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

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| JAPAN DISPLAY INC., PANASONIC LIQUID CRYSTAL DISPLAY CO., LTD., | § | |
| *Plaintiffs*, | § | |
| v. | § | CIVIL ACTION NO. 2:20-CV-00283-JRG (LEAD CASE) |
| TIANMA MICROELECTRONICS CO. LTD., | § | CIVIL ACTION NO. 2:20-CV-00284-JRG |
| | § | CIVIL ACTION NO. 2:20-CV-00285-JRG |
| *Defendant*. | § | (MEMBER CASES) |

**MEMORANDUM OPINION AND ORDER**

Before the Court is Defendant Tianma Microelectronics Co. Ltd.'s ("Tianma") Motion to Transfer to the Central District of California (the "Motion"). (Dkt. No. 69). Having considered the parties' briefing and oral arguments at the Court's hearing on August 17, 2021 (Dkt. No. 108), and for the reasons stated herein, the Court is of the opinion that the Motion should be **DENIED**.

## I. BACKGROUND

On August 31, 2020, Plaintiffs Japan Display Inc. ("JDI") and Panasonic Liquid Crystal Display Co., Ltd. ("Panasonic") (collectively, "Plaintiffs"), both Japanese entities, filed suit for patent infringement against Tianma, a Chinese entity. (*See* Dkt. No. 1 ¶¶ 1, 3–4). Plaintiffs filed three separate actions against Tianma, which were later consolidated by the Court. (Dkt. No. 57). Plaintiffs allege that Tianma infringes U.S. Patent Nos. 8,218,119; 10,139,687; 9,715,132; 9,793,299; 10,018,859; 8,218,118; 10,423,034; 10,330,989; 7,936,429; 9,310,654; 8,830,409; 9,817,288; 7,636,142; 7,385,665; and 9,939,698 (collectively, the "Patents-in-Suit"). (Lead Case No. 2:20-CV-283, Dkt. No. 1; Member Case No. 2:20-CV-284, Dkt. No. 1; Member Case No. 2:20-CV-285, Dkt. No. 1).

On June 15, 2021, Tianma filed this Motion seeking transfer of these actions to the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1404(a). (Dkt. No. 69). Much of the focus of the Motion is on evidence from Tianma's U.S.-based subsidiary and non-party, Tianma America, Inc. ("Tianma America"), which is headquartered in Chino, California. (*Id*. at 4).

## II. LEGAL STANDARD

If venue is proper in the district where a case was originally filed, a federal district court may transfer the case "[f]or the convenience of parties and witnesses" to "any other district or division where it might have been brought." 28 U.S.C. § 1404(a). Section 1404(a)'s threshold inquiry is whether the case could initially have been brought in the proposed transferee forum. *In re Volkswagen AG*, 371 F.3d 201, 202–03 (5th Cir. 2004) [*Volkswagen I*]. The question of whether a suit "might have been brought" in the transferee forum encompasses subject matter jurisdiction, personal jurisdiction, and propriety of venue. *See Hoffman v. Blaski*, 363 U.S. 335, 343–44 (1960). Only if this statutory requirement is met should the Court determine whether convenience warrants a transfer of the case. *See Volkswagen I*, 371 F.3d at 203; *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 312 (5th Cir. 2008) [*Volkswagen II*]. The burden to prove that a case could have been brought in the transferee forum falls on the party seeking transfer. *See id.* at 315; *Humble Oil & Ref. Co. v. Bell Marine Serv., Inc.*, 321 F.2d 53, 56 (5th Cir. 1963).

If that inquiry is satisfied, the Court determines whether transfer is proper by analyzing and weighing various private and public interest factors. *Id.*; *accord In re Nintendo Co., Ltd*, 589, F.3d 1194, 1198 (Fed. Cir. 2009); *In re Apple Inc.*, 979 F.3d 1332, 1338 (Fed. Cir. 2020) (applying Fifth Circuit law). The private interest factors are "(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." *Volkswagen II*, 545 F.3d at 315 (quoting *Volkswagen I*, 371 F.3d at 203). The public interest factors are "(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 [or in] the application of foreign law." *Id.* (quoting *Volkswagen I*, 371 F.3d at 203) (alterations in original). The factors are neither exclusive nor exhaustive, and no one factor is dispositive. *Id.*

