

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

ASETEK DANMARK A/S,

Plaintiff,

v.

SHENZHEN APALTEK CO., LTD., A/K/A  
SHENZHEN ANG PAI TECHNOLOGY CO.,  
LTD., and GUANGDONG APALTEK LIQUID  
COOLING TECHNOLOGY CO., LTD., A/K/A  
GUANGDONG ANG PAI LIQUID COOLING  
TECHNOLOGY CO., LTD., OR DONGGUAN  
APALCOOL,

Defendants.

Civil Action No. 6:21-cv-00501-ADA

**JURY TRIAL DEMAND**

**DEFENDANTS' REPLY TO OPPOSITION TO MOTION TO TRANSFER VENUE  
PURSUANT TO 28 U.S.C. § 1404(a), OR IN THE ALTERNATIVE TO STAY**

PUBLIC VERSION

The parties agree that this case could have been brought in the Northern District of California. ECF 37 at 2. But despite having filed or defended 7 cases in Northern California—and preparing for a jury trial in less than six months—Asetek insists that *this* case should proceed in the Western District of Texas because *for this case only* Waco is more convenient than San Jose.

Asetek prefers to be in West Texas because “we believe it will be quicker” and the venue “will suit [COO John Hamill] personally”: “I am exercising my prerogative.” Supplemental Declaration of David S. Bloch (“2d Bloch Dec.”) ¶ 2, Ex. 1 (“Hamill”) at 47:6-14, 48:12, 51:8-10, 51:23-24. But appellate courts “forbid treating the plaintiff’s choice of venue as a factor in the analysis of a request to transfer.” *In re Nintendo Co.*, 589 F.3d 1194, 1200 (Fed. Cir. 2009). And Asetek’s urgency to get to trial is belied by the fact that it wants to stay the *Cooler Master* case in California. 2d Bloch Dec. ¶ 3, Ex. 2 at 5 (“Asetek intends to file a motion to stay this case”).

\* \* \*

Patent law is uniform nationwide and there are no issues relating to conflict of laws or the application of foreign law. All other factors favor Northern California.

***The Northern District of California’s local interest.*** The “local interest” factor “focuses on the ‘factual connection’ a case has with both the transferee and transferor venues.” *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 318 (5th Cir. 2008). “[A] jurisdiction where a party’s principal place of business is located does have a particularized interest in the suit’s outcome,” so “if a court finds a jurisdiction is ‘clearly the *center of gravity* with respect to the witnesses and parties to this case, this factor weighs in favor of transfer.” *Corel Corp. v. Dell Inc.*, 2013 WL 12091649, at \*4 (W.D. Tex. July 25, 2013) (citation omitted; emphasis original). Asetek’s U.S. headquarters and only U.S. office is in San Jose, California. 2d Bloch Dec. ¶ 4, Ex. 3; Hamill at 14:20-15:22. Even during COVID, it has remained open for business. Hamill at 16:23-17:3. At

least 8 Asetek employees work at or regularly visit Asetek's San Jose office. *Id.* at 18:19-19:1, 40:16-41:5. Of them, three (Branton, Pangburn, and Westfall; *id.* at 20:7-9, 26:23-25, 39:7-20) have been deposed in other Asetek cases in Northern California or are identified as prospective witnesses in currently-pending litigation (2d Bloch Dec. ¶ 5, Ex. 4); two more (Castro and Sanders; Hamill at 22:4-16, 35:21-36:7) work specifically on the technology in Asetek's asserted patents; and still two others (Hsieh and Park; *id.* at 24:10-14, 34:11-17) work across all of Asetek's product lines, including the allegedly patent-practicing ones. These people manifestly possess discoverable information. *Id.* at 29:7-22, 30:18-31:1. Other Asetek executives, such as COO Hamill, CFO Madsen, and CEO/inventor Eriksen, have made multiple trips to the San Jose office. *Id.* at 18:3-7, 21:2-7, 54:12-17, 60:1-7. When Asetek products are shipped to the U.S., they go to a rented hub in Southern California or a facility in New Mexico. *Id.* at 11:10-15, 62:22-64:2.

By contrast, Asetek does not have a Texas office and does not pay for the home offices of its two Austin-based employees. *Id.* at 8:8-21, 39:3-4. And of course the question is where *Asetek* has a regular and established place of business—"not where [Asetek's] employee owns a home in which he carries on some of the work that he does for [Asetek]." *In re Cray Inc.*, 871 F.3d 1355, 1363, 1365 (Fed. Cir. 2017). Asetek only has one place of business in America: San Jose.

