

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

SABLE NETWORKS, INC. AND)
SABLE IP, LLC,)
)
Plaintiffs,) **Case No. 5:20-cv-00111-RWS**
)
vs.)
)
PALO ALTO NETWORKS, INC.,)
)
Defendant.)

**DEFENDANT PALO ALTO NETWORKS, INC.'S MOTION AND SUPPORTING
MEMORANDUM TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF
CALIFORNIA**

TABLE OF CONTENTS

| | |
|---|-----------|
| I. INTRODUCTION | 1 |
| II. ARGUMENT | 2 |
| A. LEGAL STANDARD | 2 |
| B. THIS ACTION COULD HAVE BEEN BROUGHT IN THE NORTHERN DISTRICT OF CALIFORNIA | 3 |
| C. THE PRIVATE INTEREST FACTORS WEIGH HEAVILY IN FAVOR OF TRANSFER..... | 4 |
| 1. <i>THE RELATIVE EASE OF ACCESS TO SOURCES OF PROOF FAVORS TRANSFER.</i> | 4 |
| 2. <i>THE AVAILABILITY OF COMPULSORY PROCESS TO SECURE THE ATTENDANCE OF WITNESSES FAVORS TRANSFER.</i> | 8 |
| 3. <i>THE COST OF ATTENDANCE FOR WILLING WITNESSES FAVORS TRANSFER.</i> | 9 |
| 4. <i>ALL OTHER PRACTICAL PROBLEMS THAT MAKE TRIAL OF A CASE EASY, EXPEDITIOUS, AND INEXPENSIVE FAVOR TRANSFER.</i> | 11 |
| D. THE PUBLIC INTEREST FACTORS FAVOR TRANSFER | 11 |
| 1. <i>THE ADMINISTRATIVE DIFFICULTIES FLOWING FROM COURT CONGESTION IS NEUTRAL.</i> | 11 |
| 2. <i>LOCAL INTEREST IN HAVING LOCALIZED INTERESTS DECIDED AT HOME FAVORS TRANSFER.</i> | 12 |
| 3. <i>THE FAMILIARITY OF THE FORUM WITH THE GOVERNING LAW PUBLIC INTEREST FACTOR IS NEUTRAL.</i> | 13 |
| 4. <i>THE AVOIDANCE OF UNNECESSARY PROBLEMS OF CONFLICT OF LAWS PUBLIC INTEREST FACTOR IS NEUTRAL.</i> | 13 |
| III. CONCLUSION | 14 |

TABLE OF AUTHORITIES

Cases

AGIS Software Development LLC v. HTC Corp., No. 2:17-CV-00514-JRG, 2018 WL 4680557 (E.D. Tex. Sep. 28, 2018) 2

Astute Tech., LLC v. Learners Digest Int’l. LLC, Case No. 2:12-CV-689-WCB, 2014 WL 12596468 (E.D. Tex. April 28, 2014)..... 13

Cooktek Induction Sys., LLC v. I/O Controls Corp., No. 4:15-cv-548-ALM, 2016 WL 4095547 (E.D. Tex. Aug. 2, 2016) 11

DSS Tech. Mgmt., Inc. v. Apple, Inc., No. 6:13-CV-919-JDL, 2014 WL 6847569 (E.D. Tex. Nov. 7, 2014) 11

Fujitsu Ltd. v. Tellabs, Inc., 639 F.Supp.2d 761 (E.D. Tex. 2009)..... 4, 12

Hammers v. Mayea-Chang, No. 2:19-CV-00181-JRG, 2019 WL 6728446 (E.D. Tex. Dec. 11, 2019) 6

In re Acer Am. Corp., 626 F.3d 1252 (Fed. Cir. 2010)..... 7

In re Genentech, Inc., 566 F.3d 1338 (Fed. Cir. 2009)..... passim

In re Hoffmann-La Roche, Inc., 587 F.3d 1333 (Fed. Cir. 2009) 8, 12, 13

In re Nintendo Co., Ltd., 589 F.3d 1194 (Fed. Cir. 2009) 3, 9, 10

In re TS Tech USA Corp., 551 F.3d 1315 (Fed. Cir. 2008) 2

In re Volkswagen AG, 371 F.3d 201 (5th Cir. 2004) (“*Volkswagen I*”) 3, 10, 11

In re Volkswagen of Am., Inc., 545 F.3d 304 (5th Cir. 2008) (*en banc*) (“*Volkswagen II*”). passim

In re Volkswagen of Am., Inc., 566 F.3d 1349 (Fed. Cir. 2009) (“*Volkswagen III*”) 2

