

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

SRC LABS, LLC & SAINT REGIS)
MOHAWK TRIBE,)
)
)
 Plaintiffs,)
)
 v.) Case No. 2:17-CV-1227-LO-JFA
)
)
 AMAZON WEB SERVICES, INC.,) JURY TRIAL DEMANDED
AMAZON.COM, INC., &)
VADATA, INC.,)
)
 Defendants.)
)
)

MEMORANDUM IN SUPPORT OF MOTION OF DEFENDANTS AMAZON WEB SERVICES, INC., AMAZON.COM, INC., AND VADATA, INC. TO TRANSFER VENUE TO THE WESTERN DISTRICT OF WASHINGTON

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Defendants Amazon.com, Inc., Amazon Web Services, Inc., and VADATA, Inc. (collectively, “Amazon”) respectfully move to transfer this case to the United States District Court for the Western District of Washington.

INTRODUCTION

Plaintiffs filed two patent infringement lawsuits in this district. The first is against Microsoft. The second—this case—is against Amazon. In both cases plaintiffs assert the same three patents. Microsoft moved to transfer its case to the Western District of Washington under 28 U.S.C. § 1404. Plaintiffs asked the Court to deny that motion because Amazon had not also requested transfer, and litigating the same patents in two district courts would create inefficiencies and potentially inconsistent outcomes. But Amazon does not oppose transfer of its case to the Western District of Washington.

Indeed, like Microsoft, Amazon is headquartered in the Western District of Washington. Several of its witnesses, including four employees that plaintiffs specifically named in the complaint as allegedly relevant to the claims, are based in that district. And non-party entities—identified by plaintiffs in the complaint as purportedly providing the infringing technology—are based on the West Coast. The Western District of Washington is undeniably more convenient for them than this district. Accordingly, if the Court grants Microsoft’s motion, it should also transfer this case to the Western District of Washington in the interests of justice and convenience.

STATEMENT OF FACTS

I. THE MICROSOFT CASE

Plaintiffs filed their case against Microsoft on October 18, 2017. *See SRC Labs, LLC et al. v. Microsoft Corporation*, Civil Case No. 1:17-cv-01172. On December 1, 2017, Microsoft moved to transfer its case to the Western District of Washington pursuant to 28 U.S.C. § 1404. (*See* Dkt.

Nos. 21-22, Case No. 1:17-cv-01172.) Plaintiffs opposed the motion in part by arguing that because Amazon had not moved to transfer to the same district, both cases should remain here for reasons of judicial efficiency. (*See* Dkt. No. 25 at 13-14, Case No. 1:17-cv-01172.)

II. THIS ACTION

The same day plaintiffs filed their complaint against Microsoft, they also filed this case against Amazon. Plaintiffs allege that Amazon's Elastic Compute Cloud (or "EC2" service) infringes five patents, three of which are the same ones at issue in the Microsoft case. (Dkt. No. 1 ("Compl.") ¶¶ 65-66.) Plaintiffs focus their infringement claims on EC2's use of Field Programmable Gate Arrays ("FPGAs") provided by third party Xilinx, Inc. (*See, e.g.*, Compl. ¶ 116.)

After Microsoft filed its motion to transfer and plaintiffs filed their opposition, Amazon filed a notice stating that it consents to transfer of this case to the Western District of Washington should the Court transfer the Microsoft case there. (Notice of Joinder at ¶¶ 4-6 (Dkt. No. 31).) Following a motion from plaintiffs, the Court struck Amazon's notice of consent and invited Amazon to file its own motion to transfer. (*See* Dkt. Nos. 32, 35.) Accordingly, in the interest of judicial efficiency and convenience, Amazon respectfully requests that the Court transfer this case to the Western District of Washington along with Microsoft's case.

Neither plaintiff has any meaningful connection with this district. SRC Labs, LLC is a Texas limited liability company whose parent is FG SRC, LLC, a Delaware limited liability company. (Dkt. No. 2.) According to public records, SRC's address is 100 Crescent Ct., Dallas, Texas. (Declaration of Laura Anne Kuykendall in Support of Amazon's Motion to Transfer Venue ("Kuykendall Decl.") Ex. A.) Saint Regis Mohawk Tribe is "a federally-recognized, sovereign American Indian tribe with reservation lands in northern New York." (Compl. ¶ 30.) Plaintiffs' only apparent connection to this district is the cases they have filed here against Amazon and Microsoft. Even the subject matter of the patents plaintiffs assert was not conceived in this district. The

inventors are all residents of Colorado. (Dkt. No. 1, Exs. A-E at 1.)

