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

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

DEFENDANT APPLE INC.'S REPLY IN SUPPORT OF ITS MOTION FOR LEAVE TO SUPPLEMENT THE RECORD ON APPLE'S MOTION TO TRANSFER

Good cause exists to grant Apple's Motion for Leave to Supplement the Record on Apple's Motion to Transfer (Dkt. 78, "Motion") to include declarations from the Apple employees already identified in Apple's Motion to Transfer (Dkt. 38, "Transfer Motion"). Apple's requested supplementation is timely, important to the venue inquiry, and will not unfairly prejudice Jawbone Innovations. Jawbone Innovations fails to rebut these showings, and has had ample opportunity to seek discovery and provide any relevant evidence related to transfer. Moreover, this Court has granted Apple's similar motions in other cases, where Apple also sought leave to supplement the record on its transfer motions with additional declarations after the issuance of the *Scramoge* Order. *See Parus Holdings Inc. v. Apple Inc.*, Civil Action No. 6:21-cv-00968-ADA-DTG (W.D. Tex. Aug. 22, 2022); *Smart Mobile Technologies LLC v. Apple Inc.*, 6:21-cv-00603-ADA-DTG (W.D. Tex. July 26, 2022). The Court should do the same here.

I. APPLE'S REQUEST IS TIMELY

Jawbone Innovations does not dispute that the *Scramoge* Order issued after Apple filed the Transfer Motion. Instead, Jawbone Innovations contends that Apple should have submitted these supplemental declarations at the time Apple filed the Transfer Motion. Opp'n (Dkt. 82) at 2. Prior to *Scramoge*, however, Apple had no reason to know of the Court's specific concerns regarding Apple's use of Mr. Rollins as a corporate declarant, as this Court had previously relied on similar testimony from Mr. Rollins on various occasions. *See, e.g., LoganTree LP v. Apple Inc.*, 2022 WL 1491097 at *6 (W.D. Tex. May 11, 2022) (granting Apple's motion to transfer and finding that "Mr. Rollins has sufficiently explained the relevant knowledge that [Apple's identified] witnesses possess"); *Cub Club Inv., LLC v. Apple, Inc.*, No. 20-cv-856-ADA, Dkt. No. 28 (W.D. Tex. Sept. 7, 2021) (granting Apple's motion to transfer to N.D. Cal. and relying on facts provided by Mr. Rollins). The Federal Circuit likewise has relied on Mr. Rollins's declarations. *See, e.g., In re Apple Inc.*, No. 2022-128, 2022 WL 1196768, at *4 (Fed. Cir. April 22, 2022) ("Apple submitted

a sworn declaration stating that 'working files, electronic documents, and any hard copy documents concerning the Accused Features reside on local computers and/or servers either located in or around [other geographic areas.]'"); *In re Apple Inc.*, No. 2021-181, 2021 WL 5291804, at *2 (Fed. Cir. Nov. 15, 2021) ("Apple's sworn declaration [from Mark Rollins] and deposition testimony make clear that essentially all of its source code and documentary evidence relevant to this action are maintained in the Northern District of California").

Contrary to Jawbone Innovations's argument, Apple acted promptly and diligently once it received the *Scramoge* Order on May 17, 2022. Opp'n at 2-3. Apple produced the six supplemental declarations on July 26, 2022, and it filed the present Motion on August 2, 2022. Mot. at 2. Jawbone Innovations ignores the significant amount of time required for Apple to evaluate the effect of the *Scramoge* Order on the present case, schedule time with each of the six witnesses (all of whom are full-time Apple employees) to prepare, review, and finalize their declarations, contact opposing counsel to confer on the Motion, and prepare and file the Motion. Moreover, venue discovery has been extended to August 11, 2022, and, currently, Jawbone Innovations's opposition is not due until August 25.[1] Thus, there was no undue delay, as Apple diligently prepared the declarations to provide an alternative form of the evidence it already submitted to support the Transfer Motion, and it did so within two and a half months of receiving the *Scramoge* Order.

II. THE REQUESTED SUPPLEMENTATION IS IMPORTANT

Jawbone Innovations argues that the supplemental declarations are not important because the information contained therein is "merely cumulative of the Rollins Declaration." Opp'n at 3.

[1] The parties intend to file another request to extend venue discovery shortly to accommodate for three 30(b)(1) depositions taken by Jawbone Innovations.

Jawbone Innovations's argument ignores this Court's prior ruling. The proposed supplementation directly addresses the Court's concerns with Apple's use of a corporate declaration as set forth in the *Scramoge* Order. The supplemental declarations, from the precise employees Mr. Rollins spoke with in preparing his original declaration, confirm the testimony that Mr. Rollins provided on behalf of Apple and allow the Court (and Jawbone Innovations) to benefit from receiving the direct personal knowledge from the Apple witnesses identified in Mr. Rollins' declaration—precisely what the Court in *Scramoge* indicated it required.

III. JAWBONE INNOVATIONS WILL NOT BE UNFAIRLY PREJUDICED

The only "prejudice" Jawbone Innovations identifies is that it will have to "respond to these new witnesses and facts," but it does not identify any additional discovery or evidence it allegedly would need to respond. *See* Opp'n at 3. Moreover, that argument is disingenuous and contradicts both the record and Jawbone Innovations's claim that the supplemental declarations are "cumulative." *Id.* The supplemental declarations are consistent with and the same in scope as what is already included in the Transfer Motion, so there are no "new witnesses or facts" that Jawbone Innovations would need to address. Mot. at 4. Indeed, Apple already disclosed all six witnesses by name, location, and job description in its Transfer Motion filed on May 2, 2022. Transfer Motion (Dkt. 38) at 2-3; Rollins Declaration (Dkt. 38-1) at ¶¶ 9-12, 15-17. Jawbone Innovations did not seek to depose any of these six witnesses, despite having the opportunity to do so both before and after the present Motion was filed. Jawbone Innovations instead elected to take depositions of individuals not identified in Apple's Transfer Motion or declarations. Thus, Jawbone Innovations cannot credibly argue that the proposed supplementation would unfairly prejudice its ability to depose these witnesses or seek other relevant discovery, when it already made the strategic decision not to do so.

Had Jawbone Innovations identified any actual unfair prejudice or additional discovery required, a **short** continuance of venue discovery would resolve it. *See, e.g.*, *In re Apple, Inc.*, 979 F.3d 1332, 1337 (Fed. Cir. 2020) (explaining that "once a party files a transfer motion, disposing of that motion should unquestionably take top priority"). But because Jawbone Innovations already agreed not to serve any new venue discovery requests and chose to take depositions of three entirely different Apple employees, even though it was fully aware of Apple's intention to file the present Motion, any claim of prejudice or need for additional discovery would ring hollow. Dkt. 71 (Joint Stipulation to Extend Venue Discovery Deadlines). Jawbone Innovations should not be rewarded with significant continuance of venue discovery to take discovery it already made the strategic decision to forgo. Jawbone Innovations has not yet filed its opposition to Apple's Transfer Motion and accordingly still has the opportunity to fully respond to the supplemental declarations. Thus, Jawbone Innovations will not be unfairly prejudiced if the Court allows Apple's requested supplementation.

IV. CONCLUSION

For the reasons set forth above, Apple respectfully requests leave to submit the supplemental declarations attached as Exhibits 1-6 to the Motion in further support of Apple's pending motion to transfer.

Dated: August 23, 2022

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