PUBLIC VERSION

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

DEMARAY LLC, *Plaintiff,*	§	
	§	
	§	
v.	§	**6-20-CV-00636-ADA**
	§	
SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC., SAMSUNG SEMICONDUCTOR, INC., and SAMSUNG AUSTIN SEMICONDUCTOR, LLC, *Defendant.*	§	
	§	
	§	
	§	

ORDER DENYING MOTION TO TRANSFER VENUE

Before the Court is Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Semiconductor, Inc., and Samsung Austin Semiconductor, LLC's (collectively "Samsung") Motion to Transfer venue to the Northern District of California pursuant to 28 U.S.C. § 1404(a) ("Motion to Transfer"). ECF No. 40. After careful consideration of the parties' briefs and the applicable law, the Court **DENIES** Samsung's Motion to Transfer.

I. BACKGROUND

Plaintiff Demaray LLC ("Demaray") filed this lawsuit on July 14, 2020, alleging that Samsung infringes U.S. Patent Nos. 7,544,276 and 7,381,657 (the "Asserted Patents") by "configure[ing] RMS [reactive magnetron sputtering] reactors, including, but not limited to reactors in the Endura product line from [third-party] Applied Materials, Inc. ("Applied Materials") for deposition of layers . . . in its semiconductor products." ECF No. 1 at ¶ 28. On the same day, Demaray filed another lawsuit in this Court against Intel Corporation ("Intel") for infringing the same Asserted Patents by configuring the same reactors from Applied. *Demaray LLC v. Intel Corp.*, Case No. 6-20-cv-634-ADA, ECF No. 1 at ¶ 25. After filing an Answer (ECF

No. 21) to Demaray's Complaint, on November 9, 2020 Samsung filed this Motion to Transfer venue under 28 U.S.C. § 1404(a), requesting that this case be transferred to the Northern District of California ("NDCA"). ECF No. 40.

Demaray is a limited liability company incorporated in Delaware and based in Silicon Valley. ECF No. 1 at ¶ 4; ECF No. 40 at Ex. B. Samsung Electronics Co., Ltd. ("SEC") is a Korean company with its principal offices in Korea. ECF No. 40 at 4. Samsung Electronics America, Inc. ("SEA") is a wholly-owned subsidiary of SEC and incorporated in New York, with its headquarters in New Jersey and a place of business in Mountain View, California, within the NDCA. *Id*. Samsung Semiconductor, Inc. ("SSI") is a wholly-owned subsidiary of SEA and is a California corporation headquartered in San Jose, California. *Id.* Samsung Austin Semiconductor, LLC ("SAS") is a wholly-owned U.S. subsidiary of SSI that operates two fabs in Austin, Texas, within the Western District of Texas ("WDTX"). *Id*. at 5. "In its Austin fabs, SAS uses a number of RMS reactors purchased from Applied." *Id*. Third-party Applied has its principal place of business in Santa Clara, California, and also has a large manufacturing facility in Austin, Texas. *Id*.; ECF No. 50 at 6.

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). 28 U.S.C. 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." *Id*. "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) ("*Volkswagen II*"). If the destination venue would have been a proper venue, then "[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. U.S. 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 (5th Cir. 2004) ("*Volkswagen I*") (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* at 203. Courts evaluate these factors based on the situation that existed at the time of filing, rather than relying on hindsight knowledge of the defendant's forum preference. *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960). The weight the Court gives to each of these assorted convenience factors will necessarily vary from case to case. *Burbank International, Ltd. v. Glf Consol. International, Inc.*, 441 F. Supp. 819, 821 (N.D. Tex. 1977).

The burden to prove that a case should be transferred for convenience falls squarely on the moving party. *In re Vistaprint Ltd.*, 628 F.3d 1342, 1346 (Fed. Cir. 2010). The burden that a movant must carry is not that the alternative venue is more convenient, but that it is *clearly* more

convenient. *Volkswagen II*, 545 F.3d at 314 n.10. While "clearly more convenient" is not explicitly equivalent to "clear and convincing," 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).

III. ANALYSIS

The threshold determination under the Section 1404 analysis is whether this case could initially have been brought in the destination venue — the Northern District of California. Neither party contests the fact that venue is proper in the NDCA and that this case could have been brought there. Thus, the Court will proceed with its analysis of the private and public interest factors.

A. The Private Interest Factors Weigh Against Transfer.

i. The Relative Ease of Access to Sources of Proof

"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). "[T]he question is *relative* ease of access, not *absolute* ease of access." *In re Radmax*, 720 F.3d 285, 288 (5th Cir. 2013) (emphases in original). "In 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) (citing *In re Genentech, Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009)).

Although the physical location of electronic documents does affect the outcome of this factor under current Fifth Circuit precedent (*see Volkswagen II*, 545 F.3d at 316), this Court has stressed that the focus on physical location of electronic documents is out of touch with modern patent litigation. *Fintiv*, 2019 WL 4743678, at *8; *Uniloc 2017 LLC v. Apple Inc.*, 6-19-CV-00532-

ADA, 2020 WL 3415880, at *9 (W.D. Tex. June 22, 2020) ("[A]ll (or nearly all) produced documents exist as electronic documents on a party's server. Then, with a click of a mouse or a few keystrokes, the party [can] produce[] these documents" and make them available at almost any location). Other courts in the Fifth Circuit similarly found that access to documents that are available electronically provides little benefit in determining whether a particular venue is more convenient than another. *See Uniloc USA Inc. v. Samsung Elecs. Am.*, No. 2:16-cv-642-JRG, 2017 U.S. Dist. LEXIS 229560, at *17 (E.D. Tex. Apr. 19, 2017) ("Despite the absence of newer cases acknowledging that in today's digital world computer stored documents are readily moveable to almost anywhere at the click of a mouse, the Court finds it odd to ignore this reality in favor of a fictional analysis that has more to do with early Xerox machines than modern server forms.").

Samsung argues that documents from third-party Applied would be critical to this action since Demaray alleged that Samsung's configuration of Applied RMS reactors infringes the Asserted Patents, and that the Applied documents relevant to this accused technology reside in NDCA. ECF No. 40 at 11. Samsung provides testimony that "certain Applied documents would not be accessible by Austin employees; those with access are in NDCA." ECF No. 88 at 3-4. However, Demaray points out that Applied's Austin employees can actually have access to those documents – they simply need permission to remotely access those materials. ECF No. 105 at 1. Further, testimony shows that Applied's Austin facility is responsible for the volume manufacturing of all of its commercial PVD chambers. *Id.*; ECF No. 50 at 6. Therefore, the required Applied documents for manufacturing are necessarily provided to its Austin employees.

Further, Samsung does not dispute that its only two domestic fabs are located in Austin, operated by SAS, which performs semiconductor fabrication or manufacturing. ECF No. 50 at 5. Thus, the accused reactors and documents related to manufacturing are necessarily located in

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