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

QUEST NETTECH CORPORATION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 2:19-CV-00118-JRG
	§	
APPLE, INC.,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Apple, Inc.'s ("Apple") Motion to Transfer Venue Under 28 U.S.C. § 1404(a) (the "Motion"). (Dkt. No. 20.) In the Motion, Apple requests that this Court transfer the above-captioned case under 28 U.S.C § 1404(a) from the Eastern District of Texas to the Northern District of California. Having considered the Motion and for the reasons set forth herein, the Court is of the opinion that the Motion should be and hereby is **DENIED**.

I. BACKGROUND

A. The Asserted Patent

This case involves one patent—United States No. RE 38,137 (the "'137 Patent") issued on June 10, 2003 with a filing date of September 28, 1995. The '137 Patent is entitled "Programmable Multiple Company Credit Card System." The sole inventor of the '137 Patent is Sol H. Wynn, who is a resident of Elk Grove, California (a town less than 100 miles from San Francisco)[1]. (Dkt. No. 20 at 4; Dkt No. 33 at 3.) In addition, the prosecuting attorney that helped Mr. Wynn secure the '137 Patent is a Mr. Max Moskowitz, who has a listed business address in New York. (Dkt. No. 20 at 5.) Plaintiff Quest NetTech ("NetTech") became the sole and exclusive owner of the

[1] According to a declaration by Mr. Jon Scahill (CEO of NetTech), Mr. Wynn has indicated that he is willing to voluntarily travel to the Eastern District of Texas. (Dkt. No. 33-2 at ¶ 11.).

'137 Patent when it merged with Wynn Technologies, Inc. on April 11, 2019. (*Id*. at 4.) NetTech has not sued any other parties for infringement of the '137 Patent. (*Id.* at 1.)

B. The Instant Lawsuit

NetTech filed its complaint against Apple on April 12, 2019, (the "Complaint") asserting that Apple's "Apple Pay functionality" implemented through Apple Wallet on such devices as the iPhone 6 with Apple iOS 8 or 9 (the "Accused Products") infringes the '137 Patent. (Dkt. No. 5 at ¶ 12; Dkt. No. 20 at 2.) Apple has yet to file an Answer but has filed a Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim, in addition to this Motion to Transfer Venue Under 28 U.S.C. § 1404(a). (*See* Dkt. No. 19; Dkt. No. 20.)

C. Quest NetTech Corporation

NetTech is a limited liability company organized and existing under the laws of Texas. (Dkt. No. 33 at 2.) NetTech's principal place of business is located in this District in Marshall, Texas. (*Id*.) Over the last decade, NetTech has been involved in numerous patent disputes in this District since its incorporation in 2009. (*Id*.) The sole manager of NetTech is Jon Scahill, a New York resident who regularly travels to this District on business for NetTech. (*Id*.) According to NetTech, Mr. Scahill will be a primary witness in this case as he "possesses highly relevant knowledge regarding the business of NetTech, the valuation of the '137 Patent, secondary considerations, and the licensing efforts of NetTech." (*Id*.) Furthermore, according to NetTech, all of its documents are located in this District. (*Id*.) NetTech, however, has no fixed employees whose designated place of work is within this District, though such is no longer uncommon in today's world of tele-working. (Dkt. No. 20 at 4.)

D. Apple, Inc.

Apple is a California corporation with its principal place of business in Cupertino, California, in the Northern District of California. (Dkt. No. 1 at ¶2.) According to Apple, Apple's primary research and development facilities are located in the Northern District of California. (Dkt. No. 20 at 2.) In addition, Apple employs several thousand people in the Northern District of California. (*Id.*) Furthermore, according to Apple, certain of its employees who are knowledgeable as to the Accused Products are located in and around the Cupertino area.[2] (*Id.*) Finally, according to Apple, the relevant documents, source code, and other evidence that relate to the Accused Products are located in the Northern District of California. (*Id.*)

Apple no longer has facilities in the Eastern District of Texas though it had two retail stored in this District when the complaint was filed.[3] (*Id.* at 4.) Apple, however, presently has facilities (both retail and non-retail) in other districts in Texas. (Dkt. No. 33 at 4.) Apple has a campus in Austin, Texas—which is in the Western District of Texas—with over 6,200 employees where Apple conducts "a broad range of functions including engineering, R&D, operations, finance, sales and customer support." (*Id.*) In addition, Apple operates facilities in Dallas and Garland—which are located in the Northern District of Texas. (*Id.*) According to NetTech (and based on LinkedIn search results), there are several Apple employees that work on the Apple Pay systems that work