The burden to prove that a case should be transferred for convenience falls squarely on the moving party. *See id.* Although the plaintiff's choice of forum is not a separate factor, respect for the plaintiff's choice of forum is encompassed in the movant's elevated burden to "clearly demonstrate" that the proposed transferee forum is "clearly more convenient" than the forum in which the case was filed. *Id.* at 314–15; *Apple*, 979 F.3d at 1338. While "clearly more convenient" is not necessarily equivalent to "clear and convincing," the moving party "must show materially more than a mere preponderance of convenience, lest the standard have no real or practical meaning." *Quest NetTech Corp. v. Apple, Inc.*, No. 2:19-CV-118, 2019 WL 6344267, at *7 (E.D. Tex. Nov. 27, 2019). In considering a transfer under § 1404(a), the Court may consider undisputed facts outside of the pleadings, but must draw all reasonable inferences and resolve factual disputes in favor of the non-movant. *Vocalife LLC v. Amazon.com, Inc.*, No. 2:19-CV-00123, 2019 WL 6345191, at *2 (E.D. Tex. Nov. 27, 2019); *cf. Trois v. Apple Tree Auction Cent. Inc.*, 882 F.3d 485, 492–93 (5th Cir. 2018) (reviewing a transfer under § 1406); *Ambraco, Inc. v. Bossclip B.V.*, 570 F.3d 233, 238 (5th Cir. 2009) (reviewing enforcement of a forum-selection clause).

## III. ANALYSIS

### a. Tianma Has Not Shown That These Cases Could Have Been Brought in the Central District of California

As an initial matter, the Court must address the threshold question under § 1404—whether these cases could have been initially brought in the proposed transferee forum. The parties gave this issue cursory attention, at best, in their briefing and at the hearing. As a result, what is contained in Tianma's Motion and their arguments before the Court is insufficient to meet this threshold burden.

Proving that the transferee forum has subject-matter jurisdiction, personal jurisdiction, and proper venue is an explicit statutory requirement of the movant—not the respondent. It is also a threshold question. *See Volkswagen I*, 371 F.3d at 203 ("[W]e have suggested that the *first determination* to be made is whether the judicial district to which transfer is sought would have been a district in which the claim could have been filed." (emphasis added)); *Volkswagen II*, 545 F.3d at 312 ("The *preliminary question* under § 1404(a) is whether a civil action "might have been brought" in the destination venue." (emphasis added)).

The convenience analysis involves the careful weighing and balancing of the *forum non conveniens* factors—a task committed to the discretion of the District Court. *Id.* at 312. However, it is a separate and subsequent requirement from the moving party to show that the case could have properly been brought in the transferee forum. This distinction is made explicit in the text of § 1404(a). The movant must satisfy *both* the statutory requirements *and then* clearly demonstrate that the transfer is clearly more convenient. *Id.* at 315. If it has not been shown that the transferee court could hear the case, the Court has no ability to transfer, regardless of how convenient or inconvenient the transfer might be. *See Hoffman*, 363 U.S. at 340.

In its Motion, Tianma states "if Plaintiffs could bring this suit anywhere in the U.S., they could have done so in the Central District of California." (Dkt. No. 69 at 7). Tianma's prevarication falls short of its statutory burden. In their briefing, Plaintiffs did not argue that the action could have been brought in the transferee district. (Dkt. No. 85 at 3). Further, during the hearing, counsel for Plaintiffs acknowledged that Tianma's statement was not a concession to the jurisdiction of the transferee court. (Dkt. No. 108 at 24:10–25:7). The Court also notes that though this topic was raised and discussed, Tianma's counsel did not address the threshold issue during the hearing, despite providing the Court with additional argument on other issues after the Court heard from Plaintiffs' counsel. Further, any lack of effort on Plaintiffs' part did not lessen or eliminate what was Tianma's clear burden. Tianma's silence at the hearing on this was deafening.

Earlier in the case, Tianma filed a Rule 12(b)(2) Motion to Dismiss Plaintiffs' Complaint for Lack of Personal Jurisdiction (the "Motion to Dismiss"), which was withdrawn. (Dkt. Nos. 21, 65, 66). Although Tianma's Motion to Dismiss was withdrawn, Tianma did not acknowledge that it was subject to the personal jurisdiction of any U.S. court in its motion requesting withdrawal, instead stating that its Motion to Dismiss was "meritorious and legally sound in substance." (Dkt. No. 65 at 2–3). Tianma, apparently wanting to have its cake and eat it too, skirted the threshold § 1404 question while attempting to preserve a jurisdictional challenge—which challenge is no longer before the Court.

"[T]he power of a District Court under § 1404(a) to transfer an action to another district is made to depend not upon the wish or waiver of the defendant, but, rather, upon whether the transferee district was one in which the action 'might have been brought' by the plaintiff." *Hoffman*, 363 U.S. at 343–44. Tianma did not meet its threshold burden to establish that this case

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