

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

DEMARAY LLC,

Plaintiff

v.

SAMSUNG ELECTRONICS CO., LTD,
SAMSUNG ELECTRONICS AMERICA,
INC., SAMSUNG SEMICONDUCTOR,
INC., and SAMSUNG AUSTIN
SEMICONDUCTOR, LLC,

Defendants.

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NO. 6:20-cv-636-ADA

PUBLIC VERSION

**REPLY TO MOTION TO TRANSFER VENUE BY DEFENDANTS SAMSUNG
ELECTRONICS CO., LTD, SAMSUNG ELECTRONICS AMERICA, INC., SAMSUNG
SEMICONDUCTOR, INC. AND SAMSUNG AUSTIN SEMICONDUCTOR, LLC**

Plaintiff Demaray LLC's brief does not dispute that venue is proper in NDCA, or that this case could have been brought there. The threshold determination in the § 1404 analysis is met.

NDCA Is Clearly More Convenient for Willing Witnesses. Plaintiff fails to identify any willing witness in WDTX. Resp. at 9-11. There are none. On the other hand, the majority of willing witnesses are in NDCA. First, Dr. Demaray resides in NDCA. Despite Plaintiff having “committed to attending trial,” than does not make WDTX more convenient than Dr. Demaray's home district, nor has he contended that it is. Second, Samsung Austin's presence (and alleged infringement at its fabs) in WDTX is irrelevant to likely trial witnesses. Mot. 9-10. Rather, Applied witnesses are most knowledgeable about the configuration of the accused chambers. *Id.*; Exs. AA, 28;14-29:24; 40:8-14; AG, 8-9, 13. Plaintiff contends that “Applied witnesses will voluntarily appear” to downplay the lack of availability of compulsory process, Resp. 9, but even accepting that is true, these important witnesses are all in NDCA: (1) Keith Miller, person in charge of configuring the accused hardware (*i.e.*, the power supplies and any filters) in the accused PVD chambers¹ (Ex. AB, 10:1-12:8; 202:11-19); (2) John Forster, an important invalidity witness, with unique knowledge regarding Applied's prior art Vectra IMP PVD system that is no different than Applied systems accused in this case (Ex. AC); and (3) Chris Talbot, who has unique information regarding Dr. Demaray's unsuccessful attempts to sell and/or license the patents-in-suit. Mot. 5. Plaintiff states that Applied is a third-party in name only, Resp. 10, but regardless of how Applied witnesses are counted, Plaintiff has not identified a single willing witness located in WDTX and concedes there are witnesses in NDCA. The location of these Applied individuals, whether as willing witnesses or witnesses requiring compulsory process, heavily favors transfer.

¹ Under “venue discovery”, Plaintiff deposed Mr. Miller on technical topics regarding Applied's (not Samsung's) configuration of the accused chambers because that information, as admitted by Plaintiff, comes from Applied. Exs. AD (*e.g.*, topics 6, 7, 9); AE; AF, 32:7-33:2; 34:16-21.

Finally, the inventors' location and willingness to attend trial— who Plaintiff “anticipates” will provide the “most important non-party testimony,” Resp. 10—also favors transfer. Two of the four are in NDCA: Dr. Demaray and Dr. Ravi Mullapudi. According to Plaintiff, Dr. Mullapudi (a former Applied employee) is unlikely to voluntarily appear. Ex. AH, 286:2-287:18. The other two, Dr. Hongmei Zhang (in Boston) and Mukundan Narasimhan (in India), are consulting with Plaintiff. Ex. AI, ¶7. Their expected travel time (flight and drive) to a San Jose versus Waco courthouse favors NDCA or is at least neutral. Ou Decl. ¶¶3-6. Moreover, Samsung expects Mr. Narasimhan (for whom NDCA would be closer) to be a more important witness, as he left Applied to join Symmorphix less than a year before filing for the patents-in-suit and will have unique information to Samsung's lack of standing and failure to join co-owner affirmative defense. Dkt. No. 29 at 20-23; Ex. AJ, ¶¶ 109-118.

Availability of Compulsory Process Heavily Favors Transfer. This factor “weigh[s] heavily in favor of transfer when more third-party witnesses reside within the transferee venue than reside in the transferor venue.” *In re Apple, Inc.*, 581 F. App'x 886, 889 (Fed. Cir. 2014). Plaintiff has not identified a single non-party witness in WDTX. Although Plaintiff points to “Applied personnel in Austin responsible for PVD chamber manufacturing,” Resp. 8-9, it fails to explain why manufacturing personnel (as opposed to those responsible for the development of the accused equipment, such as Mr. Miller and Mr. Forster in NDCA) are likely trial witnesses.