[2] For example, Mr. Glen Steele, who leads the Apple Wallet Engineering team for iOS, is located in the Northern District of California. (Dkt. No. at 2–3.) In addition, Mr. Chris Sharp, who is the Director of Engineering in the Apple Pay Server Engineering group and who was involved in the design and development of Apple Wallet, is also located in the Northern District of California. (*Id.* at 3.) Further, Mr. David Brudnicki the head of the Apple Pay Product Architecture team at Apple is also located in the Northern District of California. (*Id.*) Also, Mr. Baris Cetinok, the Senior Director of Product Marketing at Apple with responsibilities for Apple Wallet and Apple Pay, is also located in the Northern District of California. (*Id.*)

[3] At the time this suit was filed, Apple had two retail stores in the Eastern District of Texas. However, these retail stores were closed the day after this suit was filed.

in Apple's Austin campus. (*Id*.) Apple, however, disputes that these employees have information that would be relevant to this case.[4]

II. LEGAL STANDARD

If venue in the district in which the case is originally filed is proper, the court may nonetheless transfer a case based on "the convenience of parties and witnesses" to "any other district or division where it might have been brought or to any district or division to which all parties have consented." 28 U.S.C. § 1404(a). The threshold inquiry when analyzing 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*, 371 F.3d 201, 203 (5th Cir. 2004) [hereinafter *Volkswagen I*]. As such, to prove that transfer is proper, the movant must establish that, as of the time of filing, each party "would have been amenable to process in . . . the transferee court" and that "venue as to all [parties] would have been proper [there]." *See Liaw Su Teng v. Skaarup Shipping Corp.*, 743 F.2d 1140, 1148 (5th Cir. 1984), *overruled on other grounds by In re Air Crash Disaster Near New Orleans*, 821 F.2d 1147 (5th Cir. 1987); *accord Hoffman v. Blaski*, 363 U.S. 335, 342–44 (1960).

Once this initial threshold has been met, courts determine whether the case should be transferred by analyzing various public and private factors. *See Humble Oil & Ref. Co. v. Bell Marine Serv., Inc.*, 321 F.2d 53, 56 (5th Cir. 1963); *accord In re Nintendo Co., Ltd.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009). The private factors are: (1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious, and inexpensive. *Volkswagen I*, 371 F.3d at 203 (*citing Piper Aircraft Co. v.*

[4] Apple claims that it has confirmed with the employees in Austin that NetTech named that these employees had "no involvement in the design, development, implementation, or marketing of Apple Pay." (Dkt. No. 43 at 2–3.)

Reyno, 454 U.S. 235, 241 n.6 (1981)). The public factors are: (1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws or in the application of foreign law. *Id.* These factors are to be decided based on "the situation which existed when suit was instituted." *Hoffman*, 363 U.S. at 343. Though the private and public factors apply to most transfer cases, "they are not necessarily exhaustive or exclusive," and no single factor is dispositive. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 314–15 (5th Cir. 2008) [hereinafter *Volkswagen II*].

To prevail on a motion to transfer under § 1404(a), the movant must show that the transferee venue is "clearly more convenient" than the venue chosen by the plaintiff. *Id.* at 315; *accord In re Apple Inc.*, 456 F. App'x 907, 909 (Fed. Cir. 2012) (holding that a movant must "meet its burden of demonstrating [] that the transferee venue is 'clearly more convenient.'") (internal citation omitted). Absent such a showing, plaintiff's choice of venue is to be respected. *Volkswagen II*, 545 F.3d at 315. When deciding a motion to transfer under § 1404(a), the court may consider undisputed facts outside of the pleadings such as affidavits or declarations, but it must draw all reasonable inferences and resolve factual conflicts in favor of the non-moving party. *See Sleepy Lagoon, Ltd., v. Tower Grp., Inc.*, 809 F. Supp. 2d 1300, 1306 (N.D. Okla. 2011); *see also Cooper v. Farmers New Century Ins. Co.*, 593 F. Supp. 2d 14, 18–19 (D.D.C. 2008).

III. DISCUSSION

A. This Action Could Have Been Filed in the Northern District of California.

As a threshold matter, it must be determined whether NetTech could have initiated this suit in the Northern District of California. *See Volkswagen I*, 371 F.3d at 203. Apple is a California corporation with its headquarters in the Northern District of California. The Court finds that this

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