

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

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

vs.

HTC CORPORATION,

Defendant.

**CIVIL ACTION NO. 2:17-cv-514-JRG
(LEAD)**

JURY TRIAL DEMANDED

**DEFENDANT HTC CORPORATION'S MOTION TO RECONSIDER DENIAL OF
MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(A) TO THE
NORTHERN DISTRICT OF CALIFORNIA (DKT. NO. 77)**

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I. Introduction

Defendant HTC Corporation (“HTC Corp.”) respectfully submits this motion to reconsider the Court’s denial of HTC Corp.’s earlier Motion (Dkt. No. 29) to transfer venue to the Northern District of California pursuant to 28 U.S.C. § 1404(a). In its Order (Dkt. No. 77) denying the Motion, the Court found two factors favoring granting transfer, three factors favoring denying transfer, and three factors neutral on the issue of transfer. With this mixed result, the Court found that HTC Corp. had not shown that transfer was “clearly more convenient” as required by Fifth Circuit precedent. (Order at 21.)

Subsequent discovery has demonstrated that several important representations made by AGIS Software Development LLC (“AGIS”) in its Opposition (Dkt. No. 40) to the Motion, and reasonably relied on by the Court in its Order, were misleading or false. Furthermore, discovery has uncovered facts that further illuminate why transfer to the Northern District of California is warranted. As explained in greater depth herein, when these facts are considered, three or four factors favor granting transfer, while at most one factor favors denying transfer. HTC Corp. submits that this demonstrates that litigation in the Northern District of California is “clearly more convenient,” and HTC Corp. respectfully requests that the Court reconsider its Order and transfer the present proceeding to the Northern District of California for that reason.

II. Factual background

A. Facts and Arguments Considered by the Court in its Order Denying Motion to Transfer

In its Order, the Court analyzed the four judicially-defined private interest factors and four judicially-defined public interest factors, finding two factors to favor granting transfer, three factors to favor denying transfer, and three factors to be neutral.

The Court found that the private interest factor of “the relative ease of access to sources

of proof” slightly favored granting transfer. (Order at 11–14.) For this factor, the Court weighed the presence of Google source code in the Northern District of California against AGIS’s assertion that its “books and records” were located in this District and that AGIS intended to seek discovery from third-party cellular carriers located in Texas, Kansas, and New Jersey. (*Id.*) The Court noted that AGIS had argued that its infringement contentions were based on only open source Google source code, and thus the presence of Google source code in the Northern District of California was irrelevant. (*Id.* at 13.)

The Court found that the private interest factor of “availability of compulsory process” wholly favored granting transfer. (Order at 14–16.) For this factor, the Court weighed HTC Corp.’s identification of third-party Google employees and the prosecuting attorney for three of the asserted patents against the presence of former employee and current contractor, Eric Armstrong, in this District. (*Id.*)

The Court found that the private interest factor of “cost of attendance of willing witnesses” slightly favored denying transfer. (Order at 16–19.) For this factor, the Court weighed HTC Corp.’s identification of two witnesses, Nigel Newby-House and Andrew Pudduck, for which the Northern District of California would be more convenient, against AGIS’s identification of five witnesses, Eric Armstrong, Malcolm Beyer, David Sietsema, Sandel Blackwell, and Rebecca Clark, for which this District would be more convenient. (*Id.*) The Court noted that AGIS asserted that this District would also be more convenient for witnesses from third-party cellular carriers. (*Id.* at 18.) The Court did not consider the greater convenience of the Northern District of California for HTC Corp.’s witnesses based in Taiwan, finding that travel to either district would be equally convenient. (*Id.*)

The Court found that the public interest factor of “administrative difficulties flowing

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