Miscellaneous Docket No. ___

IN THE
United States Court of Appeals for the Federal Circuit

IN RE APPLE INC.,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Western District of Texas
No. 6:20-cv-00665-ADA, Hon. Alan D Albright

APPLE INC.'S PETITION FOR WRIT OF MANDAMUS

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UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number

Short Case Caption In re Apple Inc.

Filing Party/Entity Apple Inc.

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box**. Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 05/17/2021

Signature: /s/ Melanie L. Bostwick

Name: Melanie L. Bostwick

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	**2. Real Party in Interest.** Fed. Cir. R. 47.4(a)(2).	**3. Parent Corporations and Stockholders.** Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. ☑ None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. ☑ None/Not Applicable
Apple Inc.		

☐ Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable ☑ Additional pages attached

See Attachment		

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

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6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☑ None/Not Applicable ☐ Additional pages attached

Attachment

4. Legal Representatives. List all law firms, partners, and associates that (a)appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

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Orrick, Herrington & Sutcliffe LLP: Joseph R. Kolker.

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INTRODUCTION

For the second time in this case, Apple seeks this Court's intervention to direct the district court to comply with precedent regarding 28 U.S.C. § 1404(a). Apple filed its first petition because the district court refused to adhere to the repeated instructions of this Court and the Fifth Circuit to afford top priority to a transfer motion—instead advancing the case on the merits while allowing the venue motion to remain unresolved. After Apple took that step—indeed, the day after Apple filed its petition—the district court issued a new standing order indicating its intent to comply (in part) with that precedent, leading to this Court's denial of Apple's petition.

The district court ultimately resolved Apple's transfer motion a few hours before the *Markman* hearing. But its decision denying transfer continues a pattern of failing to follow clearly established precedent. The district court's analysis turns on a series of legal errors that this Court has already deemed a clear abuse of discretion. And the analysis is not even internally consistent, with the district court applying shifting standards depending on which one favored retaining the case. Apple therefore once again seeks a writ of mandamus.

RELIEF SOUGHT

Apple respectfully requests that the Court issue a writ of mandamus directing the district court to transfer this case to the Northern District of California.

ISSUE PRESENTED

Whether Apple is entitled to a writ of mandamus to compel the district court to transfer the underlying litigation to the Northern District of California.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Koss, A Delaware Company, Attempts to License Its Patents to Apple but Later Sues in the Western District of Texas.

Koss is a Delaware corporation headquartered in Wisconsin. Appx45. It manufactures headphones and audio accessories sold at retailers nationwide. Appx45.

Koss holds various patents relating to audio technology. Appx62-63. In 2017, Koss approached Apple to negotiate a license to certain patents under a confidentiality agreement, including in a series of meetings at Apple's offices in Northern California. Appx63-64; Appx87-93. Negotiations ended without a license, so Koss terminated the agreement, but not the confidentiality restriction. Appx64; Appx80 n.1.

Koss then sued Apple for alleged willful patent infringement in the Western District of Texas. Appx44-77. Though the confidentiality agreement bars Koss from using in litigation the content or existence of the parties' licensing discussions, Koss nonetheless relied on those discussions in its complaint, breaching the parties' contract. Appx44-77; Appx78-79; Appx87-88.

Koss's complaint alleged infringement of five patents: U.S. Patent No. 10,298,451, which "describes a credentialed system for accessing an ad hoc communications link between an electronic device … and a mobile computing device," Appx62, Appx65-68; and U.S. Patent Nos. 10,206,025, 10,469,934, 10,491,982, and 10,506,325, all of which "describe[] wireless earphones that comprise a transceiver circuit for receiving streaming audio from a data source … over a wireless network," Appx62-63, Appx64-66, Appx68-75. The named inventors of these patents live in California, Wisconsin, and Illinois, and the patents were prosecuted by Pennsylvania-based attorneys. Appx62-63; Appx140-164; Appx166-175.