***Docket congestion.*** Asetek says that this Court is less congested or more efficient than the Northern District of California—or was in May 2021. ECF 37 at 7. But the Court's orders denying transfer in *Juniper* and *Google* issued in June and July 2021. *WSOU Investments, LLC v. Juniper Networks, Inc.*, W.D. Tex. Case No. 6:20-cv-00812-ADA, ECF 91; *Jenam Tech, LLC v. Google LLC*, W.D. Tex. Case No. 6:20-cv-00453-ADA, ECF 95. Both were reversed because the Northern California courts are *not* comparatively more congested than the Western District of Texas. *In re Juniper Networks, Inc.*, 2021 U.S. App. LEXIS 29036, at \*19 (Fed. Cir. Sep. 24, 2021); *In re*

*Google LLC*, 2021 U.S. App. LEXIS 30052, at \*17 (Fed. Cir. Oct. 6, 2021). May 2021 was not the exception to a rule that the Federal Circuit has been emphasizing since mid-2020. *In re Adobe Inc.*, 823 F. App'x 929 (Fed. Cir. 2020); *In re Apple, Inc.*, 979 F.3d 1332 (Fed. Cir. 2020).

**Sources of proof.** Asetek claims that relative access to sources of proof is a neutral factor. While Apaltek's customers may sell Apaltek products nationwide, their only U.S. locations (which presumably host their shipping records) are clustered on the West Coast. ECFs 30-10 (MSI), 30-36 (Thermaltake), 30-37 (Enermax); *accord*, ECF 37-8 at 3 (Enermax). This supports moving the case to California. *Affinity Labs of Tex., LLC v. Blackberry Ltd.*, 2014 U.S. Dist. LEXIS 185024, at \*18-20 (W.D. Tex. June 11, 2014) (location of non-party's documents regarding accused products favors transfer). While Asetek claims that its "most important" documents are all "in the cloud," its jurisdictional witness Mr. Hamill saw loose papers and file cabinets in at least four San Jose offices (Hamill at 23:21-25, 25:21-26:2, 33:2-10, 34:23-25) and couldn't say what those documents contain (*id.* at 24:1-5, 26:3-5, 33:13-19, 68:19-69:16). The presence of these paper records from Asetek and third parties favors transfer to the Northern District of California

**Non-party witnesses.** "Courts properly give more weight to the convenience of non-party witnesses than to party witnesses." *Micropairing Techs. LLC v. Toyota Motor Mfg. Tex.*, 2021 U.S. Dist. LEXIS 190585, at \*9 (W.D. Tex. Oct. 1, 2021). The San Francisco Bay Area is a more convenient location for all of the identified non-party witnesses. Bay Area-based former Asetek employee Rao's responsibilities covered "all of Asetek's business," Hamill at 30:14-17, and he was identified as a person with knowledge in Northern California in 2019. 2d Bloch Dec. ¶ 5, Ex. 4. He still lives and works in the San Jose area. Hamill at 32:13-14. Asetek says he has agreed to testify in Waco. ECF 37 at 12 n. 5. But his agreement does not change the fact that his home jurisdiction of San Jose is more convenient. Many other Asetek ex-employees, executives, and

Board members—people with discoverable information dating back to 2010-2012, when the patents-in-suit were being applied for and issued—were or are still in the Bay Area. Hamill at 53:5-9, 55:7-11, 56:1-3, 57:7-14, 59:11-14 (Chambers, Garcia, Szteibaum, Alyaser, and Vesei). Domestic witnesses from Apaltek’s primary customers, the importers of the accused products, also would be located in California. ECFs 30-10, 30-36, 30-37, ECF 37-8 at 3. By contrast Asetek has identified no third-party witnesses in Texas.

***Cost of attendance of willing witnesses.*** Although two Asetek employees now work from “home offices in Texas,” 2d Bloch Dec. Ex. 3, both have previously been deposed in the San Francisco Bay Area (Hamill at 39:12-40:1) and the remaining six employees identified in Apaltek’s motion to transfer reside in the Bay Area. 2d Bloch Dec. Ex. 3. Asetek’s CEO and inventor, Eriksen, has testified at Bay-Area depositions and in-person to a Northern California jury. Hamill at 60:8-24. It is no hardship for him to travel to Northern California, and Asetek’s own documents confirm that San Francisco is more convenient than Austin for a witness traveling from Copenhagen. *Compare* ECF 37-11 (twelve flights to San Francisco, starting at \$891) *with* ECF 37-12 (two flights to Austin, each \$1951). Also, while Asetek makes no effort to quantify the additional inconvenience of traveling from Austin to Waco, even Hamill’s home office in Cedar Park is closer to Austin than to Waco. Hamill at 7:24-8:5 (an hour from Austin, ninety minutes from Waco). Asetek says, self-servingly, that it only plans to call its Denmark- and Texas-based employees to testify. ECF 37-1 ¶¶ 1-2. Yet multiple Northern California-based witnesses were deposed in prior cases and have been identified by Asetek as having relevant knowledge.

***Practical problems.*** Multiple courts have transferred Asetek cases to the Northern District of California at Asetek’s request. ECFs 30-23, 30-27. And as recently as September 2020, Asetek was asserting its patents in Northern California. ECF 30-31 at 27 (signed Sept. 17, 2020). This

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