

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

REALTIME ADAPTIVE STREAMING	)	
LLC,	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 17-1692-JFB-SRF
	)	
NETFLIX, INC., and NETFLIX	)	
STREAMING SERVICES, INC.,	)	
	)	
	)	
Defendants.	)	

**REPORT AND RECOMMENDATION**

**I. INTRODUCTION**

Presently before the court in this patent infringement action is defendants’ Netflix, Inc. and Netflix Streaming Services, Inc.’s (collectively, “Netflix”) motion to transfer pursuant to 28 U.S.C. § 1404(a).<sup>1</sup> (D.I. 20) For the following reasons, I recommend that the court deny Netflix’s motion to transfer.

**II. BACKGROUND**

On November 21, 2017, Realtime Adaptive Streaming LLC (“Realtime”) originally filed this patent infringement action against Netflix, asserting infringement of United States Patent Numbers 8,934,535 (“the ‘535 patent”), 9,769,477 (“the ‘477 patent”), 9,762,907 (“the ‘907 patent”), and 7,386,046 (“the ‘046 patent”) (collectively, the “Fallon patents”). (D.I. 1 at ¶ 8) Additionally, Realtime asserts Netflix’s infringement of United States Patent Numbers 8,634,462 (“the ‘462 patent”) and 9,578,298 (“the ‘298 patent”) (collectively, the “Non-Fallon patents”). (*Id.*) Realtime is the owner by assignment of the patents-in-suit, which relate to the concept of

---

<sup>1</sup> All briefing associated with this motion may be found at D.I. 21; D.I. 29; D.I. 33.

encoding and decoding data, and the digital compression of data. (*Id.* at ¶¶ 9-14; D.I. 21 at 1; D.I. 29 at 2)

Netflix has both its principal place of business and headquarters in Los Gatos, California, which is within the Northern District of California. (*Id.* at ¶¶ 2-3) Netflix is a Delaware corporation and offers services and products in the District of Delaware. (*Id.* at ¶¶ 2-4) Realtime, a Texas limited liability company, maintains its principal place of business in Tyler, Texas. (*Id.* at ¶ 1)

On February 5, 2018, Netflix filed a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that Realtime failed to allege plausible claims of infringement as to the Non-Fallon patents and challenging the patentability of the Fallon patents under 35 U.S.C. § 101. (D.I. 11; D.I. 13) As of the date of this Report and Recommendation, Netflix’s motion to dismiss remains pending.<sup>2</sup>

On April 10, 2018, Realtime filed a motion to transfer pursuant to 28 U.S.C. § 1407 with the United States Judicial Panel on Multidistrict Litigation (“the Panel”) to consolidate in the District of Colorado actions it originally brought in Delaware, California, Texas, Massachusetts, and Colorado. (D.I. 19, Ex. A) On May 1, 2018, Netflix filed this pending motion to transfer the case to the Northern District of California. (D.I. 20) On August 1, 2018, the Panel denied Realtime’s motion due to the need for defendant-by-defendant analysis of individual design elements. (D.I. 37)

---

<sup>2</sup> Oral argument on Netflix’s motion to dismiss, D.I. 11, and the motion to dismiss in the related case against Haivision Network Video Inc. (“Haivision”), C.A. No. 17-1520 D.I. 23, was held on October 2, 2018.

### III. LEGAL STANDARD

Section 1404(a) of Title 28 of the United States Code grants district courts the authority to transfer venue “[f]or the convenience of parties and witnesses, in the interests of justice . . . to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). In accordance with the analytical framework described in *Helicos Biosciences Corp. v. Illumina, Inc.*, 858 F. Supp. 2d 367 (D. Del. 2012), the court starts with the premise that a defendant’s state of incorporation has always been “a predictable, legitimate venue for bringing suit” and that “a plaintiff, as the injured party, generally ha[s] been ‘accorded [the] privilege of bringing an action where he chooses.’” 858 F. Supp. 2d at 371 (quoting *Norwood v. Kirkpatrick*, 349 U.S. 29, 31 (1955)). The Third Circuit in *Jumara v. State Farm Ins. Co.* reminds the reader that “[t]he burden of establishing the need for transfer . . . rests with the movant” and that, “in ruling on defendants’ motion, the plaintiff’s choice of venue should not be lightly disturbed.” 55 F.3d 873, 879 (3d Cir. 1995) (citation omitted).

The Third Circuit goes on to recognize that,

[i]n ruling on § 1404(a) motions, courts have not limited their consideration to the three enumerated factors in § 1404(a) (convenience of parties, convenience of witnesses, or interests of justice), and, indeed, commentators have called on the courts to “consider all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum.”