Koss filed substantially similar lawsuits in the Western District of Texas, asserting an overlapping set of patents, against Bose

Corporation; Peag, LLC; Plantronics, Inc., and Polycom, Inc.; and Skullcandy, Inc. All five sets of defendants sought some combination of dismissal under 28 U.S.C. § 1400(b), transfer to a proper venue under § 1406(a), or transfer to a convenient venue under § 1404(a). The district court has dismissed the complaint against Skullcandy for improper venue and granted a motion to stay *Plantronics* pending resolution of the transfer motion. *Koss Corp. v. Skullcandy, Inc.*, No. 20-CV-0664, Dkt. 38 (W.D. Tex. Mar. 31, 2021); *Koss Corp. v. Plantronics, Inc.,* No. 20-CV-0663 (W.D. Tex. Apr. 8, 2021). Two transfer motions are fully briefed and remain pending as the district court has proceeded with the merits. *Koss Corp. v. PEAG LLC*, No. 20-CV-0662, Dkt. 34 (W.D. Tex. Apr. 26, 2021); *Koss Corp. v. Bose Corp.*, No. 20-CV-0661, Dkt. 45 (W.D. Tex. Apr. 16, 2021). One of these defendants has sought mandamus to compel a stay of all non-venue related proceedings. *See In re Bose Corp.*, No. 21-145, Dkt. 2-1, at 5 (Fed. Cir. May 10, 2021).

Koss's Suit Targets Apple Technology Designed and Developed in California.

Koss's suit accuses several models of Apple audio products—including AirPods, various Beats models, and HomePod—of infringing

Koss's patents. Appx134-135. Koss's infringement contentions appear to refer to the way certain products are configured to access a home Wi-Fi network; receive audio content from another Apple device; function with Apple's voice-assistant technology, Siri; receive firmware upgrades; are physically structured and designed; and switch between noise-control modes. Appx120-121.

Apple is a California corporation headquartered in Cupertino, California, within the Northern District of California. Appx119. Apple's business is primarily run from Cupertino and its immediate vicinity: Apple's management is there; its primary operations, marketing, sales, and finance decisions occur there; and its financial records are located there. Appx119-120; Appx130. Apple's technical work is heavily focused in or near Cupertino, where its primary research and development facilities relevant to this lawsuit are located. Appx119-120.

All of Apple's United States-based engineers who participated in or are knowledgeable about the research, design, and development of the accused features of the accused products work in California—with the majority in the Northern District of California—except for three

individuals located in Seattle, Boston, and New York. Appx121-130. These Northern California-based engineers include three engineers, three engineering managers, a software development manager, and a senior manager who are knowledgeable about the accused features on Apple's AirPods, HomePod set-up, AirPods Pro, and PowerBeats Pro. Appx100. Also located in Northern California are Apple's product-marketing manager for HomePod and AirPods; the principal counsel knowledgeable about Apple's patent licensing and pre-suit communications; and the finance manager knowledgeable about financial and sales data for all accused products. Appx101.

No Apple employees knowledgeable about the issues in this case are in Texas—whether in the Western District or otherwise. Although Apple has an Austin campus, sworn testimony demonstrates that no Apple employees in Texas work on or previously worked on the accused features. Appx121; Appx130-131. Working files, electronic records, and paper documents concerning the accused features reside on computers in California or on servers accessible to Apple employees in California who work with the documents; materials relating to certain accused features are also located on computers and servers in Seattle, Boston,

New York, and Israel. Appx121-130. Again, none are in Texas. The source code and firmware relating to the accused features on Apple's HomePod, AirPods products, and Beats products were developed and tested in California and, in one instance, Israel. Appx121-130. Access to the source code is tightly restricted, on a need-to-know basis, and no employees who work on the accused features (and would thus have a need to know) are in Texas. Appx122.

Apple Moves to Transfer the Case to the Northern District of California.

Apple promptly filed a declaratory judgment action in the Northern District of California, asserting a claim for breach of the confidentiality agreement and seeking an injunction against further breaches and a declaration of non-infringement of Koss's patents. *Apple Inc. v. Koss Corp.*, No. 20-CV-5504, Dkt. 1, at 12-16 (N.D. Cal. filed Aug. 7, 2020). The case was stayed pending resolution of Apple's transfer motion in the Texas suit, *id.*, Dkt. 39 (N.D. Cal. Nov. 4, 2020), but the district court in the Northern District of California denied Koss's motion to enjoin arbitration between the parties over Apple's breach of contract claim, *id.*, Dkt. 63 (N.D. Cal. Jan. 27, 2021). That action has now been

transferred to the Western District of Texas after the district court here denied transfer. *Id.*, Dkt. 72 (N.D. Cal. May 12, 2021).

