UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

JAWBONE INNOVATIONS, LLC, *Plaintiff,*	§ § §	
v.	§ §	**CIVIL NO. W-23-CV-00158-ADA**
META PLATFORMS, INC., *Defendant.*	§ § § §	**PUBLIC VERSION**

ORDER DENYING DEFENDANT'S MOTION TO TRANSFER

I. INTRODUCTION

Before the Court is Defendant Meta Platforms, Inc.'s ("Meta") Opposed Motion to Transfer Venue to the Northern District of California. ECF No. 28. The motion was filed on November 21, 2023. *Id*. After completing venue discovery, Plaintiff Jawbone Innovations, LLC's ("Jawbone") responded in opposition to the motion on April 5, 2024. ECF No. 64. Meta replied in support of the motion on April 19, 2024. ECF No. 70. And Jawbone filed a sur-reply in further opposition to the motion on April 26, 2024. ECF No. 74. After considering the relevant facts, the parties' arguments, and the applicable law, the motion is **DENIED**.

II. BACKGROUND

In its Complaint, Jawbone claims Meta infringed on U.S. Patent Nos. 8,019,091 ("the '091 patent"); 7,246,058 ("the '058 patent"); 10,779,080 ("the '080 patent"); 11,122,357 ("the '357 patent"); 8,467,543 ("the '543 patent"); 8,503,691 ("the '691 patent"); 8,321,213 ("the '213 patent"); and 8,326,611 ("the '611 patent") (collectively, "the Meta patents"), which relate to noise suppression technology. ECF No. 1 at ¶ 7–14; 20, 23, 25, 27, 29. The accused products include

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Meta's Quest products, Portal products, and Smart Glasses. *See* ECF No. 28 at 2 (listing specific accused products); ECF No. 64 at 2.

III. 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

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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).

IV. ANALYSIS

A. Threshold Determination

The threshold determination in the § 1404(a) analysis is whether this case could initially have been brought in the destination venue—the Northern District of California ("NDCA"). Neither party disputes that venue could be proper in the NDCA. Meta operates a regular and established place of business in the Bay Area within the NDCA. ECF No. 28 at 2, 9. This Court therefore finds that venue would have been proper in the NDCA had the suit originally been filed there. Thus, the Court now analyzes the private and public interest factors to determine whether the NDCA is a clearly more convenient forum than the Western District of Texas ("WDTX").

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B. Private Interest Factors

The private interest factors are (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. *See In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) (*Volkswagen II*) (citing *Volkswagen I*, 371 F.3d at 203).

i. The Cost of Attendance and Convenience for Willing Witnesses

The most significant 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.* Yet 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. More recently, the Fifth Circuit has noted that it is improper to ignore the rule, the implication being that

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it should always apply. *In re TikTok*, 85 F.4th at 361–62.

Meta argues that this factor strongly favors transfer. According to Meta, most of the employees with relevant knowledge about the accused products and features are located in the NDCA and Washington. *See* ECF No. 28 at 1, 13 ("Meta's witnesses with technical, financial, and marketing information relevant to this action work in California (most in NDCA) or Washington State, and would find it much more convenient to testify in NDCA."). Meta explains that there are three Meta teams responsible for the Accused Features ([REDACTED]). ECF No. 28 at 3, 10. [REDACTED]. *Id*. at 3. According to Meta, these three teams are based in the NDCA and Redmond, Washington. *Id*.

Meta specifically identifies ten willing witnesses in NDCA: [REDACTED]. ECF No. 70 at 7; Evans Declaration, ECF No. 28-1 at 5–11. Meta lists an additional six willing witnesses for which it alleges the NDCA is a more convenient forum than the WDTX: [REDACTED]. ECF No. 70 at 7. While the Court finds that the presence of many of these witnesses in California and Washington would weigh in favor of transfer, there are a few exceptions. For instance, as Jawbone points out, [REDACTED] is a relevant witness for technology that is no longer accused (e.g., physical VADs). ECF

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