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

SYNKLOUD TECHNOLOGIES, LLC * March 27, 2020
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*
VS. * CIVIL ACTION NOS.
*
DROPOX, INC. * W-19-CV-525, W-19-CV-526
ADOBE, INC. * W-19-CV-527

BEFORE THE HONORABLE ALAN D ALBRIGHT, JUDGE PRESIDING
TELEPHONIC MOTION HEARING

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10:22 1 MS. MILES: Telephonic motion hearing in Civil Action
10:31 2 W-19-CV-525 and W-19-CV-526, styled SynKloud Technologies, LLC
10:31 3 versus Dropbox, and Civil Action W-19-CV-527 styled SynKloud
10:31 4 Technologies, LLC versus Adobe, Incorporated.

10:31 5 THE COURT: Good morning, everyone. If we can start off
10:31 6 by having counsel for plaintiff who's going to be speaking or
10:31 7 whoever -- a combination if there's more than one -- introduce
10:31 8 themselves and then if we can have counsel for defendants do
10:31 9 the same and who will be speaking.

10:31 10 We're learning a couple of lessons by doing these, one of
10:31 11 which is if you are speaking on behalf of your client, if
10:32 12 you're on speaker phone, you have to make sure that you stay
10:32 13 pretty close to the speaker phone or we lose you, which is not
10:32 14 good.

10:32 15 Also, occasionally I will try and improve the sound by
10:32 16 putting my phone on mute. I haven't left, but occasionally I
10:32 17 do forget that it's on mute, and so if there's silence when you
10:32 18 are thinking of me, I will -- I'll do my best to remember to
10:32 19 unmute and get back on. So that being said, again, if counsel
10:32 20 for plaintiff would introduce themselves, please.

10:32 21 MS. BRAHMBHATT: Good morning, Your Honor. This is
10:32 22 Deepali Brahmhatt from One LLP for plaintiff SynKloud
10:32 23 Technologies, LLC. With me we have local counsel Kevin
10:32 24 Terrazas and John Lord also from One LLP.

10:33 25 THE COURT: Okay.

10:33 1 MR. RAVEL: Your Honor, for defendant Dropbox this is
10:33 2 Steve Ravel. Along with me are my co-counsel Greg Lantier and
10:33 3 Liv Herriot from Wilmer Hale and our client representative
10:33 4 Elena Dinuzio.

10:33 5 MR. DACUS: Good morning, Your Honor. This is Deron Dacus
10:33 6 on behalf of Adobe, and also on the phone are Eugene Mar and
10:33 7 Winston Liaw with the Farella Braun law firm, and our client
10:33 8 representative Andy Nguyen is also on the phone, Your Honor,
10:33 9 and we're ready to proceed.

10:33 10 THE REPORTER: Judge, this is Kristie. Can you ask
10:33 11 everybody to mute their phone? There's a lot of feedback here.

10:33 12 THE COURT: You took the words out of my mouth.

10:33 13 THE REPORTER: Oh, thank you.

10:33 14 THE COURT: If I could have everyone -- and I'm going to
10:33 15 do the same thing -- mute their phone, maybe it'll make the
10:33 16 sound quality better. If it doesn't in a very short time, then
10:34 17 I may try calling back in because occasionally I'm --
10:34 18 apparently I'm the problem. But if everyone will mute, I'm
10:34 19 going to mute, other than whoever's going to be speaking on
10:34 20 behalf of -- I guess we'll start with someone who is arguing on
10:34 21 behalf of the movant who is moving to transfer.

10:34 22 MR. RAVEL: Your Honor, it's Steve Ravel. I represent
10:34 23 Dropbox, one of the movants, and I would be happy to go first.

10:34 24 THE COURT: Please do.

10:34 25 MR. RAVEL: Your Honor, may it please the Court. It has

10:34 1 been my honor to read every word you have written or said from
10:34 2 the bench concerning convenience transfers, and some takeaways
10:34 3 from that body of works seem to be, one, trial witnesses count.
10:34 4 And so the availability of compulsory process is significant in
10:35 5 this Court's decision making. Two, local interests count and
10:35 6 tend to play a significant role in this Court's decision
10:35 7 making.

10:35 8 During my part of the argument, I will very briefly
10:35 9 preview Dropbox's compulsory process and local interest
10:35 10 position, leaving the other factors and the details entirely to
10:35 11 Mr. Lantier.

10:35 12 May I ask you to go to our Slide 2, the facts, before
10:35 13 turning it over Mr. Lantier, and if I can direct Your Honor to
10:35 14 that slide, I wanted to note that a rare set of facts these
10:35 15 cases against Dropbox present. They are cases that stand out
10:35 16 from the rest in terms of their singular connection to the
10:35 17 transferee venue, the Northern District of California. A fair
10:35 18 number of cases include a defendant whose headquarters,
10:36 19 witnesses and documents are located somewhere else. We have
10:36 20 that here. All of Dropbox's trial evidence is up in San
10:36 21 Francisco where it is headquartered. For this reason San
10:36 22 Francisco is more convenient.

10:36 23 But it is the other facts --

10:36 24 THE COURT: Mr. Ravel? Mr. Ravel?

10:36 25 MR. RAVEL: Yes, Judge.

10:36 1 THE COURT: And this is another problem with these is it's
10:36 2 hard for us to not step over each other. I heard everything
10:36 3 that you just said, and -- but isn't the standard here -- and
10:36 4 this is really important in this case because I will tell you
10:36 5 going into this call we think it is a very close call. Isn't
10:36 6 the standard clearly more convenient?

10:36 7 MR. RAVEL: As fate would have it, Judge, I'm going to be
10:36 8 saying those words in about five seconds, though I agree that,
10:37 9 yes. It is.

10:37 10 THE COURT: Okay.

10:37 11 MR. RAVEL: It's the other connections to the Northern
10:37 12 District of California that set this case apart and push it
10:37 13 over the line to being the case in which the Northern District
10:37 14 of California is not just more convenient but clearly more
10:37 15 convenient for the trial of these cases. And let me give you
10:37 16 some reasons why it is clearly more convenient.

10:37 17 First, the work that resulted in all seven of the patents
10:37 18 at issue was done in California. It's unusual that the place
10:37 19 from which the patents originated also happen to be the
10:37 20 location of all the defendant's relevant activities, but that's
10:37 21 true here.

10:37 22 Second, the evidence I will preview now, and Mr. Lantier
10:37 23 will discuss in more detail, supports a finding that the
10:37 24 compulsory process factor strongly favors transfer. We have
10:37 25 two inventors in these combined cases, one for the patent at

10:38 1 issue in the 525 and one for the patents at issue in 526.
10:38 2 Based on public information, both live in the Northern District
10:38 3 of California. That's a rare coincidence, given the location
10:38 4 of Dropbox's evidence as well.

10:38 5 Third, SynKloud is alleging that Dropbox has been
10:38 6 willfully infringing since the predecessor entity sent letters
10:38 7 to Dropbox starting in 2015. There's a fact issue as to
10:38 8 whether at least the first letter was ever actually sent. The
10:38 9 alleged sender of that letter is a third party patent attorney
10:38 10 who lives and practices in the Northern District of California.

10:38 11 Two inventors and a willfulness witness whom Dropbox will
10:38 12 want to call live at trial are subject to process in the
10:38 13 Northern District of California but not here. Let me say that
10:38 14 again, Judge. Two inventors and a willfulness witness, likely
10:39 15 trial witnesses all, are subject to process in ND Cal but not
10:39 16 here.

10:39 17 Finally, all of the work to develop the accused Dropbox
10:39 18 services and the provision of those services to customers is
10:39 19 done in San Francisco.

10:39 20 THE COURT: Let me -- yes, Mr. Ravel.

10:39 21 MR. RAVEL: Yes, Judge.

10:39 22 THE COURT: Would the folks that you just mentioned,
10:39 23 inventors, the willfulness, whatever, I understand that they
10:39 24 are subject to subpoena in the Northern District of California.
10:39 25 Is there any -- what is the -- what is the likelihood -- what

10:39 1 do we know about whether or not they would be willing to attend
10:39 2 a trial in the Western District of Texas?

10:39 3 MR. RAVEL: Judge, I think that SynKloud has represented
10:39 4 to you -- I think that one of those three might be willing to
10:39 5 come here. I'll concede it that far and I'll let them
10:40 6 elaborate on that when it's their turn if that --

10:40 7 THE COURT: And that -- and that's the inventor, right?

10:40 8 MR. RAVEL: That's one of the inventors.

10:40 9 THE COURT: Okay. Okay.

10:40 10 MR. RAVEL: On the other hand, Judge, there's no relevant
10:40 11 connection to Texas, let alone the Western District. The
10:40 12 plaintiff is a Delaware company whose only office is in
10:40 13 Delaware and whose principal is in New York City. There are no
10:40 14 likely trial witnesses in this district.

10:40 15 The local interest proof, Judge, is equally stark. As an
10:40 16 initial proposition, at the time the accused technology was
10:40 17 developed, Dropbox had zero employees, zero presence here in
10:40 18 Austin, and according to its slide, SynKloud will focus its
10:40 19 local interest argument on Dropbox's 250 employees in Austin.
10:40 20 And as glad as we are to have those good people and their good
10:41 21 jobs here, Dropbox did not become all that to making the Austin
10:41 22 Business Journal's 2019 list of Austin's 75 largest employers.
10:41 23 No. 75 is the Texas Association of School Boards with 406
10:41 24 employees.

10:41 25 Mr. Lantier will now pick up with the formal analysis of

10:41 1 the Section 1404(a) factors, but before he does, I did want to
10:41 2 make one quick point about the court congestion factor. Your
10:41 3 Honor sets matters for trial faster and runs a more hands-on
10:41 4 docket than any other federal judge we know. That's a fact,
10:41 5 and you may be justly proud of the manner in which you have
10:41 6 elected to exercise your adherent power to manage your docket,
10:41 7 but the fact that you are, and I expect always will be, the
10:41 8 fastest and the most hands on does not mean that other courts
10:42 9 are congested. Some other federal judges just have a different
10:42 10 approach to case management and set longer fact discovery
10:42 11 disputes and longer trial settings. Whether they are right or
10:42 12 wrong to do so really isn't for any of us here to say. It's
10:42 13 their court and they can run it how they want to. The fact
10:42 14 that the transferee court has a different more extended docket
10:42 15 managing its style than this Court and intentionally longer
10:42 16 trial settings cannot weigh against transfer. The relevant
10:42 17 factor has to do with court congestion. If there is no showing
10:42 18 of congestion in either court, and there is zero evidence of
10:42 19 congestion here, then the factor is neutral.

10:42 20 Judge, I've heard Mr. Lantier's argument, and my last word
10:42 21 to the Court is that this case goes beyond more convenient to
10:43 22 clearly more convenient.

10:43 23 Now, if you would turn with us to Slide 3, Mr. Lantier
10:43 24 will pick up with the application of the facts here to the
10:43 25 1404(a) factors.

10:43 1 MR. LANTIER: Thank you, Mr. Ravel. And thank you, Your
10:43 2 Honor, for holding this hearing telephonically. This is Greg
10:43 3 Lantier, and I represent the defendant Dropbox.

10:43 4 Your Honor knows the Section 1404(a) transfer factors
10:43 5 well, and we know that our burden here is to demonstrate to
10:43 6 Your Honor that the Northern District of California is clearly
10:43 7 more convenient than the Western District of Texas for the
10:43 8 trials of these matters. So I will skip right to what we have
10:43 9 on Slide 4 which is applying the facts of this case -- of these
10:44 10 cases, the 525 and the 526, to the transfer factors.

