IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

VOIP-PAL.COM, INC. *Plaintiff,*	§	
	§	**Civil No. 6:20-cv-00272-ADA**
v.	§	
AMAZON.COM, INC., **AMAZON.COM SERVICES LLC,** and **AMAZON WEB SERVICES, INC.** *Defendants.*	§	

ORDER DENYING DEFENDANTS' MOTION TO TRANSFER VENUE

Defendants Amazon.com, Inc., Amazon.com Services LLC, and Amazon Web Services, Inc., (collectively, "Amazon") filed their Motion to Transfer (the "Motion") from the Western District of Texas (the "WDTX") to the Northern District of California (the "NDCA") on July 15, 2020. ECF No. 26. Plaintiff VoIP-Pal.com, Inc. ("VoIP") filed its Opposition to Amazon's Motion on August 5, 2020. ECF No. 33. Amazon filed its Reply on August 19, 2020. ECF No. 41. After careful consideration of the briefing and the applicable law, the Court **DENIES** Amazon's Motion.

I. FACTUAL BACKGROUND

Plaintiff VoIP is a Nevada corporation with its principal place of business in Waco, Texas. ECF No. 31 ¶ 1. Defendant Amazon is a Delaware corporation with its principal place of business in Seattle, Washington. *Id.* ¶¶ 2–4. VoIP filed a complaint against Amazon alleging infringement of U.S. Patent No. 10,218,606 (the "'606 patent" or the "Asserted Patent") on April 6, 2020. *Id.* ¶¶ 10, 47. The Asserted Patents describe systems, methods, and apparatuses for communication across and between internet-protocol based communication systems and other networks, such as internally controlled systems and external networks. *Id.* ¶¶ 26, 40. The "Accused System" is a platform for calling and messaging, enabling Amazon Alexa Calling Devices (such as the Amazon

Echo line of devices, fourth generation and later Amazon Fire devices with Alexa support, and mobile devices) and Alexa software running on such devices. *Id.* ¶ 44. The Accused System allows Amazon Alexa Calling Devices to initiate a call or a voice message between a first and second participant, with each participant device being associated with one or more network elements, with these network elements being either local or separate from one another. *Id.*

Vinod Prasad leads Amazon's Alexa Communications team, which includes nineteen employees in Sunnyvale, California. ECF No. 41-1 ¶ 3. Ex-Amazon employee Tim Thompson led a team of forty engineers responsible for the Alexa devices' operating system at Amazon's facility in Austin, Texas. ECF No. 33-25 ¶¶ 3–7. Bala Kumar leads a separate team of thirteen engineers responsible for Echo device hardware in Austin, Texas. *Id.*

While VoIP's principal place of business is here in Waco, only Chief Financial Officer Kevin Williams works in Waco. *VoIP-Pal.com, Inc. v. Amazon.com, Inc.*, No. 6:21-CV-00668 (W.D. Tex.), ECF No. 29 at 4. VoIP's other current and former c-suite executives live mainly in Canada. *Id.* Moreover, until recently VoIP's principal place of business was in Bellevue, Washington—VoIP moved to Waco in March 2021. *Id.*

II. LEGAL STANDARD

In patent cases, motions to transfer under 28 U.S.C. § 1404(a) are governed by the law of the regional circuit. *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008). Section 1404(a) provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." "Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an

'individualized, case-by-case consideration of convenience and fairness.'" *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)).

The preliminary question under Section 1404(a) is whether a civil action might have been brought in the transfer destination venue. *In re Volkswagen, Inc.*, 545 F.3d 304, 312 (5th Cir. 2008) (en banc) ("*Volkswagen II*"). Answering that question requires a determination of whether the proposed transferee venue is proper. A plaintiff may establish proper venue by showing that the defendant committed acts of infringement in the district and has a regular and established place of business there. 28 U.S.C. § 1400(b). A defendant has a regular and established place of business in the district if the plaintiff proves that there is a "physical place in the district," that it is a "regular and established place of business," and lastly that it is "the place of the defendant." *In re Cray Inc.*, 871 F.3d 1355, 1360 (Fed. Cir. 2017).

