

EXHIBIT 2

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

ContentGuard Holdings, Inc.,

Plaintiff,

v.

Amazon.com, Inc.; Apple Inc.; BlackBerry Limited (fka Research In Motion Limited) and BlackBerry Corporation (fka Research In Motion Corporation); HTC Corporation and HTC America, Inc.; Huawei Technologies Co., Ltd. and Huawei Device USA, Inc.; Motorola Mobility LLC; Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC,

Defendants.

Civil Action No. 2:13-cv-01112-JRG

JURY TRIAL DEMANDED

**PLAINTIFF CONTENTGUARD HOLDINGS, INC.'S RESPONSE TO MOTION TO
TRANSFER TO THE NORTHERN DISTRICT OF CALIFORNIA (DKT. 110)**

I. INTRODUCTION

Virtually all of the arguments raised in Moving Defendants’¹ Motion to Transfer (Dkt. 110) were considered and rejected by this Court in its Memorandum Opinion and Order denying Google Inc.’s Motion to Transfer (the “Google Transfer Opinion”) filed in the co-pending *ContentGuard Holdings Inc. v. Google Inc.* litigation. If anything, Moving Defendants, who ask this Court to adopt a transfer-all-of-us-or-none-of-us Order (*see* Dkt. 110-01), present an even more tenuous case for transfer. Most notably, three of the six groups of Moving Defendants include companies **headquartered in Texas** (Samsung, Huawei, and BlackBerry), either within this District or immediately outside it, and a fourth Moving Defendant (Motorola) **manufactures infringing devices in Fort Worth, Texas**, just miles away from this District. Meanwhile, **not a single Moving Defendant is headquartered in the Northern District of California**, and, ironically, the only Defendant whose headquarters are located in that forum (Apple) has chosen **not to seek transfer**, thereby conceding that this Court is a convenient forum.

At bottom, Moving Defendants seek a transfer from the State many of them chose as their U.S. corporate headquarters and where all of them conduct relevant business. But the mere fact that some evidence is located in the Northern District of California is not sufficient to deem that forum clearly more convenient, and that is particularly true given that, as the Court has already found, ContentGuard has a “legitimate” and “extensive” presence in Plano. Google Transfer Opinion at 5, 6. Consistent with precedent, ContentGuard respectfully requests that the Court deny the Motion. *See PersonalWeb Techs., LLC v. NEC Corp. of Am., Inc.*, 2013 U.S. Dist. LEXIS 46296, at *75 (E.D. Tex. Mar. 21, 2013) (“As much as they try, the HP Defendants cannot avoid the fact that [one of their subsidiaries] is headquartered in the Eastern District of

¹ The Moving Defendants include all defendant groups except for Apple Inc. (“Apple”): (1) Amazon.com, Inc. (“Amazon”); (2) BlackBerry Limited and BlackBerry Corporation (“BlackBerry”); (3) HTC Corporation and HTC America, Inc. (“HTC”); (4) Huawei Technologies Co., Ltd. and Huawei Device USA, Inc. (“Huawei”); (5) Motorola Mobility LLC (“Motorola”); and (6) Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC (“Samsung”). Apple has not filed a motion to transfer.

Texas HPES, a wholly-owned subsidiary of HP, employs over 5000 people at its headquarters in the Eastern District of Texas. This fact alone, coupled with PersonalWeb’s Tyler location, makes transfer inappropriate.”).

II. ARGUMENT

Under 28 U.S.C. § 1404(a), a party seeking transfer must prove that the transferee forum is “clearly more convenient” than the venue chosen by the plaintiff. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008). This is a “significant burden,” which is not met when transfer would merely shift the inconvenience from one district to another. *Thomas Swan & Co. v. Finisar Corp.*, 2014 U.S. Dist. LEXIS 773, at *10 (E.D. Tex. Jan. 6, 2014); *see also Kahn v. Gen. Motors Corp.*, 889 F.2d 1078, 1083 (Fed. Cir. 1989). Moving Defendants, who seek transfer collectively rather than based on individual circumstances, have not come remotely close to meeting their burden.

A. The Convenience of the Parties and Witnesses Does Not Favor Transfer

1. The relative ease of access to sources of proof does not favor transfer

Moving Defendants’ assertions that “the Northern District of California would provide easier access to sources of relevant and important proof” (Dkt. 110 at 10) rely on a sleight of hand. That is, Moving Defendants deem as relevant every connection, however slight, they and ContentGuard have to the West Coast, but at the same time ignore or dismiss as irrelevant the extensive connections this dispute has with the Eastern District of Texas or with locations immediately adjacent, including the Western and Northern Districts. An unbiased review of the record,² however, underscores the correctness of this Court’s conclusion that proof relevant to this dispute is located not only in California, but also in Texas. Google Transfer Opinion at 6.

² ContentGuard submits that facts available in the public record and Moving Defendants’ own submissions to the Court amply establish that heaps of relevant evidence are located in the Eastern District of Texas or its close vicinity. To the extent that the Court nonetheless concludes that the showing herein is insufficient, ContentGuard respectfully requests an opportunity to seek targeted discovery from Moving Defendants for purposes of supplementing the record.

Thus, a transfer to California would impermissibly shift inconvenience from one district to another.

Samsung. Defendant Samsung is headquartered in Richardson, Texas, within the Eastern District of Texas. Dkt. 110-22 ¶ 3. In its Richardson facilities, Samsung “researches, develops and markets a variety of personal and business products throughout North America including handheld wireless phones, wireless communications infrastructure systems and enterprise communications systems.” Lelutiu Decl. Ex. 1. From its Richardson facilities, Samsung “work[s] with the carrier network operators in the U.S. to develop and commercialize mobile devices, including the Samsung Galaxy line of smartphones” that ContentGuard has accused in this case. Dkt. 110-22 ¶ 4. From its Richardson facilities, Samsung “also conducts . . . sales and marketing activities in the U.S. for Samsung-branded mobile devices.” Dkt. 110-22 ¶ 4. Prior to April 2014, Samsung’s Richardson facilities also housed Samsung’s Mobile Communications Lab, which “work[ed] with Google on technical issues relating to . . . Google Mobile Services, including the Google Play applications” that ContentGuard has accused in this case. Dkt. 110-22 ¶ 4. Moving Defendants do not deny that Samsung’s Richardson facilities contain relevant evidence concerning the operation and marketing of the Samsung accused products. And while Samsung’s declarant James Botello states that he is “not aware of any S[amsung] documents or witnesses with relevant knowledge relating to the DRM features in the Google Play, Amazon Kindle or Amazon Instant Video *apps* . . . in the Eastern District” (Dkt. 110-22 ¶ 7 (emphasis added)), Mr. Botello’s carefully-constructed statement is at best a half-truth. Evidence concerning and witnesses knowledgeable about *the DRM features of Samsung’s own accused products*, i.e., Samsung devices, as well as a content-distribution service known as Samsung Hub, are located in Richardson, as demonstrated by publicly-available documents. Lelutiu Decl. Exs. 2, 3. Finally, Moving Defendants do not deny that Samsung’s Richardson facilities contain relevant evidence concerning other important topics, such as Samsung’s licensing activities. Significantly, Samsung and its ultimate Korean parent (Defendant Samsung Electronics Co., Ltd.) have regularly availed themselves of the Eastern

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