10:44 11 Turning to Slide 4, to begin with the sources of proof,
10:44 12 and in this case, I think more than almost any other, the
10:44 13 sources of proof are overwhelmingly centered in the Northern
10:44 14 District of California. That is where at least one and
10:44 15 probably both of the named inventors of the patents asserted
10:44 16 are located. It's where the Dropbox accused services were
10:44 17 developed and it's the place where Dropbox supplies those
10:44 18 services to its customers from. It's where all of Dropbox's
10:44 19 trial witnesses are, and it's where J. James Li, the attorney
10:44 20 who represented SynKloud's predecessor and interest with
10:45 21 respect to the patents at issue in the 526 case is, it states,
10:45 22 and where he is subject to compulsory process.

10:45 23 On the other hand, we don't have any sources of proof in
10:45 24 the Western District of Texas that are relevant to the transfer
10:45 25 analysis. There are no likely trial witnesses here, and I

10:45 1 would be happy to go through the list that SynKloud identifies
10:45 2 in its motion papers, but we did that in our reply, and so
10:45 3 unless there are questions, I don't think we need to go through
10:45 4 those individually. Suffice it to say, none of those
10:45 5 individuals is a likely trial witness, and we can tell that
10:45 6 just from the backgrounds.

10:45 7 And Dropbox's Austin office did not come into existence
10:45 8 until well after the accused services here were developed and
10:46 9 launched by Dropbox by people who were are in the Northern
10:46 10 District of California. So we think that this is a
10:46 11 straightforward application for this factor and that it favors
10:46 12 transfer.

10:46 13 SynKloud argues on the other side that this factor does
10:46 14 not weigh in favor of transfer because, one, SynKloud does not
10:46 15 have any sources of proof in the Northern District of
10:46 16 California, and, two, it says that it is making indirect
10:46 17 infringement allegations and the existence of customers and
10:46 18 customer service representatives could be relevant to those
10:46 19 allegations.

10:46 20 There is a decision that Your Honor issued a little under
10:46 21 two weeks ago that I think is highly relevant on this factor,
10:46 22 and that is Your Honor's decision in CloudofChange versus NCR
10:47 23 Corporation, Docket -- or Case No. 6:19-CV-513-ADA. In that
10:47 24 case where Your Honor ultimately found that the factors favored
10:47 25 transfer but did not clearly favor transfer, the arguments made

10:47 1 by the plaintiff there were the same arguments and Your Honor
10:47 2 did reject them and found that the sources of proof factor did
10:47 3 weigh in favor of transfer. I submit that Your Honor should
10:47 4 reject SynKloud's arguments here for the same reasons and in
10:47 5 fact for the reasons I stated before having to do with sources
10:47 6 of proof specific to the asserted patents also being in the
10:47 7 Northern District of California. This factor actually weighs
10:47 8 more strongly in favor of the transfer in this case and in
10:47 9 these two cases than it did in the CloudfChange case.

10:48 10 Turning to Slide 5. I don't have a slide on each of the
10:48 11 five interest factors, Your Honor. I'm trying to go through
10:48 12 this expeditiously. The remaining three private interest
10:48 13 factors are shown on Slide 5. Mr. Ravel already addressed the
10:48 14 first one, the availability of compulsory process, which we
10:48 15 think clearly favors transfer here. While it is the case that
10:48 16 there is a declaration from one of the two named inventors
10:48 17 indicating that he would be willing to travel to the Western
10:48 18 District of Texas for trial, we do not have any indication from
10:48 19 J. James Li, the third party witness, that he would be willing
10:48 20 to do so, and there's a -- the public information shows that
10:48 21 the second inventor is in the Northern District of California,
10:48 22 but it does not appear that either party has been able to
10:48 23 actually contact him in order to determine whether he is
10:49 24 willing to travel or not. I will say he's not -- he does not
10:49 25 appear to be affiliated with SynKloud, and so I don't have any

10:49 1 reason to think he would be willing to travel.

10:49 2 The cost of attendance for willing witnesses also favors
10:49 3 transfer to the Northern District of California, and I would
10:49 4 submit, Your Honor, that this one is not a close call. There's
10:49 5 no dispute that the majority of witnesses on both sides,
10:49 6 including the inventor and then all of Dropbox's witnesses,
10:49 7 live within driving distance of the San Francisco courthouse in
10:49 8 the Northern District of California. There is one likely trial
10:49 9 witness who's been identified that does not reside in the
10:49 10 Northern District of California, and that is SynKloud's
10:49 11 principal Mr. Colao. Mr. Colao lives in New York City, and so
10:49 12 he will have to transfer -- travel -- pardon me -- a great
10:50 13 distance no matter where the case is tried, whether it's San
10:50 14 Francisco or it's in Waco or in Austin, and, therefore, I don't
10:50 15 think that his costs should factor in that greatly. He
10:50 16 indicates that it would be less expensive for him to eat and to
10:50 17 stay in Waco. I would say it is a little bit -- it's probably
10:50 18 a little bit far field, but somebody who lives in New York City
10:50 19 is sort of used to out of state San Francisco prices when it
10:50 20 comes to eating, but more and to the point, he's one person
10:50 21 compared to probably five or so, give or take, witnesses who
10:50 22 could sleep at their own homes if this case were tried in the
10:50 23 San Francisco courthouse, and so I think the cost of attendance
10:50 24 for the willing witnesses quite clearly favors transfer.

10:50 25 And then, finally, the -- oh, and let me say, Your Honor,

10:51 1 that I think the CloudfChange case here is -- is relevant as
10:51 2 well, and that is because on the availability of compulsory
10:51 3 process factor, Your Honor rejected the same argument that
10:51 4 SynKloud is making here which is that if you go out and cherry
10:51 5 pick people who you find using LinkedIn profiles and say that
10:51 6 they might be trial witnesses, that really isn't a relevant --
10:51 7 that really should not be afforded much weight because those
10:51 8 people aren't people who really are relevant, unlike, for
10:51 9 example, the inventors, unlike, for example, the people who
10:51 10 Dropbox identified as being responsible for the accused
10:51 11 technology here for marketing the accused technology and for
10:51 12 the sales and finances of the accused technology.

10:51 13 And then, Your Honor, the practical issues are neutral
10:52 14 there. We don't make any argument that that's not the case.

10:52 15 I'm nearly finished. Turning to Slide 6, though, we have
10:52 16 our public interest factors, and I would like to go through
10:52 17 those very briefly. The first public interest factor, I know
10:52 18 that this is one that Your Honor has identified in the past and
10:52 19 is a very important factor, and that is the factor of court
10:52 20 congestion. We do submit that here the court congestion factor
10:52 21 is neutral. We don't dispute that Your Honor will set this
10:52 22 case for -- these cases for trial faster than I think any other
10:52 23 judge in the United States would. That is true, and that is
10:52 24 absolutely Your Honor's prerogative and that's why your name is
10:52 25 judge and mine is not. But it's not the same thing as the --

10:53 1 the transferee court being congested. In our view, and I think
10:53 2 this is right, the case is that many other federal judges for
10:53 3 their own reasons, whether right or wrong, set longer case
10:53 4 schedules, and it's not because they couldn't do it more
10:53 5 quickly, it's because they choose to spend more time on fact
10:53 6 discovery or maybe need a longer period for the decision of
10:53 7 dispositive motions or other things like that. And the fact
10:53 8 that they make that choice, which is their prerogative, does
10:53 9 not weigh against transfer, and we would submit that that
10:53 10 factor is neutral. We think that the only public interest
10:53 11 factor that weighs one way or the other is the localized
10:53 12 interest factor.

10:53 13 THE COURT: Let me ask you about your last point. You and
10:53 14 Mr. Ravel both have said -- have both made the point that the
10:54 15 fact that the Northern District judges take longer to get to
10:54 16 trial is not necessarily evidence of congestion and that it's
10:54 17 because, you know, the way they handle their case scheduling is
10:54 18 just different than mine. What do you have other than just
10:54 19 your assumption that that's correct? I mean, I'll tell you on
10:54 20 the record that -- and I'm going to do my very best since it's
10:54 21 not really evidence in the case, but, you know, I'm -- I do
10:54 22 talk to other judges. I've talked to a fair number of other
10:54 23 judges in the Northern District, and my sense is that it is
10:54 24 more congested. Not across the board. I mean, there are lots
10:55 25 of judges, and we don't know which one would get this case.

10:55 1 You know, it might be, you know, John Tigar who just -- I was
10:55 2 just on a panel with who's a phenomenal judge, phenomenal guy,
10:55 3 and -- but what is your basis for saying that those courts are
10:55 4 not -- I don't know that congestion is a mandate for -- I mean,
10:55 5 there's no question if you're talking about Delaware, you know,
10:55 6 where they're getting a bazillion cases a year. Congestion is
10:55 7 a pretty easy thing to presume, but what do we have beside your
10:55 8 argument that the fact that it takes longer to get to trial in
10:55 9 the Northern District is not because of congestion?

10:55 10 MR. LANTIER: So, Your Honor, I think that's a very good
10:55 11 and fair question, and I would make two points in response.
10:56 12 The -- well, three, I suppose. The first is, as Your Honor
10:56 13 well knows, Your Honor has had more patent cases filed in your
10:56 14 court by far than any other judge in the country over the last
10:56 15 12 months and by a very large degree more than any other --
10:56 16 than any judge in the Northern District of California, and yet
10:56 17 Your Honor still sets your cases for trial in a very speedy
10:56 18 way. And so I don't think that we can say that there is a
10:56 19 correlation between the number of cases pending before a
10:56 20 particular judge and congestion because I think it's the case
10:56 21 that judges are going to handle their own dockets their own
10:56 22 ways, and Your Honor would -- I don't think Your Honor would
10:56 23 say you're congested even though you've had more patent cases
10:56 24 filed before you than any other judge in the country, and we
10:57 25 wouldn't contend you're congested either.

10:57 1 The second --

10:57 2 THE COURT: Well, I can tell you if this were someone who
10:57 3 you wanted a trial on a bankruptcy appeal, my court would
10:57 4 suddenly be very congested and it would not get to trial for a
10:57 5 very long time.

10:57 6 (Laughter.)

10:57 7 THE COURT: So that's probably a personal thing for me as
10:57 8 well. So I'm sorry I interrupted you. You were about to make
10:57 9 your second point.

10:57 10 MR. LANTIER: No. The second point, Your Honor, I would
10:57 11 make is -- and I don't think I'm telling Your Honor anything
10:57 12 you don't already know, but there's a -- there is a wide
10:57 13 variation amongst even individual judges in the Northern
10:57 14 District of California as to how quickly they set cases for
10:57 15 trial. So even cases before the same judge have variation in
10:57 16 terms of how quickly they get to trial, and there are many
10:57 17 cases in the Northern District of California and several judges
10:57 18 who set cases for trial not quite as fast as Your Honor that
10:58 19 I'm aware of but nearly as fast, particularly outside of the
10:58 20 patent sphere. I think there may be some trial settings that
10:58 21 are even faster in non patent cases which can make sense
10:58 22 because there may not be as many steps to go through before
10:58 23 trial. And so I don't think that there's any -- that as a
10:58 24 factual matter it is true that the judges in the Northern
10:58 25 District of California simply can't set their cases for trial

10:58 1 more quickly because of congestion.

10:58 2 And then the third -- the third point I would make is on
10:58 3 the record before Your Honor here, and other cases in the
10:58 4 future might be different, but on the record before Your Honor
10:58 5 here there's no evidence and not even an argument that has been
10:58 6 made by the plaintiff SynKloud that the Northern District of
10:58 7 California judges are actually congested such that they cannot
10:58 8 set cases for trial as quickly as they would like to.

10:59 9 Those would be the three points I would make in response
10:59 10 to Your Honor.

10:59 11 THE COURT: Okay. And well done. I appreciate that.
10:59 12 Thank you.

