

EXHIBIT 3

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

CONTENT GUARD HOLDINGS, INC.,

Plaintiff,

v.

AMAZON.COM, INC., et al.,

Defendants.

§
§
§
§
§
§
§
§
§

Case No. 2:13-CV-1112-JRG

MEMORANDUM OPINION AND ORDER

Before the Court are Defendants Amazon.com, Inc. (“Amazon”), Blackberry Limited and Blackberry Corporation (collectively, “Blackberry”), HTC Corporation and HTC America, Inc. (collectively, “HTC”), Huawei Technologies Co., Ltd. and Huawei Device USA, Inc. (collectively, “Huawei”), Motorola Mobility LLC (“Motorola”), Samsung Electronics Co., Ltd., Samsung Electronics America, Inc. and Samsung Telecommunications America, LLC’s (collectively, “Samsung”) (collectively, the “Movants”) Joint Motion to Transfer Venue to the Northern District of California (Dkt. No. 110); and ContentGuard’s Supplemental Response to Motion to Transfer to the Northern District of California (Dkt. No. 184). Movants seek to transfer under 28 U.S.C § 1404(a) from the Eastern District of Texas (“EDTX”) to the Northern District of California (“NDCA”). Having considered the parties’ written submissions, the Court DENIES Movants’ Motion for the reasons set forth below.

APPLICABLE LAW

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 court or division where it might have been brought.” 28 U.S.C. § 1404(a). However, a motion to transfer venue should only be granted upon a showing that the transferee venue is “clearly more

convenient” than the venue chosen by the plaintiff. *In re Nintendo Co.*, 589 F.3d 1194, 1197 (Fed. Cir. 2009); *In re Genentech, Inc.*, 566 F.3d 1388, 1342 (Fed. Cir. 2009); *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008); *In re Volkswagen of America, Inc. (Volkswagen II)*, 545 F.3d 304, 315 (5th Cir. 2008). District courts have “broad discretion in deciding whether to order a transfer.” *Balawajder v. Scott*, 160 F.3d 1066, 1067 (5th Cir. 1998) (quoting *Caldwell v. Palmetto State Sav. Bank*, 811 F.2d 916, 919 (5th Cir. 1987)).

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 (Volkswagen I)*, 371 F.3d 201, 203 (5th Cir. 2004). If the transferee district is a proper venue, then the Court must weigh the relative public and private factors of the current venue against the transferee venue. *Id.* In making such a convenience determination, the Court considers several private and public interest factors. *Id.* “Factors relating to the parties’ private interests include ‘[1]) relative ease of access to sources of proof; [2]) availability of compulsory process for attendance of unwilling, and [3]) the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and [4]) all other practical problems that make trial of a case easy, expeditious and inexpensive.’” *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 134 S. Ct. 568, 581 n.6 (2013) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241, n.6, (1981); *Nintendo*, 589 F.3d at 1198; *Genentech*, 566 F.3d at 1342; *TS Tech.*, 551 F.3d at 1319; *Volkswagen II*, 545 F.3d at 315. “Public-interest factors may include ‘[1]) the administrative difficulties flowing from court congestion; [2]) the local interest in having localized controversies decided at home; [and] [3]) the interest in having the trial of a diversity case in a forum that is at home with the law.’” *Atl. Marine*, 134 S. Ct. at 581 n.6 (citing *Piper Aircraft*, 454 U.S. at 241 n.6); *Volkswagen I*, 371

F.3d at 203; *Nintendo*, 589 F.3d at 1198; *TS Tech*, 551 F.3d at 1319. Other public factors are: 4) the familiarity of the forum with the law that will govern the case; and 5) the avoidance of unnecessary problems of conflict of laws or in the application of foreign law. *Volkswagen I*, 371 F.3d at 203; *Nintendo*, 589 F.3d at 1198; *TS Tech*, 551 F.3d at 1319. Although the private and public factors apply to most transfer cases, “they are not necessarily exhaustive or exclusive,” and no single factor is dispositive. *Volkswagen II*, 545 F.3d at 314-15.

In the Fifth Circuit, the plaintiff’s choice of venue has not been considered a separate factor in this analysis. *Volkswagen II*, 545 F.3d at 314-15. However, “[t]he Court must also give some weight to the plaintiffs’ choice of forum.” *Atl. Marine*, 134 S. Ct. at n.6 (citing *Norwood v. Kirkpatrick*, 349 U.S. 29, 32 (1955)). “Plaintiffs are ordinarily allowed to select whatever forum they consider most advantageous (consistent with jurisdictional and venue limitations), [and the Supreme Court has] termed their selection the ‘plaintiff’s venue privilege.’” *Atl. Marine*, 134 S. Ct. at 581 (citing *Van Dusen v. Barrack*, 376 U.S. 612, 635 (1964)). In the Fifth Circuit, the “venue privilege” has been seen as contributing to the defendant’s burden in proving that the transferee venue is “clearly more convenient” than the transferor venue. *Volkswagen II*, 545 F.3d at 315; *Nintendo*, 589 F.3d at 1200; *TS Tech*, 551 F.3d at 1319.

“The idea behind § 1404(a) is that where a ‘civil action’ to vindicate a wrong—however brought in a court—presents issues and requires witnesses that make one District Court more convenient than another, the trial judge can, after findings, transfer the whole action to the more convenient court.” *Van Dusen*, 376 U.S. at 622 (quoting *Cont’l Grain Co. v. The FBL-585*, 364 U.S. 19, 26 (1960)). “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, 376 U.S. at 622). Section 1404(a) requires this discretionary “individualized, case-by-case consideration of convenience and fairness.” *Genentech* 566 F.3d at 1346 (quoting *Van Dusen*, 376 U.S. at 622).

BACKGROUND

This suit is a suit concerning the infringement and validity of certain U.S. patents. Plaintiff ContentGuard was originally formed as a partnership between Xerox Corporation and Microsoft Corporation¹ to pursue digital rights management (“DRM”) technology.² As part of its business, ContentGuard filed and obtained various patents, including the nine patents that it asserts in this action. The Defendants in this action—Amazon, Apple, Huawei, Motorola, HTC, and Samsung³—are well-known technology companies that, among their varied businesses, provide electronic hardware and software products. Generally in this suit, ContentGuard accuses DRM aspects of certain of Defendants’ software applications (“apps”) (e.g. iTunes, Amazon Kindle, Amazon Instant Video) and hardware and software components of infringing its patent claims.

¹ ContentGuard is now owned by Pendrell Technologies, LLC. (Dkt. No. 2.) ContentGuard’s website suggests that may also be owned by Time Warner. *See* <http://contentguard.com/company/> (“ContentGuard is owned by Pendrell Corporation and Time Warner”) (last visited January 30, 2015).

² Broadly, DRM technology, which might also be thought of as “copy protection,” seeks to control access (e.g. viewing, copying) to digital information, including media, such as music, movies, and software.

³ BlackBerry Corporation (f/k/a Research In Motion Corporation), another technology company, was dismissed on January 21, 2015. BlackBerry was a signatory to the pending motion. BlackBerry is a Delaware corporation with its principal place of business in Irving, Texas. Irving, Texas is located to the west of Richardson, Texas in Dallas County, which is in the Northern District of Texas. The Court’s preliminary analysis of BlackBerry’s facts in the briefing, strongly suggest that including BlackBerry in this analysis would weigh against transfer. As the Court otherwise finds that the evidence does not favor transfer, the Court does not undertake the full analysis of BlackBerry’s facts and therefore excludes BlackBerry from its analysis.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.