

Dana Point, California. *Id.* ¶ 1. Apple is a corporation organized under the laws of the state of California. *Id.* ¶ 2. Apple is registered to do business in the state of Texas. *Id.* According to DoDots, Apple sells products that infringe the asserted patents, including mobile phones (e.g., Apple iPhone, iPhone 6, iPhone 6S, iPhone 6 Plus, iPhone 6S Plus, iPhone SE, iPhone 7, iPhone 7 Plus, iPhone 8, iPhone 8 Plus, iPhone X, iPhone XR, iPhone XS, iPhone XS Max, iPhone 11, iPhone 11 Pro, iPhone 11 Pro Max, iPhone 12, iPhone 12 Mini, iPhone), tablet computers (e.g., iPad Air, iPad mini, and iPad Pro Tablets), smartwatches (e.g., Apple Watch (First through Seventh Generations)), and iOS enabled mobile devices (e.g., iPod Touches). *Id.* ¶ 55. The Court will refer to these products as the “accused products.”

Along with its claims against Apple, DoDots also filed claims against Best Buy Stores, L.P., BestBuy.com, LLC, and Best Buy Texas.com (collectively, the “Best Buy Defendants”) in this case. The Court severed and stayed DoDots’ claims against the Best Buy Defendants under the customer-suit exception. ECF No. 124. Along with this case, DoDots also filed an action against Samsung, Best Buy Stores, L.P., BestBuy.com, LLC, and Best Buy Texas.com. *DoDots Licensing Solutions LLC v. Samsung Elecs.Co., Ltd. et al.*, No. 6:22-cv-535-ADA (W.D. Tex. May 24, 2022), ECF No. 1 [hereinafter “Samsung Litigation”]. The Court also severed and stayed the claims against the Best Buy Defendants in the Samsung Litigation. *DoDots Licensing Solutions LLC v. Samsung Elecs.Co., Ltd. et al.*, No. 6:22-cv-535-ADA (W.D. Tex. July 20, 2023), ECF No. 93.

After responding to DoDots’ complaint, Apple filed this motion to transfer. ECF No. 60. Apple 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. DoDots contends that this case should remain in the WDTX, pointing to, among other factors, Apple’s witnesses and evidence in Texas, the presence of relevant third parties in this state, and the local interest in this District. ECF No. 95 at 1–2.

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. Apple argues that the threshold determination is met because Apple is headquartered in Cupertino, California within the NDCA. ECF No. 60 at 6. DoDots argues that the threshold is not met because DoDots brought this action against Apple and the Best Buy Defendants and Apple has failed to show that venue is proper in the NDCA for the Best Buy Defendants. ECF No. 95 at 2–3. In its reply, Apple argues that the Best Buy Defendants should not be a party to this suit. ECF No. 99 at 1.

Because the Court has severed and stayed the claims against the Best Buy Defendants, the Court only considers here whether transfer is appropriate for DoDots’ claims against Apple. Because Apple has shown that venue is proper for the claims against Apple, 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. When analyzing this factor, the Court should consider all potential witnesses. *Alacritech Inc. v. CenturyLink, Inc.*, No. 2:16-CV-00693, 2017 WL 4155236, at *5 (E.D. Tex. Sept. 19, 2017).

According to Apple, the relevant witnesses from Apple are located in California, Oregon, and Colorado. ECF No. 60 at 1. According to DoDots, Apple also has relevant employees in

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