10:59 13 MR. LANTIER: The only factor we think among the public
10:59 14 interest factors that is not so neutral is the localized
10:59 15 interest factor, but we do believe that the localized interest
10:59 16 factor weighs heavily in favor of transfer, and that's because
10:59 17 of the odd circumstance here that the patents that are being
10:59 18 asserted originated from the same judicial district where the
10:59 19 defendant's headquarters and all of the accused products are
10:59 20 also based and where they originated. So here we have this
10:59 21 sort of confluence of on the patent side there's a local
10:59 22 interest in the Northern District of California in seeing --
10:59 23 being the enforcement, if it's appropriate enforcement, of
11:00 24 patents that originated there based on work performed in the
11:00 25 Northern District of California based on -- or done by

11:00 1 inventors who are from California and who, as far as we can
11:00 2 tell, continue to reside in California.

11:00 3 We have Dropbox and its 1,500 employees in the Northern
11:00 4 District of California having done all of the development work
11:00 5 for all of the accused products in that judicial district, and
11:00 6 so there is a localized interest there and a strong localized
11:00 7 interest because of the tight nexus between that judicial
11:00 8 district and the accused services.

11:00 9 And then for the 526 case we have this allegation of
11:00 10 willfulness where the allegation is based in part and
11:00 11 predominantly on this letter that was supposedly sent in
11:00 12 October of 2015 to Dropbox by this individual named J. James
11:01 13 Li, and then there was a back and forth -- after that there
11:01 14 were more letters sent and those letters were exchanged
11:01 15 exclusively between people in the Northern District of
11:01 16 California up until right before this case was filed. So there
11:01 17 is a very strong -- in the Northern District of California.

11:01 18 On the other hand, you know, Dropbox is of course proud of
11:01 19 its presence in Austin and its 250 employees there. It's also
11:01 20 proud of its developer Bill Day and working with local
11:01 21 individuals in Austin on future technologies that they may be
11:01 22 trying to develop, and Dropbox would very much like to help
11:01 23 them do that, but Dropbox's Austin office didn't even exist at
11:01 24 the time that these accused services were developed, and it has
11:01 25 no oversight or technical maintenance function with respect to

11:02 1 the accused services. And so while it is true that Austin is
11:02 2 excited of Dropbox's office with 250 people, those people are
11:02 3 not people who worked on the accused technologies and
11:02 4 developing it. They're not the people who currently maintain
11:02 5 that technology, and so there's not nearly as strong an
11:02 6 interest in Austin, we would submit, as there is in the
11:02 7 Northern District of California.

11:02 8 And so, Your Honor, in sum I would just say that we think
11:02 9 that these cases present what is a very rare set of facts
11:02 10 because of the extraordinary connection between the Northern
11:02 11 District of California and what issues will need to be tried in
11:02 12 this case. That's not just true on the defendant's side, but
11:02 13 it's also true in terms of the asserted patents that they came
11:02 14 from as well as at least one key third party. And so given
11:03 15 that undeniably strong and deep connection to the Northern
11:03 16 District of California, we respectfully submit that this is the
11:03 17 set of circumstances where it would be clearly more convenient
11:03 18 for these cases to proceed there, and Dropbox respectfully
11:03 19 requests they be transferred.

11:03 20 THE COURT: Okie dokie.

11:03 21 MR. MAR: Your Honor, this is Eugene Mar for defendant
11:03 22 Adobe, and I was going to ask Your Honor whether you thought
11:03 23 it'd be more efficient for both the movants to go first so that
11:03 24 SynKloud can address both of our arguments, or what would your
11:03 25 preference be, Your Honor?

11:03 1 THE COURT: My preference would be for you both to go.

11:03 2 That'd be great.

11:03 3 MR. MAR: Great. Thank you, Your Honor. This is Eugene
11:03 4 Mar for defendant Adobe in the 527 case.

11:03 5 And, Your Honor, moving to our first slide, we have
11:03 6 relisted many of the factors that we think demonstrate why the
11:04 7 facts in this case clearly show the Northern District of
11:04 8 California is the more convenient forum than Your Honor's
11:04 9 district in Texas. Indeed, none of the witnesses, none of the
11:04 10 documents, none of the sources of proof are in Texas for any of
11:04 11 the parties, the plaintiff, the defendant Adobe or even
11:04 12 bringing the third parties. Many of the witnesses, if not all
11:04 13 of them, reside in the Northern District of California who will
11:04 14 testify at trial.

11:04 15 Importantly, one of the distinctions we have from the
11:04 16 Dropbox case is we only face assertions from one patent
11:04 17 portfolio, and there's only one inventor, and he also resides
11:04 18 in the Northern District of California. We've pointed out that
11:04 19 our documents are -- many of them are stored there. Again,
11:04 20 none of them are in Texas. So, indeed, these five factors
11:04 21 we've listed on Slide 1 we believe show why the Northern
11:04 22 District of California is clearly more convenient.

11:04 23 My next slide will target some specific issues I wanted to
11:05 24 address, Your Honor, that were raised in SynKloud's surreply
11:05 25 and I think will further demonstrate why in this case with

11:05 1 these facts there are no particular ties indeed to the Western
11:05 2 District of Texas for this case.

11:05 3 On Slide 2, Your Honor, again in the Adobe case in 527, we
11:05 4 only have one inventor. His name is Ted Tsao. It's spelled
11:05 5 T-s-a-o for the record purposes. He lives and resides in the
11:05 6 San Francisco Bay area. The company that he helps run is a
11:05 7 small business known as STTWebOS is also existent in the San
11:05 8 Francisco Bay area. These six patents he's asserted against
11:05 9 Adobe, and indeed also against Dropbox, these six patents that
11:05 10 he has developed were developed in the San Francisco Bay area.
11:05 11 In our moving papers, Your Honor, we talked about issues we
11:05 12 think have been created by Mr. Tsao's activities when he was
11:05 13 developing his prototypes and developing his products prior to
11:05 14 applying for the patents. We have been in the midst of some
11:06 15 limited discovery in that sense, but we believe there might be
11:06 16 on-sale bar issues that are created by his activity. Mr.
11:06 17 Tsao's testimony and the evidence he has, including his
11:06 18 documents, his source code, are all in California, and he would
11:06 19 only be able to be compelled to testify in the Northern
11:06 20 District of California.

11:06 21 Mr. Tsao has to date remained a third party. We have not
11:06 22 seen any evidence that he's under any obligation or under
11:06 23 control of SynKloud to be compelled to appear in Texas. While,
11:06 24 yes, he has submitted a declaration, Your Honor, saying at this
11:06 25 time he'd be willing to come to the Western District of Texas,

11:06 1 Mr. Tsao is very much I think an independent thinker and he may
11:06 2 well change his mind. No one can compel him to come to Texas
11:06 3 to testify.

11:06 4 We've also pointed Your Honor to the Groupchatter case
11:06 5 from the Eastern District of Texas, this is 2016 Westlaw
11:06 6 541516, where, similarly, a transfer motion was decided by I
11:07 7 believe Magistrate Love and there were declarations there from
11:07 8 four witnesses, four inventors in the state of Washington, and
11:07 9 Magistrate Love found that that -- those declarations were
11:07 10 difficult for him to tackle and that, indeed, they seemed
11:07 11 speculative in terms of evidence about whether that would make
11:07 12 trial more convenient in the Eastern District or whether it
11:07 13 should be in the Northern District of Texas -- sorry --
11:07 14 Northern District of Georgia.

11:07 15 We also pointed Your Honor to the Vigilos case. And
11:07 16 that's the V-i-g-i-l-o-s versus Sling Media, and that's 2011
11:07 17 Westlaw 13156923, a decision by Judge Folsom where he also
11:07 18 looked at statements from nonparty inventors, again, affidavits
11:07 19 saying that they could travel to Texas to come testify and
11:07 20 would not seek reimbursement, and there Judge Folsom said even
11:07 21 with the presence of those declarations, that did not trump the
11:08 22 100-mile rule that the Fifth Circuit had, and here it's
11:08 23 indisputable that Mr. Tsao lives in the Northern District of
11:08 24 California, and that's well beyond the 100-mile radius of this
11:08 25 Court.

11:08 1 Your Honor, one of the -- if we move to Slide 3, one of
11:08 2 the big issues that I believe SynKloud has tried to create some
11:08 3 local ties for Adobe that are relevant to this case is by
11:08 4 pointing to Adobe's Austin office, and then I wanted to spend
11:08 5 some time talking about that. Adobe's Austin office relates
11:08 6 and services a particular company they acquired in 2018. This
11:08 7 company was a standalone company at the time known as Magento.
11:08 8 Magento has now become one of Adobe's family of companies. It
11:08 9 is an acquired entity, and they are based in Austin.

11:08 10 Who is Magento? Magento is an e-commerce company, Your
11:08 11 Honor, and in Slide 3 we included a brief snippet from one of
11:08 12 the exhibits we submitted with our moving papers.

11:09 13 As an e-commerce company, Your Honor, Magento provides
11:09 14 services for online merchants such as shopping cart that they
11:09 15 could deploy on their website, how to log searching features,
11:09 16 other searching capabilities and some communication platforms
11:09 17 to communicate with their customers. That is fundamentally who
11:09 18 they are is an e-commerce company.

11:09 19 But what's actually at issue in this case, Your Honor, is
11:09 20 not an e-commerce platform. If we move to Slide 4, I've quoted
11:09 21 languages from what SynKloud has said this case is about. Your
11:09 22 Honor, in their own opposition papers, which is Docket 18 at
11:09 23 Page 2, SynKloud provides what they believe the patents-in-suit
11:09 24 are about, and in their words they say, this case -- this
11:09 25 case -- the patents-in-suit, generally speaking and without

11:09 1 limitation, involve cloud storage and automated transfer of
11:09 2 files between two remote locations. Magento does not provide
11:10 3 any of those services. Magento's e-commerce platform is not a
11:10 4 cloud storage platform that allows users to transfer files
11:10 5 between two locations, and SynKloud knows that. They have not
11:10 6 once accused Magento of infringement. They have not once
11:10 7 suggested in any of their moving papers or their infringement
11:10 8 contentions that Magento infringes because they know it does
11:10 9 not provide any of the services that they think is covered by
11:10 10 their patents-in-suit.

11:10 11 And thus, Your Honor, Adobe proffers to you that its
11:10 12 entire Austin operation, though we are proud of that presence
11:10 13 and we're proud of what Magento does, it does not have any
11:10 14 relevance to the issues, the technology and ultimately the
11:10 15 products that may be tried in this case.

11:10 16 I've also pointed to the invalidity contentions, Your
11:10 17 Honor, and while we pointed to three specific products that
11:10 18 they have named, Document Cloud, Creative Cloud and Lightroom,
11:11 19 those are three specific products that SynKloud has identified
11:11 20 that they believe infringes. That's the phrase that they like
11:11 21 to talk about that they say there's software, there's wireless
11:11 22 networks, that there are web browser interfaces and mobile
11:11 23 applications. All of those in their descriptions are used in
11:11 24 conjunction with Document Cloud, Creative Cloud and Lightroom.
11:11 25 And, again, none of them points to Magento as being an

11:11 1 infringing service.

11:11 2 Once more, Your Honor, at Slide 5 I point back to their
11:11 3 complaint, and here I do agree with what SynKloud has said.
11:11 4 They have consistently replied the same exact products as being
11:11 5 at issue in the case, and I think they've been clear as
11:11 6 Document Cloud, Creative Cloud and Lightroom, and it is the
11:11 7 cloud storage the component where you can transfer files
11:11 8 between two locations.

