

1 Jacqueline K. S. Lee  
2 **JONES DAY**  
3 1755 Embarcadero Road  
4 Palo Alto, CA 94303  
5 Telephone: 650.739.3939  
6 Facsimile: 650.739.3900  
7 jkslee@jonesday.com

8 Blaney Harper  
9 **JONES DAY**  
10 51 Louisiana Avenue, N.W.  
11 Washington, DC 20001-2113  
12 Telephone: 202.879.3939  
13 Facsimile: 202.626.1700  
14 bharper@jonesday.com

15 *Attorneys for Defendant Cree, Inc.*

16 **UNITED STATES DISTRICT COURT**  
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

18 Document Security Systems, Inc.,

19 Plaintiff,

20 v.

21 Cree, Inc.,

22 Defendant.

Case No. 2:17-cv-04263-JVS-JCG

**DEFENDANT CREE, INC.'S  
REPLY BRIEF IN SUPPORT OF  
MOTION TO TRANSFER  
VENUE PURSUANT TO 28  
U.S.C. § 1404(A)**

Judge: Hon. James V. Selna  
Hearing Date: October 16, 2017  
Time: 1:30 p.m.  
Courtroom: 10C

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1 **I. INTRODUCTION**

2 Plaintiff's Brief in Opposition falls short of rebutting Cree's showing that  
3 Plaintiff's choice of forum should be entitled to little, if any, deference under the  
4 circumstances of this case. It is further clear that analysis of the *Jones* factors  
5 strongly favors transfer. In the present circumstances, this action should be  
6 moved to the Middle District of North Carolina.

7 In support of its motion, Cree explained that Plaintiff twice brought suit  
8 outside its home forum to a venue where it had no substantial connection. The  
9 present suit in California is not only outside Plaintiff's home forum of New  
10 York, but also is entirely across the country from where Cree is located in North  
11 Carolina and from where the vast majority of evidence concerning the  
12 infringement counts is located. On these facts, Plaintiff's choice of forum is not  
13 entitled to deference because the operative facts have not occurred within the  
14 forum and the forum has no interest in the parties or the subject matter.  
15 Additionally, particularly in patent infringement cases, courts have given less  
16 weight to the plaintiff's chosen forum and instead focused on the 'center of  
17 gravity of the accused activity' when ruling on motions to transfer. Cree  
18 maintains that appropriate consideration of the convenience of the parties,  
19 convenience of the witnesses, location of the evidence, and the interests of  
20 justice all strongly favor transfer under the analysis of the *Jones* factors.

21 In its brief opposing transfer, Plaintiff DSS contends that it is entitled to  
22 deference in its choice of forum. This argument is untenable in light of the fact  
23 that DSS resides in New York and has no substantial contacts with California.  
24 Additionally, Plaintiff argues that Cree's advanced research facility in this  
25 district conducted research and development relating to the accused products.  
26 This argument is misplaced. The vast majority of records concerning the  
27 structure of the accused products and their sales are located in North Carolina.

1 The mere fact that some discoverable information may exist in California, even  
2 if true, does not change the fact that the vast majority of the relevant evidence is  
3 located far away from this District. Plaintiff makes several other subsidiary  
4 arguments which are contradicted by the facts here or are wholly unsupported,  
5 and in any event, fail to rebut Cree's showing of convenience.

## 6 **II. ARGUMENT**

### 7 **A. Plaintiff's choice of venue is not entitled to deference in this case**

8 Relying on two cases, *iPowerUp* and *Broadcom*, DSS contends that  
9 "DSS's choice of forum is entitled deference and weighs against transfer."  
10 Plaintiff's Brief in Opposition, ECF No. 30 at 4. However, both cases relied on  
11 by DSS are inapposite because they involve a plaintiff residing in this District.

12 In *iPowerUp*, the court noted that "Defendant has not presented evidence  
13 to show that the connection [between the alleged infringement and this District]  
14 is 'insignificant.' Moreover, ***Plaintiff resides in this District.***" *iPowerUp, Inc.*  
15 *v. Ascent Solar Techs., Inc.*, No. LA CV16-01006-JAK (AFMx), 2016 WL  
16 6953453, at \*2 (C.D. Cal. May 27, 2016) (emphasis added). As explained in  
17 Cree's motion, ECF No. 27 at 8-10, lack of Plaintiff's residence in a district  
18 significantly undercuts any deference concerning Plaintiff's choice of forum.  
19 Plaintiff DSS does not reside in this District. *See, e.g.*, First Amended  
20 Complaint, ECF No. 17, ¶¶1-2 ("Document Security Systems, Inc. is a publicly-  
21 traded New York corporation. . . . DSS is pursuing both licensing and  
22 commercialization of this technology acquisition, and is establishing those  
23 activities within its Plano location.")<sup>1</sup> This lack of residence factually  
24 distinguishes the present case from *iPowerUp*.