QR Spex, Inc. v. Motorola, Inc., 507 F.Supp.2d 650 (E.D. Tex. 2007)..... 14

Software Rights Archive, LLC v. Google, Inc., No. 2:07-CV-511-CE, 2010 WL 2950351 (E.D. Tex. Jul. 22, 2010) 4

SSL Services, LLC v. Cisco Sys., Inc., No. 2:15-cv-00433-JRG-RSP, 2016 WL 727673 (E.D. Tex. Feb. 24, 2016)..... 5

TC Heartland LLC v. Kraft Food Group Brands LLC, 137 S.Ct. 1514 (2017)..... 4

Voxpath RS, LLC v. LG Electronics U.S.A., Inc., No. 2:10-CV-160-JRG, 2012 WL 194370 (E.D. Tex. Jan. 23, 2012)..... 9

Other Authorities

28 U.S.C. § 1400(b) 4

28 U.S.C. § 1404(a) 1, 2, 10, 14

Pursuant to 28 U.S.C. § 1404(a), Defendant Palo Alto Networks, Inc. (“Palo Alto Networks”) respectfully requests an order transferring this action to the United States District Court for the Northern District of California, where an overwhelming majority of relevant witnesses, documents, and evidence is located.

I. INTRODUCTION

This is a patent infringement lawsuit brought by Sable Networks, Inc. and Sable IP, LLC (collectively, “Sable”) against Palo Alto Networks.¹

The Northern District of California is a clearly more convenient forum. Palo Alto Networks’ headquarters in Santa Clara, California, houses its engineering research, design, and development departments for its firewall products, including the Accused Products, and also the marketing, sales, operations, product management, and finance departments as to the Accused Products. All identified material and relevant witnesses and documentary or physical evidence in connection with these departments are located within the Santa Clara, California, headquarters. The source code for the Accused Products is developed, stored, and archived in Santa Clara, California. The hardware appliances for the Accused Products also are designed and developed in Palo Alto Networks’ California headquarters.

In addition, the Northern District of California is a clearly more convenient forum for relevant third-party witnesses—including the named inventors and the prosecuting attorneys of the

¹ Collectively, Sable alleges that U.S. Patent Nos. 6,977,932, 7,012,919, 8,085,775, 8,243,593, and 8,817,790 (collectively, the “Asserted Patents”) are infringed by the following Palo Alto Networks products: the PA-Series Appliances with PAN-OS 7.1 and later (PA-200, PA-220, PA-220R, PA-500, PA-800 Series, PA-2000 Series, PA-3000 Series, PA-3200 Series, PA-4000 Series, PA-5000 Series, PA-5200 Series, PA-7000 Series), the VM-Series with PAN-OS 7.1 and later (VM-50, M-100, VM-200, VM-300, VM-500, VM-700, VM-1000-HV), and the PA-7000 Series (including PA-7080, PA-7050, PA-7000-20GQXM-NPC, PA-7000-20GXM-NPC, PAN-PA-7000-100G-NPC-A) (collectively, the “Accused Products”).

Asserted Patents, the majority of whom are located within the Northern District of California, and none of which are located in Texas. By contrast, Sable has no genuine ties to the Eastern District of Texas.

Palo Alto Networks therefore respectfully asks the Court to grant this motion and transfer this case to the Northern District of California.

II. ARGUMENT

A. Legal Standard

Section 1404(a) provides that “[f]or 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.” 28 U.S.C. § 1404(a). The Fifth and Federal Circuits have set forth the standard to be used in deciding motions to transfer venue. *See In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) (*en banc*) (“*Volkswagen II*”); *In re Volkswagen of Am., Inc.*, 566 F.3d 1349, 1351 (Fed. Cir. 2009) (“*Volkswagen III*”) (applying the Fifth Circuit’s *en banc Volkswagen II* decision to rulings on transfer motions out of this Circuit);. In *Volkswagen II*, the Fifth Circuit made clear that transfer is appropriate when the transferee forum is “clearly more convenient” than the plaintiff’s chosen venue. *Id.*

“Fifth Circuit precedent clearly forbids treating plaintiff’s choice of venue as a distinct factor in the § 1404(a) analysis.” *In re TS Tech USA Corp.*, 551 F.3d 1315, 1320 (Fed. Cir. 2008) (citing *Volkswagen II*, 545 F.3d at 314 n.10). Probably the most important inquiry is the location of the evidence in the case, including witnesses and documents. *See In re Genentech, Inc.*, 566 F.3d 1338, 1343 (Fed. Cir. 2009); *AGIS Software Development LLC v. HTC Corp.*, No. 2:17-CV-00514-JRG, 2018 WL 4680557 at *8 (E.D. Tex. Sep. 28, 2018) (stating that the “convenience of the witnesses is probably the single most important factor in a transfer analysis”).

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.