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

FINTIV, INC.,		§	
		§	
	Plaintiff,	§	C.A. NO. 6:18-cv-372-ADA
v.		§	
		§	JURY TRIAL DEMANDED
APPLE INC.,		§	
		§	
	Defendant.	§	

APPLE INC.'S MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)

Pursuant to 28 U.S.C. § 1404(a), Defendant Apple Inc. ("Apple") moves to transfer this case to the Northern District of California ("NDCA") because NDCA is a clearly more convenient forum than the Western District of Texas ("WDTX"). Should the Court determine that NDCA is not clearly more convenient than this District, Apple alternatively moves to transfer this case to the Austin Division of this District.

INTRODUCTION

In this patent infringement lawsuit, Fintiv accuses Apple, a California company, of infringing a single patent by making, using, selling, importing and/or offering for sale the Apple Wallet application on iPhone and Apple Watch. The research, design, development, implementation, and product marketing of Apple Wallet are all centered in NDCA. Accordingly, Apple's potential witnesses and documents are in NDCA. Potential nonparty witnesses are also in NDCA. Apple is not aware of any potential Apple or nonparty witnesses in this District.

Although Fintiv is headquartered in Austin, it appears to be a virtual company focusing on patent enforcement with only a handful of employees around the United States. Fintiv does not appear to have been involved in the development of the patent-in-suit and admitted it does not possess any conception and reduction to practice documents. Therefore, Fintiv is unlikely to have many relevant witnesses or documents in this District or anywhere.

Because the interests of justice and the convenience of the parties and likely witnesses strongly favor transfer, Apple respectfully requests that this action be transferred to NDCA, or in the alternative, to the Austin Division of WDTX.

BACKGROUND

I.   This Lawsuit and the Asserted Patent

Fintiv alleges that the Apple Wallet application (the "Accused Technology") on the iPhone (including the iPhone 6, 6 Plus, 6s, 6s Plus, SE, 7, 7 Plus, 8, 8 Plus, X, XR, XS, and XS Max) and Apple Watch (including Series 1 through 4) (collectively, the "Accused Products") infringes U.S. Patent No. 8,843,125 (the "'125 Patent"). Pl.'s 1st Am. Compl. for Patent Infringement ¶¶ 1-3, 16 (ECF No. 28) ("FAC"). The '125 Patent is titled "System and Method for Managing Mobile

Wallet and Its Related Credentials." According to Fintiv, the '125 Patent relates to "a mobile wallet application and mobile wallet management system to store contactless cards in a secure environment." *Id. ¶* 12.

II.   Apple's Witnesses and Documents Are in NDCA

Apple is a California corporation headquartered in Cupertino, California since 1976. Decl. of Michael Jaynes ¶ 3 (Ex. A) ("Jaynes Decl."). Although Apple sells its products throughout the United States, the research, design, development, marketing, and finance operations for the Accused Technology take place in NDCA. *Id. ¶¶* 5, 10-15, 17, 19-21. Indeed, the Apple employees who designed and developed the Accused Technology, and who will be able to explain to jury how that technology operates, are located in or around Cupertino. *Id. ¶¶* 12-15.

Because Fintiv's infringement allegations are based largely on the Apple Wallet software, engineers familiar with the Apple Wallet source code and servers will be particularly important witnesses. *See, e.g.*, Decl. of Claudia Wilson Frost (Ex. B-17) (Preliminary Infringement Contentions at 18) ("Frost Decl.") ("On information and belief, the Accused Apple Devices enable retrieving a widget (e.g., related user interface software) and a wallet management applet (WMA) (e.g., a software component related to management of credit card applets) corresponding to the contactless card applet (e.g., a software component related to a credit card within Apple Wallet)."); *id.* at 89 ("On information and belief, the Accused Apple Devices include a WMS (e.g., Apple Pay server wallet management infrastructure) that is hosted on the TSM system (e.g., Apple Pay servers)."). These individuals are located in NDCA.

Glen Steele is an Engineering Manager at Apple and leads the Wallet Engineering team for iOS, the operating system for the accused iPhones. Jaynes Decl. ¶ 12. Mr. Steele and his team are responsible for developing, maintaining, and updating the device-side iOS source code for Apple Wallet. *Id.* Mr. Steele and the members of his team with knowledge about the design and development of the Apple Wallet iOS source code are all located in or around Cupertino. *Id.*

Greg Novick is an Engineering Manager at Apple and leads the Apple Watch Software Engineering team for watchOS, the operating system for the accused Apple Watches. *Id.* ¶ 13.

