# EXHIBIT 21

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

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| **CORE WIRELESS LICENSING S.A.R.L.** | ) | |
| | ) | **CIVIL ACTION NO. 6:14-cv-751-JRG-JDL** |
| **Plaintiff,** | ) | **CIVIL ACTION NO. 6:14-cv-752-JRG-JDL** |
| **v.** | ) | |
| | ) | **JURY TRIAL DEMANDED** |
| **APPLE INC.,** | ) | |
| **Defendant.** | ) | |

**CORE WIRELESS LICENSING S.A.R.L.'S SUR-REPLY IN SUPPORT OF ITS OPPOSITION TO APPLE'S MOTION TO TRANSFER VENUE**

## I. INTRODUCTION

As explained in Core Wireless's opposition, judicial efficiency is a major factor that disfavors transfer of these cases. In its Reply, Apple attempts to argue that California courts can be as efficient as this Court. Considering the substantial institutional knowledge of this Court directly related to these cases and other co-pending cases involving overlapping patents, however, transferring the cases after ten months of litigation in this District to a court with no such knowledge or experience will undeniably incur a high cost in judicial efficiency. Apple also unjustifiably downplays Core Wireless's Texas presence and identified Texas witnesses. While chastising Core Wireless for being a small entity, Apple at the same time (inaccurately) paints Core Wireless as an entity with unlimited resources that can shoulder the increased burden of litigating this case in California; meanwhile, Apple has already admitted Texas is not inconvenient. Apple has not met, and cannot meet, its high burden to justify transfer.

## II. ALL RELEVANT FACTORS WEIGH AGAINST TRANSFER

### A. Judicial Efficiency Weighs Against Transfer

Try as it might, Apple cannot dispute the fact that judicial efficiency overwhelmingly weighs against transfer. In its Reply, Apple argues that the California courts could handle the claim construction issues as efficiently as this Court; but that defies logic. Even if the Courts were to grant the relief that both Apple and LG seek, multiple courts would still be overseeing the cases, and judicial efficiency would be wasted. For example, LG sought to transfer the originally filed -912 case to the Southern District of California. Thus, both the Northern District of California and the Southern District of California would be ruling on the new overlapping standard essential patents (SEPs), and it is highly unlikely that these Courts would consolidate the *Markman* proceedings, and certainly not on the schedule this Court can offer – indeed opening briefs have already been filed in cases against both Apple and LG. (Further, the

Southern District of California would also have to get fully up to speed on the SEPs that were asserted against Apple in 12-cv-100, without the benefit of this Court's institutional knowledge, thereby resulting in further wasted resources.) As both parties have acknowledged, this Court has efficiently opted to consolidate the case for *Markman* proceedings only.[1] The same Texas-based technical advisor who advised the Court in the first SEP case, Mr. Egan, will be assisting the Court with the claim construction procedure here, which further weighs against transfer.

But judicial efficiency is not served just by the consolidated *Markman* proceedings. This Court also has specific familiarity with the parties, and is well versed in the facts surrounding the years of negotiation attempts, rejected meeting requests, and offers that form part of Core Wireless's breach of contract claims asserted in this case. Thus, unlike *PersonalWeb Techs, LLC v. NEC Corp. of Am., Inc.*, No. 6:11-CV-655, 2013 U.S. Dist. LEXIS 46296, *84-85 (E.D. Tex. Mar. 21, 2013) (Davis, J.), this Court's institutional knowledge will be further beneficial for trial, not just the *Markman* proceedings. This Court's familiarity with the parties and this cause of action further weighs against transfer. Apple does not deny this fact.

**B. Cost of Attendance for Willing Witnesses Weighs Against Transfer**

If these cases are transferred to California, costs for Core Wireless's witnesses to attend trial will be greater; if the cases are not transferred, costs for Apple's witnesses will be greater.

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[1] Apple argues that Core Wireless is taking inconsistent positions about the appropriateness of deciding issues of the co-pending Apple and LG cases together. That is not true. In its opposition to LG's motion to consolidate, with regard to the potential for inconsistent rulings, Core Wireless simply noted that there was no guarantee that LG and Apple would select the same claim terms (which turned out to be the case for many claims), and recognized that the Tyler Court in the Apple cases might benefit from the *Markman* ruling from the Marshall Court because the schedules were different. (*See* 14-cv-911, Dkt. 39 at 7-8). Core Wireless maintains that there is not adequate justification for consolidating the cases, and Apple must concur because it has never requested consolidation.

Apple would have the Court completely disregard Core Wireless's witnesses located in this district, which is unfair. Apple inaccurately argues that Core Wireless "identifies no employee of either [Core Wireless, Texas or Conversant, Texas] with personal knowledge of specific relevant facts." (Reply at 3.) But Core Wireless's brief and supporting documents clearly identify that Core Wireless employee Brad Johnson worked on the prosecution of the asserted '818 patent (Opp., Ex. C at 3); and Doo Seon Shin, a Texas-based Conversant employee, has knowledge about the portfolio acquisition and licensing efforts. (Opp. at 13.)

The added cost for willing party witnesses to litigate in their non-preferred forum is, at best, neutral, particularly considering the burden relative to each party's financial strength.[2] But Apple ignores that costs for third-party willing witnesses, who carry more weight, weighs against transfer. The only third-party who has stated a willingness to send its witnesses to trial is Cirrus Logic. Travel costs for these witnesses, who appear to reside in or around Austin, Texas, will be less if trial is held in Tyler, TX versus San Francisco, CA.[3] To the extent prosecuting attorneys or other identified potential witnesses residing on the East Coast are willing to attend, costs will also be lower for them to travel to and stay in Texas than California.[4]

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[2] It is highly unlikely that Apple will bring to trial all of its identified party witnesses, even if the cases are transferred to California. As Core Wireless noted in its opposition, in the *Apple 1* trial, Apple presented only a single live employee witness; and Apple never claimed this had to do with cost or convenience of the venue.

[3] San Francisco hotels were recently found to be the most expensive in the world, averaging nearly $400 per night. *See* Ex. 1.

[4] Apple claims that the convenience for those witnesses does not matter, and cites *In re Toyota Motor Corp.*, 747 F.3d 1338, 1340 (Fed. Cir. 2014) ("The comparison between the transferor and transferee forums is not altered by the presence of other witnesses and documents in places outside both forums."). But in that case, like in *Genentech*, no identified witnesses resided in the transferor forum. Here, that is not the case, and it is appropriate to consider the locations of all witnesses.

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