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27 <sup>1</sup> In further contrast to *iPowerUp*, Cree has presented ample evidence that the  
connection of the alleged infringement to this District is insignificant. *See e.g.*,

1 Likewise in *Broadcom*, the plaintiff was “a California corporation with its  
2 principal place of business in Irvine, California.” *Broadcom Corp. v. Sony*  
3 *Corp.*, No. SACV 16-1052 JVS (JCGx), D.E. 60-1 at 3 (C.D. Cal. Sept. 12,  
4 2016). The court noted:

5 “Broadcom has presented evidence establishing substantial contacts  
6 with the Central District relating to its claims for patent infringement.  
7 This includes, most importantly, declaration testimony from  
8 Broadcom human resources personnel establishing that (1) Broadcom  
9 maintains its principal place of business in Irvine, California, and that  
10 (2) Broadcom makes ultimate business and legal decisions regarding  
11 domestic patent prosecution at its Irvine offices.”

12 *Id.* at 7. Again, in contrast with *Broadcom* and *iPowerUp*, DSS has no  
13 contacts with this district whatsoever, let alone “maintain[ing] a principal place  
14 of business” or “mak[ing] ultimate business and legal decisions.”

15 DSS also cites *Broadcom* for the proposition that “of all the transfer  
16 factors, the plaintiff’s choice of forum carries the most weight.” Plaintiff’s Brief  
17 in Opposition, ECF No. 30 at 4. However, in *Broadcom* the court quotes  
18 approvingly from *Saleh* that “[t]he relative convenience to the witnesses is often  
19 recognized as the most important factor to be considered in ruling on a motion  
20 under § 1404(a).” *Broadcom*, D.E. 60-1 at 5 (quoting *Saleh v. Titan Corp.*, 361  
21 F. Supp. 2d 1152, 1160 (S.D. Cal. 2005)). DSS mischaracterizes the  
22 applicability of both *iPowerUp* and *Broadcom* to the facts of the present matter.  
23 DSS is not a resident of California, has chosen twice to avoid its resident state,  
24 and its choice of forum now is not entitled to deference.  
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California] facility is not responsible for the manufacturing or selling of specific

1           **B.     Location of Cree’s R&D facility in this District is not relevant to**  
2                           **the venue transfer analysis**

3           DSS argues that “Cree has a research and development facility in this  
4 District, where research and development relating to the accused products is or  
5 has been conducted.” Plaintiff’s Brief in Opposition, ECF No. 30 at 6. DSS’  
6 argument is misplaced because the relevant issue for the court now is the  
7 convenience of the parties, not whether venue is appropriate.

8           The relevant *Jones* factors here are convenience of the parties,  
9 convenience of the witnesses, and location of the evidence. The proffered  
10 venues are evaluated on these bases. To analyze the *Jones* factors, the question  
11 is not whether the parties have *some* evidence, or witnesses, in this District.  
12 Rather, the question is where are there *significantly more* relevant witnesses and  
13 evidence, such that the convenience of the parties will be enhanced. As  
14 explained in Cree’s motion, ECF No. 27 at 10-13, the answer to this question is  
15 unquestionably North Carolina.

16           In particular, a substantial amount of Cree’s manufacturing facilities are  
17 located in North Carolina. ECF No. 28, Demos Decl. ¶5. Cree’s corporate  
18 records concerning the structure and sales of the accused products are located in  
19 North Carolina. *Id.* ¶7. All Cree witnesses identified so far are located in North  
20 Carolina. *Id.* ¶8. Further, Cree’s advanced research facility (the SBTC) is not  
21 responsible for the production, manufacture, sale, or marketing of any product.  
22 *Id.* ¶5. Cree is not presently aware of any relevant evidence located in the SBTC  
23 facility. *Id.* ¶9. Significantly more evidence and witnesses concerning the  
24 infringement allegations are located in North Carolina.

25           DSS highlights Cree’s Application Note for XLamp XB-D as  
26 “confirm[ing] that it tested bulbs incorporating the accused XB-D LED  
27 components at the SBTC.” Plaintiff’s Brief in Opposition, ECF No. 30 at 6. As

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