11:11 9 So, Your Honor, as I go to Slide 6, I think SynKloud's
11:11 10 surreply very well summarizes where their position is with
11:11 11 Magento. They actually have no evidence that ties Magento to
11:12 12 any of the accused products. What they have in their surreply,
11:12 13 and it's quoted here -- this is Docket 24 at Page 3: While
11:12 14 Adobe attempts to discount Magento products, undisputedly,
11:12 15 Magento products are publicly touted to enhance the user
11:12 16 experience.

11:12 17 The user experience, Your Honor, is not what's accused of
11:12 18 infringing. Simply having a user experience doesn't then turn
11:12 19 our product or a service to become relevant in this case.

11:12 20 The next sentence, Your Honor, is even more telling:
11:12 21 Under such circumstances, it is reasonable to expect overlap of
11:12 22 employees on the user interface development in Magento to be
11:12 23 integrated with the accused products and/or services.

11:12 24 Now, those are SynKloud's words. They are reasonable to
11:12 25 expect. They are speculating. They are assuming, but in fact

11:12 1 there is no overlap. Magento is an independent company. They
11:13 2 develop their own independent product. Continues to remain an
11:13 3 independent e-commerce platform product. Thus, when you go and
11:13 4 see the declarations that we've submitted by Mr. Edelstein and
11:13 5 Peter Baust, B-a-u-s-t, and Akshay Madan, M-a-d-a-n, all of
11:13 6 them in Docket 15 and Docket 18, and Dennis Griffin, they also
11:13 7 talk about latest development of the three products that are
11:13 8 actually accused of infringement for -- and Madan is in the
11:13 9 Northern District of California where Adobe is headquartered.

11:13 10 I'll point to this quote that SynKloud has repeatedly
11:13 11 relied on. This is also on Slide 6, and they put it in their
11:13 12 papers. It comes from an Adobe director of engineering at
11:13 13 Magento. A lady named Nicole Cornelstone. And they say this
11:13 14 quote shows that there's integration of the products, but,
11:13 15 indeed, when you read the quote and you understand that Magento
11:13 16 was an acquired company in 2018 from Adobe, all Ms. Cornelstone
11:13 17 is stating here is she is surprised by how well as an
11:14 18 organization these two companies have come together and grown.

11:14 19 There is no description, none, about integration at a
11:14 20 technological level, and, again, SynKloud knows this and they
11:14 21 have not yet once said Magento infringes in any way.

11:14 22 Your Honor, my next point points to the convenience of
11:14 23 witnesses, which, as the Fifth Circuit has said, is one of the
11:14 24 most important factors. We talked about already Mr. Tsao. I'd
11:14 25 like to reiterate the point that we as Adobe have identified 12

11:14 1 potential trial witnesses. There's lots of technical issues,
11:14 2 the marketing issues as well as financing details. All of
11:14 3 those 12 witnesses we have identified, Your Honor, 11 of them
11:14 4 reside and work in the Northern District of California, clearly
11:14 5 making that forum more convenient. A 12th witness lives in
11:14 6 Seattle. Seattle, from our view, Your Honor, is still closer
11:15 7 to the Northern District of California. That travel is more
11:15 8 convenient.

11:15 9 As our -- the counsel from Dropbox has discussed,
11:15 10 plaintiff's witnesses are on the east coast. Indeed, the only
11:15 11 specific witness they've identified is Mr. Colao, and he
11:15 12 resides in New York. In the -- all of Adobe's witnesses here
11:15 13 are in -- with the exception of one is in the Northern District
11:15 14 of California. Importantly, the third party inventor is also
11:15 15 in the Northern District of California. We think this factor
11:15 16 makes it clearly more convenient to have this case tried and
11:15 17 heard here in the Northern District.

11:15 18 I'd like to touch upon the documents issue very briefly,
11:15 19 Your Honor. I've seen your prior orders, Your Honor,
11:15 20 discussing this factor. We know it's different in light of the
11:15 21 electronic age. Nevertheless, it's important for us to
11:15 22 emphasize that none of the relevant documents in terms of the
11:15 23 accused product from our side, none of the documents from
11:15 24 SynKloud, none of the documents of source code for Mr. Tsao are
11:16 25 in Texas. The materials for Mr. Tsao as a third party, they're

11:16 1 in California. Our technical documents out on the internal
11:16 2 wikis, our declarants, are in Oregon. Our finance and
11:16 3 marketing documents are with the finance and marketing teams in
11:16 4 the San Francisco Bay area. So none of the sources of proof,
11:16 5 Your Honor, are here in the Western District.

11:16 6 And one thing I'll touch upon, and Dropbox has done quite
11:16 7 a bit as well on this, is really the local interest issue, Your
11:16 8 Honor. At the end of the day this is a case about an inventor
11:16 9 and a small company that is in the San Francisco Bay area. So
11:16 10 out of the assistance of a non practicing entity SynKloud to
11:16 11 enforce his patent against a Bay area company where the accused
11:16 12 products were developed and continue to be managed in the San
11:16 13 Francisco Bay area and thus, Your Honor, we respectfully say
11:16 14 that this is where that case should be heard and this is where
11:16 15 that case should be tried.

11:17 16 Your Honor, this concludes our remarks at this point. I'm
11:17 17 happy to respond to anything you want to hear in response to
11:17 18 SynKloud.

11:17 19 THE COURT: I'm good. Thank you.

11:17 20 MS. BRAHMBHATT: Your Honor, this is Deepali Brahmbhatt
11:17 21 speaking for SynKloud Technologies. Should I proceed?

11:17 22 THE COURT: Yes, please.

11:17 23 MS. BRAHMBHATT: Okay. Thank you, Your Honor, for this
11:17 24 opportunity, and I think both Adobe and Dropbox referred to it
11:17 25 that your court has the fastest time to trial and you really

11:17 1 handle patent cases very efficiently, and that is shown by the
11:17 2 number of patent cases that are filed here. And the reason
11:17 3 behind that, Your Honor, is that litigation is expensive, and
11:18 4 for small businesses having a court that brings efficient
11:18 5 resolution on the merits in a very efficient time period makes
11:18 6 patent litigation affordable. So when you're stretching out
11:18 7 that litigation time for the -- you know, for the small
11:18 8 business from the plaintiff's side, you're also increasing
11:18 9 litigation costs and -- you know, and the time it takes to get
11:18 10 to the actual merits of the case. And so it's more than just
11:18 11 court condition. It's also whether patent litigation can be
11:18 12 affordable for small businesses.

11:18 13 What SynKloud does is help monetize patent portfolios for
11:18 14 small businesses that we're trying to bring products to the
11:18 15 market that fail but have very good IP. So if you look at the
11:19 16 525 case, that was the Ximeta case, they were the first that
11:19 17 came up with the network attached device technology, and it is
11:19 18 broadly acknowledged that the inventor Han-Gyoo Kim was
11:19 19 prolific and he was the first in the -- in those inventions.
11:19 20 He -- he has now moved to Korea. We know from SynKloud that
11:19 21 after the transaction, SynKloud also has contacts with Korea,
11:19 22 South Korea, and they have contractors who do work for them in
11:19 23 South Korea, and they -- they have met him in South Korea. So
11:19 24 he is -- in the 525 case the inventor is in South Korea, and we
11:19 25 gave that fact as -- in the declaration of Mr. Colao that based

11:19 1 on personal knowledge, we know he does not reside in Northern
11:20 2 District of California anymore. And so he will be -- you know,
11:20 3 he will be out of the compass area process for both the courts.
11:20 4 It wouldn't be that -- just because the company originally
11:20 5 started in Northern District of California to how -- there is
11:20 6 somehow an advantage in going back there for the 525 case.

11:20 7 And I wanted to emphasize, Your Honor, that, you know, the
11:20 8 burden is clearly more convenient factors -- this is -- you
11:20 9 know, there's no issue of personal jurisdiction of whether the
11:20 10 venue is proper. Both the defendants, you know, are not
11:20 11 alleging any of that. This is more of a convenience analysis,
11:20 12 and they have not met their heavy burden of showing that this
11:20 13 is clearly more convenient.

11:20 14 And so I wanted to, you know, bring your attention, Your
11:20 15 Honor, the Federal Circuit case in your docket that concerned
11:21 16 that the district court has discretion to resolve factual
11:21 17 disputes in favor of the nonmovant vendors, at least a
11:21 18 plausible basis to find that individuals in this district may
11:21 19 have relevant information. This was the Federal Circuit order
11:21 20 from the writ of mandamus in the Civil Action 6-18-CV-00372
11:21 21 which is I think the Fintiv v. Apple case.

11:21 22 And so, Your Honor, you know, we all appreciate that you
11:21 23 rule on this motion to transfer a lot and you also know the law
11:21 24 with a total objective analysis of totality of circumstances
11:21 25 like the -- so the -- all the factors taken together, and so I

11:22 1 would, you know, like to emphasize more on the facts and what
11:22 2 is the technology at issue here.

11:22 3 So the technology -- so, Your Honor, for the Dropbox case,
11:22 4 you know, the technology at issue, according to Dropbox, and,
11:22 5 you know, the Paragraph 5 disclosures that Dropbox submitted to
11:22 6 us, we are still waiting for the Paragraph 5 disclosures from
11:22 7 Adobe because they requested an extension to the original
11:22 8 deadline, but for Dropbox, Your Honor, what we received was the
11:22 9 SEC filings for the past two years. We did not get any
11:22 10 internal sales records that characterized or took out a portion
11:22 11 of their accused products or services. So by -- based on
11:22 12 Dropbox own, you know, SEC filings, which is all of Dropbox
11:22 13 products and services, the SEC filings do not break it down any
11:23 14 further. So Dropbox -- Dropbox filed disclosure, they're
11:23 15 admitting that everything, all products and services that
11:23 16 Dropbox offers are at issue here in this case. So they're not
11:23 17 subcategorizing that, oh, this products are developed here and
11:23 18 what Austin office does is something else. Everybody at
11:23 19 Dropbox -- what is at issue in both the cases is pretty much
11:23 20 everything that Dropbox does.

11:23 21 And the second concession, Your Honor, that Dropbox did
11:23 22 last year -- last week, and we very much appreciate that, was
11:23 23 they made source code available in their Palo Alto office of
11:23 24 Wilmer Hale, but with the coronavirus, a lot of shelter
11:23 25 lockdown, they offered that they would make the source code

11:23 1 available in the local offices of their local counsel Kelly
11:24 2 Hart in Austin. And so the original argument that source code
11:24 3 would only be available in San Francisco under a protective
11:24 4 order, I think they have moved away from that, and with the
11:24 5 coronavirus, in fact, they are willing to, you know, move the
11:24 6 source code. And, Your Honor, you have acknowledged that with
11:24 7 the electronic source code thing, it's just a click of button
11:24 8 and Dropbox is a global storage company which makes documents
11:24 9 available just with a click of button, and now with the
11:24 10 coronavirus they are working with us to make sure that we can
11:24 11 inspect the source code.

11:24 12 And so on that point, Your Honor, one more thing is, you
11:24 13 know, with the pandemic, both the states will see the effects,
11:24 14 but California, you know, has been affected way more than Texas
11:24 15 and Austin and so that the federal courthouse of San Jose in
11:25 16 the Northern District of California will shut down because
11:25 17 visitors have tested positive for COVID-19. And so the whole
11:25 18 thing is we don't know how far and how long this pandemic will
11:25 19 go, but that should also factor into the thing that things will
11:25 20 be further delayed if the case moves to ND Cal because of the
11:25 21 fact that California is affected by corona more than Austin or
11:25 22 Waco in Texas.

