IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

TRILLER, INC., ***Plaintiff,***	§	
v.	§	**6-20-CV-00693-ADA**
BYTEDANCE, LTD., BYTEDANCE, INC., TIKTOK, INC., TIKTOK PTE. LTD., ***Defendants.***	§	

ORDER GRANTING MOTION TO TRANSFER

Came on for consideration this date is Defendants' Motion to Transfer to the Northern District of California ("NDCA") pursuant to 28 U.S.C. § 1404(a). After careful consideration of the Motion, the Parties' briefs, and the applicable law, the Court is of the opinion that the Motion should be **GRANTED**.

I. INTRODUCTION

A party seeking a transfer to an allegedly more convenient forum carries a significant burden. *Babbage Holdings, LLC v. 505 Games (U.S.), Inc.*, No. 2:13-CV-749, 2014 U.S. Dist. LEXIS 139195, at *12–14 (E.D. Tex. Oct. 1, 2014) (stating the movant has the "evidentiary burden" to establish "that the desired forum is clearly more convenient than the forum where the case was filed"). The burden that a movant must carry for a Section 1404(a) transfer is not that the alternative forum is more convenient, but that it is clearly more convenient. *In re Volkswagen, Inc.*, 545 F.3d 304, 314 n.10 (5th Cir. 2008) (hereinafter "*Volkswagen II*"). Defendants agreed to jurisdiction and venue in the Western District of Texas ("WDTX") "for the purposes of this case only," or "[t]o streamline proceedings." Defs.' Joinder, ECF No. 45-1 at ¶ 1

n.1. Defendants subsequently moved to have this case transferred to NDCA, and the Court finds that transfer to NDCA is warranted.

II. LEGAL STANDARD

Section 1404(a) provides that, for the convenience of parties and witnesses, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented. "Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'" *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)). The party seeking a transfer under Section 1404(a) must show good cause. *Volkswagen*, 545 F.3d at 315 (quoting *Humble Oil & Refin. Co. v. Bell Marine Serv., Inc.*, 321 F.2d 53, 56 (5th Cir. 1963)). In this context, showing good cause requires the moving party to "clearly demonstrate that a transfer is for the convenience of parties and witnesses [and] in the interest of justice." *Id.* (cleaned up) (quoting 28 U.S.C. § 1404(a)). When the movant fails to demonstrate that the proposed transferee venue is "clearly more convenient" than the plaintiff's chosen venue, "the plaintiff's choice should be respected." *Id.* Conversely, when the movant demonstrates that the proposed transferee venue is clearly more convenient, the movant has shown good cause and the court should transfer the case. *Id.* The "clearly more convenient" standard is not equal to a clear-and-convincing-evidence standard, but it is nevertheless "materially more than a mere preponderance of convenience." *Quest NetTech Corp. v. Apple, Inc.*, No. 2:19-CV-00118, 2019 WL 6344267, at *7 (E.D. Tex. Nov. 27, 2019).

"The preliminary question under § 1404(a) is whether a civil action 'might have been brought' in the destination venue." *Volkswagen II*, 545 F.3d at 312. If so, in the Fifth Circuit, the

"[t]he determination of 'convenience' turns on a number of public and private interest factors, none of which can be said to be of dispositive weight." *Action Indus., Inc. v. U.S. Fid. & Guar. Co.*, 358 F.3d 337, 340 (5th Cir. 2004). The private 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." *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) (*Volkswagen I*) (citing to *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1982)). 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.* Courts evaluate these factors based on "the situation which existed when suit was instituted." *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960).

Although these factors "are appropriate for most transfer cases, they are not necessarily exhaustive or exclusive," and no single factor is dispositive. *Volkswagen II*, 545 F.3d at 315. Moreover, courts are not to merely tally the factors on each side. *In re Radmax, Ltd.*, 720 F.3d 285, 290 n.8 (5th Cir. 2013). Instead, courts "must make factual determinations to ascertain the degree of actual convenience, if any, and whether such rises to the level of 'clearly more convenient.'" *Quest NetTech*, 2019 WL 6344267, at *7 (citing *In re Radmax*, 720 F.3d at 290 (holding that, where five factors were neutral, two weighed in favor of transfer, and one weighed "solidly" in favor of transfer, the movant had met its burden)); *see also In re Radmax*, 720 F.3d at 290 (holding that courts abuse their discretion when they deny transfer solely because the plaintiff's choice of forum weighs in favor of denying transfer). A plaintiff's choice of venue is

