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

OMNI MEDSCI, INC.,	§	
	§	
Plaintiff,	§	**CIVIL ACTION NO. 2:18-CV-00134-RWS**
	§	
v.	§	~~SEALED~~
	§	
APPLE INC.,	§	
	§	
Defendant.	§	

ORDER

Before the Court is Defendant Apple, Inc.'s Motion to Transfer Venue to the Northern District of California under 28 U.S.C. § 1404 (Docket No. 59). Apple contends that venue is clearly more convenient in the Northern District of California. Apple filed a nearly identical motion in the co-pending case between these parties, Case No. 2:19-cv-429, and the parties agree there are no substantive differences between the two motions.

I. Procedural Background

Plaintiff Omni MedSci, Inc. ("Omni MedSci") brought case no. 2:18-cv-134 ("the '134 case") in this district, alleging that Apple infringes U.S. Patent Nos. 9,651,533, 9,757,040, 9,861,286 and 9,885,698.[1] Six months later, Omni filed a second suit against Apple in this district, 2:18-cv-429 ("the '429 case"), alleging infringement of U.S. Patent Nos. 10,098,546, 9,861,286,[2] 9,885,698,[3] 10,188,299 and 10,213,113. Both cases were brought on the same family of patents and asserted against Apple's family of smart watches.

[1] Claims relating to the '698 patent were subsequently dismissed.

After Omni MedSci filed its complaint, Apple waited six months to file the instant motion. Apple then agreed to delay briefing by four more months, until after the *Markman* hearing. On the eve of the *Markman* hearing, Apple moved to stay the case. As a result, the parties were not fully heard on the instant motion until nearly one year after the case was filed. As a result of this delay, fact discovery has closed and the case is in a very late phase.

II. Factual Background

Apple is a Delaware corporation headquartered in Cupertino, California, within the Northern District of California. Omni MedSci is a Michigan company headquartered in Ann Arbor, Michigan. Dr. Mohammad Islam, Omni MedSci's founder, President, Treasurer, Secretary, Director, Chief Technology Officer and resident agent, is the sole named inventor of the asserted patents. Dr. Islam also resides in Ann Arbor.

Venue discovery revealed that, though some of Apple's documents are stored on servers around the country, Apple's witnesses and most third-party witnesses and documents are located in California and a plurality are in the Northern District of California. As for links to this district, Omni MedSci's investigation revealed that one possible source of prior art is located in this district, AMS-TAOS USA Inc. ("Taos").[4] [redacted][6] Although discovery revealed that Apple has a facility in Austin, Texas, there is no evidence that it has any relevance to this case.

[4] Prior to the hearing on this motion, Apple stopped pursuing invalidity based on the Taos prior art. *See* Docket No. 159.

[5] Between the '134 and '429 cases, Omni MedSci has alleged that four generations of Apple smart watches infringe Omni MedSci's patents.

[6] [redacted]

Apple does not dispute that venue in this forum is proper. Instead, it contends that the Northern District is clearly a more convenient forum for this dispute.

III. 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 or to any district or division to which all parties have consented." 28 U.S.C. § 1404(a). The Fifth Circuit has developed a test based on several private and public interest factors to determine whether transfer is appropriate under § 1404(a). *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) ("*Volkswagen II*"). The private interest factors include (1) the availability of compulsory process to secure the attendance of witnesses; (2) the cost of attendance for willing witnesses; (3) the relative ease of access to sources of proof and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive. *Id.* The public interest 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. *Id.*

A plaintiff's choice of venue is not an express factor in the analysis. *Seven Networks, LLC v. Google LLC*, 2:17-CV-00442-JRG, 2018 WL 4026760, at *8 (citing *Volkswagen II*, 545 F.3d at 315). However, a moving defendant must demonstrate that the "that the transferee forum is '*clearly* more convenient.' " *In re HP Inc.*, No. 2018-149, 2018 WL 4692486, at *2 (Fed. Cir. Sept. 25, 2018) (alteration in original) (quoting *In re Toyota Motor Corp.*, 747 F.3d 1338, 1341 (Fed. Cir. 2014)). By applying this elevated burden of proof, the plaintiff's choice of forum is given the appropriate deference. *Seven Networks*, 2018 WL 4026760, at *2 (citing *Volkswagen II*, 545 F.3d at 315).

"Motions to transfer venue are to be decided based on 'the situation which existed when suit was instituted.' " *In re EMC Corp.*, 501 Fed. App'x 973, 976 (Fed. Cir. 2013) (quoting *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960)). However, the Court may consider circumstances that were "apparent at the time the suit was filed." *Id.*

IV. Discussion

As an initial matter, Omni MedSci does not dispute that the case could have been brought in the Northern District of California. Accordingly, the Court focuses its analysis on the convenience factors.

A. Private Interest Factors

As noted above, 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." *Volkswagen II*, 545 F.3d at 315 (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981)).

i. Access to Sources of Proof

"The first factor focuses on the locations of sources of proof, such as documents and physical evidence." *Remmers v. United States*, No. CIV. A. 1:09-CV-345, 2009 WL 3617597, at *4 (E.D. Tex. Oct. 28, 2009). "Courts analyze this factor in light of the distance that documents, or other evidence, must be transported from their existing location to the trial venue." *Uniloc USA, Inc. v. Activision Blizzard, Inc.*, No. 6:13-CV-256, 2014 WL 11609813, at *2 (E.D. Tex. July 16, 2014) (citing *Volkswagen II*, 545 F.3d at 316) (noting that this factor is still relevant even if documents are stored electronically).

This factor turns on which party "most probably [has] the greater volume of documents relevant to the litigation and their presumed location in relation to the transferee and transferor

venues." *Id.* (citing *In re Nintendo Co.*, 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). "In patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer. Consequently, the place where the defendant's documents are kept weighs in favor of transfer to that location." *In re Genentech*, 566 F.3d at 1345 (citation omitted). "That access to some sources of proof presents a lesser inconvenience now than it might have absent recent developments does not render this factor superfluous." *Volkswagen II*, 545 F.3d at 316.

Though the parties dispute where the servers that hold relevant documents are located, Apple has established that sources of proof are more easily available in the Northern District of California. As the defendant in a patent case, the bulk of the documents produced belong to Apple and are more easily accessible where it maintains its headquarters.[7] As to Omni MedSci, any relevant documents they may produce are in Michigan, and Omni MedSci has no ties to this district. The third-party documents in this district that may be relevant—prior art technology from Taos and [redacted] are a small subset of the total sources of proof. Accordingly, this factor weighs in favor of transfer.

ii. The availability of compulsory process to secure the attendance of witnesses

This factor is directed towards unwilling third-party witnesses. *Seven Networks*, 2018 WL 4026760, at *7 (citing *Volkswagen II*, 545 F.3d at 316). " 'A district court should assess the relevance and materiality of the information the witness may provide' and where a party has 'identified witnesses relevant to [the] issues [present in a case], [ ] the identification of those witnesses weighs in favor of [the identifying party].' " *Id.* at *8 (quoting *In re Genentech*, 566

[7] Though Apple maintains a facility in Austin, Texas, where documents may also be accessible, Apple's only places of business in this district—the relevant inquiry—are two retail stores. Omni has not established that these locations

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