



communication capability, the capability to switch dynamically between wireless networks, and the capability of communicating with a server than enhances the functionality of the devices.” *Id.* ¶ 23. The ’434, ’653, ’946, ’291, ’083, and ’943 patents are directed to “enhancements to mobile device communications functionality.” *Id.* ¶ 24.

Smart Mobile, the owner of the asserted patents, is a limited liability company organized under the laws of Delaware. *Id.* ¶ 16. Smart Mobile’s principal place of business is in Austin, Texas. *Id.* SEC is a corporation organized under the laws of South Korea with a principal place of business in South Korea. *Id.* ¶ 17. SEA is a wholly owned subsidiary of SEC. *Id.* ¶ 18. SEA is a corporation organized under the laws of New York with a principal place of business in New Jersey. *Id.* According to Smart Mobile, Samsung sells products that infringe the asserted patents, including Galaxy S, Galaxy Note, Galaxy A, Galaxy J, Galaxy Z, Galaxy Tab, and other Galaxy mobile devices. *Id.* ¶ 34. The Court will refer to these products as the “accused products.”

Along with this case, Smart Mobile also filed an action against Apple Inc. *Smart Mobile Technologies LLC v. Apple Inc.*, No. 6:21-cv-603-ADA (W.D. Tex. June 11, 2021), ECF No. 1 [hereinafter “Apple Litigation”]. The Apple Litigation involves many of the same patents that are asserted in this case.

After responding to Smart Mobile’s complaint, Samsung filed this motion to transfer. ECF No. 42. Samsung does not argue that the Western District of Texas (“WDTX”) is an improper venue for this case; instead, it argues that the Northern District of California (“NDCA”) is a more convenient forum, pointing to the location of potential witnesses and the relevant records in California. *Id.* at 1. Smart Mobile contends that this case should remain in the WDTX, pointing to, among other factors, Smart Mobile’s witnesses and evidence in Texas and the lack of relevant witnesses in the NDCA. ECF No. 84 at 1.

## 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—here, the Fifth Circuit. *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008). 28 U.S.C. § 1404(a) provides in part 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 . . .” *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 § 1404(a) is whether a civil action “‘might have been brought’ in the 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) (footnote omitted). The private interest 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 moving party has the burden to prove that a case should be transferred for convenience. *Volkswagen II*, 545 F.3d at 314. The burden is not simply that the alternative venue is more convenient, but that it is clearly more convenient. *Id.* at 314–15. While “clearly more convenient” is not the same as the “clear and convincing” standard, the moving party must still show more than a mere preponderance. *Quest NetTech Corp. v. Apple, Inc.*, No. 2:19-cv-118, 2019 WL 6344267, at \*7 (E.D. Tex. Nov. 27, 2019). Yet, the Federal Circuit has clarified that, for a court to hold that a factor favors transfer, the movant need not show an individual factor *clearly* favors transfer. *In re Apple Inc.*, 979 F.3d 1332, 1340 (Fed. Cir. 2020).

### III. DISCUSSION

The threshold determination in the § 1404(a) analysis is whether this case could initially have been brought in the destination venue—the NDCA. Samsung argues that the threshold determination is met because SEA has facilities in California and over 520 full-time employees in the NDCA, and SEC is a foreign corporation. No. 42 at 4. Smart Mobile does not address the threshold determination. ECF No. 84. Because Samsung has shown that venue is proper for the claims against SEC and SEA, the Court determines that the threshold determination is met. Because the threshold determination is met, the Court now analyzes the private and public interest factors to determine whether the NDCA is a clearly more convenient forum than the WDTX.

#### A. The Private Interest Factors

##### *i. The Cost of Attendance and Convenience for Willing Witnesses*

The most important factor in the transfer analysis is the convenience of the witnesses. *In re Genentech, Inc.*, 566 F.3d 1338, 1342 (Fed. Cir. 2009). According to Fifth Circuit law, if the distance between a current venue and a proposed venue is more than 100 miles, the inconvenience

to witnesses increases in direct relationship to the additional distance they must travel if the matter is transferred. *Volkswagen II*, 545 F.3d at 317. But it is unclear when the 100-mile rule applies, as the Federal Circuit has stated that courts should not apply the rule “rigidly” in cases where witnesses would be required to travel a significant distance no matter what venue they testify in. *In re Apple*, 979 F.3d at 1342 (discussing witnesses traveling from New York) (citing *Volkswagen II*, 545 F.3d at 317). “[T]he inquiry should focus on the cost and inconvenience imposed on the witnesses by requiring them to travel to a distant forum and to be away from their homes and work for an extended period of time.” *In re Google, LLC*, No. 2021-170, 2021 WL 4427899, at \*4 (Fed. Cir. Sept. 27, 2021). According to the Federal Circuit, time is a more important metric than distance. *Id.* However, the Federal Circuit has also held that when willing witnesses will have to travel a significant distance to either forum, the slight inconvenience of one forum in comparison to the other should not weigh heavily on the outcome of this factor. *In re Apple*, 979 F.3d at 1342.

According to Samsung, this factor favors transfer because Smart Mobile’s witnesses are located in the NDCA. ECF No. 42 at 10. Samsung alleges that the inventors of the asserted patents, Sunil K. Rao and Sanjay K. Rao, reside in Palo Alto, California. *Id.* In response, Smart Mobile argues that Sunil K. Rao and Sanjay K. Rao both reside in Austin, Texas. ECF No. 84 at 10. Smart Mobile argues that the WDTX is a more convenient forum for Sunil K. Rao and Sanjay K. Rao. *Id.* at 10–11. Smart Mobile also argues that it has an employee, William Heye, who resides in Plano, Texas. *Id.* at 11. Smart Mobile argues that the WDTX is a more convenient forum for Mr. Heye. *Id.* In its reply, Samsung argues that Sunil K. Rao’s and Sanjay K. Rao’s presence in the WDTX is a “construct for litigation.” ECF No. 91 at 2. Samsung notes that Sanjay K. Rao signed a lease in Austin less than two months before this case was filed. *Id.* Samsung also notes that Mr.

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