



## 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

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

Plantronics, Inc. and Polycom, Inc. are Delaware Corporations with their principal places of business in Santa Cruz, California. Pl.’s Compl., ECF No. 1 at ¶¶ 5–6. In 2018, Plantronics acquired Polycom. *Id.* at ¶ 7. Plantronics and Polycom conduct their combined operations under the name “Poly.” *Id.* Poly has one office in Austin, Texas where it sells, develops, and markets its products. *Id.* at ¶ 8. However, Poly contends that its presence in the Western District and its “satellite office” in Texas had no involvement with the accused products, no employees relevant to this case, and no relevant documents. Def.’s Mot., ECF No. 29 at 1.

Plaintiff Koss Corp. is a Delaware Corporation with its principal place of business in Milwaukee, Wisconsin. Pl.’s Compl. at ¶ 2. Koss markets a line of headphones and audio

accessories that are sold in at least eight cities in the Western District of Texas, including Waco. *Id.* at ¶ 3. However, Koss owns no land, makes no products, and employs no personnel in Texas. Def.’s Mot. at 2.

Koss filed this lawsuit on July 22, 2020, alleging patent infringement against Poly for making, having made, using, importing, supplying, distributing, selling, or offering to sell its Blackbeat-branded headphones (“the Accused product”). Pl.’s Compl. at ¶¶ 63, 76, 89, 102. Specifically, Koss alleges infringement of U.S. Patent Nos. 10,206,025 (“’025 patent”), 10,368,155 (“’155 patent”), 10,469,934 (“’934 patent”), 10,506,325 (“’325 patent”). *Id.* Koss asserts that these patents relate to “the wireless headphone and wearable technology space.” *Id.* at ¶ 56.

On December 18, 2020, Poly filed this motion to transfer venue under 28 U.S.C. § 1404(a). Def.’s Mot. at 1. Specifically, Poly requests that this 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***

Poly argues that the relative ease of access to sources of proof favors transfer to NDCA. Def.’s Mot. at 9. Specifically, Poly notes that all U.S. documents pertaining to the conceptual and functional design, development, and market of the accused products are located within NDCA in Santa Cruz, California. *Id.* Further, Poly notes that third-party documents—

particularly Apple’s documents concerning Apple Siri, Apple Music, and Apple iPhones—potentially relevant to this case are also located in NDCA. *See generally*, Def.’s Mot.

In response, Koss attacks Poly’s argument that all relevant U.S. documents are located in NDCA by noting that “like most international corporations, Poly is set up to allow the share of relevant information to whatever location that needs the information.” Pl.’s Opp. at 5–6. Koss further suggests that the memories of deposition witnesses have proven faulty. *Id.* at 6. Consequently, Koss infers that such witnesses are unlikely to or need not testify at trial. *Id.* Moreover, Poly argues that WDTX is in fact more convenient than NDCA. *Id.* Specifically, Koss observes that its IT vendor, Synectics, is located in Texas. *Id.* at 7. The servers, where Koss’s alleged relevant documents are located in Dallas in the Northern District of Texas. *Id.*

In reply, Poly correctly notes that this factor concerns the physical location of relevant documents and not their general accessibility. Def.’s Reply at 1. Furthermore, Poly observes that Koss only shows that relevant documents *were* accessible in a number of cities outside the U.S. but does not show that the documents were ever accessed from Texas. *Id.* Additionally, Poly argues that Koss has incorrectly conflated two issues. *Id.* Specifically, Poly alleges that Koss’s treatment of witnesses as sources of proof is inappropriate and that the present factor only relates to the ease of access of non-witness evidence. *Id.* at 2. Moreover, Poly argues that the location of documents held by Koss’s IT vendor, Synectics, is irrelevant. *Id.* Poly notes that the Federal Circuit has rejected the use of vendors “to create ‘a fiction’ that documents are stored in Texas.” *Id.* (quoting *In re Hoffman-La Roche Inc.*, 587 F.3d 1333, 1337 (Fed. Cir. 2009)). Finally, Poly notes that, to prevail on this factor, it does not need to demonstrate that each and every relevant document is located in NDCA. *Id.* Consequently, Poly concludes that this factor weighs heavily in favor of transfer.

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