

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

QUEST NETTECH CORPORATION,

Plaintiff,

v.

APPLE INC.,

Defendant.

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C.A. No. 2:19-cv-00118-JRG

JURY TRIAL DEMANDED

**APPLE INC.'S REPLY TO QUEST NETTECH CORPORATION'S OPPOSITION
TO APPLE INC.'S MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)**

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NetTech's Opposition (Dkt. 33) is based on demonstrably incorrect assertions about the locations of nonparty and party sources of evidence and an incorrect understanding of the applicable law. When the correct legal standard is applied to the actual facts, NDCA is clearly the more convenient venue and the case should be transferred there.

I. APPLE'S AUSTIN PRESENCE IS IRRELEVANT.

But for the case caption, one might mistakenly believe that this case had been filed in the Western District of Texas (WDTX) given the extensive discussion of Austin in NetTech's Opposition. *See, e.g.*, Opp. at 1, 4, 6, and 11. NetTech's repeated references to Austin do not somehow make Apple's activities there relevant to the transfer analysis in this case. NetTech is mistaken on both the law and the facts related to Apple's Austin activities. On the law, NetTech is incorrect that Apple's general presence in Austin bears on the transfer analysis at all. And on the facts, NetTech is mistaken about the relevance of the Apple employees it identifies in Austin.

A. Apple's General Presence in Austin is Irrelevant.

Lacking any meaningful ties or connections to the Eastern District of Texas (EDTX), NetTech argues that the Court should consider Apple's activities in the "surrounding areas" and emphasizes that "Apple houses its largest campus outside of its California headquarters in Austin, Texas." Opp. at 1; *see also id.* at 4, 6, 11. Yes, Apple has a large campus and general presence in Austin. No, that campus is not relevant to the transfer analysis.

As an initial matter, Austin is not in EDTX¹ and, by NetTech's own admission, is nearly "300 miles from this District." Opp. at 6. In any event, the same argument that NetTech presses here—that Apple's general presence and campus in Austin favors keeping the case in EDTX—has been squarely rejected by this Court. In *PersonalWeb Techs., LLC v. Apple, Inc.*, the plaintiff "point[ed] to Apple's 3,500-employee operations center in Austin" as a reason to maintain the case in EDTX. Order at 20-21, No. 6:12-CV-660-LED (E.D. Tex. Feb. 12, 2014). The plaintiff further

¹ Even if Apple's Austin campus were in EDTX, it would still be irrelevant. *See Uniloc USA, Inc. et al. v. Apple, Inc.*, No. 18-CV-0164-LY, Dkt. 52 at 2 and 4-6 (W.D. Tex., Mar. 28, 2019) (transferring WDTX case to NDCA and finding that private interest factors (ease of proof and attendance of willing witnesses) favored transfer notwithstanding Apple's WDTX presence).

argued that Apple’s “sworn declaration that the Austin facility was not involved in the design or development of the accused products” was “insufficient evidence to show there are no sources of proof in Austin.” *Id.* at 21. This Court disagreed, stating that “the Court will not consider Apple’s Austin office” in the transfer analysis. *Id.* Here, too, Apple has submitted sworn declarations from its Finance Manager, Michael Jaynes, stating that Apple’s Austin facility is not involved in the design or development of Apple Pay. *See* Dkt. 20-1 (Dec. of M. Jaynes in support of Apple’s Transfer Motion). This testimony stands unrebutted, but for NetTech’s conjecture about four Apple employees in Austin which is addressed below.

B. NetTech is Mistaken About Apple’s Employees in Austin.

Ignoring the five Apple employees specifically identified in Apple’s motion² and the accompanying declaration describing their roles and responsibilities vis-à-vis the design, development, implementation, and marketing of the Accused Technology, NetTech speculates that four Austin-based Apple employees are “likely knowledgeable” about Apple Pay. *Opp.* at 1. Especially when considering that the relevant timeframe is from October 2014 (when Apple Pay was first released) to September 2015 (when the Asserted Patent expired), NetTech’s attempt to paint Apple as having four relevant witnesses in EDTX completely backfires, as demonstrated by the very LinkedIn profiles attached to NetTech’s Opposition. *See Opp.* Exs. 1-4.

