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

UNILOC 2017 LLC, ***Plaintiff***	§	
	§	**CIVIL NO. 6-19-CV-00532-ADA**
-v-	§	
APPLE INC., ***Defendant***	§	

ORDER DENYING MOTION TO TRANSFER

Came on for consideration this date is Defendant Apple Inc.'s motion for transfer to the Northern District of California ("NDCA") pursuant to 28 U.S.C. § 1404(a). The Court held a hearing on the Motion on May 12, 2020. ECF No. 58. After considering the Motion, the briefs filed by the Parties, and oral argument, the Court is of the opinion that the Motion should be **DENIED**.

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."). Apple does not contest that venue is proper in the Western District of Texas ("WDTX"), nor could it. *See generally,* Def.'s Mot., ECF No. 15; Pl.'s Resp., ECF No. 38, at 2. The burden that a movant must carry is not that the alternative venue 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*). Apple moved to have this case transferred to NDCA. Apple relies heavily on the fact that other courts have transferred other patent cases between it and three Uniloc

entities, including cases outside this judicial District. This Court finds that Apple fails to show that transfer is warranted. While other cases involving Uniloc and Apple may be informative, the Court notes that this case involves a different asserted patent and different technology from any other case that Apple relies on and the Court believes that its determination in this case should be based on the facts that are unique to this case. In short, discretionary decisions by other courts in different cases do not compel the transfer of the current case. Thus, NDCA is not a clearly more convenient venue and Apple's Motion must be denied.

II. LEGAL STANDARD

Title 28 U.S.C. § 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 moving for transfer carries the burden of showing good cause. *Volkswagen II*, 545 F.3d at 314 ("When viewed in the context of § 1404(a), to show good cause means that a moving party, in order to support its claim for a transfer, must . . . clearly demonstrate that a transfer is '[f]or the convenience of parties and witnesses, in the interest of justice.'") (quoting 28 U.S.C. § 1404(a)).

"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) (hereinafter "*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).

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 § 1404(a) as "heavy").

III. BACKGROUND

A. Current case

Uniloc filed this lawsuit on September 10, 2019 alleging infringement of U.S. Patent No. 6,467,088 ("the '088 Patent.). Pl.'s Compl., ECF No. 1. Previously, Uniloc filed suit against Apple in WDTX alleging infringement of the '088 Patent, in which Apple filed a petition for *inter partes*

review. *Uniloc USA, Inc. v. Apple Inc.*, No. 1:18-CV-296 (W.D. Tex. April 9, 2019). On April 29, 2019, the Patent Trial and Appeal Board ("PTAB") found no reasonable likelihood that Apple would prevail on its assertions of invalidity and denied to institute *inter partes* review. PTAB Decision, Ex. 1 at 21, ECF No. 38-2. Uniloc then filed the present suit.

According to Uniloc, the '088 Patent is generally directed at "a reconfiguration manager that may be implemented on a computer or other data processing device to control the reconfiguration of software or other components of an electronic device . . . ." '088 Patent at 2:22–25, ECF No. 38-3. The claimed invention addresses the difficulty in "determin[ing] if a new or improved component is compatible with the rest of the device . . . ." *Id.* at 1:22–25. Uniloc alleges that the Accused Products include at least the Apple macOS, iOS, and iPadOS operating systems and associated servers implementing iOS/macOS/iPadOS update functionality, Mac desktop and notebook computers, iPad, iPhone, and iPod devices running the Apple operating systems, the App Store, and associated servers implementing App Store functionality. ECF No. 1 at ¶ 10; Claim Chart Ex. 3 at 1, ECF No. 38-4. According to Uniloc, "Apple (through a contractor, Flextronics) has manufactured the accused Mac Pro computers in Austin." ECF No. 38 at 2.

Uniloc 2017 LLC is a Delaware company that is part of the larger Uniloc family of entities. Uniloc has an office in Tyler, Texas, and employees in Plano, Texas. Uniloc also has an office in California. Apple is a California corporation headquartered in Cupertino, California. Apple has a second campus in Austin, Texas that has 8,000 employees, with plans to have 15,000 employees in the near future.[1] Apple has several stores within WDTX, notably two in Austin, and three others in San Antonio and El Paso.[2]

[1] *See* Press Release, Apple, *Apple Expands in Austin*, Apple.com, https://apple.com/newsroom/2019/11/apple-expands-in-austin/ (last visited June 10, 2020).
[2] Apple Inc., https://www.apple.com/retail/storelist/ (last visited June 10, 2020).

Apple filed a Motion to Transfer Venue on November 12, 2019. ECF No. 15. On January 17, 2020, the Court granted the Parties' Motion For Leave to Conduct Venue Discovery. On February 10, 2020, Uniloc filed its Response in Opposition to Apple's Motion to Transfer Venue. ECF No. 38. Apple filed its Reply to Uniloc's Response on February 20, 2020. ECF No. 40. The Court held a telephonic hearing on the Motion to Transfer Venue on May 12, 2020 and denied the Motion to Transfer. ECF No. 58.

B. Apple's serial motions to transfer

Apple's current motion to transfer is the latest in a series of motions to transfer that Apple has filed in this Court. As of the date of this order, Apple has been sued for patent infringement ten times in this Court. Of those ten cases, Apple has yet to file an answer or otherwise respond in two cases (*VoIP-Pal.com, Inc. v. Apple Inc.* (6:20-cv-00275) and *Neonode Smartphone LLC v. Apple Inc.* (6:20-cv-00505))), while another case (*Neodron Ltd. v. Apple, Inc.* (6:20-cv-00116)) was stayed pending ITC review. Of the remaining seven cases, Apple has filed a motion to transfer pursuant to 35 U.S.C. § 1404 in five of them (*Fintiv, Inc. v. Apple Inc.* (1:19-cv-01238), *STC.UNM v. Apple Inc.*(1:20-cv-00351), the instant case, *Solas OLED Ltd. v. Apple Inc.* (6:19-cv-00537), and *Parus Holdings Inc. v. Apple Inc.* (6:19-cv-00432)). Of the five cases in which Apple has filed a motion to transfer, the Court has denied three (including the instant case), while two more are pending. In the two cases (excluding the instant case) in which the Court has denied Apple's motion to transfer, Apple has filed petitions for writ of mandamus in both of them. *In re Apple Inc*, No. 20-00104 (Fed. Cir. 2019), *petition for en banc review denied*; *In re Apple Inc*, 2020-127, 2020 WL 3249953 (Fed. Cir. June 16, 2020). The Federal Circuit denied both petitions for writ of mandamus, as well as Apple's petition for *en banc* review.

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