The Amazon defendants are companies with headquarters in Seattle. (Declaration of Jeffrey H. Dean in Support of Amazon’s Motion to Transfer Venue (“Dean Decl.”) ¶ 2.) Amazon expects that many of the relevant witnesses for the case will be located there. Indeed, plaintiffs recite specific allegations about the following Amazon employees: Dan Grossman, Matt Wilson, Atul Deo, Cliff Platt, Andrew Caldwell, and Nafea Bshara. (Compl. ¶¶ 25, 108, 110; *see also* Dean Decl. ¶ 4.) Four of these employees work in Seattle; the remaining two work in Palo Alto, California.¹ (Dean Decl. ¶ 4.) Other employees, with knowledge of AWS U.S. financial and marketing operations, also work in Seattle. (*Id.* ¶ 3.)

Non-party witnesses knowledgeable about non-infringement and prior art live substantially closer to the Western District of Washington than to the Eastern District of Virginia. In the complaint, plaintiffs identify Xilinx, Inc. as a third-party supplier to Amazon of the accused FPGAs and Intel Corporation as a third-party supplier of processors allegedly used in the accused EC2 service. (*See* Compl. ¶¶ 79-80.) These non-parties, not Amazon, are the best sources of information about the design and functionality of the FPGAs and processors they provide, along with related prior art. Xilinx is headquartered in the San Francisco Bay Area and its employees with knowledge of the accused technology work there. (Kuykendall Decl. Ex. B-C.) For example, Xilinx’s Senior Vice President responsible for FPGA Development and Silicon Technology, Liam Madden, works in the Bay Area. (*Id.* Ex. C.) Intel is headquartered in Santa Clara, California. (*Id.* Ex. D.)

Plaintiffs allege also that Amazon induces infringement by “aiding and abetting the direct

¹ Plaintiffs list additional Amazon employees in the complaint, but fail to recite any basis for including them beyond the fact that their roles relate generally to the accused product. (Compl. ¶ 25.)

infringement of at least the following companies: Aldec, Inc., Aon Benfield, Atomic Rules, CME Group, Edico Genome, Falcon Computing Solutions, Mipsology, National Instruments, NGCodec, Reconfigure.io, Ryft, Teradeep, Maxeler Technologies, Missing Link Electronics, Titan IC Systems, and Plunify.” (Compl. ¶ 173.) None is headquartered in this district. (Kuykendall Decl. Exs. E-T.) In fact, seven are located on the opposite coast, in California or in Nevada. (*Id.* Exs. E, I, J, M, P, Q, R.)

ARGUMENT

Under 28 U.S.C. § 1404(a), a court may transfer a civil action to any judicial district where it could have been brought originally for the “convenience of parties and witnesses” and “in the interest of justice.” This case could have been brought in the Western District of Washington and in the interest of justice and convenience should be litigated there.

I. PLAINTIFFS COULD HAVE BROUGHT THIS CASE IN WASHINGTON.

Plaintiffs could have brought their claims against Amazon in the Western District of Washington because Amazon has its headquarters in that district. (Dean Decl. ¶ 2.) The Court can therefore transfer this case there. 28 U.S.C. § 1400(b) (a patent infringement action may be brought in the district “where the defendant has committed acts of infringement and has a regular and established place of business”); *Symbology Innovations, LLC v. Lego Sys., Inc.*, No. 2:17-CV-86, 2017 WL 4324841, at *13 (E.D. Va. Sept. 28, 2017) (describing threshold requirement for change of venue).

II. THE COURT SHOULD TRANSFER THE CASE TO WASHINGTON IN THE INTEREST OF JUDICIAL EFFICIENCY AND FOR THE CONVENIENCE OF THE PARTIES AND WITNESSES.

If the Court transfers the Microsoft case, the Court should also transfer this case to the Western District of Washington in the interest of judicial economy.

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