Soon after filing the declaratory judgment case in California, Apple moved in December 2020 to transfer the Texas case to the Northern District of California pursuant to 28 U.S.C. § 1404(a). Appx94-117. Apple supported its transfer motion with documentation and a sworn declaration from Mark Rollins, a Finance Manager at Apple. Appx119-131. Apple established that the § 1404(a) factors clearly favor transfer: It provided sworn testimony that the specific Apple witnesses who are likely to testify are located in the Northern District of California, as is relevant documentation for all accused features. Appx121-130. It demonstrated that the named inventors are located in California, Illinois, and Wisconsin, Appx140-164, and, in a later supplementary submission, that two non-party witnesses with knowledge of physical prior art products and samples of those products are in the Northern District of California, Appx187-188. And it showed that no likely witnesses are anywhere in Texas, much less in the Western District of Texas. Appx106-109. Collectively, this evidence demonstrated that several key § 1404(a) factors favor transfer.

Apple also showed that the parallel declaratory judgment action that was then proceeding in the Northern District of California favored transfer, and there are no corresponding "practical problems" weighing against transfer, Appx110-111; that Koss has no meaningful presence in Texas, Appx103-107, Appx111-113; and that the remaining transfer factors are neutral, Appx113-114.

Full briefing on that motion was delayed, however, by the district court's standing order that permitted Koss up to six months of discovery before filing its opposition. Western District of Texas, Waco Division, Standing Order Regarding Venue and Jurisdictional Discovery Limits for Patent Cases (Nov. 19, 2020), tinyurl.com/3va3t6jy. Because of that extended timeline, and the *Markman* hearing scheduled for April, on the same day Apple filed its motion to transfer, it also moved to stay the case pending resolution of its transfer motion. Appx176-185. The stay motion was fully briefed by January 11, 2021. But the district court never addressed it.

Koss filed its transfer opposition after the parties completed venue discovery. Appx191-210. Koss relied heavily on its "decades" of connections to Texas-based *customers* and *vendors*, with no mention of

any connections—let alone meaningful connections—between Texas and this litigation. Appx196. Koss disputed the relevance of the physical location of electronic sources of proof, ignoring admonitions from the Fifth Circuit and this Court that the location of documentary evidence is still relevant despite electronic discovery. Appx199-200. And it claimed that two third-party witnesses, a co-owner of Koss' outsourced IT vendor who "developed Koss'[s] website and stores Koss documents" and "an individual who formerly worked at the company that designed firmware for Koss's Striva product," live in Texas, without linking them to this litigation. Appx201.

As the case proceeded through claim-construction briefing and toward the *Markman* hearing, Apple twice asked the district court to rule on the stay motion or the motion to transfer. Appx223-226. But staff for the district court stated only that the court was "working diligently to resolve [the pending motions] ahead of the Markman hearing." Appx224-225; *see also* Appx223.

One month before the *Markman* hearing, Apple filed a mandamus petition with this Court, requesting that the district court be directed to rule on Apple's pending transfer motion and stay all other proceedings

in the interim. The following day, the district court issued a standing order stating its intent to resolve any pending inter-district transfer motions prior to a *Markman* hearing or postpone that hearing until transfer was resolved. Western District of Texas, Waco Division, Standing Order Regarding Motion for Inter-District Transfer (Mar. 23, 2021), tinyurl.com/h97hxrxb. This Court then denied Apple's mandamus petition, reasoning that the new standing order resolved the concern that the district court would hold the *Markman* hearing without resolving transfer. Appx227-229.

The District Court Denies Apple's Transfer Motion the Morning of the* Markman *Hearing.

The day before the *Markman* hearing, Apple contacted the district court to ask whether it intended to proceed with the hearing, given the still-pending and unresolved transfer motion. Appx222-223. The district court subsequently issued tentative claim constructions. It then responded that it "will be issuing an order on the Motion to Transfer prior to the Markman which will [] go forward as scheduled." Appx222. The following morning, the district court denied Apple's transfer motion and held the *Markman* hearing a few hours later.