- **Christine McGarvey** was a graduate student and intern at a foods company in Denver during much of the relevant time period. *Opp.* Ex. 3 at 1. Ms. McGarvey joined Apple in August 2015 (one month before the patent expired) as a member of the AppleCare organization, which provides customer support. *Id.*; *Supp. Jaynes Dec.*, ¶¶4-6, 9. She has confirmed that she has had no involvement in the design, development, implementation, or marketing of Apple Pay. *Id.*, ¶9.
- **Claire Bradshaw** is a Team Manager in the AppleCare organization and has worked in supervisory roles in that organization since joining Apple in 2011. *Opp.* Ex. 2 at 1. *Supp. Jaynes Dec.*, ¶¶4-6, 8. Ms. Bradshaw has confirmed that she has had no involvement in the design, development, implementation, or marketing of Apple Pay. *Id.*, ¶8.
- **Mark Bennett** is a Quality Program Manager in the AppleCare organization and

² The fact that Apple specifically identified its witnesses and explained their roles distinguishes the *Core Wireless* case cited by NetTech. *See Opp.* at 5 (discussing *Core Wireless Licensing, S.A.R.L. v. Apple Inc.*, No. 6:12-cv-100-LED-JDL, 2013 WL 682849 (E.D. Tex. Feb. 22, 2013)).

has worked in that organization since 2008. Opp. Ex. 1 at 1; Supp. Jaynes Dec. ¶¶4-7. Mr. Bennett has confirmed that he has had no involvement in the design, development, implementation, or marketing of Apple Pay. *Id.*, ¶7.

- **Jack Senyard** was a logistics coordinator at an energy company during the majority of the relevant time period. Opp. Ex. 4 at 1. Mr. Senyard was employed by a staffing agency which first placed him at Apple in April 2015, and he did not join Apple until August 2016 (a year after the patent expired). Supp. Jaynes Dec. ¶¶4-6, 10. He was, and still is, a data analyst on a fraud prevention team, and he has confirmed that he has had no involvement in the design, development, implementation, or marketing of Apple Pay. *Id.*, ¶10.

Not only are none of these individuals located in EDTX, none of them have knowledge relevant to this litigation. Accordingly, the “ease of access” and “cost of attendance” private interest factors strongly favor transfer.³

II. NETTECH’S OWN WITNESSES ARE NOT IN EDTX.

Notwithstanding NetTech’s claim that its principal place of business is in Marshall, NetTech fails to identify a single witness in the state of Texas. Opp. at 2-3. Moreover, NetTech does not dispute that the Asserted Patent was owned by New York-based Wynn Technologies, Inc.—a sister company to NetTech—from November 29, 2000 until April 11, 2019. The “merger” of Wynn Technologies (whose sole asset is the Asserted Patent) with NetTech the day before filing suit is a transparent attempt to manipulate venue. Mot. at 4; Dkt. 20-3 at 11 (Annual Report stating “[t]he sole asset of Wynn Technologies Inc. is U.S. Pat. No. RE38,137”).

NetTech admits that Mr. Scahill—the only “primary witness” NetTech identifies—does not reside in Texas, but in New York. Opp. at 2. Lacking a single identifiable witness in Texas, NetTech argues that Mr. Scahill is located “much closer to [EDTX] than [NDCA].” *Id.* Likewise, NetTech identifies several other witnesses in New York (but none in Texas) and argues that their “presence in New York weighs against transfer because New York is far closer to Marshall, Texas than to [NDCA].” *id.* at 9; *see also id.* at 3. But equating distance with convenience misstates the

³ Without providing any details, NetTech also argues that litigating in EDTX cannot be inconvenient for Apple and its witnesses because Apple did not move to transfer two other EDTX cases. Opp. at 1-2. This argument is meritless and NetTech tacitly admits as much by acknowledging elsewhere in its Opposition that the court must “weigh a number of *case-specific factors* based on the *individualized facts on record.*” Opp. at 15.

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