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

PARUS HOLDINGS INC.	§	
Plaintiff,	§	**CIVIL ACTION 6:19-CV-00432-ADA**
	§	**Lead case**
v.	§	
	§	**CIVIL ACTION 6:19-CV-00437-ADA**
LG ELECTRONICS INC. AND LG	§	**Member case**
ELECTRONICS U.S.A., INC.	§	
Defendant	§	

ORDER GRANTING DEFENDANT LG'S
MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)

Came on for consideration this date the Motion of Defendant LG Electronics Inc. and LG Electronics U.S.A., Inc. ("LG") to transfer under 28 U.S.C. § 1404(a) filed on January 3, 2020. ECF No. 62. Plaintiff Parus Holdings Inc. ("Parus") filed its response on January 10, 2020 (ECF No. 70, and Parus replied on January 9, 2020 (ECF No. 69). After careful consideration of the arguments made, the Court **GRANTS** LG's motion to transfer the case to the Northern District of California.

I. Factual Background and Procedural History

Parus filed its original complaint on July 22, 2019. Pl.'s Compl., ECF No. 1. On October 21, 2019, Parus submitted its amended complaint alleging infringement of two patents-in-suit.[1] Pl.'s Am. Compl. at 1. ECF No. 28. Parus alleges that LG makes, uses, sells, and/or offers for sale its smartphone products implementing the Google Android operating system, including the Google Assistant. Pl.'s Compl. at 1, ECF No. 1. Parus alleges that Google Assistant has infringed upon

[1] 3 U.S. Patent No. 7,076,431 (the "'431 Patent") and 9,451,084 (the "'084 Patent"), (collectively, the "Asserted Patents"). ECF No. 1 at ¶ 3.

the asserted patents. *Id.* at 3–17, 17–29. According to the Complaint, the Asserted Patents enable users to search and retrieve publicly available information by controlling a web browsing server using spoken voice commands. *Id.* Additionally, these technologies incorporate a methodology that allows for the detection of changes from the websites and adapt those changes in real-time. *Id.* Finally, the technology allows users to control and monitor household devices connected to a network using verbal commands through a voice-enabled device. *Id.*

On December 20, 2019, this Court ordered the consolidation of this case with four related actions in the interests of justice and convenience of the parties. Pl.'s Am. Compl. ECF No. 34. On January 3, 2020, LG filed its Motion to Transfer Venue under 28 U.S.C. § 1404(a) requesting that the case be transferred to the Northern District of California ("NDCA"). Def.'s Mot. at 1, ECF No. 62.

II. Standard of Review

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. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 314 (5th Cir. 2008) (hereinafter "*Volkswagen II*")("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).

Courts may "consider undisputed facts outside the pleadings, but it must draw all reasonable inferences and resolve all factual conflicts in favor of the non-moving party." *Weatherford Tech. Holdings, LLC v. Tesco Corp.*, No. 2:17-CV-00456-JRG, 2018 WL 4620636, at *2 (E.D. Tex. May 16, 2019).

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 314 n.10, 315 ("[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. Discussion regarding transfer to the Northern District of California

As a preliminary matter, neither party contests the fact that venue is proper in NDCA and that Parus could have filed this action in NDCA.

a. Relative ease of access to sources of proof

In considering the relative ease of access to proof, a court looks to where the parties store documentary evidence, such as documents and physical evidence. *Volkswagen II*, 545 F.3d at 316.

LG argues that this factor weighs heavily in favor of transfer for several reasons. First, LG points out that the action against LG is reliant upon the asserted technology as developed by Google in the form of Google Assistant, and that Google researches, designs, develops, and tests Google Assistant in NDCA. Def.'s Mot. at 8, ECF No. 62. LG also points out that two of five Parus executives live in the San Francisco Bay area. *Id.* Based on this contention, LG infers that most of Parus' documents relevant to this case are located in NDCA. *Id.* Finally, LG points out that all of the prior art witnesses and evidence are in NDCA, and that there is no relevant evidence, witnesses, or documents in the WDTX. *Id.*

Counter to LG's contentions, Parus argues that LG has not shown that it is clearly more convenient to access sources of proof in NDCA than this district. Pl.'s Resp. at 4, ECF No. 70. Parus states that LG has not shown that it would be difficult or burdensome to access any documents electronically, nor has it shown that any specific relevant documents are in NDCA. *Id.*

Further, Parus asks the Court to discount the distance that some documents may have to travel because access to documents found on a server can be instantaneous. Pl.'s Resp. at 5, ECF No. 70. Parus additionally argues that LG is misguided in stating that Parus witnesses, certain prior art witnesses, and associated evidence are in NDCA. *Id.* Parus says that their executives and other potentially relevant witnesses reside in several states throughout the country and that an inventor of the asserted patent lives in New Hampshire. *Id.* Finally, Parus argues that the Court should give the location of prior art witnesses little weight. *Id.*

In its reply, LG claims that Parus does not provide any evidence that WDTX is a more convenient source of proof than NDCA. Def.'s Reply at 4, ECF No. 68. LG states that Parus concedes that its executives and employees are in NDCA and that NDCA is also home to key LG, Google, and other third-party witnesses whose documents and evidence are located in NDCA as well. *Id.* LG claims that its documents relevant to this case are significantly harder to access from WDTX than from NDCA because LG has no offices, facilities or relevant employees in WDTX. *Id.*

Parus relies upon the language as previously stated in this Court, referring to the modern-day patent litigation circumstances which surround document and information evidence. *See Fintiv, Inc. v. Apple, Inc.*, No. 6:18-cv-00372-ADA, 2019 WL 4743678, at *4 (W.D. Tex. Sept. 10, 2019) (Albright, J) ("In modern patent litigation, all (or nearly all) produced documents exist as electronic documents on a party's server. Then, with a click of a mouse or a few keystrokes, the party produces these documents. In modern patent litigation, documents are located on a server, which may or may note in the transferee district . . . and are equally accessible from both the transferee and transferor districts."). While the court recognizes the relevance of this element in the current day, it must adhere to the precedent of the Fifth Circuit when considering the location

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