

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

XR COMMUNICATIONS, LLC, dba,  
VIVATO TECHNOLOGIES,

PLAINTIFF,

v.

ASUSTEK COMPUTER INC.

DEFENDANT.

Civil Action No. 6:21-cv-00622-ADA

**JURY TRIAL DEMANDED**

FILED UNDER SEAL

**DEFENDANT ASUSTEK COMPUTER INC.'S REPLY  
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION  
TO TRANSFER VENUE**

HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY  
FILED UNDER SEAL

**TABLE OF CONTENTS**

A. XR’s Timeliness Argument is Moot..... 1

B. Both the Rule 1404(a) Public and Private Interest Factors Favor Transfer ..... 1

C. Conclusion ..... 5

**A. XR's Timeliness Argument is Moot**

Plaintiff XR's argument that Defendant AUSTeK's transfer motion is untimely (Opp. at 2-4) is wrong. In granting ASUSTeK's Motion for leave outside the OGP deadline, the Court already determined (Dkt. 42 at 3-4, Dkt. 50 at 1-2) that ASUSTeK had good cause to do so.<sup>1</sup>

**B. Both the Rule 1404(a) Public and Private Interest Factors Favor Transfer<sup>2</sup>**

**Local Interests.** XR argues that the local interests favor the WDTX because ASUSTeK is a foreign corporation and the case involves certain WiFi standards purportedly governed by the WiFi Alliance. Opp. at 4. But this argument is hollow. XR omits that no deposition has been scheduled for the Wifi Alliance and XR identifies no critical documents despite XR receiving extra time from this Court for venue discovery.<sup>3</sup> XR further ignores that: (i) XR *itself* is based in the CDCA; (ii) ACI, an ASUSTeK-related third party that actually sells the accused products in the US, is in the NDCA; and (iii) XR's first-filed actions were in the CDCA. Mot. at 3-4. [REDACTED]

[REDACTED] See Ex.

1. XR does not even allege that it has any connection to WDTX because it has none. XR's desperate argument that WiFi Alliance is in the WDTX and testimony of its representatives *might* be necessary *if* the authenticity of its documents is challenged (Opp. at 4) does not overwhelm those facts. Mot. at 4-5, 10-11. *See also Betty's Best, Inc. v. Yuyao Aggpo Elec. Tech. Co.*, No. 1:22-CV-1078-RP, 2022 WL 17724417, at \*3 (W.D. Tex. Dec. 15, 2022) ("the local interest is in having the case decided in California" where plaintiff was based in California).

<sup>1</sup> See OGP 4.1 at 5 (in filing motion for transfer outside deadline provided, "a movant must show good cause for any delay and seek leave of court").

<sup>2</sup> "Ex. \_" refers to the exhibits to the Declaration of Jonathan K. Waldrop filed concurrently herewith

<sup>3</sup> Wi-Fi Alliance has also already objected to the deposition and document subpoena issued to it in a parallel litigation pending in WDTX. *See Exs. 2, 3.*

HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY  
FILED UNDER SEAL

**Familiarity with Legal Issues and Conflict of Laws.** As ASUSTeK showed (Mot. at 7-8), the CDCA has addressed issues related to the ’728 and ’376 patents. The ’235 patent is related to those other patents. Thus, the CDCA is familiar with important and nuanced legal issues relevant to this litigation. As to the cases XR identifies in the WDTX on the ’235 patent (Opp. at 4-5), almost all defendants in those litigations (Amazon, Google, Dell, Apple) *have also moved to transfer venue to California*. This Court has already stayed the Apple litigation based on transfer as directed by the Federal Circuit. *See In re Apple Inc.*, 52 F.4th 1360 (Fed. Cir. 2022). Thus, those cases, which are in the transfer process, do not warrant keeping this action in the WDTX. XR filed in the CDCA *first* (including against ASUSTeK) and those cases are farther along, and thus venue is more appropriate there. Indeed, all of the named inventors and other important witnesses have been deposed in the cases in the CDCA venue and XR’s attorneys have asked witnesses about CDCA proceedings and XR has responded to discovery by referencing information produced in the CDCA actions. Moreover, XR’s discovery responses refer to cases in the CDCA depositions in those cases, and documents produced by Intel (a California company). *See Ex. 4* at 15-16 (response to interrogatory Nos. 7-8, 11, 18). At deposition, XR’s witnesses were asked and even referenced prior testimony in the CDCA actions.

**Court congestion.** XR does not dispute that the CDCA has a faster time to trial and is less congested than this Court. XR instead relies on the fact that this case was scheduled for trial in the summer of 2023. But as XR knows, XR moved the case schedule because of third party discovery (the chip makers in California) and the case has no set trial date. *See Dkt. 75* at 2.

**Ease of Access to Sources of Proof.** In arguing that this factor does not support transfer, XR contends that: (i) ASUSTeK has not shown that ACI has relevant documents; (ii) the chip suppliers and their documents are “scattered” around the United States; (iii) relevant documents

HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY  
FILED UNDER SEAL

can be produced electronically; and (iv) WiFi Alliance’s presence in the WDTX weighs against transfer. Opp. at 7-9. Those arguments are baseless.

Contrary to XR’s arguments, ACI, which is the ASUSTeK entity that imports and sells the accused products, has relevant information going to those sales and XR’s alleged damages, *in the NDCA*. Dkt. 44 ¶¶ 9, 11. More importantly, it is the entity responsible for the infringing conduct, to the extent there is any. While the primary chipmaker suppliers may have *offices* around the country, they are *headquartered* in California and subpoenas have been served in California. (Mot. at 4-5). [REDACTED]

[REDACTED] See Ex. 1. And, of course, *XR itself* is in the CDCA; *see, e.g., QES Pressure Control LLC v. Zurich Amer. Ins. Co.*, No. 4:20-CV-50-DC-DF, 2020 WL 6821335, at \*5 (W.D. Tex. Aug. 21, 2020) (noting that “Courts analyze this factor in light of the distance that documents, or other evidence, must be transported from their existing location to the trial venue” and “[p]resumably, the bulk of the discovery material relating to a corporate party is located at the corporate headquarters”). As shown above, WiFi Alliance’s presence in the WDTX does not change the analysis.<sup>4</sup>

**Convenience for Willing Witnesses.** Contrary to XR’s argument (Opp. at 10), as ASUSTeK showed, ACI is the importer/ seller of the accused products and its testimony is relevant to infringement and damages. That *one* purported ACI employee works remotely in the WDTX (Opp. at 10) is irrelevant; ACI’s headquarters (its relevant witnesses) are in the NDCA. Mot. at 3-4.

---

<sup>4</sup> *WSOU Investments, LLC v. Microsoft Corp.*, No. 6:20-cv-00454-ADA, 2021 WL 1298935 (W.D. Tex. Apr. 7, 2021) (Opp. at 9) is inapposite. There the issue was transfer from Waco (where plaintiff had its documents) to Austin, where *neither* party had documents. *Id.* at \*3. In contrast, here, XR is located in the CDCA, ACI documents are in the NDCA and the primary suppliers are mostly headquartered in California. Access to sources of proof is easiest there.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.