

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

BILLJCO, LLC,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	CIVIL ACTION NO. 2:21-CV-00181-JRG
	§	(LEAD CASE)
CISCO SYSTEMS, INC.,	§	
	§	
<i>Defendant.</i>	§	

v.	§	CIVIL ACTION NO. 2:21-CV-00183-JRG
	§	(MEMBER CASE)
HEWLETT PACKARD ENTERPRISE COMPANY, ARUBA NETWORKS, LLC.,	§	
	§	
<i>Defendants.</i>	§	

ORDER

Before the Court are the Hewlett Packard Enterprise Company and Aruba Networks, LLC’s Opposed Motion to Transfer Venue to the Northern District of California Under 28 U.S.C. § 1404 (Dkt. No. 33) (the “HP Motion”) and Defendant Cisco Systems, Inc.’s Motion to Transfer Venue (Dkt. No. 36) (the “Cisco Motion”) (collectively, the “Motions”). In the Motions, Defendants Hewlett Packard Enterprise Company (“HP”), Aruba Networks, LLC (“Aruba”), and Cisco Systems, Inc. (“Cisco”) (collectively, “Defendants”), request the Court transfer the above-captioned cases to the Northern District of California (“NDCA”) pursuant to 28 U.S.C. § 1404. Plaintiff BillJCo, LLC (“BillJCo”) opposes the Motions.

Having considered the Motions, the associated briefing, and for the reasons set forth below, the Court finds that the Motions should be **DENIED**.

I. BACKGROUND

BillJCo filed this lawsuit against Cisco on May 25, 2021, alleging infringement of United States Patent Nos. 8,671,804 (the “804 Patent”), 10,292,011 (the “011 Patent”), and 10,477,994 (the “994 Patent”) (collectively, the “Asserted Patents”). (Dkt. No. 1 at ¶ 2). The Asserted Patents generally relate to Bluetooth Low Energy (“BLE”) beacon technology. (*Id.* at ¶¶ 18–20).

BillJCo is a limited liability company with its principal place of business at 1704 Katherine Court, Flower Mound, TX 75022. HP is headquartered in Houston, Texas. Aruba is a wholly owned subsidiary of HP headquartered in San Jose, California. Cisco is based in San Jose and has an office in Richardson, Texas, with over 1,400 employees as well as another office just north of Houston in Spring, Texas.

II. LEGAL STANDARDS

In evaluating a motion to transfer pursuant to § 1404(a), the Court considers the Fifth Circuit’s non-exhaustive list of private and public interest factors. *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) (“*Volkswagen I*”). The private interest 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.” *Id.* The public interest 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.” *Id.*

To support a claim for transfer under § 1404(a), a movant must demonstrate that the transferee venue is “clearly more convenient” than the current District. *In re Volkswagen of Am.*,

Inc., 545 F.3d 304, 315 (5th Cir. 2008) (“*Volkswagen II*”). The elevated burden to show that the transferee forum is “clearly more convenient” reflects the respect owed to the Plaintiff’s choice of forum. *In re Vistaprint Ltd.*, 628 F.3d 1342, 1344 (Fed. Cir. 2010).

III. ANALYSIS

A. The relative ease of access to sources of proof is neutral.

As the parties recognize, this factor “refers exclusively to sources of documentary or physical proof.”¹ (Dkt. No. 69 at 7; Dkt. No. 33 at 7.) The Defendants contend in their respective Motions that the ease of access to sources of proof in this case strongly favors transfer. (Dkt. No. 33 at 7, Dkt. No. 36 at 5.)

In the HP Motion, HP and Aruba (collectively, the “HP Defendants”) argue that the majority of the sources of proof in this case are located in California. Aruba states that its “documents relevant to this case are located in California.” (Dkt. No. 33 at 8.) HP acknowledges that it has an office in this Plano, Texas, which is within this District, and is headquartered elsewhere in Texas but contends that “discovery ... will come from Northern California.” (*Id.* at 9.) Lastly, the HP Defendants both argue that the Bluetooth Special Interest Group (“SIG”) and Apple, Inc. (“Apple”) are relevant third parties and their documents are located in Washington and California, respectively. (*Id.*) In the Cisco Motion, Cisco concedes that “any relevant electronic Cisco documents may be accessed from any jurisdiction.” (Dkt. No. 36 at 6.) However, Cisco further contends that the “majority of relevant evidence in this matter is likely to come from Apple,” which is in California. (Dkt. No. 36 at 5.)