The district court's opinion denying transfer was predicated on a combination of legal errors, relying on an internally inconsistent analysis and ignoring well-established precedent from this Court and the Fifth Circuit about the § 1404(a) factors. The district court recognized that witness convenience is "the single most important factor" but found that Apple's witnesses convenience carried "little weight" because it believed Apple could force its employees to testify. Appx14; Appx19. The court assumed that it was "highly unlikely" that Apple would call most of its witnesses at trial, but even if it did, it would be equally burdensome for three of those employees, who live in Southern California, to travel within California as it would be for them to travel between California and Waco, Texas. Appx17. Similarly, the district court found that an inventor of all four patents who lives in Sacramento, California, would only be "slightly" more inconvenienced by a trial in Waco than by one in California. Appx21.

By contrast, the court assumed that all of Koss's identified witnesses would testify and weighed their interests heavily against transfer. While the district court noted that one of Koss's proffered witnesses—the co-owner of Koss's IT vendor—was "unlikely" to testify

because his company "serves a primarily archival role" for Koss, it nonetheless credited him as a "willing witness" in the Western District of Texas. Appx13; Appx21. The district court also found it a "significant fact" that the six remaining inventors on the asserted patents, who live in Illinois and Wisconsin, supposedly would find it more convenient to travel to Waco than to Northern California. Appx20-21.

The district court also concluded that the compulsory process factor "strongly weigh[ed] against transfer" because Apple failed to prove that its third-party witnesses in California were unwilling to travel to Texas. Appx10-13. But it treated Koss's IT vendor, whom it had determined was "unlikely" to testify (but had also deemed a "willing witness"), as a witness subject to its subpoena power. Appx13. The court also included in its compulsory process analysis a firmware engineer who briefly worked for a company that once, in turn, worked on Koss products "during development of the firmware for Koss's Striva headphones," a product that was taken off the market before the accused Apple products were introduced. Appx13; Appx60-61; Appx181. Although Koss did not describe the relevant knowledge this witness

might possess, the district court accepted Koss's attorney argument that he was "unlikely to willingly testify," that he was a "relevant witness regarding the firmware in Koss's Striva headphones in the context of a lost profits damages analysis," and that he was within the district court's subpoena power. Appx13. In accepting that both witnesses were "unwilling" for purposes of the compulsory process factor, the district court did not require Koss to meet what the court called the "impractical and likely impossible to satisfy" burden of showing that the firmware engineer would not be unwilling to travel in the future. Appx11-13. The district court further held that the local interest factor weighed against transfer because Apple is "one of the largest employers" in California and Texas, "so both districts have a significant interest in this case," whereas Koss does "extensive business in Texas, both through direct sales to Texas companies, and files Texas state tax returns." Appx27-28.

All told, the district court concluded that one factor—the ease of access to sources of proof—weighed in favor of transfer and that all other factors were either neutral or weighed against transfer. Appx28.

REASONS FOR ISSUING THE WRIT

A petitioner seeking mandamus relief must (1) show a "clear and indisputable" right to the writ; (2) have "no other adequate means to attain the relief he desires"; and (3) demonstrate that "the writ is appropriate under the circumstances." *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 311 (5th Cir. 2008) (en banc) ("*Volkswagen II*") (quoting *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380-81 (2004)). The first and third prongs are satisfied where a district court reaches a "patently erroneous result" by relying on clearly erroneous factual findings, erroneous conclusions of law, or misapplications of law to fact. *Id.* at 310-12, 318-19. The second prong is necessarily satisfied where a district court improperly denies transfer under § 1404(a). *See id.* at 319; *see also In re Radmax, Ltd.*, 720 F.3d 285, 287 n.2 (5th Cir. 2013). In reviewing issues related to a § 1404(a) transfer, "this court applies the laws of the regional circuit in which the district court sits, in this case the Fifth Circuit." *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008).

The Fifth Circuit's § 1404(a) analysis involves well-established private- and public-interest factors. The private-interest factors

include: "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive." *Volkswagen II*, 545 F.3d at 315. The public-interest factors include: "(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws [or in] the application of foreign law." *Id.* (alteration in original).

