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

AGIS SOFTWARE DEVELOPMENT LLC, *Plaintiff*, v. HUAWEI DEVICE USA INC., HUAWEI DEVICE CO., LTD., HUAWEI DEVICE (DONGGUAN) CO., LTD., *Defendants*.	§	CIVIL ACTION NO. 2:17-CV-00513-JRG

MEMORANDUM OPINION AND ORDER

Before the Court is Defendants Huawei Device USA Inc. ("Huawei USA"), Huawei Device Co., Ltd. ("Huawei Device"), and Huawei Device (Dongguan) Co., Ltd.'s, ("Huawei Dongguan," collectively, "Huawei") Motion to Transfer Venue to the Northern District of California (Dkt. No. 36, "the Motion"), wherein Huawei moves this Court to transfer venue for this action pursuant to 28 U.S.C. § 1404(a). Having considered the Motion and the relevant authorities, the Court is of the opinion that the Motion should be **DENIED** for the reasons set forth herein.

I. LEGAL STANDARD

Section 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." 28 U.S.C. § 1404(a). The first inquiry when analyzing a case's eligibility for § 1404(a) transfer is "whether the judicial district to which transfer is sought would have been a district in which the claim could have been filed." *In re Volkswagen AG*, 371 F.3d

201, 203 (5th Cir. 2004) ("*Volkswagen I*"). "Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400(b) (2012); *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1519 (2017) ("§ 1400(b) 'is the sole and exclusive provision controlling venue in patent infringement actions.'" (quoting *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 229 (1957))). For purposes of § 1400(b), a domestic corporation resides only in its state of incorporation. *TC Heartland*, 137 S. Ct. at 1521.

Once the initial threshold of proving the proposed transferee district is one where the suit might have been brought is met, courts analyze both public and private factors relating to the convenience of parties and witnesses as well as the interests of particular venues in hearing the case. *See Humble Oil & Ref. Co. v. Bell Marine Serv., Inc.*, 321 F.2d 53, 56 (5th Cir. 1963); *In re Nintendo Co., Ltd.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009). The private 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 I*, 371 F.3d at 203 (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981)). The public 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.* These factors are to be decided based on "the situation which existed when suit was instituted." *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960). Though the private and public factors apply to most transfer cases, "they are not necessarily exhaustive or exclusive," and no single

factor is dispositive. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 314–15 (5th Cir. 2008) ("*Volkswagen II*").

While a plaintiff's choice of venue is not an express factor in this analysis, the appropriate deference afforded to the plaintiff's choice is reflected by the defendant's elevated burden of proof. *Id.* at 315. In order to support its claim for a transfer under § 1404(a), the moving defendant must demonstrate that the transferee venue is "clearly more convenient" than the venue chosen by the plaintiff. *Id.* Absent such a showing, however, the plaintiff's choice is to be respected. *Id.* Additionally, when deciding a motion to transfer venue under § 1404(a), the court may consider undisputed facts outside of the pleadings such as affidavits or declarations, but it must draw all reasonable inferences and resolve factual conflicts in favor of the non-moving party. *See Sleepy Lagoon, Ltd. v. Tower Group, Inc.*, 809 F. Supp. 2d 1300, 1306 (N.D. Okla. 2011); *see also Cooper v. Farmers New Century Ins. Co.*, 593 F. Supp. 2d 14, 18–19 (D.D.C. 2008).

II. DISCUSSION

a. The Action May Have Been Brought in the Transferee District.

As noted above, the threshold inquiry in a § 1404(a) analysis requires a court to find that the action could have been filed in the proposed transferee district. *Volkswagen I*, 371 F.3d at 203. A party cannot unilaterally waive proper venue under § 1404 such that transfer would be permitted—upon a finding of convenience—to a district desired by the movant but not one in which the action might have been brought. *See Hoffman v. Blaski*, 363 U.S. 335, 344 (1960).