Besides Applied, other non-party witnesses with highly relevant and unique information are in NDCA. As discussed, Dr. Mullapudi, the only named inventor not working with Plaintiff, is in NDCA. Samsung also now believes that Robert Weisse, a consultant at the time for Symmorphix (Demaray's predecessor), may be an unnamed inventor that patentee failed to name during prosecution. Ex. AP, 7. Merits discovery, when permitted, may yield an inequitable conduct

defense based on patentee's omission of Mr. Weisse, making prosecuting attorney, Gary Edwards, also a likely trial witness. At a minimum, both will have unique knowledge to Samsung's inventorship defense, and both are in NDCA. Mot. 6; Exs. M, AK.

Several former Applied and/or Applied Komatsu ("AKT") employees are likely witnesses to Samsung's license defense based on a sales and relationship agreement ("SRA") that granted Applied (and thus, Samsung as Applied's customer) a license. In deposition, Plaintiff identified several individuals likely involved in the negotiations of the SRA in NDCA: Michael Danaher for Symmorphix and David Sponseller, Larry Edelman, and Jim Scholer for AKT. Exs. AH, 241:18-244:18; AM-AO; AP, 5; AQ, 1; Ou Decl. ¶7. Plaintiff did not identify any in WDTX. After the Court ordered a second deposition, Demaray changed its story by identifying Applied's former counsel, Donald Verplancken, as critical to the negotiations, despite being "not certain as to who he was, unless he's in the notes here somewhere" during the first deposition. Ex. AH, 186:2-5. While Mr. Verplancken lists his office in Houston, he is (1) outside the 100-mile radius of the Waco courthouse and (2) prefers a trial in NDCA instead of WDTX. Verp. Decl. ¶¶1-5; Ou Decl. ¶8. He also identified two other people as individuals most knowledgeable for AKT as to this defense: Kam Law and Don Kumamoto. *Id.*, ¶4. Both are in NDCA. Exs. AR-AS.

Finally, Demaray identified other former Symmorphix employees with potential knowledge (and thus potential witnesses) to Samsung's defenses: Kai-An Wang and Bill Lee, both in NDCA. Exs. AL, 455:16-457:12; 458:11-460:11; AP, 5-6; AQ, 1-2; AT-AU. When considering the location of likely witnesses (willing and subject to compulsory process), at least *fifteen* are in NDCA, and none are in WDTX (summary in Table 1 of Ou Decl., ¶2; Ex. AW).

Access to Sources of Proof Favors Transfer. Plaintiff fails to identify any sources of proof accessible in WDTX, but not in NDCA, [REDACTED]

Ex. AB, 134:7-135:14; 206:14-207:17. Applied first builds its chambers in its NDCA lab, where it performs demonstrations for customers on the same chambers later purchased and used by Samsung. *Id.*, 15:15-16:1; 197:2-199:13. The physical tools, and the specifications for how they are built and operate, are in NDCA (not WDTX). *Id.*, 203:15-205:2. Plaintiff otherwise concedes that electronic documents “are equally accessible at locations across the country” (Resp. 8) and argues that focusing on the location of physical documents “conflicts with the realities of modern patent litigation.” Resp. 7, n.3. But the location of both electronic and physical documents must be considered in evaluating whether access to sources of proof favor transfer; here they do.

Other Practicalities Favor NDCA. Plaintiff relies on its case against Intel but ignores that Intel has also moved to transfer to the home of its headquarters, Plaintiff, and Intel and Samsung’s primary supplier of the accused chambers (Applied)², and where Applied has filed a DJ action. These cases present the classic “customer suit” that warrants preference for Applied’s case. Plaintiff’s references to the dismissal of Applied’s original DJ action are misleading. The NDCA credited Plaintiff’s representations that its allegations were directed to purported post-installation “configurations” by Samsung in finding no jurisdiction. Ex. AV, 7-12. But affirmative acts by Plaintiff since the original DJ complaint (*e.g.*, the Applied subpoenas) refute those arguments, and establish jurisdiction for Applied’s second action. Ex. AJ, ¶¶9, 27-50. Likewise, this dispute may be resolved by license and ownership defenses personal to Applied and Plaintiff at issue in the DJ action. *Id.*, ¶¶101-118. Transfer to NDCA avoids duplicative litigation and promotes judicial

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