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

XR COMMUNICATIONS, LLC, DBA VIVATO TECHNOLOGIES, Plaintiff, v. HP INC., Defendant.	Civil Action No. 6:21-CV-694-ADA **FILED UNDER SEAL**

ORDER GRANTING DEFENDANT'S MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)

Before the Court is Defendant HP Inc.'s ("HP") Motion to Transfer Venue under 28 U.S.C. § 1404(a) to the Northern District of California ("NDCA"). ECF No. 27. Plaintiff XR Communications LLC dba Vivato Technologies ("Vivato") filed its Response (ECF No. 50), and Defendant filed its Reply (ECF No. 52). After careful consideration of the parties' briefs and the applicable law, the Court **GRANTS** Defendant's Motion to Transfer to the Northern District of California.

I. FACTUAL BACKGROUND

Plaintiff filed this lawsuit accusing Defendant of infringing on claims 8 and 12 of U.S. Patent No. 10,715,235 (the "'235 Patent"). ECF No. 1. The '235 Patent describes a transmitted beam-forming network that "routes data-communication transmission to the client devices via directed communication beams that are emanated from an antenna assembly." ECF No. 1-1 at 25. Plaintiff alleges that Defendant manufactures, uses, and sells products ("Accused

Products") that practice the technology of the '235 Patent. ECF No. 1 at 8. The Accused Products include several HP laptop and desktop computers. *Id.* at 8–9.

HP is a corporation organized under the laws of Delaware. ECF No. 18 at 12. Its principal place of business is in Palo Alto, California. *Id*. HP maintains offices in both the transferor and transferee districts: one located in Palo Alto, California, and another in Austin, Texas. *Id.* at 4, 12. HP conducts tests and manages integration of its WiFi modules in Taipei, Taiwan. ECF No. 27 at 6.

Vivato is a limited liability company organized under the laws of Delaware with its principal place of business in Venice, California. ECF No. 1 at 5. Vivato has filed seven separate cases in this District that all assert infringement of the '235 Patent. ECF No. 50 at 7. *See XR Commc'ns LLC v. Amazon.com, Inc. et al.*, No. 6:21-CV-00619-ADA (W.D. Tex. June 16, 2021); *XR Commc'ns LLC v. ASUSTeK Comput. Inc.*, No. 6:21-CV-00622-ADA (W.D. Tex. June 16, 2021); *XR Commc'ns LLC v. Google LLC,* No. 6:21-CV-00625-ADA (W.D. Tex. June 16, 2021); *XR Commc'ns LLC v. Samsung Elecs. Co., LTD et al.*, No. 6:21-CV-00626-ADA (W.D. Tex. June 16, 2021); *XR Commc'ns LLC v. Dell Techs. Inc. et al.,* No. 6:21-CV-00646-ADA (W.D. Tex. June 22, 2021); *XR Commc'ns LLC v. Apple, Inc.*, No. 6:21-CV-00620-ADA (W.D. Tex. June 16, 2021); XR *Commc'ns LLC v. Microsoft Corp.*, No. 6:21-CV-00695-ADA (W.D. Tex. July 1, 2021). Vivato has also filed an additional case for related patents with overlapping inventors. *See XR Commc'ns LLC v. Cisco Sys., Inc. et al.*, No. 6:21-CV-00623-ADA (W.D. Tex. June 16, 2021).

II. LEGAL STANDARD

In patent cases, motions to transfer under 28 U.S.C. § 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). 28 U.S.C. § 1404(a) provides that "[f]or 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."

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 Section 1404(a) is whether a civil action "might have been brought" in the transfer destination venue." *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 312 (5th Cir. 2008) (hereinafter "*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) (hereinafter "*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*. Courts evaluate these factors based on the situation which existed at the time of filing rather than relying on hindsight knowledge of the defendant's forum preference. *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960).

The burden to prove that a case should be transferred for convenience falls squarely on the moving party. *Volkswagen II*, 545 F.3d at 315. The burden that a movant must carry is not that the alternative venue is more convenient, but that it is clearly more convenient. *Id.* at 314 n.10. Although the Vivato's choice of forum is not a separate factor entitled to special weight, respect for the Vivato'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 315. 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).

III. DISCUSSION

The threshold determination in the § 1404(a) analysis is whether this case could initially have been brought in the destination venue—the Northern District of California. HP asserts that this case could have originally been brought in the NDCA because it is headquartered in Palo Alto, California. ECF No. 27 at 5. Vivato does not contest this point. This Court finds that venue would have been proper in the NDCA had Vivato originally filed this case there. Thus, the Court proceeds with its analysis of the private and public interest factors to determine if the NDCA is clearly more convenient than the Western District of Texas ("WDTX").

A. The Private Interest Factors

i. The Relative Ease of Access to Sources 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, 2019 WL 4743678, at *2 (W.D. Tex. Sept. 10, 2019). "[T]he questions is *relative* ease of access, not *absolute* ease of access." *In re Radmax*, 720 F.3d 285, 288 (5th Cir. 2013) (emphases in original). "In patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer. Consequently, the place where the defendant's documents are kept weighs in favor of transfer to that location." *In re Apple Inc.*, 979 F.3d 1332, 1340 (Fed. Cir. 2020) (quoting *In re Genentech*, 566 F.3d 1388, 1345 (Fed. Cir. 2009)).

HP contends that documents relating to marketing, sales, financials, and patent licensing for the Accused Products are kept in the NDCA. ECF No. 27 at 10. Additionally, HP's research,

design, and development documents are primarily in NDCA, Spring, Texas, and Taiwan. *Id.* at 2. Vivato has two primary responses to HP's claims. First, Vivato states that HP's motion did not identify physical documents and was vague about the location of electronic documents. ECF No. 50 at 2. Second, Vivato argues that the files are likely electronic and can be accessed as easily in Texas as in California. *Id*. at 2–3.

The Fifth Circuit has stressed the importance of not relying on technological improvements in electronic discovery to hold that accessing remotely stored documents favors one forum over another. *Volkswagen II*, 545 F.3d at 316. And the Federal Circuit has agreed that the ability to access documents remotely does not render this factor superfluous. *In re Juniper Networks, Inc.*, 14 F.4th 1313, 1321 (Fed. Cir. 2021). The "location of document custodians and location where documents are created and maintained, which may bear on the ease of retrieval," are still relevant. *In re Google LLC*, No. 2021-178, 2021 WL 5292267, at *2 (Fed. Cir. Nov. 15, 2021) (citing *In re Radmax*, Ltd., 720 F.3d 285, 288 (5th Cir. 2013)). Even if the physical location of HP's documents is entirely unknown, the fact that documents are created and maintained in the NDCA is still relevant.

The sources of proof in the present case come primarily from NDCA, Taiwan, and Spring, Texas. ECF No. 27 at 2. Taiwan likely has the most relevant evidence in this case because the documents there are technical in nature and are necessary for Vivato to develop its infringement case. *Id*. at 10. The evidence abroad favors neither district as inspection of those documents could be made in either California or Texas. HP also has documents related to the design, development, marketing, and sales of the Accused Products on the computers of employees in the NDCA, Taiwan, and Spring, Texas. EFC No. 28 ¶ 23. Although the documents in Spring would likely be more accessible in the WDTX, the documents in Palo Alto are already in the transferee forum. The final group of relevant evidence would be HP's sales and financial information, which would be highly relevant to damages. Those documents are in the NDCA. ECF No. 27 at 10. As most of the relevant evidence usually comes from the accused infringer,

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