11:25 23 So, I mean, I know -- and so I think -- I also wanted to
11:25 24 address some of the things Dropbox counsel said, and that was,
11:25 25 you know, they both are trying to discount that it's just one

11:25 1 witness. It's just, you know, we are the plaintiff. We have
11:25 2 the burden of proof, and so we will be bringing in expert
11:26 3 witnesses as well at the trial and hosting and making that all
11:26 4 affordable. It's not just for one witness. It's the cost of
11:26 5 the entire trial, Daubert, you know, hosting expert witnesses
11:26 6 for different, you know, Markmans, summary judgment, trial
11:26 7 teams, different things like hotel accommodations and
11:26 8 everything. So the cost of litigation goes up if it is moved
11:26 9 to San Francisco. And it's more than just one witness, Your
11:26 10 Honor.

11:26 11 And the other thing was that, you know, Dropbox counsel
11:26 12 acknowledged that there's like a varying time period with each
11:26 13 different judge and you don't know, and with this pandemic, you
11:26 14 know, this whole thing -- the uncertainty even is more
11:26 15 expensive than it would be otherwise.

11:26 16 Dropbox counsel said that we did not make an argument that
11:27 17 there was court congestion in ND Cal which is --

11:27 18 THE COURT: I'm sorry. I'm sorry. Let me interrupt you
11:27 19 there and then I'm going to ask -- if you'll put a -- just a
11:27 20 mental footnote where I'm stopping you because I'm going to
11:27 21 come back to you in a second, but you raised something that
11:27 22 frankly I had not been thinking of just there before and that
11:27 23 the defense counsel did not address. At least I don't think
11:27 24 they addressed, but that strikes me as something that is unique
11:27 25 and important at this moment which is -- and the counsel for --

11:27 1 I'll have -- both counsel for the defendants talked about this
11:27 2 and they may not really -- and I'm going to tell you in advance
11:27 3 this is sort of an unfair question in that, you know, we are in
11:27 4 a unique moment now with regard to the virus, and I know -- I
11:28 5 have a strong ability to predict with respect to myself how I
11:28 6 can respond to maintaining a case, a patent case because of --
11:28 7 I have -- as both counsel have said, I have complete control
11:28 8 over my docket, but I'll hear first from Mr. Ravel. But why
11:28 9 shouldn't I be very concerned at this point in terms of -- if
11:28 10 nothing, for lack of a better word, the unknown that the
11:28 11 Northern District of California has with respect to what's
11:28 12 going to happen going forward, it seems to me that almost by
11:28 13 default, that weighs in me keeping -- it weighs against a
11:29 14 Northern District court being clearly more convenient when I
11:29 15 think we really have no idea of how severe the impact of this
11:29 16 virus is going to be on those courts.

11:29 17 So I will stipulate, Mr. Ravel, that I'm tossing what may
11:29 18 be an unfair question to you because -- but it's something that
11:29 19 strikes me from what counsel just said that it is -- that is a
11:29 20 fair issue to raise.

11:29 21 MR. RAVEL: Your Honor, I'll take a shot at it and I'll --
11:29 22 and Mr. Lantier can certainly chime in and add more ideas if
11:29 23 the Court would allow, but to me -- and as the Court knows, I'm
11:29 24 spending most of my time working with people in the Bay area,
11:29 25 and while their shelter in place occurred a little earlier, the

11:30 1 Austin one and the Waco one are equally as restrictive right
11:30 2 now. Just happened maybe seven days later. I don't think
11:30 3 there is any reliable evidence about how bad the problem is in
11:30 4 either place or how long it will last in either place.

11:30 5 THE COURT: But let me say to me that cuts against you,
11:30 6 and let me -- and maybe it shouldn't, and I'll have you explain
11:30 7 to me why it shouldn't, but, again, I actually found your --
11:30 8 both of your arguments about the fact that a slower docket in
11:30 9 the Northern District of California did not necessarily equate
11:30 10 to a more congested docket, and I totally understand that, you
11:31 11 know, and I'll take that obviously into consideration, but,
11:31 12 again, here, why doesn't the -- what was it Rumsfeld said? All
11:31 13 the known, unknowns, the unknown, unknown, all that, but why
11:31 14 doesn't the unknown, unknowns with regard to the Northern
11:31 15 District of California make this a much tougher case literally
11:31 16 in the month of March of 2020 than it might have been in
11:31 17 January of 2020, given that I literally have no idea how
11:31 18 pervasive the problems will be in the Northern District of
11:31 19 California? And regardless of whether we have a lockdown in
11:31 20 Waco or Austin or whatever, I am certain that I know how I'll
11:31 21 be able to address those and keep cases moving. For example,
11:31 22 and I'll put on the record, you know, it is not -- while it's
11:32 23 certainly not my preference -- in fact, it's against my
11:32 24 preference to have a very substantial motion like this one be
11:32 25 heard by teleconference, the idea of handling things by

11:32 1 teleconference is not something that started happening a week
11:32 2 or two ago because of the coronavirus either. You know, that's
11:32 3 been a part of what I've done from the beginning. The idea
11:32 4 that from the very beginning I've handled discovery motions not
11:32 5 by papers being filed and then a long time being taken and
11:32 6 possibly a hearing on it, the fact that I'm able to -- have
11:32 7 been able in 100 percent of the cases to resolve discovery
11:32 8 disputes within 24 hours of the parties raising them, again,
11:32 9 I'm not putting down any other court for the way they do
11:32 10 things. What I'm saying is I know that -- how I'm equipped to
11:33 11 not allow the coronavirus to interfere with my docket. I have
11:33 12 no idea what the Northern District of California is going to
11:33 13 do.

11:33 14 MR. RAVEL: Your Honor, I'm going to take a stab at it,
11:33 15 then turn it over to Mr. Lantier. First, as a legal matter,
11:33 16 that you are more efficient and you know what you're going to
11:33 17 do does not equate to the other courts being congested and not
11:33 18 knowing what they're going to do. So that you have done a lot
11:33 19 of hearings remotely, I think this distinction to that is the
11:33 20 same as the quickness of your docket that you are -- I think
11:34 21 the argument that we made that you are the fastest and the most
11:34 22 hands on stands up in the COVID-19 era of leaving the factor
11:34 23 neutral because we certainly don't have any evidence that
11:34 24 they're going to handle it poorly, and the notion that anything
11:34 25 other than the fastest is equal to congestion is -- I just

11:34 1 don't think it's the law. So I'm going to turn it over to Greg
11:34 2 if he has anything he'd like to add, with leave of Court of
11:34 3 course.

11:34 4 THE COURT: Of course. No. Of course. No. We're going
11:34 5 to hammer all this out and take whatever time we need. So I'm
11:34 6 unlike most -- well, unlike many -- unlike some judges, I
11:34 7 actually enjoy doing this, and so for me this is like Christmas
11:34 8 early to get such quality lawyers arguing after the briefs that
11:35 9 you all did, which were exceptional, and getting to have this
11:35 10 hearing. My only regret, like I said, was not getting to have
11:35 11 it in person where I can be more involved in a give and take,
11:35 12 but there's -- no one needs to worry that they are taking too
11:35 13 much time. I definitely want to try and get this right.

11:35 14 MR. LANTIER: Thank you, Your Honor. And this is Greg
11:35 15 Lantier again on behalf of Dropbox. I would just make I think
11:35 16 three quick points. The first is that, Your Honor, from my own
11:35 17 personal experience, and certainly we could do some kind of a
11:35 18 survey if Your Honor wanted additional information, but the
11:35 19 courts in the Northern District of California are proceeding I
11:35 20 think just as Your Honor is, and that is they are continuing to
11:35 21 move cases forward. They are continuing to decide motions.
11:35 22 They're continuing to do all of those things during the crisis.
11:36 23 It's just that their courtrooms are not open for in-person
11:36 24 hearings, and so I -- I don't think that there is a qualitative
11:36 25 difference in terms of the way that the courts are handling

11:36 1 things in the Northern District of California. I think
11:36 2 everybody is currently on lockdown and has to keep things
11:36 3 moving for that reason in any way they can, and the judges in
11:36 4 the Northern District are doing that.

11:36 5 The second thing I would say is, you know, President Trump
11:36 6 is obviously in charge of the federal government, including the
11:36 7 agencies that are responsible for federal courthouses. You
11:36 8 know, he has been very clear, I think, that we're not going to
11:36 9 keep everything closed for business for --

11:36 10 THE COURT: I would skip over that one. I don't think
11:36 11 you're right on that one. I can just tell you -- I can tell
11:37 12 you that President Trump not only picked enormously terrific
11:37 13 judges, and, you know, we can -- you can all debate whether --
11:37 14 how he's doing right now, but I can tell you from personal
11:37 15 knowledge that he is 100 percent uninvolved in what's happening
11:37 16 in courthouses being open or closed. So that's all happening
11:37 17 within each district's courthouse family. So that's -- I'll
11:37 18 just move you along on that one.

11:37 19 MR. LANTIER: Thank you, Your Honor.

11:37 20 The third point that I would make is I would actually
11:37 21 suggest that, if anything, the coronavirus crisis, counsel's in
11:37 22 favor of transfer to the Northern District of California, and
11:37 23 here is the reason. The one thing that we know is the most
11:37 24 dangerous activity during this crisis is putting people
11:38 25 together on airplanes and in other small places and having them

11:38 1 travel around and interact with people who come from different
11:38 2 areas. Here we have nearly every witness who will testify at
11:38 3 trial already in the Northern District of California able to
11:38 4 drive their own vehicle to the courthouse for trial or for
11:38 5 other events without having to travel long distances and put
11:38 6 themselves in situations where they're pent up with a lot of
11:38 7 other people breathing the same air, being within the proximity
11:38 8 that we know is not safe in terms of the risk of transmission.

11:38 9 I would say if the coronavirus is going to be factored in
11:38 10 here at all into the transfer motion, and we certainly didn't
11:38 11 argue it, it wasn't a fact at the time that the motion was
11:38 12 filed, I'm not sure that it will still be a relevant factor at
11:38 13 the time that the case is tried, but I think if we're going to
11:38 14 factor it in, then it needs to weigh in favor of keeping people
11:39 15 who are currently in the Northern District of California in the
11:39 16 Northern District of California where they can keep appropriate
11:39 17 distances and the safety measures can be in place.

11:39 18 The last thing I would say, and this isn't directly in
11:39 19 response to Your Honor's question, but I do pay particular
11:39 20 umbrage to it, is the suggestion that somehow Dropbox doing --

11:39 21 THE COURT: Well, hold on. Hold on. I'm not -- I'm going
11:39 22 to go back to the plaintiff, and hold that thought. But I
11:39 23 interrupted the plaintiff. I just wanted to -- you know, I was
11:39 24 trying to just have you guys respond to that one point. Let me
11:39 25 let counsel for plaintiff finish and then I'm going to give

11:39 1 both you and Mr. Ravel whatever time you'd like to make a more
11:39 2 robust response.

11:39 3 MR. TERRAZAS: Your Honor, this is Kevin Terrazas on
11:39 4 behalf of the plaintiff as well.

11:39 5 THE COURT: Yes, sir.

11:39 6 MR. TERRAZAS: I just wanted to add a couple of points on
11:39 7 the coronavirus.

11:39 8 THE COURT: Sure.

11:39 9 MR. TERRAZAS: Just from the San Francisco Chronicle as of
11:40 10 yesterday they say there's 1,415 confirmed cases in the Bay
11:40 11 area. That's just from an article taken today as of yesterday,
11:40 12 and Baylor University has another update as of March 26th at
11:40 13 6:13 p.m., so yesterday, last evening, and it says there's 33
11:40 14 confirmed cases in the Waco, McLennan County area, and that
11:40 15 there's 1,396 confirmed cases in Texas. So the Bay area
11:40 16 currently right now has more confirmed cases than does all of
11:40 17 Texas. I think that should -- I'm sorry, Your Honor.

11:40 18 THE COURT: No. I'm sorry. I interrupted you. And the
11:40 19 Markman is not set until mid September, correct?

