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

KOSS CORPORATION, ***Plaintiff,***	§	
	§	**6-20-CV-00665-ADA**
v.	§	
APPLE INC, ***Defendant.***	§	

ORDER DENYING DEFENDANT'S MOTION TO TRANSFER

Came on for consideration this date is Apple Inc.'s Motion to Transfer to the Northern District of California ("NDCA") pursuant to 28 U.S.C. § 1404(a). After careful consideration of the Motion, the Parties' briefs, and the applicable law, the Court **DENIES** Defendant Apple's Motion to Transfer.

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" (emphasis added)). 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*") (emphasis added). Apple moved to have this case transferred to NDCA. The Court finds that Apple fails to meet the heavy burden of showing that NDCA is a *clearly more convenient* venue.

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II. LEGAL STANDARD

A. Section 1404 Transfer

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

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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") (emphasis added).

III. BACKGROUND

Defendant Apple is a California Corporation with its principal place of business in Cupertino, California. Pl.'s Compl., ECF No. 1 at ¶ 5. Apple's second corporate campus is located in Austin, Texas. *Id.* Apple also has several retail stores within WDTX, notably two in Austin, and three others in San Antonio and El Paso.[1] Apple, among other things, markets audio accessories, including the Apple HomePod, the Apple AirPods and the Apple Beats by Dre. *Id.* at ¶ 8.

Plaintiff Koss Corp. is a Delaware Corporation with its principal place of business in Milwaukee, Wisconsin. *Id.* at ¶ 2. Koss markets headphones and audio accessories that are at

[1]Apple Inc., https://www.apple.com/retail/storelist/ (last visited April 21, 2021).

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sold at various retail chains throughout the country, including Walmart stores. *Id.* at ¶ 3. Koss specifically markets the Striva line of wireless headphones. *Id.* at 42.

On July 22, 2020, Koss filed this lawsuit alleging patent infringement against Apple for making, having made, using, importing, supplying, distributing, selling, or offering to sell its products and/or systems, including systems in which its AirPods and/or wireless Beats by Dre-branded headphones are incorporated (the "Accused Headphones"). Pl.'s Compl. at ¶¶ 79–82, 107–110, 121–124, 135–138. Koss also claims patent infringement alleging that Apple has made, had made, used, imported, supplied, distributed, sold, or offered for sale products and/or systems, including systems in which its HomePod and/or Apple Watch products and/or systems are incorporated (the "Accused Networking Devices"). Pl.'s Compl. at ¶¶ 93–96. Specifically, Koss asserts infringement of U.S. Patent Nos. 10,206,025 ("'025 patent"); 10,298,451 ("'451 patent"); 10,469,934 ("'934 patent"); 10,491,982 ("'982 patent"); and 10,506,325 ("'325 patent"). *Id*. Koss asserts that these patents generally relate to "the wireless headphone and wearable technology space." *Id*. at ¶ 69.

On December 21, 2020, Apple filed this Motion to Transfer Venue under 28 U.S.C. § 1404(a). Def.'s Mot. at 1. Specifically, Apple requests that the Court transfer the instant case from the Western District of Texas ("WDTX") to the Northern District of California ("NDCA"). *Id*.

IV. ANALYSIS

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

A. The Private Interest Factors Weigh In Favor of Transfer.

i. The Relative Ease of Access to Sources of Proof

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After carefully reviewing the Parties' arguments, the Court finds that the relative ease of access to sources of proof factor slightly favors of transfer. "In considering the relative ease of access to proof, a court looks to where documentary evidence, such as documents and physical evidence, is stored." *Fintiv*, 2019 WL 4743678, at *2. "[T]he question is *relative* ease of access, not *absolute* ease of access." *In re Radmax*, 720 F.3d 285, 288 (5th Cir. 2013) (emphases in original).

Apple argues that the location of its own sources of proof strongly favor transfer. Def.'s Mot. at 6. Specifically, Apple delineates three categories of documents: confidential source code; technical documents pertaining to the design and engineering of the accused features; and financial, marketing and licensing documents relevant to the accused products. *Id.* at 6–7. Apple asserts that all three of these relevant document categories are located in California or on servers in California. *Id.* Apple further assures this Court that all documents and source code outside California are either located in foreign countries or in U.S. States other than Texas. *Id.* at 7. Additionally, Apple asserts that its employees researched, developed, and tested the accused products and features almost exclusively in California and performed none of these activities in Texas. *Id.* While Apple acknowledged that it has a second campus in Austin, Apple contends that there are no sources of proof within this District. *Id.* at 8.

In response, Koss asserts that the first factor—access to sources of proof—is neutral. Pl.'s Opp. at 5. Regarding Apple's documents, Koss points to statements made by Apple's employee, Mark Rollins, who stated that Apple "does not have any *unique* working files or documents . . . located in the WDTX." *Id.* (citing Rollins Decl., ECF No. 34-2, ¶ 8). Koss asserts that when questioned further, [redacted]

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