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

JAWBONE INNOVATIONS, LLC,	§	Case No. 6:23-cv-00158-ADA
Plaintiff,	§	**JURY TRIAL DEMANDED**
v.	§	[redacted]
META PLATFORMS, INC.,	§	
Defendant.	§	

PLAINTIFF JAWBONE INNOVATIONS, LLC'S SUR-REPLY IN FURTHER OPPOSITION TO META PLATFORMS, INC.'S OPPOSED MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA (DKT. 28)

On Reply, Meta raises essentially the same arguments which this Court has already rejected in *Immersion Corp. v. Meta Platforms Inc*. Ex. G. While Meta nonspecifically disputes Jawbone's conclusions, it fails to address the specific evidence supporting Jawbone's positions. Meta has not shown that NDCA is clearly more convenient. The Motion should be denied.

I. The Declaration of Evans Is Unreliable

Meta does not engage with Jawbone's criticism of Mr. Evans' declaration. It does not confront Mr. Evans' testimony that [redacted]. Nor does it address that Mr. Evans' "investigation" of technical employees was limited to [redacted].

Meta takes issue with the assertion that Mr. Evans did not investigate Texas-based financial employees, citing a mention of [redacted] in his declaration. However, Mr. Evans testified that [redacted] Ex. F at 68:8-25, 83:16-2. [redacted]. Ex. Q. Meta's critique only underscores the lack of any real investigation into Texas-based employees, including those the Court found relevant to the same products in *Immersion*.

II. Relative Ease of Access to Sources of Proof Weighs Against Transfer

On Reply, Meta does not rebut Jawbone's evidence weighing against transfer to NDCA. At the outset, it does not identify the actual location of relevant sources of proof or undermine Jawbone's evidence that they are located in Texas. While it again cites statements in the Evans' declaration, it ignores Mr. Evans' testimony that [redacted]. Meta also ignores that its [redacted] is a

mere preference, not entitled to weight. Meta also fails to rebut that, as described, this policy is limited to [redacted]. Finally, Meta does not address that patent prosecution documents it wrongly identified as in NDCA are in WDTX.

Meta instead misinterprets *In re TikTok, Inc.* for the conclusion that [redacted] is controlling. It is not. The issue in *TikTok* concerned the "relative ease of access" versus "absolute ease of access" of sources of proof. 85 F.4th 352, 358 (5th Cir. 2023). It did not overturn established precedent on the location of sources of proof, which is still relevant. *Id. TikTok* does not allow Meta's [redacted] to supersede evidence that its documents and code are accessible [redacted], including WDTX.

Meta disregards Jawbone's evidence regarding Qualcomm and [redacted] sources in WDTX, and completely ignores EssilorLuxottica. Opp at 3-4. Meta instead improperly narrows this inquiry to "unique" documents. Meta's new argument that some documents may be more easily accessible in their NDCA offices is unsupported speculation, and its hair-splitting regarding accused features ignores its admissions that [redacted] and Qualcomm supply at least relevant [redacted]. *Id.*

Finally, Meta wrongly argues that Jawbone's sources of proof are not in WDTX. Meta did not take venue discovery from Jawbone and does not address the documents Jawbone identified in its Waco office. Meta instead argues, for the first time, that Jawbone is ephemeral, despite its distribution of products in WDTX, relying on *In re Google* which was decided on a very different factual record than the one now before this Court.

III. Cost of Attendance for Willing Witnesses Weighs Against Transfer

Meta relies on new declarations and supplemental interrogatory responses which it served on the same day as its Reply brief, which should be discounted as they have not been subject to cross-examination during venue discovery. Even then, it fails to specifically address most of the

25 witnesses Jawbone identified. Meta's arguments boil down to a repetition of *Immersion* and should be rejected for the same reasons. Meta ignores the [redacted], publications, and LinkedIn profiles, linking at least 22 Meta employees to accused audio capture functionalities. Meta also ignores its Texas-based business, marketing, legal, and financial witnesses. Finally, Meta does not specifically dispute WDTX is more convenient for Mr. Setton and Dr. Burnett.

Just as in *Immersion*, Meta conclusorily disagrees with Jawbone's identification without disputing specific evidence regarding identified witnesses. Meta instead generally disputes witnesses' "unique" knowledge, introduces contradictory declarations pointing the finger at other managers or employees, and mischaracterizes Jawbone's argument as suggesting employees with "any level of involvement with the Accused Products" are relevant, again repeating arguments rejected in *Immersion*. Reply at 7. But the cited evidence shows that the identified witnesses work on accused audio capture technology. Meta's protests rely on narrow declarations, most of which are not even signed by the identified employees themselves, that generally dispute employees' involvement in writing production code or point the finger at an NDCA-based co-worker (mostly unidentified in Meta's motion) while suggesting that the identified witness lacks "unique" knowledge. Even then, they only address 11 of 22 employees. Reply, Ex. A. These declarations should be given little, if any, weight. In any case, Meta's interpretation of relevance is unduly narrow, excluding relevant [redacted]. Product design is an iterative process, and employees do not need to have written the last source code version (or any code) to be relevant. Indeed, employees involved in earlier research and design stages may have *more* fundamental knowledge, particularly as Meta's own documents describe [redacted]

[redacted] In any case, these witnesses work on substantively the same functionalities described in the Evans Declaration for every technical witness other than [redacted]. If Meta maintains they are irrelevant, Meta identifies only *one* relevant technical witness under its own standard.

Meta's argument that the Texas-based financial, marketing, and business witnesses Jawbone identified cannot be relevant unless they work directly on the accused functionality is also nonsensical. Those witnesses' knowledge of the Accused Products, customer sentiment, financials, business decisions, does not require them to have performed technical work specific to the accused features. Indeed, none of the financial witnesses that Meta identified in NDCA have worked directly on the accused features either. Meta's double standard is revealing.

Finally, Meta does not engage with this Court's findings regarding the relevance of specific witnesses to the accused products in *Immersion*. Meta instead mischaracterizes Jawbone's arguments and mischaracterizes these witnesses' relevance as solely limited to haptics, citing one cherry-picked statement from the *Immersion* order in regard to [redacted]' knowledge of haptics. Reply at 2. Meta ignores that Jawbone identified [redacted] based on [redacted] and did ***not*** include him in the list of 12 employees who are relevant for the ***same reasons*** as the Court found in *Immersion*. Opp. at 6-7.

IV. Availability of Compulsory Service Weighs Against Transfer

Meta does not substantively dispute the locations of the 24 Texas-based witnesses Jawbone identifies, or that those individuals are subject to compulsory process in this Court. Nor does Meta take on the specific statements in those individuals' LinkedIn profiles, and in some cases internal Meta profiles, supporting their relevance. Finally, Meta does not substantively dispute the relevance of Scott Kokka, who it previously wrongly identified as located in NDCA.

Meta instead mischaracterizes Jawbone's identification of relevant third-party employees

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