"[I]n a case featuring most witnesses and evidence closer to the transferee venue with few or no convenience factors favoring the venue chosen by the plaintiff, the trial court should grant a motion to transfer." *In re Nintendo Co.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009). That is the situation here. The district court reached an alternate conclusion only by applying the § 1404(a) factors in a way that was both contrary to binding precedent and internally inconsistent.

I. The District Court Clearly Abused Its Discretion In Evaluating And Denying Apple's Transfer Motion.

A. The district court's treatment of the critical witness-related factors was clearly contrary to binding precedent and internally inconsistent.

Witness convenience is the "single most important factor in transfer analysis." *In re Genentech, Inc.,* 566 F.3d 1338, 1343 (Fed. Cir. 2009). The Fifth Circuit and this Court have recognized that "it generally becomes more inconvenient and costly for witnesses to attend trial the further they are away from home." *TS Tech*, 551 F.3d at 1320. For that reason, the Fifth Circuit's "100-mile rule" requires that "[w]hen the distance between an existing venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled." *In re Volkswagen AG*, 371 F.3d 201, 204-05 (5th Cir. 2004) ("*Volkswagen I*"). But the § 1404(a) analysis provides no special weight to the convenience of "witnesses [who] … will be required to travel a significant distance no matter where they testify." *In re TracFone Wireless, Inc.*, No. 2021-136, 2021 WL 1546036, at *3 (Fed. Cir. Apr. 20, 2021) ("*TracFone II*"). Moreover, party and non-party witnesses are equally inconvenienced by the concerns

animating the Fifth Circuit's approach: not only the "monetary costs" imposed on witnesses who must travel for trial, "but also the personal costs associated with being away from work, family, and community." *Volkswagen II*, 545 F.3d at 317.

The other § 1404(a) prong that implicates witness testimony, the compulsory process factor, favors the court with subpoena power over a greater number of third-party witnesses. *Genentech*, 566 F.3d at 1345. This factor is concerned with ensuring the presence at trial of key witnesses who can be subpoenaed to testify in one venue but not in the other. *See id.*

Both factors here weigh overwhelmingly in favor of transfer. Apple identified numerous relevant witnesses in the Northern District of California and meticulously documented the testimony each was likely to offer, while both parties are extremely unlikely to call any witnesses located in the Western District of Texas.

At least 13 Apple employees in California are knowledgeable about the engineering, design, development, and marketing of the accused products, the licensing of relevant patents, and pertinent financial records and practices, and all the engineers who are

knowledgeable about the accused features live in California, Seattle, Boston, and New York. Appx99-101; Appx121-128; Appx130; *see supra* at 5-6. None has any known relevant connection to Texas—they do not work with anyone in Texas or travel to Texas for work purposes—and Apple's signed, sworn declaration attests that no one in Texas has any responsibility for the accused features. Appx131; *see also* Appx122-131. The Northern District of California is also home to one key non-party witness, the inventor of four of the five patents in suit, who lives in Sacramento. Appx9; Appx106. Two non-party witnesses with knowledge of physical prior art products and samples of those products are also in the Northern District of California. Appx187-188.

Meanwhile, Koss is a Delaware corporation whose sole known office is in Milwaukee; Koss has no offices or employees anywhere in Texas. Appx45. The remaining inventors of the asserted patents live in Illinois and Wisconsin and are not subject to compulsory process in either district. Appx15-16. Koss contended that it had identified two third-party witnesses in Texas: the co-owner of an outsourced IT firm that provides help-desk support and "developed Koss'[s] website and stores Koss documents" and "an individual who formerly worked at the

company that designed firmware for Koss's Striva product." Appx201. But it offered no plausible explanation of why those individuals might have relevant testimony in a case alleging patent infringement by Apple. *See supra* at 10. And the district court found that the IT vendor was "unlikely" to testify. Appx13.

Nonetheless, the district court held that the convenience of willing witnesses factor weighs against transfer. Appx16. It did so by discounting all thirteen of Apple's employee witnesses in one broad stroke; speculating that, if they did testify, Apple's employees could readily work out of Apple's Austin campus during a Waco trial; finding Waco relatively more convenient than Northern California for witnesses traveling from Illinois and Wisconsin (while deeming it roughly equivalent in convenience for the Sacramento-based witness); and noting that Waco was highly convenient for Koss's IT vendor, whom it had concluded was *unlikely* to testify. Appx13-21.

