PUBLIC VERSION

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

AIRE TECHNOLOGY LTD.,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 6:21-cv-01101-ADA

JURY TRIAL DEMANDED

[redacted]

DEFENDANT APPLE INC.'S SEALED REPLY IN SUPPORT OF ITS OPPOSED MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)

I. UNDISPUTED FACTS CONFIRM NDCA IS THE GRAVITATIONAL CENTER

Apple's Motion to Transfer ("Motion") established facts critical to the transfer inquiry, including: the identification of seven key Apple witnesses; over twenty important third-party witnesses, [redacted] prior art inventors, and companies with product prior art; and multiple document repositories, including source code and technical documents from both Apple [redacted] all located in NDCA and all showing that NDCA is the gravitational center of this suit. Aire spent ten weeks taking venue discovery to test those facts and the conclusions drawn from them. As detailed below, Aire's Opposition fails to rebut those facts, including with any evidence developed in venue discovery. Instead, it offers mostly speculation. That Aire had the opportunity to take venue discovery and is unable to rebut Apple's evidence reinforces the conclusion that NDCA is the clearly move convenient venue for this suit.

II. THE LOCATIONS OF WILLING WITNESSES FAVORS TRANSFER

Aire does not dispute the importance of Apple's seven identified witnesses, Mot. 3-4. Instead, it argues that "the center of gravity of Apple employees with relevant knowledge is in WDTX, not NDCA," speculating that 27 Apple employees "potentially" possess or "appear" to possess relevant information. Aire's speculation, however, is based ***solely*** on LinkedIn profiles referencing "Apple Pay." Opp'n. 3-6. Aire's speculation about potential relevance does not outweigh Apple's evidence of the actual relevance of the identified Apple employees.

As an initial matter, Aire's reliance on only LinkedIn profiles is legally insufficient. *See LoganTree LP v. Apple Inc.*, No. 21-cv-00397-ADA, 2022 WL 1491097, at *7 (W.D. Tex. May 11, 2022) (finding that convenience of witnesses "based only on vague LinkedIn profiles" was "owed no weight"). Aire took venue discovery yet chose not to investigate its theory about those employees, including via deposition. There is no evidence that these individuals work on any

aspect of the accused functionality, had any role in its design or development, or otherwise have relevant information. Aire concedes as much. Opp.'n 1 ("potentially"), 11.

Even crediting the LinkedIn profiles, they fail to establish any nexus between this suit and Texas. First, this case is not about Apple Pay generally, but about the Accused Products' NFC functionality as used with Apple Pay or NXP's Low Power Card Detector Mode. Compl. ¶¶ 1, 11. Many Apple employees' work may touch on Apple Pay—which encompasses many irrelevant features, such as online or in-app payments, cash transfers, the GUI, etc.—but the majority, including those Aire identified, are not relevant here. As Mr. Rollins's unrebutted testimony establishes, and as confirmed by the declarations of other Apple employees, none of those Austin-based witnesses worked on the research, design, or development of the accused technology. ECF 24-2 ("Rollins Decl."), ¶8; ECF 36-1 through 36-8; Declaration of Michael Gamez III ("Gamez Decl."); Declaration of Daniel Ewing ("Ewing Decl.") ¶ 3-7; Declaration of Dom Neill ("Neill Decl.") ¶ 3-4; Declaration of Arvind Subramanian ("Subramanian Decl.") ¶ 4.

Second, the evidence shows that these 27 persons are not relevant to this suit. Fifteen are engineers who began work on Apple Pay or Wallet in 2020 or later, so cannot possess firsthand knowledge about the Accused Functionalities' development; Apple Pay NFC functionality was introduced long before.[1] Ex. AA. Three are engineers who started their work earlier but also are irrelevant. *E.g.*, Neill Decl. ¶ 3-4 (never worked on Accused Functionality); Subramanian Decl. ¶4 (same); [redacted][2] Six are in

[1] *See* ECF No. 41-01 ("Hollander Decl."), [redacted]

[2] Aire does not dispute that the Quality Assurance team is irrelevant to the design, development, or operation of accused the functionality. ECF 24-2. ¶10. [redacted] and four of the other engineers Aire identified [redacted] work on that team.

business operations.[3] Contrary to Aire's assertion that business operations "may be knowledgeable about damages," Opp'n. 4-5, [redacted] Ewing Decl. ¶ 3-5. Finally, three individuals do not fall within the above categories, but are similarly not relevant.. [redacted] is responsible for [redacted] and has nothing to do with "the benefits of…stor[ing] at least two applications" in Wallet. Opp'n. 3; ECF No. 41-03, 3. [redacted] Gamez Decl. ¶ 3-4. His knowledge is indisputably not relevant to this suit. *Id.* Finally, [redacted] is responsible for [redacted] Ex. V, *9-10 (describing duties of lone Austin-based individual on business strategy team); Ewing Decl. ¶ 3 (same). To the extent [redacted] is considered, this Court should consider the [redacted] in NDCA on her team. Ex. V, *9-10. In summary, none of these 27 persons has the demonstrated relevance to this suit as Apple's seven witnesses in NDCA.

Separately and in addition to the above, Aire should not be permitted to rely on these 27 employees. Apple served venue discovery asking Aire to identify "each Person likely to have discoverable information that You may use to support Your claims or defenses" and Aire never identified these employees, even though Aire had been "preparing is response [sic]" to Apple's Motion before venue discovery closed. Ex. X, 6-8, ECF 40 at 9. Aire should not be permitted to ignore its disclosure obligations to gain a tactical briefing advantage. *See S. Tex. Neon Sign Co. v. Ixtapa, Inc.*, No. L-08-0116, 2009 WL 10695795, at *2 (S.D. Tex. June 2, 2009). Nor did Aire

[3] *See* ECF No. 41-01, [redacted]

identify these individuals in its initial disclosures, rendering them irrelevant. Ex. W.

III. EASE OF ACCESS TO SOURCES OF PROOF FAVOR TRANSFER

Aire does not dispute that Apple maintains its source code [redacted] pertaining to the Accused Functionality in NDCA and not in TX. Rollins Decl. ¶ 10. Aire demanded production of that source code pre-fact discovery, confirming that its location in NDCA is entitled to weight. Ex. AB. Aire also does not dispute that Apple's documents and source code [redacted] for the Accused Functionality. Rollins Decl. ¶ 8, 9-12, 14-15. Aire also does not meaningfully dispute that third-parties eBay, Visa, and PayPal were active in the NFC-enabled pay space at the relevant time periods and so likely have evidence in N.D. Cal. Mot., 5-6.

In response, Aire makes three unconvincing arguments. ***First***, Aire wrongly criticizes a sentence in Mr. Rollins' Declaration about the location of relevant documents. Opp'n. *6-7. [redacted]. Rollins Decl. ¶¶ 9-12; 14-15; [redacted] Ex. V *14. ***Second***, Aire relies on certain Apple employees in Austin, TX, who, as discussed above, are not relevant to this suit. ***Third***, Aire speculates that there may be relevant evidence in NXP's Austin headquarters—but that speculation ignores the unrebutted evidence from Apple [redacted] while none are in TX. Rollins Decl. ¶¶ 13; ECF 24-1 ("Dachs Decl.") ¶¶ 6, 8, 11. This is yet another area Aire ignored in venue discovery.

IV. COMPULSORY PROCESS FAVORS TRANSFER

NXP is a critical third-party—as Aire's own subpoena to NXP in the opening days of fact discovery confirms—[redacted]

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