

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

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Civil Action No. 2:17-CV-516-JRG

**DEFENDANT APPLE'S REPLY IN SUPPORT OF ITS MOTION TO TRANSFER
VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA**

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Eight months ago, the Federal Circuit affirmed a verdict of non-infringement against AGIS, Inc. in a case filed in the Southern District of Florida on patents from the same family at issue here, and upheld an assessment of attorneys' fees. Six months ago, AGIS, Inc. created the Plaintiff in this case (AGIS Software Development LLC, or "AGIS"), purportedly opened an office across the street from the Courthouse, and filed five lawsuits just 20 days later, including this one. AGIS now argues that it has always had "longstanding" ties to this District.

Yet it identifies just four such connections: (1) its new Marshall office (which has no employees); (2) one "consultant" (who is irrelevant according to AGIS's own discovery responses); (3) its paid litigation expert (who has testified across the country); and (4) land owned by its CEO (which has nothing to do with this dispute). This Court and the Federal Circuit have repeatedly transferred cases—like this one—which have no meaningful tie to this District. This case should therefore be transferred to the Northern District of California, where all of Apple's relevant documents and likely trial witnesses are located, where numerous third parties are located, and which has the most significant local interest in this dispute.

I. Documentary Evidence Is Located in Northern California, Not In This District.

No dispute exists that the bulk of documentary evidence exists at Apple's headquarters in Northern California. No relevant sources of proof exist in this District—AGIS identifies none (*see* D.I. 57 at 7-8), and any such documents would have been moved here just before this lawsuit and therefore irrelevant to the transfer analysis.¹ Moreover, AGIS's argument that this factor is *irrelevant* lacks merit. This factor weighs in favor of transfer where—as here—no sources of proof exist within this District, even if documents can be produced electronically.²

¹ *Optimum Power Solutions LLC v. Apple, Inc.*, 794 F. Supp. 2d 696, 701 (E.D. Tex. 2011).

² *Oyster Optics, LLC v. Coriant Am. Inc.*, No. 2:16-CV-1302, 2017 WL 4225202, at *5 (E.D. Tex. Sep. 22, 2017).

II. Northern California Is More Convenient For Almost Every Willing Witness.

The primary disputes in this case concern Apple’s accused products—how they work, whether they infringe any asserted claims, and any alleged damages.³ The testimony relevant to those issues will largely come from Apple’s potential trial witnesses, *seven* of whom Apple has specifically identified by name and scope of potential testimony, and all of whom live and work in Northern California. (D.I. 53-1.) AGIS’s arguments to the contrary should be rejected.

First, AGIS’s argument that Apple did not reveal the “substance of [its likely witnesses’] testimony” (D.I. 57 at 9-10)—and that their convenience should be disregarded—lacks merit. Apple’s opening brief and supporting declaration outline the specific information that each of its seven potential witnesses would testify about at trial, including the design, development, manufacture and marketing of the accused software, as well as financial and sales information regarding the accused devices. (D.I. 53-1 ¶¶ 8-16.) Requiring a question-and-answer-style outline for each witness nearly a year before trial (as AGIS apparently suggests) is unnecessary.⁴ *Second*, AGIS baselessly asserts that relevant Apple witnesses may work in Texas. But Apple has investigated and determined that the engineers responsible for developing the accused technology all belong to one of three specific groups within Apple. (Jaynes Reply Decl. ¶ 4.) Only one employee from those groups is located anywhere in Texas, and that employee had no involvement in the design or development of the technology at issue here. (*Id.*) *Third*, AGIS identifies six witnesses that it expects to call to trial: Malcolm Beyer (Jupiter, FL); David Sietsema (Austin, TX); Sandel Blackwell (Lenexa, KS); Chris Rice (Redmond, WA);

³ AGIS does not contend that any AGIS product practices the asserted claims. (Ex. 1 at 8.)

⁴ *Godo Kaisha IP Bridge 1 v. Xilinx, Inc.*, No. 2:17-cv-100-JRG-RSP, 2017 WL 4076052, at *4 (E.D. Tex. Sep. 14, 2017).

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