not an independent factor in the venue transfer analysis, and courts must not give inordinate weight to a plaintiff's choice of venue. *Volkswagen II,* 545 F.3d at 313 ("[W]hile a plaintiff has the privilege of filing his claims in any judicial division appropriate under the general venue statute, § 1404(a) tempers the effects of the exercise of this privilege."). However, "when the transferee venue is not clearly more convenient than the venue chosen by the plaintiff, the plaintiff's choice should be respected." *Id.* at 315; *see also QR Spex, Inc. v. Motorola, Inc.*, 507 F.Supp.2d 650, 664 (E.D. Tex. 2007) (characterizing movant's burden under Section 1404(a) as "heavy").

III. BACKGROUND

Plaintiff Triller, Inc. filed this patent infringement suit against Original Defendants ByteDance, Ltd. ("BDL") and TikTok, Inc. ("TTI") on July 29, 2020. Pl.'s Compl., ECF No. 1. Triller is incorporated in Delaware with its principal place of business located in Los Angeles, California. *Id.* at ¶ 3. BDL is a Cayman Islands corporation, and TTI is incorporated in California with its principal place of business located in Culver City, California. Defs.' Mot., ECF No. 30 at ¶¶ 1, 7.

Defendant BDL filed a Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction contemporaneously with Defendants' Rule 12(b)(3) Motion to Dismiss or Transfer pursuant to 1404(a) on November 19, 2020. Def. BDL's Mot. to Dismiss, ECF No. 29; Defs.' Mot. On November 24, 2020, Triller amended its Complaint to include additional Defendants ByteDance, Inc. ("BDI") and TikTok, Pte. Ltd. ("TTPL"). Pl.'s Amend. Compl., ECF No. 32 at ¶ 1. BDI is incorporated in Delaware with its principal place of business in Mountain View, California, and TTPL is a Singapore corporation. Defs.' Reply, ECF No. 68 at ¶ 2; Pl.'s Amend. Compl. at ¶ 3.

Triller claims that BDL "controls the majority of the shares or other ownership units of TTI, BDI, and TTPL and controls or attempts to control the activities of each of them," and that BDI is the *alter ego* of TTI. Pl.'s Amend. Compl. at ¶¶ 3, 13. Furthermore, BDI's Global Business Solutions unit is based in Austin, Texas, and the "TikTok app has been widely distributed in [WDTX.]" Pl.'s Resp., ECF No. 63 at ¶ 14; Pl.'s Amend. Compl. at ¶ 5.

On February 1, 2021, BDI and TTPL joined the Original Defendants' Section 1404(a) Motion to Transfer. Defs.' Joinder, ECF No. 51. The Original Defendants then withdrew their Motions to Dismiss consenting to this Court's jurisdiction "for purposes of this case only." Defs.' Joinder at ¶ 1 n.1. Triller filed its Response on May 12, 2021, and Defendants filed their Reply on June 1, 2021. Pl.'s Resp.; Defs.' Reply. On June 25, 2021, the Court held a hearing on Triller's Motion to Strike information presented in Defendants' Reply, and the Motion to Strike was denied. Text Order denying Plaintiff's Motion to Strike (July 6, 2021).

Triller's Complaint alleges infringement of U.S. Patent No. 9,691,429 titled "Systems and methods for creating music videos synchronized with an audio track" (the "Asserted Patent"). Pl.'s Amend. Compl. at ¶ 1. Triller is the developer and distributor of a social video platform application for iOS and Android devices. *Id*. Triller claims that Defendants "directly and indirectly infringe the Asserted Patent by making, using, offering for sale, selling, importing, and/or inducing others to use the popular iOS and Android software application known as 'TikTok.'" *Id*. at ¶ 2. The TikTok application is also a social video platform application for iOS and Android devices. *Id*. at ¶ 5. Triller claims the TikTok application infringes the Asserted Patent through the Green Screen Video ("GSV") effect, which allows TikTok application users to "shoot over" synchronized video and audio tracks. *Id*. at ¶ 23.

IV. ANALYSIS

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