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

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| **JAWBONE INNOVATIONS, LLC,**<br><br>**Plaintiff(s),**<br><br>**v.**<br><br>**APPLE INC.,**<br><br>**Defendant(s).** | **Case No. 6:21-CV-00984-ADA**<br><br>**PATENT CASE**<br><br>**JURY TRIAL DEMANDED**<br><br>[redacted] |

**DEFENDANT APPLE INC.'S OPPOSED MOTION FOR LEAVE TO SUPPLEMENT THE RECORD ON APPLE'S MOTION TO TRANSFER**

## I. INTRODUCTION

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, Apple respectfully requests leave to supplement the record on its motion to transfer venue, (Dkt. No. 38) ("Transfer Motion"), to include declarations from the Apple employees already identified by Mark Rollins in his declaration filed in support of the Transfer Motion (Dkt. 38-1, "Rollins Declaration"). Apple seeks leave to submit these declarations to address the Court's guidance and concerns related to Mark Rollins's declaration in its Order granting Apple's Motion to Transfer in *Scramoge Technology Ltd. v. Apple Inc.*, No. 21-cv-00579, ECF No. 77 (May 17, 2022, W.D.T.X.) ("*Scramoge*").

Apple respectfully submits that there is good cause for this supplementation because (1) the Court's Order in *Scramoge* issued after Apple filed its Transfer Motion in this case, and Apple believes that, in light of the statements in that Order, the Court would benefit from hearing directly from the Apple employees identified in the Rollins Declaration; (2) the information that these witnesses provide is relevant to the venue analysis; (3) Jawbone Innovations will not be unfairly prejudiced because: (a) Apple already identified these witnesses in its Transfer Motion and Rollins Declaration, (b) these witnesses' declarations are analogous in scope to the Rollins Declaration, and (c) Apple recently produced these declarations to Jawbone Innovations as part of venue discovery, which remains open, thereby affording Jawbone Innovations time to depose any one or more of these individuals before its responsive venue brief is due, if Jawbone Innovations chooses to do so; and (4) a continuance is not necessary, but is available to cure any potential prejudice to Jawbone Innovations.

In accordance with the Western District of Texas Local Rules, Apple has attached the declarations it seeks to supplement as exhibits to this motion. LR CV-7(d).

## II. BACKGROUND

On May 2, 2022, Apple moved to transfer this case to the Northern District of California under 35 U.S.C. § 1404(a). In its Transfer Motion, Apple relied on the Rollins Declaration to establish certain facts, such as the roles and locations of relevant witnesses and their teams, and the locations of various categories of documents and other evidence. On May 13, 2022, Jawbone Innovations served written venue discovery on Apple, which, pursuant to the Court's OGP, extended the date for Jawbone Innovations's response to the Transfer Motion to July 25, 2022. Since that discovery was served, the parties have been engaging in venue-related discovery. On July 26, 2022, Apple produced and served on Jawbone Innovations the declarations attached hereto. Apple anticipates that venue discovery will be completed by August 11, 2022. To date, Jawbone Innovations has not requested any deposition of Mr. Rollins or the witnesses identified in the Rollins Declaration.

## III. THERE IS GOOD CAUSE TO GRANT LEAVE TO SUPPLEMENT

Good cause is required to supplement a motion record. *See* FED. R. CIV. P. 16(b)(4); *Al-Khawaldeh v. Tackett*, No. 1:20-CV-01079-RP, 2021 WL 2322930 (W.D. Tex. June 7, 2021) (holding that Rule 16(b)(4) governed request to supplement evidence in opposition to summary judgement motion, and granting leave to supplement) (citing *Shepherd ex rel. Estate of Shepherd v. City of Shreveport*, 920 F.3d 278, 287 (5th Cir. 2019) (applying good cause standard to motion to supplement briefing)). Good cause is evaluated based on the assessment of four factors: (1) the explanation for the failure to timely offer the evidence; (2) the importance of the evidence; (3) potential prejudice in allowing the evidence into the record; and (4) the availability of a continuance to cure such prejudice. *See E.E.O.C. v. Service Temps Inc.*, 679 F.3d 323, 333-34

(5th Cir. 2012) (applying factors to proposed pleading amendment). For the reasons set forth below, all four factors support good cause to permit the requested supplementation.

**A. Apple's Explanation for the Timing of the Requested Relief Supports Good Cause for the Requested Supplementation**

Apple timely filed its Transfer Motion on May 2, 2022, relying upon the accompanying Rollins Declaration to establish certain facts concerning the roles, activities, and locations of relevant witnesses and their teams, and the locations of relevant documents. Approximately two weeks later, this Court issued its Order in *Scramoge* that set forth concerns regarding a declaration of Mr. Rollins. That *Scramoge* Order provided guidance about declaration testimony that would assist the Court in determining motions to transfer venue.

After receiving the *Scramoge* Order, Apple acted promptly to obtain and seek leave to submit declarations from the Apple employees that Mr. Rollins identified in the Rollins Declaration—with each employee testifying to information similar in scope to that which Mr. Rollins set forth in his declaration. In particular, Apple promptly evaluated the effect and impact of the *Scramoge* Order on the present Transfer Motion and Rollins Declaration to determine whether supplementation here was needed; scheduled time with each of the witnesses submitting supplemental declarations to prepare, review, and finalize their declarations; contacted opposing counsel to meet and confer on the present motion; and diligently prepared and filed the present motion. Jawbone Innovations has long been aware of the identity of the declarants, and they will be available for deposition, if necessary. Apple is also willing to accommodate a further extension to Jawbone Innovations's deadline to oppose the Transfer Motion.

**B. The Importance of the Evidence Supports Good Cause for the Requested Supplementation**

To prevail on its motion to transfer, Apple bears the burden to establish that the Northern District of California is the clearly more convenient venue. *In re Volkswagen of Am., Inc.*, 545

F.3d 304, 312-15 (5th Cir. 2008) ("*Volkswagen II*"). The convenience of willing witnesses is the most important factor in the transfer analysis. *See In re: Apple Inc.*, 818 F. App'x 1001, 1003 (Fed. Cir. June 16, 2020). The location of relevant records is also an important factor. *Id.*

Apple sought to provide evidence concerning those factors via the Rollins Declaration; however, now that Apple is on notice that the Court will credit "Mr. Rollins's declaration only for its unrebutted statements" (*Scramoge* Order at 3), Apple risks being left without a means to substantiate the testimony of Mr. Rollins with the evidence that the Court's *Scramoge* Order explained will be most helpful to the Court in establishing the location of the likely Apple witnesses and records that Mr. Rollins discussed in his declaration. The importance of the requested supplementation supports a finding of good cause.

**C. Jawbone Innovations Will Not Be Prejudiced by the Requested Supplementation**

For several independent reasons, Jawbone Innovations will not be prejudiced by the requested supplementation.

***First***, each of the declarations is from a witness already identified in the Rollins Declaration and relied on in the Transfer Motion. That these specific witnesses are relevant to the suit and the Transfer Motion is information known to Jawbone Innovations since the filing of Apple's Transfer Motion.

***Second***, the information in the supplemental declarations is consistent with and the same in scope as the information already provided in the Rollins Declaration. In that respect, these declarations do not provide new evidence, but instead supplement the evidence that has already been submitted and made known to Jawbone Innovations, who has been able to craft its venue discovery strategy around that already-provided information.

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