The district court further found that the compulsory process factor "strongly" weighs against transfer, by declining to credit the California-based inventor because Apple could not prove he would be an "unwilling" witness by the trial; disregarding Apple's California-based

prior art witnesses as unlikely to testify; and concluding that both Koss's IT vendor and the former employee of a company that briefly did work for Koss were subject to subpoena in Texas. Appx8-13. The district court reached these conclusions only by ignoring contrary precedent from this Court and the Fifth Circuit and by relying on internally inconsistent rationales. In short, it reached a "patently erroneous result" by relying on erroneous conclusions of law and misapplications of law to fact. *Volkswagen II*, 545 F.3d at 310.

1. The district court ignored binding precedent from this Court and the Fifth Circuit regarding the convenience and availability of witnesses.

"District courts have no discretion to make" "erroneous conclusions of law[] or misapplications of law to fact." *In re Apple Inc.*, 979 F.3d 1332, 1346 (Fed. Cir. 2020). But that is exactly what the district court did here.

The district court repeatedly stated that the "convenience of party witnesses is given little weight," because "the party can compel their testimony and ensure that they are produced at trial." Appx14; Appx16; Appx19. It "assume[d] that no more than a few party witnesses" would testify and found it "highly unlikely that Apple will

call the majority of its thirteen employee witnesses at trial." Appx16-17. The district court did not square this assumption with the fact that Koss's infringement contentions implicate several distinct features implemented in the hardware and software of multiple device models within three different Apple product lines, or with Apple's detailed showing linking each potential witness to a relevant topic. *See* Appx100-101. The district court also "disagree[d] … that all thirteen of Apple's employee witnesses weigh in favor of transfer" because three of them "reside in the Southern District of California," and stated that it "strongly believe[d] that the convenience of" Apple's Austin facility undermined Apple's case for transfer. Appx16-19.

The notion that party witness convenience receives "little weight" runs contrary to Fifth and Federal Circuit precedent recognizing the significance of convenience to party and nonparty witnesses alike. *See, e.g.*, *In re Acer Am. Corp.*, 626 F.3d 1252, 1255 (Fed. Cir. 2010); *Nintendo*, 589 F.3d at 1198-99; *Genentech*, 566 F.3d at 1343-45; *Volkswagen II*, 545 F.3d at 316-17. After all, the concern for witness convenience—travel time, expense, and time away from home and "regular employment"—applies equally to party and non-party

witnesses. *Volkswagen I*, 371 F.3d at 204-05; *see also, e.g.*, *TracFone II*, 2021 WL 1546036, at *2 (the "rule's rationale" serves "the ultimate task of scheduling fact witnesses": "to minimize the time when they are removed from their regular work or home responsibilities" (internal quotation marks omitted)). And the district court's summary treatment of Apple's witnesses contradicts this Court's clear guidance that a court should assess "the relevance and materiality of the information [a] witness may provide." *Genentech*, 566 F.3d at 1343; *see Charles v. Wade*, 665 F.2d 661, 664 (5th Cir. Unit B 1982) ("A party to a lawsuit obviously is entitled to present his witnesses.").

The district court's insistence that Apple witnesses would not be inconvenienced by having to travel to Waco because there is an Apple campus 100 miles away in Austin is likewise a misapplication of precedent to the facts of this case. The district court "strongly believe[d]" that the Austin campus was "[r]elevant" to the convenience of "all thirteen of Apple's employee witnesses" because it "greatly minimize[d] the time that Apple's employees are removed from their regular work responsibilities." Appx18-19. This determination ignored the concern this Court and the Fifth Circuit have expressed with taking

witnesses from their homes and regular places of employment. Moreover, not a shred of evidence suggests that Apple's California-based employees would find it convenient to work from the Austin campus—far from their teams—while attending trial 100 miles away in Waco.

