PUBLIC VERSION

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

BILLJCO, LLC, **Plaintiff,** *v.* **APPLE INC.,** **Defendant.**	**6:21-cv-00528-ADA**

MEMORANDUM OPINION & ORDER DENYING DEFENDANT APPLE INC.'S MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a) [ECF No. 26]

Came on for consideration this date is Defendant Apple Inc.'s Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a). ECF No. 26 (the "Motion"). Plaintiff BillJCo, LLC filed an opposition on December 27, 2021, ECF No. 33, to which Google replied on January 10, 2022, ECF No. 37. BillJCo also filed a Notice of Supplemental Authority on February 16, 2022. ECF No. 48. After careful consideration of the Motion, the Parties' briefs, and the applicable law, the Court **DENIES** Apple's Motion.

I. BACKGROUND

BillJCo filed suit on May 25, 2021, accusing a variety of Apple iPhones and iPads (the "Accused Products") of infringing U.S. Patent Nos. 8,566,839 (the '839 Patent); 8,639,267 (the '267 Patent); 8,761,804 (the '804 Patent); 9,088,868 (the '868 Patent); 10,292,011 (the '011 Patent); and 10,477,994 (the '994 Patent) (collectively the "Asserted Patents") based on BillJCo's assertion that the Accused Products "conform to and implement the iBeacon protocol and infringe the Patents-in-Suit." ECF No. 1 (the "Complaint") ¶¶ 36–37. According to BillJCo, the asserted patents "relate to specific and particularized inventions for, and associated with, this beacon technology and the related protocols and specifications which facilitate and enable aspects of the beacon technology ecosystem including devices capable of implementing beacon standards and

specifications, manufacturers of beacon transmitting devices, application developers, and beacon deployers." *Id.* ¶ 21. BillJCo's Complaint accuses iOS products, such as iPhones and iPads, that allegedly "conform to and implement the iBeacon protocol." *Id.* ¶ 36.

Apple is a California corporation, employing more than 35,000 people who work in or around its headquarters in Cupertino. *See* ECF No. 26-1 (the "Rollins Affidavit") ¶ 3.

BillJCo is Texas limited liability corporation headquartered in Flower Mound, Texas, and founded by Bill Johnson. ECF No. 1 ¶ 4. [redacted] *Id.* at 4. [redacted]

Apple has moved to transfer this case to the Northern District of California ("NDCA") under 28 U.S.C. § 1404(a), alleging that it is more convenient than this District. That Motion is now ripe for judgment.

II. LEGAL STANDARD

In patent cases, motions to transfer under § 1404(a) are governed by the law of the regional circuit. *In re TS Tech USA Corp*., 551 F.3d 1315, 1319 (Fed. Cir. 2008). Title 28 U.S.C. § 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 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 preliminary question under § 1404(a) is whether a civil action 'might have been brought' in the [transfer] destination venue." *In re Volkswagen, Inc.*, 545 F.3d 304, 312 (5th Cir. 2008) ("*Volkswagen II*"). If the destination venue would have been a proper venue, then "[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) ("*Volkswagen I*") (citing *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*. The weight the Court gives to each of these assorted convenience factors will necessarily vary from case to case. *See Burbank Int'l, Ltd. v. Gulf Consol. Int'l, Inc.*,

441 F. Supp. 819, 821 (N.D. Tex. 1977). A court should not deny transfer where "only the plaintiff's choice weighs in favor of denying transfer and where the case has no connection to the transferor forum and virtually all of the events and witnesses regarding the case . . . are in the transferee forum." *In re Radmax, Ltd.*, 720 F.3d 285, 290 (5th Cir. 2013).

The burden to prove that a case should be transferred for convenience falls squarely on the moving party. *In re Vistaprint Ltd.*, 628 F.3d 1342, 1346 (Fed. Cir. 2010). The burden that a movant must carry is not that the alternative venue is more convenient, but that it is *clearly* more convenient. *Volkswagen II*, 545 F.3d at 314 n.10. While "clearly more convenient" is not explicitly 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). Yet, the Federal Circuit has clarified that, for a court to hold that a factor favors transfer, the movant need not show that that factor *clearly* favors transfer. *In re Apple Inc.*, 979 F.3d 1332, 1340 (Fed. Cir. 2020).

III. ANALYSIS

A. Venue and Jurisdiction in the Transferee Forum

This Court finds, and BillJCo does not contest, that this Action could have been brought in the NDCA.

B. Private Interest Factors

1. Relative Ease of Access to Source of Proof

"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, Inc. v. Apple Inc.*, No. 6:18-cv-00372-ADA, 2019 U.S. Dist. LEXIS 171102, at *5 (W.D. Tex. Sept. 10, 2019). This factor relates to the relative—not absolute—ease of access to non-witness evidence. *See In re Radmax*,

720 F.3d at 288; *In re Apple*, 979 F.3d at 1339. And "the movant need not show that all relevant documents are located in the transferee venue to support a conclusion that the location of relevant documents favors transfer." *In re Apple*, 979 F.3d at 1340.

The Fifth Circuit has held that, even in the context of electronic documents that can be accessed anywhere on earth, this factor is not superfluous. *See Volkswagen II*, 545 F.3d at 316; *see also In re Dish Network L.L.C.*, No. 2021-182, 2021 U.S. App. LEXIS 31759, at *6 (Fed. Cir. Oct. 21, 2021). Though having persistently characterized that holding as antiquated in the setting of a modern patent dispute, this Court will continue to analyze this factor with a focus on the location of physical documents and other evidence; and the hardware storing the relevant electronic documents. *See, e.g.*, *Bluebonnet Internet Media Servs., LLC v. Pandora Media, LLC*, No. 6-20-CV-00731-ADA, 2021 U.S. Dist. LEXIS 137400, at *7 & n.1 (W.D. Tex. July 22, 2021), *vacated on other grounds*, *In re Pandora Media, LLC*, No. 2021-172, 2021 U.S. App. LEXIS 30963 (Fed. Cir. Oct. 13, 2021).

BillJCo asserts all its evidence is "100 miles away from this Court," at BillJCo's headquarters in Flower Mound. ECF No. 33 at 3, 6. Apple argues that "BillJCo's physical documents in the EDTX do not warrant keeping this case in the WDTX." ECF No. 37 at 1. Given Flower Mound's proximity to this Court, it is easier to access BillJCo's evidence from Waco than it would be from the NDCA. This weighs against transfer.

Yet Apple has also shown that its documents are relatively easier to access in the NDCA. Apple states that its "witnesses with knowledge potentially relevant to this case—software engineers, product managers, marketing, licensing, and finance personnel—have all confirmed that Apple's relevant documents are in California." ECF No. 26 at 6 (citing ECF No. 26-1 ¶¶ 7–14). More specifically, "the overwhelming majority of the research, design, and development of

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