11:40 20 MR. TERRAZAS: I believe that's right, Your Honor.

11:40 21 THE COURT: So the discovery -- here's my point about the
11:40 22 coronavirus is -- and even though counsel, I think it was for
11:41 23 Adobe, made a very good point about weighing whether people
11:41 24 ought to be traveling back and forth in this time. My
11:41 25 concern -- I'm hopeful at the moment that by the time that

11:41 1 travel were to start, which would be fall when discovery opens
11:41 2 up, that we would be back -- somewhat back to normal in the
11:41 3 United States, and you guys have addressed it and we can move
11:41 4 on, but I just -- it just struck me that we have a situation
11:41 5 here where I know how -- I know how the issue of the
11:41 6 coronavirus will impact me and how I can mitigate the impact on
11:41 7 my docket, and I don't know how it will impact the Northern
11:41 8 District. I don't know that it will even, but I'm just saying
11:41 9 it is a question mark that is unique to March of 2020 that I
11:42 10 wanted to let you all chat about. So I'll toss it -- I think
11:42 11 we've beaten -- unless you'd like to say something else and
11:42 12 then we can go back to your argument.

11:42 13 MR. MAR: Your Honor, I'm sorry to interrupt, but for
11:42 14 Adobe in the 527 case, this is Eugene Mar. I thought I could
11:42 15 anecdotally add a bit to what Dropbox has said.

11:42 16 THE COURT: Yes.

11:42 17 MR. MAR: You know, I practice out here in the Northern
11:42 18 District. I literally had a telephonic hearing yesterday with
11:42 19 Judge Davila on a fees motion in an IP case. The situation is
11:42 20 this where I had several matters. That's one. There's another
11:42 21 matter I had before Judge Corley where each time the opposing
11:42 22 party has asked to move things out because of the COVID-19 and
11:42 23 the Court has declined in the Northern District to extend any
11:42 24 of those dates and has imposed telephonic hearings similar to
11:42 25 what you're doing, Your Honor, and also created the options of

11:42 1 doing WebEx. So I'd be in support of what Mr. Lantier has said
11:42 2 earlier, the Courts and judges out here are doing the best they
11:42 3 can, just as you are, Your Honor, to move cases forward during
11:43 4 these trying times.

11:43 5 THE COURT: And that's -- and that's good anecdotal
11:43 6 evidence the Court will take into consideration.

11:43 7 And so back to the plaintiffs if they'd like to...

11:43 8 MS. BRAHMBHATT: Yes, Your Honor. I think just to end
11:43 9 this point here, you know, Dropbox mentioned that we have not
11:43 10 put in congestion evidence in our brief. We did put in the
11:43 11 statistic of congestion. ND Cal is 25 percent more congested
11:43 12 than Western District of Texas. And I think the statistic is
11:43 13 also recited in our brief, Your Honor.

11:43 14 So I think I would like to move on to more of, you know,
11:43 15 what is the technology and how it relates to the witnesses.
11:43 16 And, you know, right at the start, Your Honor, I would like to
11:44 17 acknowledge and, you know, as you have also mentioned in your
11:44 18 earlier rulings that there's a symmetry of information. Both
11:44 19 Dropbox and Adobe, you know, they know their internal
11:44 20 information. We are going from what is publicly available and,
11:44 21 you know, what it is that we can reasonably believe to be true.
11:44 22 And so the technology -- so if I go step by step of taking one
11:44 23 case at a time -- so the -- as I mentioned, for the 525 there's
11:44 24 just the one patent against Dropbox. That same patent is not
11:44 25 asserted against Adobe and that inventor is in South Korea and

11:44 1 we have a declaration stating that we know that he is in South
11:44 2 Korea. So there's no third party witness who's available in
11:45 3 the Northern District of California for the 525.

11:45 4 Now, if he -- so the 525 -- and so if you go to the 526
11:45 5 case for Dropbox, the technology -- you know, as I mentioned,
11:45 6 Dropbox -- you know, all of what Dropbox does is at issue here,
11:45 7 and the STT patent, STTWebOS that we gave a little discovery
11:45 8 on, we made all the documents, relevant documents that produced
11:45 9 in production was complete. We also made source code available
11:45 10 in -- of our LA offices of One LLP and both Adobe and Dropbox
11:45 11 came and have inspected the source code.

11:45 12 What was -- the inventor of STTWebOS had reached out to
11:45 13 Dropbox starting 2015 through his attorney James Li, and we
11:46 14 have alleged that for the willfulness of, you know, Dropbox
11:46 15 knowledge of the patents-in-suit. So what -- and this witness,
11:46 16 he's a willing witness. His interests are aligned with
11:46 17 SynKloud. He has submitted a declaration saying he's willing
11:46 18 to come to trial to Waco or Austin as need be. So he -- his
11:46 19 motivation is to see his portfolio, patent portfolio, you know,
11:46 20 get what -- you know, get the appropriate recognition, and it
11:46 21 is a big thing for that inventor, and we represent STTWebOS as
11:46 22 well, and so there is no question as to -- I know they're
11:46 23 trying to make it as if all is he going to be a willing witness
11:46 24 or not despite our declaration. We are representing him and he
11:47 25 is a willing witness and he is going to come to trial. He will

11:47 1 come for any other hearings, and -- and so there's no question
11:47 2 about that. So if it -- so the inventor is there.

11:47 3 So then Dropbox is saying that they would also like to
11:47 4 cross-examine Mr. Li. So Mr. Li was, you know, Ted Tsao's
11:47 5 attorney, and what he was doing communicating any nonprivileged
11:47 6 information was communicated to Dropbox is equally available
11:47 7 with Dropbox. Anything else that he was internally discussing
11:47 8 with Ted Tsao would be attorney/client privilege. He is an
11:47 9 attorney. He goes to trial, and we did -- and, Your Honor, at
11:47 10 that time of the briefing we were not able to reach him. You
11:47 11 know, if really needed, we may also be able to negotiate an
11:47 12 agreement with him and he may also be willing to come and
11:47 13 testify. We are not sure of that right now. And -- but I'm
11:48 14 saying, like what are the facts that we need from him? He is
11:48 15 going to be an attorney. He is going to claim privilege for
11:48 16 any internal communication, and the prong that we need his
11:48 17 analysis for is more for willfulness. It's the totality of
11:48 18 circumstances. It's an objectiveness and it's objectiveness on
11:48 19 Dropbox thinks. What was Dropbox knowledge? It has nothing to
11:48 20 do with what Mr. Li thought at that time. All the legal
11:48 21 analysis goes toward willfulness and infringement, and that is
11:48 22 more of, did Dropbox act reasonably under the circumstances or
11:48 23 did, you know, Dropbox continue to willfully infringe? It's
11:48 24 all about what Dropbox thought. So it doesn't make sense to
11:48 25 have an issue that, oh, we need this, you know, attorney and so

11:48 1 he's in ND Cal and so that should be the reason this case
11:48 2 should be transferred.

11:48 3 And so I also want to make a point here, Your Honor. Mr.
11:49 4 Li was not involved with any of the communications with Adobe.
11:49 5 So he's only -- he's only an issue with one of the Dropbox
11:49 6 cases. And, you know, in most part, as you know, if you bring
11:49 7 in an attorney to testify, he's going to say, you know, it's
11:49 8 not going to be meaningful, but we would -- we are willing to
11:49 9 make sure that we work with him and there is an agreement, and
11:49 10 if it's really needed in the case that we be -- you know, we
11:49 11 try to bring him to Austin, Texas. And, anyways, I think the
11:49 12 legal analysis in this situation is centered more towards
11:49 13 Dropbox, and, you know, willfulness is more from Dropbox
11:49 14 perspective that it was taking the -- that it was taking the
11:49 15 right actions or not.

11:49 16 And so -- and so there was in the briefing and I think the
11:49 17 counsel of Dropbox did not go into that -- there was this issue
11:49 18 of, oh, we are highlighting this smart sync which is not an
11:50 19 accused thing. As I mentioned earlier, Your Honor, you know,
11:50 20 we got those SEC filings which is like all accused products. I
11:50 21 think that the patents-in-suit go to the core of what Dropbox
11:50 22 does which is like the cloud storage and it makes it efficient
11:50 23 and easy to upload files and access that and it makes it -- it
11:50 24 makes that interaction seamless. So there's a back and forth
11:50 25 perspective to the invention which is like how the servers have

11:50 1 that storage and there's a user interface to it as to how users
11:50 2 of, you know, smartphones, laptop devices, like how they
11:50 3 seamlessly access something that is not on their local device.
11:50 4 It's on the storage. And so there's a user interface. There's
11:50 5 a back end interface of the technology, and we also have
11:50 6 indirect infringement claim where customer support and
11:50 7 marketing comes in how Dropbox -- from Dropbox perspective like
11:51 8 everything it does is related to the accused products and
11:51 9 services. And so whoever is working anywhere, they are always
11:51 10 doing the work for the accused products and services, and so
11:51 11 there shouldn't be a distinction that all the people in Austin
11:51 12 are somehow not involved in that.

11:51 13 So, I mean -- yes, Your Honor.

11:51 14 THE COURT: No. No. No. Yes, ma'am. All good.
11:51 15 Proceed, please.

11:51 16 MS. BRAHMBHATT: So if I had to go to Adobe, Adobe, you
11:51 17 know, is trying to -- so for Adobe's purpose there is no third
11:51 18 party that is unwilling. You know, we just have Ted Tsao. He
11:51 19 said he's going to come to Austin, Texas. So what everybody's
11:51 20 trying to say -- and, Your Honor, before I move to Adobe,
11:52 21 Dropbox has said it has employees in Seattle and San Francisco
11:52 22 who may be witnesses. And so if it's -- in today's day, time
11:52 23 and age, you know, going to San Francisco or going to Austin
11:52 24 from Seattle should be the same. For Adobe they have said
11:52 25 there are employees in Seattle, India, Germany who are working

11:52 1 on this technology as well as San Francisco. So Adobe is
11:52 2 saying, oh, it's all related. Everything in Austin is related
11:52 3 to this new acquisition. What they failed to mention is that
11:52 4 there are two offices in Austin. The first office was always
11:52 5 there working with the headquarters and working on the core
11:52 6 technologies, and then the second office is related to the new
11:52 7 acquisition to Magento which is -- which they are saying is
11:52 8 the -- you know, user interface related to AI, and we agree
11:52 9 with them. Magento in itself is not the accused product and
11:53 10 service. It is -- it is -- but it also uses the underlying
11:53 11 storage technology which is part of the platform as a service,
11:53 12 and there are people working on platform as a service in the
11:53 13 Austin office. There are LinkedIn profiles. There are job
11:53 14 descriptions requesting people to work in platform as a
11:53 15 service. Now, there's -- it is the spirit -- they're saying,
11:53 16 oh, platform as a service is just a generic term, and, you
11:53 17 know, it's not part of the accused products and services. None
11:53 18 of our claim charts mention that, but it is a generic term,
11:53 19 Your Honor, and, you know, it is part of the accused products
11:53 20 and services. It's how storage is offered. What platform as a
11:53 21 service means is how storage is offered seamlessly through
11:53 22 different devices, and that is what exactly the patents are
11:53 23 about. And so they have people here as well in -- for Adobe
11:54 24 who are working and who are knowledgeable. Of course we are at
11:54 25 a disadvantage because we don't know the internal, you know,

11:54 1 structure and organization and who is in which group. And so
11:54 2 we have that symmetry of information, but there is plausible
11:54 3 evidence and they have clearly not shown clearly that, you
11:54 4 know, this transfer should be more convenient.

11:54 5 So let me just go through my points one more time, Your
11:54 6 Honor, just to make sure that I covered because I'm -- I had
11:54 7 this in my mind with three separate cases and we are, you know,
11:54 8 doing this all together. And so I just want to make sure that
11:54 9 I have made all the points that I wanted to make.