The district court also disregarded binding precedent by deeming it a "significant fact" that the Western District of Texas would be supposedly "more convenient" for six third-party inventors named on the asserted patents, none of whom are in Texas. Appx20. Those inventors would all be travelling from Illinois and Wisconsin and would have to travel significant distances regardless of which venue is selected. Factoring the allegedly superior convenience of the Western District of Texas to those inventors into the analysis is flatly inconsistent with this Court's recent *Apple* and *TracFone* decisions, both of which explained that the Fifth Circuit's 100-mile rule should not be applied in this "rigid and formulaic" way for witnesses who will have to travel long distances to either district. *See TracFone II*, 2021 WL 1546036, at *2-3; *Apple*, 979 F.3d at 1341-42.

Moreover, the district court erred legally when it imposed a requirement that Apple prove that third-party witnesses are "unwilling" before it would count them toward the compulsory process prong. Appx10-12. This burden appears nowhere in the case law of this Court or the Fifth Circuit. On the contrary, this Court has stated that a witness is "presumed to be unwilling" when "there is no indication that a non-party witness is willing." *In re HP Inc.*, No. 2018-149, 2018 WL 4692486, at *3 n.1 (Fed. Cir. Sept. 25, 2018). And both this Court and the Fifth Circuit have evaluated the availability of compulsory attendance without requiring any threshold proof of unwillingness by either party. *See, e.g.*, *Acer*, 626 F.3d at 1255; *Genentech*, 566 F.3d at 1345; *Volkswagen II*, 545 F.3d at 316-17.

2. The district court's witness-related analysis is internally inconsistent in a way that improperly weights those factors against transfer.

In addition to breaking with precedent from this Court and the Fifth Circuit, the district court also applied the § 1404(a) witness factors in ways that were internally inconsistent, always with the result of weighting the analysis against transfer.

First, the district court initially concluded that Koss's non-party IT vendor, who resides in the Western District of Texas, was unlikely to be called to testify at trial because his company "serves a primarily archival role." Appx13. In the following sentence, however, the district court counted this same individual as "an established unwilling witness who resides in this District and is, therefore, subject only to this Court's subpoena power"—thus counting an admittedly unlikely witness as a reason to deny transfer. Appx13. The district court then double-counted this individual—who, again, is unlikely to have any relevant information in this case—as a "*willing* witness[]" whose presence in the Western District of Texas tips that *second* factor against transfer. Appx20 (emphasis added); *see supra* at 12-13.

Second, the district court stated that it assumed that "no more than a few party witnesses—and even fewer third-party witnesses, if any—will testify live at trial." Appx14. It relied on this assumption to heavily discount the "majority" of Apple's 13 employee witnesses, which it described as "thirteen somewhat-duplicative employees," Appx17, Appx21, disregarding Apple's extensive and detailed showing that each witness was knowledgeable about a different accused feature or

product. For instance, the district court suggested that the testimony of two Apple engineers would be "duplicative" because they have "the exact same title and exact same relevant knowledge," Appx18, though Apple made clear that each employee worked on a separate accused product, Appx100; Appx121-128.

Yet the district court employed the opposite assumption for Koss's identified witnesses, assuming that every single one was likely to testify, including Koss's party witnesses, Koss's IT vendor, and all seven inventors. Appx20-21. It even accepted Koss's unsupported argument that an engineer who had briefly worked for a company that formerly worked as a contractor on Koss products was a likely witness, though Koss did not argue that this engineer had ever worked on a Koss product or offer any evidence to suggest he had any relevant information. Appx13; *see* Appx216.

Third, the district court took an inconsistent approach to the distance that various witnesses might need to travel to attend trial in Waco or the Northern District of California. When faced with three Apple witnesses based in Los Angeles and San Diego, the district court found that those witnesses must travel "significant distances to reach

either WDTX or NDCA" and stated that this "undercut[] Apple's argument that NDCA is overwhelmingly more convenient than WDTX." Appx17. And it declined to "attribut[e] too much convenience merely because" one of the named inventors "lives closer to" the Northern District of California, since Koss would be paying for his travel expenses and he would "likely have to leave home for an extended period of time and [would] not incur any travel, lodging, or related costs regardless of the venue." Appx21. But as discussed above (at 13, 24), the district court found it to be a "significant fact" that the Western District of Texas would be "more convenient" for six third-party inventors named on the asserted patents, Appx20, all of whom would be travelling from Illinois and Wisconsin, which are substantially farther from Waco than Sacramento and San Diego are from the Northern District of California.

