



cv-00961 (E.D. Tex. Jun. 29, 2016). Each of these matters was also assigned to Judge Schroeder and referred to the undersigned.

In its Complaint, Realtime alleges that Defendants have entered into a “commercial partnership” where Quantum supplies its DXi deduplication software technology to FAI for incorporation into FAI’s products, including FAI’s ETERNUS CS800 product. (*Id.* at ¶ 4.) In its Answer to the Complaint, FAI denies that it has a commercial partnership with Quantum, but admits that its ETERNUS CS800 product uses Quantum’s DXi deduplication software. (Doc. No. 24, ¶4.) In Quantum’s Answer, Quantum admits “that it has licensed one or more versions of Quantum DXi software to [FAI]” and denies Realtime’s remaining allegations. (Doc. No. 28, ¶4.)

Realtime is a New York limited liability company with its principal place of business located at 116 Croton Lake Road, Katonah, New York 10536. (Doc. No. 1, ¶ 1.) Realtime also maintains offices in Tyler, Texas and Plano, Texas, where Realtime purports to keep substantially all of its documents relevant to this case. (*Id.*; Doc. No.39-2 (“Tashjian Decl.”), ¶ 5.) Realtime asserts that one of its relevant witnesses is located in this District and four are located in the state of New York. (Tashjian Decl., ¶¶7, 9.)

Quantum is a Delaware Corporation with its principal place of business located in San Jose, California. (Doc. No. 1, ¶3; Doc. No. 28, ¶3.) Quantum asserts that “[s]ubstantial portions of the technology accused of infringement in this case were developed in San Jose.” (Doc. No. 34, (“Mintz Decl.”), ¶2.) Specifically, Quantum asserts that the “research, design and development activities for the accused products in this litigation are split between San Jose, California; Irvine, California; and Adelaide, Australia.” (*Id.* at 4.) Quantum also asserts that its marketing and sales activities are “primarily directed” from San Jose, California. (*Id.*) Quantum

asserts that it has five potential witnesses located in San Jose, three in Irvine, and two in Australia. (*Id.* at ¶¶5-8.) It also asserts that it has three former employees with relevant knowledge who work for competitors in the Bay Area. (*Id.* at ¶¶5, 10.) Quantum states that source code production for this litigation will likely need to be facilitated by one of its engineers located in Irvine, California. (*Id.* at ¶9.)

FAI is a California Corporation with its principal place of business located in Sunnyvale, California. (Doc. No. 24, ¶2.) FAI asserts that the majority of the design, manufacturing, and testing of FAI's accused products occurs outside of the United States, but FAI maintains an engineering department in Sunnyvale, California to address customer requests and "because the United States is an important market." (Doc. No. 33-15 ("Owens Decl."), ¶3.) FAI further asserts that the finance and marketing of the ETERNUS products are directed from Sunnyvale, California and that documents related to those efforts are maintained in Sunnyvale. (Doc. No. 33-16 ("Lam Decl."), ¶¶3, 6; Doc. No. 33-14 ("Kalra Decl."), ¶5, 6.) FAI does not specifically identify any witnesses with relevant information. However, two of its four declarants, each of whom is located in Sunnyvale, California, state that to the extent their knowledge of the ETERNUS products is relevant, they would be willing to testify. (Kalra Decl., ¶8; Owens Decl., ¶8.)

In their Motion, Defendants state that FAI's accused ETERNUS products that are sold in the U.S. either do not include deduplication technology or use Quantum's deduplication technology. (Doc. No. 33, at 2; *see also* Doc. No. 35-1 ("Valiante Decl."), ¶7; Owens Decl., ¶7.) Defendants also note that the "substantive infringement allegations in the Complaint are directed to Quantum's data deduplication functionality." (Doc. No. 33, at 2 (citing Doc. No. 1, ¶¶11-55).) Thus, according to Defendants, "this case is really about Quantum's data deduplication

technology and the location of Quantum's documents and witnesses should be given more weight in the transfer analysis than FAI's." (*Id.* at 2.)

## II. APPLICABLE LAW

Section 1404(a) provides that "[f]or the convenience of the 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). The goals of § 1404(a) are to prevent waste of time, energy, and money, and also to protect litigants, witnesses, and the public against unnecessary inconvenience and expense. *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964). Ultimately it is within a district court's sound discretion to transfer venue pursuant to 28 U.S.C. § 1404(a), but the court must exercise its discretion in light of the particular circumstances of the case. *Hanby v. Shell Oil Co.*, 144 F. Supp. 2d 673, 676 (E.D. Tex. 2001); *Mohamed v. Mazda Corp.*, 90 F. Supp. 2d 757, 768 (E.D. Tex. 2000). The party seeking transfer must show good cause for the transfer. *In re Volkswagen of America, Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) (en banc) ("*Volkswagen IP*"). To show good cause, the moving party must demonstrate the transferee venue is clearly more convenient. *Id.*

When deciding whether to transfer venue, a district court balances the private interests of the parties and the public interests in the fair and efficient administration of justice. The private interest factors the court considers 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 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 P*"). 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 laws or in the application of foreign law. *Id.*

### **III. DISCUSSION**

Realtime does not dispute that venue would be proper in the Northern District of California. The Court thus proceeds to analyze the private and public interest factors under §1404(a).

#### **A. Private Interest Factors**

##### **1. The relative ease of access to sources of proof**

As Defendants note, this factor remains a part of the transfer analysis despite technological advances that have lightened the inconvenience of transporting large amounts of documents. *Volkswagen II*, 545 F.3d at 316. Courts analyze this factor in light of the distance evidence must be transported from its existing location to the trial venue. *See id.* The accused patent infringer is presumed to have the greater volume of documents relevant to the litigation such that more weight is placed on the location of the accused infringer's documents. *See, e.g., in re Nintendo Co., Ltd.*, 589 F.3d 1194, 1199 (Fed. Cir. 2009); *In re Genentech, Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009); *Volkswagen II*, 545 F.3d at 314-15. Documents that have been moved to a particular venue in anticipation of litigation are not considered in this analysis. *In re Hoffman-La Roche Inc.*, 587 F.3d 1333, 1336-37 (Fed. Cir. 2009).

To meet its burden under this factor, Defendants must identify their sources of proof with some specificity such that the Court may determine whether transfer to a particular district will increase the convenience of the parties. *J2 Global Comm'ns, Inc. v. Proctus IP Solutions, Inc.*, No. 6:08-cv-211, 2009 WL 440525, at \*2 (E.D. Tex. Feb. 20, 2009); *see also Invitrogen v. Gen.*

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