11:54 10 THE COURT: Okay.

11:54 11 MS. BRAHMBHATT: Did you have a question for me?

11:54 12 THE COURT: No, ma'am. No, ma'am. I think you've done a
11:54 13 great job.

11:54 14 MS. BRAHMBHATT: Okay. Thank you.

11:54 15 THE COURT: Mr. Ravel, are you going first? Or I'll hear
11:54 16 from whoever and then y'all decide who should go first.

11:55 17 MR. RAVEL: Your Honor, I think Mr. Lantier is going to
11:55 18 make the rebuttal argument for Dropbox.

11:55 19 MR. LANTIER: Yes, Your Honor. With your permission, this
11:55 20 is Greg Lantier again.

11:55 21 THE COURT: Yes. Absolutely.

11:55 22 MR. LANTIER: I would just make a few quick points. The
11:55 23 first point is this: There was argument just made that there's
11:55 24 nothing that James -- or J. James Li, the patent attorney who
11:55 25 everybody agrees is in the Northern District of California and

11:55 1 everybody agrees has not agreed to travel to Waco for trial,
11:55 2 could offer from an evidentiary standpoint because the argument
11:55 3 was made that anything he said to the inventor of the patents
11:55 4 would be privileged and therefore could not be disclosed. I
11:55 5 would challenge that premise because I don't think we know
11:55 6 enough about what communications he had to be able to draw such
11:56 7 a sweeping conclusion at this point, but I do have more to the
11:56 8 point one specific fact issue that clearly is not privileged
11:56 9 and clearly would be an issue at trial that involves Mr. Li,
11:56 10 and that is this: If Your Honor turns to or has the ability
11:56 11 later to turn to Exhibit 1A of the complaint in the 526
11:56 12 proceeding, that is a letter that is dated October 11th, 2015
11:56 13 that appears to have been written by Mr. Li because it appears
11:56 14 to be on his letterhead. That is the letter that SynKloud --
11:56 15 and counsel for SynKloud just did it again -- is relying on to
11:56 16 assert that Dropbox had knowledge of the patents at issue in
11:56 17 the 526 case since that date in 2015. That letter is not
11:57 18 signed and there is no Federal Express receipt indicating that
11:57 19 it was ever sent. And so at a minimum there is a fact issue as
11:57 20 to whether Mr. Li actually sent that letter or not, and that
11:57 21 would be a key issue at trial, given that SynKloud is asserting
11:57 22 that Dropbox has been aware of those patents since 2015.

11:57 23 There are subsequent letters between Mr. Li and
11:57 24 individuals in the San Francisco office of Dropbox in which
11:57 25 Dropbox did receive and starting later in time in 2017 in which

11:57 1 Dropbox responded to very clearly explaining why the SynKloud's
11:57 2 patents have nothing to do with what Dropbox's service is, and
11:57 3 SynKloud has never come back with a -- any kind of a reasoned
11:58 4 response to that explanation. I don't think we need to argue
11:58 5 that before Your Honor today. It's really not the point of
11:58 6 this hearing, but I wanted to mention it because there was this
11:58 7 assertion that the patents somehow go right to the heart of
11:58 8 what Dropbox does which we would contend is not the case and
11:58 9 we've informed SynKloud of that previously.

11:58 10 The second point is this: A lot was made of these
11:58 11 Paragraph 5 disclosures that Dropbox made of financial
11:58 12 information and that Dropbox disclosed financial information
11:58 13 for all of its United States revenues in response to the suit
11:58 14 here. The reason for that is not that Dropbox agrees or
11:58 15 believes or has admitted that the patents that are being
11:58 16 asserted have anything to do with Dropbox's service or any of
11:59 17 Dropbox's services. The reason that that was the scope of the
11:59 18 disclosure under Paragraph 5 is because that's the scope of
11:59 19 what SynKloud identified in its complaint, and this is at
11:59 20 Footnote 1, for example, of our opening brief in the 526
11:59 21 proceeding where we set forth the definition that SynKloud used
11:59 22 for accused products and services and complaint. They
11:59 23 literally kitchen sinked it and just threw in everything that
11:59 24 Dropbox -- that they could I think identify from the internet
11:59 25 that Dropbox is offering. And so as a result of that, that is

11:59 1 also the scope of the financial disclosure. It doesn't have
11:59 2 any connection to what is actually relevant or what features of
11:59 3 Dropbox's technology are actually relevant here to these
11:59 4 patents based on our review of what the claims say.

11:59 5 The third point is there was an argument made that struck
12:00 6 me in a particularly bad way that because Dropbox in specific
12:00 7 response to the coronavirus crisis was going to be willing to
12:00 8 do something it's very uncomfortable doing and has never done
12:00 9 in the past in order to allow discovery to move forward here,
12:00 10 and that is to make its source code available at Mr. Ravel's --
12:00 11 in a site outside of -- outside of the San Francisco Bay area
12:00 12 and to move it to Mr. Ravel's office, that that should somehow
12:00 13 be counted against Dropbox here. All we were trying to do is
12:00 14 deal with an unprecedented set of circumstances and not go back
12:00 15 to the plaintiff and say, we can't go forward with discovery
12:00 16 and we can't go forward with source code production in light of
12:00 17 the coronavirus. You're just going to have to wait. I don't
12:00 18 think that it would be appropriate to weigh that against
12:01 19 Dropbox in terms of a transfer here. What we were trying to do
12:01 20 was move the case forward, and we shouldn't be penalized for
12:01 21 doing that.

12:01 22 So unless Your Honor has any other questions or any
12:01 23 questions, the last thing I would say is that counsel for
12:01 24 SynKloud began with a citation to the Federal Circuit's
12:01 25 decision in the Fintiv versus Apple case. Suffice to say, that

12:01 1 case is very, very different from the facts of this case.

12:01 2 THE COURT: Let me interrupt you for just a second because
12:01 3 y'all have done so much that I -- if I can get stuff on the
12:01 4 record -- the last point you made with respect to Mr. Ravel's
12:01 5 offer, let me make absolutely clear on the record that I agree
12:01 6 with your point that that's not going to -- that will not
12:02 7 impact my decision in any way. So I just -- there's no way for
12:02 8 me to -- with everything y'all have argued to have quite that
12:02 9 much detail when we make a decision, but let me make absolutely
12:02 10 clear I think that's the kind of conduct that I want counsel to
12:02 11 engage in, and I don't want anyone to ever appear that by doing
12:02 12 the right thing that it might assist the other side in making
12:02 13 an argument like this. And so you can continue.

12:02 14 MR. LANTIER: Thanks, Your Honor. And I was really
12:02 15 finished. I think the other -- there really weren't any other
12:02 16 points that I heard counsel for SynKloud make that we haven't
12:02 17 already discussed.

12:02 18 The last thing I was saying is just that is trying to
12:02 19 compare this case to a prior decision that Your Honor made with
12:02 20 Fintiv versus Apple case I think is not a relevant comparison.
12:03 21 The facts there were tremendously different from the facts
12:03 22 here.

12:03 23 THE COURT: Okay.

12:03 24 MR. LANTIER: You know, for one, in that case the
12:03 25 plaintiff was -- had headquarters in Austin. It had employees

12:03 1 in Austin which we do not have here. We don't have anyone from
12:03 2 the plaintiff located within 1,000 miles of the Western
12:03 3 District of Texas here. In that case the alleged infringement,
12:03 4 some of it was based on chips manufactured by NXP which had a
12:03 5 headquarters in Austin. You know, the patents there didn't
12:03 6 originate in the Northern District of California as they do
12:03 7 here. The inventors were not in the Northern District of
12:03 8 California. At least one of the two is here, and there's no
12:03 9 allegation of willful infringement based on the Northern
12:03 10 District of California activity as there is here. So I would
12:03 11 say this is a set of facts that pushes the analysis from --
12:03 12 just maybe even favoring transfer as it did in CloudofChange,
12:04 13 as Your Honor found, to clearly favoring transfer, and I don't
12:04 14 think that anything that was said today by counsel for SynKloud
12:04 15 should change that outcome, but thank you very much for taking
12:04 16 the time, Your Honor. I know this has been probably a longer
12:04 17 hearing than you were anticipating on this motion.

12:04 18 THE COURT: All to the good. I've enjoyed every minute of
12:04 19 it. So...

12:04 20 MR. MAR: Your Honor, this is Eugene Mar for defendant
12:04 21 Adobe in the 527 case. With Your Honor's permission, I'd like
12:04 22 to respond to about three points raised by plaintiff's counsel.

12:04 23 THE COURT: Sure.

12:04 24 MR. MAR: Thank you, Your Honor. The first point relates
12:04 25 to the sole inventor that's at issue, the third party Mr. Ted

12:04 1 Tsao. You know, SynKloud's talked a lot about him being a
12:04 2 willing witness. Your Honor, I would just point out that I
12:04 3 think the law requires us to look at which court has the
12:04 4 absolute subpoena power over the witness, and the Fifth Circuit
12:04 5 has talked about that in the in re Volkswagen case. The only
12:05 6 court that has the absolute subpoena power and that being
12:05 7 defined by the Court as being both for deposition and for trial
12:05 8 is the Northern District of California for Mr. Tsao, and I
12:05 9 believe it can't be in dispute when you look at from the
12:05 10 convenience perspective that he resides in the Northern
12:05 11 District of California as does 11 of the 12 witnesses Adobe has
12:05 12 identified who would testify at trial. All of that is in the
12:05 13 Northern District of California.

12:05 14 Secondly, Your Honor, SynKloud has brought up a lot about
12:05 15 wanting to seek discovery or that there is aspects of the user
12:05 16 interface and the back end servers suddenly matter to the
12:05 17 issues in this case. Adobe's declarants, in particular
12:05 18 Mr. Noah Edelstein and Mr. Akshay Madan, M-a-d-a-n, and both of
12:05 19 these -- both of these individuals submitted declarations with
12:05 20 the moving papers, Docket 15, as well as reply papers in Docket
12:06 21 22. They in particular have responsibilities over an aspect
12:06 22 known as the cloud file system which pertains to how user
12:06 23 interfaces develop as well as the folder structure that may be
12:06 24 at issue in this case, and Mr. Madan has responsibilities over
12:06 25 the shared cloud which is actually how the backbone of the

12:06 1 cloud storage platform is put together both for the Creative
12:06 2 Cloud product and the Document Cloud product as accused of
12:06 3 infringement. So, indeed, Adobe has identified witnesses and
12:06 4 the team that developed the very backbone that SynKloud says
12:06 5 they need to have discovery on. Those backbones and those
12:06 6 interface teams are in the Northern District of California.
12:06 7 They are not in Austin.

12:06 8 Your Honor, my final point is about Austin. Austin
12:06 9 remains, regardless of whether there's one or two offices there
12:06 10 for Adobe, is for Magento. It is not for Document Cloud,
12:06 11 Creative Cloud or Lightroom which is what's named as infringing
12:06 12 products. SynKloud made a statement that P-A-A-S, PAAS,
12:07 13 platform as a service, is about storage. That floored me, Your
12:07 14 Honor. It is absolutely not just about storage. It is about
12:07 15 offering platforms on the internet. And that is not what's
12:07 16 accused of infringing. Platforms on the internet, simply being
12:07 17 in the cloud is not what's at issue in the case. It is cloud
12:07 18 storage, and it's been stated over and over through our moving
12:07 19 papers, and the team that developed and maintain cloud storage
12:07 20 are in the Northern District of California. There are no --
12:07 21 there are no witnesses. There are no individuals in the Austin
12:07 22 offices that work on those products.

12:07 23 Your Honor, that is our final point on this issue, and for
12:07 24 Adobe we'd submit that we are done with our remarks.