Here, Huawei admits that proper jurisdiction over each Huawei Defendant exists in the Northern District of California. "Huawei USA is registered to do business in the State of California, has business operations in Santa Clara within N.D. Cal., and therefore is subject to jurisdiction in that district." (Dkt. No. 36 at 9 (citing *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2787 (2011))). "With respect to foreign defendants Huawei Device and Huawei Dongguan,

venue is appropriate in N.D. Cal." (*Id.* (citing 28 U.S.C. § 1391(c)(3))). Plaintiff AGIS Software Development LLC ("AGIS") does not dispute these admissions. (Dkt. No. 56 at 8 ("[T]his suit could have been brought against Huawei in the proposed transferee district.")).

The Court finds that this action may have been brought in the proposed transferee district of the Northern District of California and proceeds to the second portion of the analysis, the private and public convenience factors.

b. Convenience Factors

i. Relative Ease of Access to Sources of Proof

Huawei argues that this factor "favors transfer because . . . relevant documents, including highly proprietary source code, and witnesses with knowledge relating to the development, manufacturing, and management of the Accused Devices and the third-party Accused Applications are located in N.D. Cal. or at locations far more convenient to N.D. Cal. than to E.D. Tex." (Dkt. No. 36 at 10).

Huawei submits that, as to Huawei Device and Huawei Dongguan, both are Chinese corporations which design and manufacture the Accused Devices outside of the United States, including any pre-loaded installation of Google software on those devices. (Dkt. No. 36 at 4). "Huawei Device and Huawei Dongguan's employees who design and manufacture Huawei's smartphones and tablets reside in China." (*Id.*) Neither of these companies have facilities or employees in Texas, nor do they maintain any documents in Texas. (*Id.*) Huawei USA is a Texas corporation with its principal place of business in Plano, Texas. (*Id.*) Huawei submits, however, that none of its Plano-based employees are involved in research and development, or sales and marketing of the Accused Devices, and argues that its Plano facility "primarily handles corporate-level functions that are not product or technology specific." (*Id.* at 4–5).

Instead, Huawei argues, Huawei USA's research and development, testing, and sales and marketing efforts for the Accused Devices occur primarily within California, specifically in Huawei USA's Santa Clara, Mountain View, and San Diego facilities in California. (*Id.* at 5). Related to these efforts, Huawei has identified in its Motion two witnesses: Wen Wen and Yao Wang. Huawei identified Wen Wen as having "knowledge of sales and marketing efforts for the Accused Devices;" Wen Wen is employed at the Bellvue facility in California. (*Id.*) Huawei has also identified Yao Wang as its only other party witness; Yao Wang is a Principal Engineer who works out of Huawei's Santa Clara office.

Unsurprisingly, there is *much* speculation from both sides under this factor about third party witnesses. Specifically, Huawei argues that "Accused Applications are all developed by third parties located in and around N.D. Cal.," such as Google, and, thus, "Google's knowledge and documents will be essential to showing how these applications function." (Dkt. No. 36 at 5–6). Huawei supports this argument with a number of declarations by Google employees. (Dkt. Nos. 36-4, 36-5, 36-6). The declarations address various Google software products or services, such as Google Maps for Mobile, Google Hangouts or Messenger, and Find My Device. (*Id.*) Each of the declarations states that "at least" the engineers at Google's Mountain View campus have knowledge regarding the current design, development, and operation of those various products and that the declarant is unaware of any employee with relevant knowledge who resides or works in the Eastern District of Texas. (*Id.*) Further, the declarations state that:

> Nearly all the documents relating to [the declaration's product/service], including highly proprietary information and source code, are either physically present in or electronically accessible from Mountain View, California, as that is where many of the personnel most qualified to identify and locate such documents reside. I am aware of no documents described in this paragraph being located in the Eastern District of Texas.

(*Id.*) Notably, Huawei does not identify with particularity any specific Google employees that they anticipate calling at trial or any documentation they plan to present as evidence. (*See, generally*, Dkt. No. 36).

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