Additionally, Fifth Circuit courts "should . . . grant" a § 1404(a) motion if the movant can show his proposed forum is "clearly more convenient." *Volkswagen II*, 545 F.3d at 315. The Fifth Circuit further held that "[t]he determination of 'convenience' turns on a number of public and private interest factors, none of which can be said to be of dispositive weight." *Action Indus., Inc. v. US. Fid. & Guar. Co.*, 358 F.3d 337, 340 (5th Cir. 2004). The private factors include: "(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." *In re Volkswagen AG*, 371 F.3d 201, 203 (hereinafter "*Volkswagen I*") (5th Cir. 2004) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1982)). The public factors include: "(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 of the application of foreign law." *Id.*

The burden to prove that a case should be transferred for convenience falls on the moving party. *Volkswagen II*, 545 F.3d at 314. Thus, the movant must demonstrate that the alternative venue is clearly more convenient than the plaintiff's chosen forum. *Id.* at 315. Although the plaintiff's choice of forum is not a separate factor entitled to special weight, respect for the plaintiff's choice of forum is encompassed in the movant's elevated burden to "clearly demonstrate" that the proposed transferee forum is "clearly more convenient" than the forum in which the case was filed. *Id*. at 314–15. While "clearly more convenient" is not necessarily equivalent to the "clear and convincing" evidence standard, the moving party "must show materially more than a mere preponderance of convenience, lest the standard have no real or practical meaning." *Quest NetTech Corp. v. Apple, Inc.*, No. 2:19-cv-118, 2019 WL 6344267, at *7 (E.D. Tex. Nov. 27, 2019).

Finally, for purposes of transfer, a court does not need to look solely at the situation as it existed at time of filing of the Complaint when examining convenience factors. While a court must do so for purposes of considering where the suit "might have been brought" under § 1404(a), the "convenience" clause "includes no comparable language mandating that courts look only backward." *Lynk Labs, Inc. v. Home Depot USA, Inc.*, No. 6:21-CV-00097, 2022 WL 1593366, at *6 (W.D. Tex. May 19, 2022) (citing *Seagen Inc. v. Daiichi Sankyo Co.*, No. 2:20-CV-00337-JRG, 2021 WL 3620428, at *2 (E.D. Tex. Apr. 19, 2021)). Therefore, this Court will consider facts arising after the original transfer motion. *See Unification Techs. LLC v. Micron Tech., Inc.*, No. 6:20-CV-500-ADA, 2022 WL 92809, at *3 (W.D. Tex. Jan. 10, 2022).

III. ANALYSIS

A. VoIP could have brought this suit in the Northern District of California.

The preliminary question in any transfer analysis under 28 U.S.C. § 1404(a) is whether the plaintiff could have properly brought its lawsuit in the proposed transferee forum. *Volkswagen II*, 545 F.3d at 312. VoIP certainly could have. Under 28 U.S.C. § 1400(b), one location where venue in a patent lawsuit is proper is where the defendant has committed acts of infringement and maintains a regular and established place of business. Amazon maintains a significant office with many employees in the NDCA. VoIP does not dispute that this threshold inquiry is satisfied.

B. The private interest factors weigh against transfer.

a. The relative ease of access to sources of proof slightly weighs against transfer.

"In considering the relative ease of access to proof, a court looks to where documentary evidence, such as documents and physical evidence, is stored." *Fintiv Inc. v. Apple Inc.*, No. 6:18-cv-00372, 2019 WL 4743678, at *2 (W.D. Tex. Sept. 10, 2019). The question properly focuses on "*relative* ease of access, not *absolute* ease of access." *In re Radmax*, 720 F.3d 285, 288 (5th Cir. 2013) (emphases in original). And "[i]n patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer. Consequently, the place where the defendant's documents are kept weighs in favor of transfer to that location." *In re Apple Inc.*, 979 F.3d 1332, 1340 (Fed. Cir. 2020).

Amazon argues that this factor is neutral, stating that the bulk of the documentation relevant to this case is located in the Seattle area and stored on servers in Oregon. ECF No. 26 at 12; ECF No. 26-3 ¶ 11. The individuals who maintain technical documentation related to the accused technology are located in Amazon's Seattle headquarters. *Id.* Since the documents in Seattle are "equally accessible" in the NDCA and the WDTX, Amazon concludes this factor is neutral. ECF No. 26 at 12.

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