12:07 25 Hello?

12:07 1 THE REPORTER: Judge, is your mute button on?

12:07 2 THE COURT: I'm sorry. I was on mute. I'm sorry. I
12:08 3 apologize. I kept saying "plaintiff's counsel" and no one was
12:08 4 responding. Obviously it was my fault.

12:08 5 Okay. If I -- any wrap-up comments from the plaintiff?

12:08 6 MS. BRAHMBHATT: Yes, Your Honor. I mean, the only
12:08 7 comment I would like to say is that Dropbox did make a big deal
12:08 8 about not, you know, having documents available in Austin and
12:08 9 so -- and we appreciated them working with the offices of Kelly
12:08 10 Hart, but I didn't want it to come across in a negative way as
12:08 11 to what they were trying, and, you know, if it did, I wanted to
12:08 12 apologize to the Court and to Dropbox.

12:09 13 THE COURT: No. No. No.

12:09 14 MS. BRAHMBHATT: I was making more of a logical point that
12:09 15 it is a click of a button.

12:09 16 THE COURT: No. No. No. No problem at all. I didn't
12:09 17 mean to cast any aspersions. I just -- I just wanted to make
12:09 18 clear on the record that was a point that I -- that I wasn't
12:09 19 going to consider. So...

12:09 20 MS. BRAHMBHATT: Okay. Thank you, Your Honor.

12:09 21 THE COURT: No apology necessary. Is there anything else
12:09 22 you would like to raise?

12:09 23 MS. BRAHMBHATT: No, Your Honor. We are done from
12:09 24 plaintiff's side. Thank you.

12:09 25 THE COURT: Anything else from defendants?

12:09 1 MR. LANTIER: Nothing more from Dropbox, Your Honor.

12:09 2 Thanks again.

12:09 3 THE COURT: Okay.

12:09 4 MR. MAR: Your Honor, for Adobe this is Eugene Mar. Just
12:09 5 a procedural question, Your Honor, in terms of where the Court
12:09 6 will go from here in terms expectation on timing.

12:10 7 THE COURT: For Dropbox about 35 seconds, and for Adobe we
12:10 8 are -- I'm sorry. For Adobe it'll be about 35 seconds. For
12:10 9 Dropbox it will be slightly longer, but we'll have an order out
12:10 10 I think by next Monday or Tuesday.

12:10 11 With respect to the factors with regard to Adobe, I'm
12:10 12 going to address first the relative ease of access to sources
12:10 13 of proof factor. Adobe has documents in the Northern District
12:10 14 of California and the inventor, and also there are other, you
12:11 15 know, STTWebOS documents that are in the Northern District of
12:11 16 California. I find that these outweigh the location of
12:11 17 SynKloud's documents in New York and Virginia.

12:11 18 I find that there's a factual conflict with respect to
12:11 19 whether current and former employees have relevant knowledge.
12:11 20 Neither side asked for venue discovery, and so I'm going to
12:11 21 find that those factual conflicts remain. That being said,
12:11 22 even if I conclude and resolve this factual conflict in favor
12:11 23 of SynKloud, it's unclear whether it's enough to tip the factor
12:11 24 from favors transfer to weighs against transfer. I'm going to
12:11 25 find, therefore, that this factor slightly favors transfer.

12:12 1 For the compulsory process factor, because all of the
12:12 2 facts -- the Court finds the facts to be particularly
12:12 3 speculative, I put less weight on them. Witnesses related to
12:12 4 the power of assignment and prior art rarely testify, I know
12:12 5 that from my own personal experience, so I'm placing almost no
12:12 6 weight on the location of these witnesses. In contrast, the
12:12 7 Court finds it almost certain that one party or the other would
12:12 8 want the inventor to testify. So that weighs in favor of
12:12 9 transfer if the inventor is unwilling to testify.

12:12 10 Even if the Court were to resolve the factual conflict
12:12 11 with regard to the four former Adobe employees having relevant
12:12 12 knowledge in favor of SynKloud and needed to be compelled to
12:12 13 testify, it seems unlikely to the Court they all four would
12:13 14 testify, and, thus, it is unclear whether these witnesses are
12:13 15 enough to tip this factor, and it favors transfer -- tips this
12:13 16 factor from favors transfer to weighs against transfer.
12:13 17 Therefore, the Court concludes with respect to the factor of
12:13 18 compulsory process that the factor slightly favors transfer.

12:13 19 With respect to kind of the generic all of the practical
12:13 20 problems that make trial of the case easy, expeditious and
12:13 21 inexpensive, the Court finds that this factor is neutral.

12:13 22 With respect to the Court congestion factor, this phone
12:13 23 call has been extremely helpful to the Court. I think Adobe in
12:14 24 its papers at least has made the point that I've not yet had
12:14 25 any patent trials, which is obviously correct, and they did not

12:14 1 do that in any way to be pejorative, just to make the point
12:14 2 that in some ways trial -- time to trial numbers can be
12:14 3 speculative. That being said, the Court is -- has had a year
12:14 4 and a half of experience in terms of setting schedules and
12:14 5 timing of cases and trials and all that, and we have an order
12:14 6 governing proceedings that I use in virtually every case that
12:14 7 specifies that the trial will occur within roughly 44 to 47
12:14 8 weeks after a Markman hearing. To the best of my recollection,
12:14 9 although maybe I'm off by one or two cases, we've had no
12:14 10 difficulty in this court in me setting a trial within that
12:15 11 anticipated window, and if we have not done so, at least my
12:15 12 recollection is that it would be only because the parties asked
12:15 13 for a different time period. In a couple cases we made that
12:15 14 time period shorter rather than longer. Therefore, the Court
12:15 15 finds that this factor weighs against transfer.

12:15 16 With respect to the local interest and having localized
12:15 17 interest decided at home, while Adobe has facilities in both
12:15 18 districts, SynKloud does not. The Court finds that this factor
12:15 19 is neutral to slightly favors transfer.

12:15 20 With regard to the familiarity of the forum with the law
12:16 21 that will govern the case, I will -- I have been -- obviously I
12:16 22 think -- I know what I know, but obviously I think there are
12:16 23 very fine judges in the Northern District of California, and
12:16 24 the Court finds this factor to be neutral.

12:16 25 With regard to the avoidance of unnecessary problems of

12:16 1 conflict of laws or in the application of foreign law, the
12:16 2 Court finds this to be neutral.

12:16 3 So to summarize, two of the three factors slightly favor
12:16 4 transfer while one, in the Court's opinion, weighs against.
12:16 5 The Court finds that the Northern District of California might
12:16 6 be more convenient, but the Court finds that Adobe has not
12:16 7 established that it is clearly more convenient which is the
12:17 8 standard; therefore, the Court is going to deny Adobe's motion
12:17 9 to transfer.

12:17 10 With respect, as I said, to Dropbox, we're working on an
12:17 11 order that I will not preview at this time, but we will get it
12:17 12 out I'm anticipating by no later than -- well, it'll be next
12:17 13 week, and we'll do everything we can to make sure that it is
12:17 14 early next week.

12:17 15 Does anyone else -- does anyone have anything having made
12:17 16 that ruling -- let me say this also as clearly as I can. I
12:17 17 understand the importance of this motion. I'll state on the
12:17 18 record it was -- it is and was a very close call, and I can't
12:17 19 diminish that at all. I understand that at least one of the
12:18 20 parties to this may believe that I'm in error, and I'm not --
12:18 21 I'm a federal judge. I'm not perfect. And so the decision may
12:18 22 be made to take this up on some kind of appeal. Obviously that
12:18 23 is -- that doesn't offend me at all. I understand everyone on
12:18 24 the phone call has to take -- do everything they can to protect
12:18 25 their client's rights. All I would ask is if either -- is

12:18 1 if -- gosh. I'm having a senior moment here. If Adobe makes
12:18 2 the decision to take this -- my order up on appeal, that's
12:18 3 fine, obviously, but I would invite you to -- I would ask that
12:18 4 you just let the Court know that you're doing that, let Josh
12:18 5 know, and keep us apprised of the progress just so we can --
12:18 6 you know, that helps us with our scheduling as well.

12:19 7 So that being said, I'll ask plaintiff, is there anything
12:19 8 else you need to take up with the Court?

12:19 9 MS. BRAHMBHATT: No, Your Honor. Thank you very much.
12:19 10 There may be a source code protective order issue that may come
12:19 11 up as a discovery thing, but we are not there yet. So we may
12:19 12 reach out to talk to you later.

12:19 13 THE COURT: If you have a -- I'm sorry. I didn't mean to
12:19 14 interrupt you. So let me say something about that. We are
12:19 15 doing our very best to try and get transcriptions from the
12:19 16 substantial -- if there is a substantial issue -- and source
12:19 17 code and protective orders is one that has been a recurring
12:19 18 issue before the Court. I'm doing, Josh more than me, but
12:19 19 we're doing our very best to get other hearings where I have
12:19 20 ruled on that issue up so that you all can read them and have
12:20 21 some insight to how I handle them in case the issues are
12:20 22 similar to what I've worked on. That being said, as I've
12:20 23 always tried to make clear, if you have any issues over -- in
12:20 24 any way about any issue but especially source code, I'd
12:20 25 certainly understand the sensitivity of that, and if you all

12:20 1 can't get it worked out, that's fine with the Court. I
12:20 2 understand why the plaintiff has to be zealous in trying to get
12:20 3 source code and get it in a way -- produced in a way that makes
12:20 4 it as easy as possible for you and your experts to use. I
12:20 5 understand why the defendants have an aversion to producing
12:20 6 more than one word or one number, and so I am absolutely happy
12:20 7 to help you all resolve any issues you have if you can't work
12:20 8 them out. It doesn't anger the Court that -- I don't have the,
12:21 9 "good lawyers should work this kind of stuff out" attitude. I
12:21 10 think good lawyers need to represent their client's interests,
12:21 11 and if you can't resolve it, then just let us know and we'll be
12:21 12 able to set a hearing typically within 24 hours.

12:21 13 Counsel for Dropbox?

12:21 14 MR. LANTIER: Yes, Your Honor. This is Greg Lantier.

12:21 15 Nothing further from Dropbox.

12:21 16 THE COURT: Counsel for Adobe?

12:21 17 MR. MAR: Your Honor, this is Eugene Mar. There's nothing
12:21 18 further from us. We appreciate the time you spent with us on
12:21 19 this matter.

12:21 20 THE COURT: Well, let me -- again, let me make as clear as
12:21 21 I can on the record, the argument -- the briefing was
12:21 22 exceptional. Arguments today were unbelievably helpful. As
12:21 23 Justice Breyer said in the Supreme Court argument when they
12:22 24 were talking about taxation of internet sales that his biggest
12:22 25 problem as a judge is that one side argues and he thinks

12:22 1 they're right and then the other side argues and he thinks
12:22 2 they're right. You know, that -- that's just a sign of really
12:22 3 good lawyering, and ultimately I have to make a decision one
12:22 4 way or the other. So, again, I think the lawyers did a great
12:22 5 job on this. We'll get an order out as quickly as possible on
12:22 6 Dropbox, and I hope all of you stay safe in these times and
12:22 7 take care of your families, and if -- I will see you all -- if
12:22 8 not sooner, I will see you all in September. Have a great day.

12:22 9 (Hearing adjourned at 12:22 p.m.)

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1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)

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4 I, Kristie M. Davis, Official Court Reporter for the
5 United States District Court, Western District of Texas, do
6 certify that the foregoing is a correct transcript from the
7 record of proceedings in the above-entitled matter.

8 I certify that the transcript fees and format comply with
9 those prescribed by the Court and Judicial Conference of the
10 United States.

11 Certified to by me this 30th day of March 2020.

12

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