern District, including many relevant current and former Fortress employees.[5] Dkt. No. 94 at 10 (citing *id*. at Background § III) (identifying over a dozen potential witnesses in California). On the other hand, Google states that it is not aware of any non-party witnesses who reside or work in the Eastern District. *Id*. (citing *Toyota*, 747 F.3d at 1340; Dkt. No. 94-15 at 56:11–57:12). Google also argues that the Northern District is more convenient for party witnesses as most of the relevant Google and Uniloc witnesses reside in or near the Northern District. *Id*. (citing *id*. at Background §§ I–II; Dkt. No. 94-10 at 15–19).

Uniloc counters that "Google fails to identify any *willing* nonparty witnesses" while Uniloc can identify two non-party witnesses who are willing to travel to this District. Dkt. No. 142 at 11 (citing Palmer Decl.; Burdick Decl.).[6] Further, Uniloc argues its witnesses can provide the information requested from many of the identified non-party witnesses, making their appearance unnecessary. Uniloc also calls into question Google's assertion that the location of Google's party witnesses favors transfer. Finally, Uniloc concedes that while two of its witnesses are based in California, another is based in New Jersey, which is closer to this District than California. Uniloc concludes that, taken as a whole, the convenience of its witnesses does not support transfer as the Uniloc witnesses prefer to testify in this District, Uniloc has an office in this District, and "lodging

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[5] Fortress Investment Group is a Northern California entity that incorporated and formed both Uniloc and Uniloc's parent, CF Uniloc Holdings LLC, funded Uniloc's patent assertion strategies, and appointed its own employees as officers and board members of Uniloc and CF Uniloc, many of whom reside and work in the Northern District. *Id*. at 6–8 (citations omitted). The parties sharply disagree over Fortress' relevance.

[6] Uniloc only attached exhibits to its Motion briefing in Case No. 2:18-cv-00548. *See, e.g.*, Dkt. No. 114 in the -548 case. However, it stated that the exhibits are identical in each case. *See* Dkt. No. 142 at 1 n.1. Therefore, the Court relies on the exhibits attached in the -548 case but cites to the record in this case as if the exhibits had been attached.

and meals are likely to be significantly less expensive in Marshall than in San Francisco." *Id*. at

12–13 (citing Dkt. No. 142-1; Dkt. No. 142-9 at 59:5–7; Turner Decl. at ¶ 3; Pedersen Decl. at ¶

2).

Google replies that Uniloc does not dispute that the Northern District is more convenient

for the non-party witnesses identified by Google as well as the vast majority of Google and Uniloc

witnesses, who are residents of California. It further contends that Uniloc's assertion that it can

provide information requested from non-party witnesses is contradicted by Uniloc's own

representations throughout venue discovery. Dkt. No. 148 at 1 (citing Dkt. No. 148-2 at 2; Dkt.

No. 148-3 at 3; Dkt. No. 94-8 at 118:19–119:14; Dkt. No. 148-4; Dkt. No. 106 at 2–3). Google

also argues that while Uniloc submitted declarations stating that two non-party witnesses are

willing to travel to this District, it did not address the willingness of the other non-party witnesses

identified by Google, many of whom reside in the Northern District. *Id*. (identifying eight other

potential non-party witnesses). Google also contends that the non-party witnesses identified by

Uniloc either do not reside in this District, have testimony on irrelevant topics, or both. Finally,

Google argues that Uniloc has shown only minimal ties to this District, especially as it relates to

Uniloc's witnesses.

Google recently filed a supplement confirming its previous assertion that its prior

identification of relevant witnesses was accurate. It states "that 13 of the 14 Google witnesses who

were deposed [earlier] were located in the Northern District of California; and at least 25 of the 27

Google witnesses who will be deposed in these cases . . . are similarly located in the Northern

District of California." Dkt. No. 286 at 2. It goes on to state that the other two Google witnesses

as well as two potential Uniloc witnesses are on the West Coast while none are in Texas. Google

then argues that the COVID-19 pandemic increases the importance of witness location and

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