*Id.* (citation omitted). The Court then describes some of the “many variants of the private and public interests protected by the language of § 1404(a).” *Id.*

The private interests have included: plaintiff’s forum of preference as manifested in the original choice; the defendant’s preference; whether the claim arose elsewhere; the convenience of the parties as indicated by their relative physical and financial condition; the convenience of the witnesses – but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and the location of books and records (similarly limited to the extent that the files could not be produced in the alternative forum).

The public interests have included: the enforceability of the judgment; practical considerations that could make the trial easy, expeditious, or inexpensive; the relative administrative difficulty in the two fora resulting from court congestion; the local interest in deciding local controversies at home; the public policies of the fora; and the familiarity of the trial judge with the applicable state law in diversity cases.

*Id.* (citations omitted).

#### **IV. DISCUSSION**

Netflix moves to transfer this case, under 28 U.S.C. § 1404(a), to the United States District Court for the Northern District of California. (D.I. 20) Realtime opposes Netflix's motion arguing that that the *Jumara* factors weigh against granting the transfer. (D.I. 29) After considering the *Jumara* factors, I recommend that the court deny Netflix's motion to transfer.

##### **A. Whether the Case Could Have Been Brought in the Northern District of California**

It is undisputed that Realtime could have originally filed this case in the Northern District of California. (D.I. 21 at 7; D.I. 29 at 1-4) Venue, personal jurisdiction, and subject matter jurisdiction requirements would all be satisfied in the Northern District of California. *See Blackbird Tech. LLC v. Cloudflare, Inc.*, C.A. No. 17-283, 2017 WL 4543783, at \*3 (D. Del. Oct. 11, 2017) (quoting *Smart Auidio Techs., LLC v. Apple, Inc.*, 910 F. Supp. 2d 718, 728 (D. Del. 2012)). Netflix offers the allegedly infringing services worldwide and maintains a principal place of business in Los Gatos, California, within the transferee district. (D.I. 21 at 4-5; D.I. 29 at 7) Therefore, venue would have been proper in the Northern District of California according to the second part of § 1400(b). Finally, the parties do not dispute that the proposed transferee district meets the personal and subject matter jurisdictional requirements. *See* 28 U.S.C. §§ 1331, 1338(a). Having found no dispute that the case could have been brought in the Northern

District of California, the court now turns to analyze the *Jumara* private and public interest factors.

**B. Private Interests**

**a. Plaintiff's Forum Preference**

Plaintiffs have historically been accorded the privilege of choosing their preferred venue for pursuing their claims. *See C. R. Bard, Inc. v. Angiodynamics, Inc.*, 156 F. Supp. 3d 540, 545 (D. Del. 2016). “It is black letter law that a plaintiff’s choice of a proper forum is a paramount consideration in any determination of a transfer request, and that choice should not be lightly disturbed.” *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 25 (3d Cir. 1970) (internal citation and quotation marks omitted). However, the Federal Circuit has accorded less deference to a plaintiff’s choice of forum when the plaintiff is not physically located in the chosen forum and the forum is therefore not inherently more convenient for the plaintiff. *See In re Link\_A\_Media Devices Corp.*, 662 F.3d 1221, 1223 (Fed. Cir. 2011); *Mitel Networks Corp. v. Facebook, Inc.*, 943 F. Supp. 2d 463, 469-70 (D. Del. 2013).

In the present action, Realtime does not allege that it has facilities, employees, or operations in Delaware. However, this court has found that it is legitimate and rational for a plaintiff to file suit in the defendant’s state of incorporation, and Netflix is incorporated in Delaware. *See Genentech, Inc. v. Amgen Inc.*, C.A. No. 17-1407-GMS, 2018 WL 503253, at \*3 (D. Del. Jan. 22, 2018); *Elm 3DS Innovations LLC v. SK Hynix Inc.*, C.A. No. 14-1432-LPS-CJB, 2015 WL 4967139, at \*4 (D. Del. Aug. 20, 2015). Realtime’s choice of Delaware as a forum weighs in its favor, but not as strongly as it would if Realtime had a place of business in Delaware. *See IpVenture, Inc. v. Acer, Inc.*, 879 F. Supp. 2d 426, 431 (D. Del. 2012); *Memory Integrity, LLC v. Intel Corp.*, C.A. No. 13-1804-GMS, 2015 WL 632026, at \*3 (D. Del. Feb. 13,

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.