¹ Despite this recognition, the parties also mistakenly list various witnesses for consideration under this factor. However, “the only question the Court can consider under this factor is the access to documentary evidence including source code.” *AGIS Software Dev. LLC v. Huawei Device USA Inc.*, No. 2:17-CV-00513-JRG, 2018 WL 2329752, at *4 (E.D. Tex. May 23, 2018). The parties’ arguments concerning their witnesses are instead considered under the second and third private interest factors, where appropriate.

BillJCo responds that this factor heavily weighs against transfer because “documents for three of the four parties are located in this District or Texas.” (Dkt. No. 69 at 7.) BillJCo states that all of its own documentary evidence is located in this District. (Dkt. No. 69 at 7.) Regarding Cisco, BillJCo contends that “Cisco has admitted that servers in this district host many of Cisco’s electronic documents and has not identified any documents that are not stored in Texas.” (*Id.* (internal quotation marks omitted).) With regard to the HP Defendants, BillJCo does not dispute that Aruba’s documents are located in California but contends that at least some relevant HP documents are likely to be located in Texas because the company is headquartered in Texas. Finally, regarding third-party Apple’s documents, BillJCo states that it “has alleged a claim for direct infringement against the Defendants that does not require any involvement by Apple” and further notes that any necessary documents are likely accessible from Apple’s second headquarters in Austin, Texas. (Dkt. No. 69 at 8-9.) BillJCo also notes that the Apple declaration relied on by the Defendants in both Motions contains vague language stating that Apple’s documents are “either located in *or around* NDCA or [] *are accessible* in NDCA” and that it “does not have any *unique* working files or documents relevant to this case located in Texas.” (Dkt. No. 69 at 8-9; Dkt. No. 36-15 at 3 (emphasis added).)

In reply, Cisco contends that “the center of this dispute is fifteen years of history between BillJCo and Apple,” and therefore the location of Apple’s documents, not Cisco’s, should direct the transfer inquiry. (Dkt. No. 72 at 1.) The HP Defendants, in their respective reply, simply reiterate the arguments that Aruba’s documents related to the accused products, Apple’s documents, and Google’s documents related to a license for the asserted patents are all located in NDCA.

The Court finds this factor neutral. It is clear from the parties' competing arguments that there are considerable sources of proof in both this District and the NDCA. The Plaintiff's documentary evidence is located in this District. Cisco concedes that its own documents are equally accessible from any district and that it maintains servers potentially containing those documents in this District. HP is silent regarding the location of its documents but given that it is headquartered in Texas, maintains an office in this District, and Aruba admits that it does at least some business related to the accused products through HP's office in this District (Dkt. No. 33 at 9), it is more likely than not that at least some relevant documents are located or accessible in Texas or this District. Thus, the documentary sources in Texas and this District are substantial.

On the other hand, the majority of Aruba's documents are located in California. Third parties Apple and Google appear to maintain documents that may be relevant to this case in California.² With regard to Apple, the Court agrees with BillJCo that the vague wording of the declaration relied on by the Defendants lessens the weight given to the location of Apple's document. Whether Apple's documents are located "around" the NDCA or "are accessible" from the NDCA is not the same as being physically located in the NDCA, particular when it is highly likely that those same documents "are accessible" from Apple's second headquarters in Austin, Texas. Despite these weaknesses, the Court gives some weight to the fact that certain Apple documents relevant to this case are likely located in the NDCA. As a result, documentary sources in the NDCA are also substantial.

Considering all the identified documents, and giving each category its due weight, the Court concludes that the sources of proof "relevant and material to the issues here," *In re Netflix*,

² The Court also concludes that the Bluetooth SIG's documents are irrelevant to this inquiry because they are allegedly located in Kirkland, Washington, which is in neither this District nor the NDCA, and likely electronic/digital in nature.

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