Mr. Novick and his team are responsible for developing, maintaining, and updating the device-side watchOS source code for Apple Wallet. *Id.* Mr. Novick and the members of his team with knowledge about the design and development of the Apple Wallet source code for watchOS are all located in or around Cupertino. *Id.*

Chris Sharp is the Director of Engineering in the Apple Pay Server Engineering group. *Id.* ¶ 15. Mr. Sharp has been involved in the design and development of Apple Wallet, and its predecessor product called Apple Passbook, since its inception around 2011, and he wrote much of the source code for the original version of the server-side software utilized by the Apple Wallet application. *Id.* Mr. Sharp's team is responsible for developing, updating, and maintaining the server-side source code for Apple Wallet. *Id.* The servers are not located in WDTX. *Id.* With four exceptions, Mr. Sharp and his team are located in or around Cupertino. *Id.* The remaining four individuals are located outside the United States. *Id.*

Apple witnesses with knowledge relevant to non-technical issues in this case are also located in NDCA. David Brudnicki leads the Apple Pay Product Architecture team at Apple. *Id.* ¶ 14. Mr. Brudnicki's team interfaces with both internal Apple personnel (*e.g.*, the Apple Wallet engineering teams) and external business partners (*e.g.*, financial institutions) to ensure that Apple Wallet satisfies business, technical, and regulatory requirements. *Id.* Mr. Brudnicki and all the members of his team are located in or around Cupertino. *Id.*

Baris Cetinok is the Senior Director of Product Marketing at Apple with product marketing responsibilities for Apple Wallet and Apple Pay. *Id.* ¶ 17. Mr. Cetinok and his team members with knowledge of Apple Wallet product marketing are located in or around Cupertino. *Id.*

Michael Jaynes, Senior Finance Manager at Apple, works in Sunnyvale, California and is knowledgeable about the sales and financial information concerning iPhones and Apple Watches. *Id.* ¶ 21. Apple's team responsible for and knowledgeable about Apple's licensing practices is also located in NDCA, and none of its members are in Texas. *Id.* ¶ 20.

In addition, none of these individuals are aware of anyone in Texas who is responsible for

designing, developing, or marketing Apple Wallet.[1] *Id.* ¶¶ 12-15, 17, 22.

III.   Fintiv Is Likely to Have Few Sources of Evidence

While public details are scarce, Fintiv has the earmarks of a newly-rebranded virtual company with limited business operations beyond litigation. Fintiv claims to be a "new company" that has "a mobile commerce platform that brings together payments, loyalty programs and marketing campaigns in one place." Frost Decl. (Ex. B-12) (Fintiv's webpage); *id.* (Ex. B-13) (Fintiv's LinkedIn Profile). In reality, Fintiv is the new name of a troubled startup previously known as Mozido, Inc. that is now "actively working to enforce its broad patent portfolio." *Id.* (Ex. B-15) (Entity Details for Fintiv, Inc.); *id.* (Ex. B-11) (*Forbes* article). Mozido, "now doing business as Fintiv," was a "financial technology start-up company," *id.* (Ex. B-14, ¶ 4) (Indictment, *United States v. Liberty*), that raised over $55 million in funding between 2010 and 2017. *See id.* (B-16, ¶¶ 1-2) (Compl., *SEC v. Liberty*); *id.* (Ex. B-11) (*Forbes* article). As alleged by the government in lawsuits against certain Mozido founders, significant portions of those funds, however, were diverted for personal use by one founder and his friends and family. *See id.* (Ex. B-14, ¶ 12) (Indictment, *United States v. Liberty*); *id.* (Ex. B-16, ¶ 3) (Compl., *SEC v. Liberty*).

Fintiv alleges its principal place of business is at 801 Barton Springs, Austin, Texas, which is a co-working space owned by WeWork. FAC ¶ 5; Frost Decl. (Ex. B-1) (WeWork webpage—

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[1] Apple has five retail stores and three nonretail offices in WDTX, but none of the employees at those facilities have knowledge relevant to this litigation and all of the relevant documents located to date are in NDCA. *Id.* ¶¶ 24-26. None of the employees in WDTX has any responsibility for the design, development, implementation, or product marketing of Apple Wallet or are likely to have unique documents or information relevant to this case. *Id.* Although Apple employs a data scientist in Austin who is responsible for fraud detection in connection with the Apple Pay card provisioning process, *id.* ¶ 16, the '125 Patent neither claims nor discloses any fraud detection algorithms. *See generally* '125 Pat. Fraud detection is a separate aspect of card provisioning that is not at issue in this case. The data scientist in Austin develops algorithms to detect potential fraud, but does not write code that is included in Apple Wallet, does not design or develop the Accused Technology, and relies on the Cupertino-based Apple Wallet engineers to ensure that Apple Wallet can provide the data necessary for the fraud prevention algorithms. Jaynes Decl. ¶ 16. The algorithms also run on separate servers that are not part of Apple Wallet. *Id.*

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