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

GESTURE TECHNOLOGY PARTNERS, LLC, ***Plaintiff***	§	
-VS-	§	**6:21-CV-00121-ADA**
APPLE INC., ***Defendant***	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Apple's ("Defendant" or "Apple") Motion to Transfer Venue under 28 U.S.C. § 1404(a) to the Northern District of California. ECF No. 21. Plaintiff Gesture Technology Partners, LLC ("Plaintiff" or "Gesture") filed its response (ECF No. 34) and Apple its reply (ECF No. 37). After careful consideration of the parties' briefs and the applicable law, the Court **GRANTS** Apple's motion.

I. BACKGROUND

Plaintiff Gesture, an Ohio Corporation headquartered in Toledo, Ohio, filed suit on February 4, 2021. *See* ECF No. 1. Gesture accuses a variety of Apple iPhones and iPads (the "accused products") of infringing U.S. Patent Nos. 8,194,924 ("the '924 Patent"), 7,933,431 ("the '431 Patent"), 8,878,949 ("the '949 Patent"), and 8,553,079 ("the '079 Patent") (collectively, the "Asserted Patents"). *See generally, id.* The Asserted Patents relate to using cameras and gestures detected by the cameras or other sensors to control functions in the device for different applications. *Id.* The complaint accused several Apple applications in the Accused Products, including Face ID, QR Scanner, Smart HDR, tracking autofocus, picture face

recognition, selfie focus, autofocus area, optical image stabilization, portrait mode, switch control, and Animojis. *Id.* Apple has moved to transfer venues from the Western District of Texas (the "WDTX") to the Northern District of California (the "NDCA"). *See generally* ECF No. 21.

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. § 1404(a) provides that, "[f]or the convenience of parties and witnesses . . . 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) (hereinafter "*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) (hereinafter "*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.* Courts evaluate these factors based on the situation which 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 burden to prove that a case should be transferred for convenience falls squarely on the moving party. *Volkswagen II*, 545 F.3d at 314. The burden that a movant must carry is not that the alternative venue is more convenient, but that it is clearly more convenient. *Id.* at 314–15. 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 demonstrate that the proposed transferee forum is "clearly more convenient" than the forum in which the case was filed. *Id.* While "clearly more convenient" is not necessarily 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. DISCUSSION

A. Gesture could have brought this case in the Northern District of California.

The threshold determination in the § 1404(a) analysis is whether this case could initially have been brought in the destination venue—the NDCA. Apple asserts that this case could have been brought in the NDCA because Apple maintains its headquarters in Cupertino, California. ECF No. 21 at 6. Gesture does not dispute this assertion. *See generally,* ECF No. 34. This Court finds that venue would have been proper in the NDCA had Gesture originally filed this case there. Thus, the Court proceeds with its analysis of the public and private interest factors to determine if the NDCA is clearly more convenient than the WDTX.

B. The Private Interest Factors

1. The Relative Ease of Access of 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*, 566 F.3d 1338, 1345 (Fed. Cir. 2009)).

Apple maintains that this factor heavily favors transfer because the "*relevant* documents and information are in California." ECF. No. 21 at 8. Apple concedes that there may be Apple documents located in the WDTX, however, it argues that none of those documents are relevant

to this suit. *Id*. To give credence to this conclusion, Apple points to potentially relevant Apple personnel confirmations that the relevant documents are housed in Apple's office in Cupertino. *Id*. Furthemore, Apple contends that the majority of the research, design, development, source code, and generation of documents related to the accused products took place in the NDCA. *Id.* Apple also maintains that all the relevant financial and marketing documents are in or around the NDCA. *Id.*

Gesture argues that Apple has not met its burden and that it failed "to identify with specificity that any hard copies of documents are located in NDCA." ECF No. 34 at 4. Gesture further contends that Apple made no showing concerning the location of the "relevant source code" and Apple admits that some of the key documents were generated outside the NDCA. *Id*. Gesture also asserts that Apple employees with the appropriate credentials can access Apple documents from anywhere, including Texas. *Id.* Furthermore, Gesture argues that Apple's Austin campus is instrumental in the development of the accused products as was demonstrated by Johnny Srouki's 2016 statement that Apple's Austin team is "Apple's biggest research and development group outside of its Cupertino, Calif. Headquarters." *Id*. at 5. Additionally, Gesture points to similar statements made by Mr. Srouki that Apple's Austin team "plays a critical and integral role—they are designing chips that go into all the devices [Apple] sell[s]. *Id*. at 5–6. In a last-dtitch effort to demonstrate Apple's relevant operations in the WDTX, Gesture states that Apple "currently lists 35 job openings in Austin for work relevant to its camera and video technology." *Id*. at 6.

This factor favors transfer as Apple has identified a specific group of relevant documents and source code that are mostly located in NDCA. ECF No. 21 at 8. The relevant inquiry,

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