Fourth, as discussed above (at 25), the district court required Apple to prove that a witness is "unwilling" to travel for trial before he can be factored into the compulsory process analysis. Appx10. But elsewhere the district court reasoned it would be "impractical and likely impossible" for *Koss* to prove that a currently willing third-party witness based in California would *not* change his mind about his

willingness to travel to Texas for trial. Appx12. Thus, even the district court acknowledged that the burden of prospective proof it imposed on Apple is essentially insurmountable.

B. The district court clearly abused its discretion in concluding that the district where the accused technology was designed and developed has a less meaningful interest in the dispute than a district with no tie to this case.

The first public-interest factor is "the local interest in having localized interests decided at home." *Volkswagen II*, 545 F.3d at 315. This factor is not simply about "the parties' significant connections to each forum writ large"; it requires "'significant connections between a particular venue and *the events that gave rise to a suit*.'" *Apple*, 979 F.3d at 1345 (quoting *Acer*, 626 F.3d at 1256); *cf. In re HP Inc.*, 826 F. App'x 899, 901, 903 (Fed. Cir. 2020) (district court "correctly labeled the local interest factor in favor of transfer" because it recognized that "more of the events giving rise to th[e] suit" occurred in the transferee district than the transferor district).

Just last year, this Court concluded that the "district court misapplied the law" when it found that "Apple has substantial presences in both NDCA and WDTX, so both districts have a significant

interest in this case." *Apple*, 979 F.3d at 1344-45 (quoting district court opinion). Yet the district court once again employed that same faulty legal reasoning in this case to weigh the local-interest factor slightly against transfer. Appx27-28. It reasoned that "Apple is likely one of the largest employers in both NDCA and WDTX, so both districts have a significant interest in this case." Appx27. The district court did not find that Apple's activities in Austin have any particular link to the facts of this litigation; it relied instead on the idea that "WDTX has a significant localized interest because of the state and local tax benefits received by and pledged to Apple to build a second campus in Austin." Appx28.

The district court's failure to follow this Court's precedent was a clear abuse of discretion. On the correct application of the law, the local-interest factor strongly favors transfer here, because there is a substantial connection to the Northern District of California and no such local interest in the Western District of Texas: Koss's willful infringement claims call into question the reputation of Apple employees in California. *In re Hoffmann-La Roche Inc.*, 587 F.3d 1333, 1336 (Fed. Cir. 2009); *see* Appx111-112. All the named inventors are

located in California or in other non-Texas states, Appx140-164; no party representatives are in the Western District of Texas, Appx45; Appx218-219; and Koss has no presence in Texas, Appx45.

The district court found that the Western District of Texas has a further interest because Koss does "extensive business in Texas, both through direct sales and through sales to Texas companies, and files Texas state tax returns." Appx28. But it did not find—and there was no basis for finding—that Koss has any distinctive relationship with Texas; as Koss stated, "Koss's products … are sold at various retail chains throughout the United States." Appx45. This holding was thus similarly inconsistent with precedent. As the Fifth Circuit has held, the mere fact that an entity sells its products in an undifferentiated way in a district does not give that district an interest in the case for § 1404(a) purposes. *Volkswagen II*, 545 F.3d at 318; *see also TracFone II*, 2021 WL 1546036, at *3 (finding error where district court relied on the fact that "TracFone utilizes the allegedly infringing process throughout the nation" to counterweight local interest of proposed transferee forum). Indeed, the Fifth Circuit has explained that this kind of rationale "stretches logic in a manner that eviscerates the public interest that

this factor attempts to capture," because the same argument "could apply virtually to any judicial district or division in the United States." *Volkswagen II*, 545 F.3d at 318.

C. The district court clearly abused its discretion by relying on impermissible speculation about court congestion.

The district court defied precedent (and logic) in its analysis of the court-congestion factor. Ultimately, this factor "concerns whether there is an appreciable difference in docket congestion between the two forums." *In re Adobe Inc.*, 823 F. App'x 929, 932 (Fed. Cir. 2020), *cert. denied*, No. 20-1211, 2021 WL 1240949 (U.S. Apr. 5, 2021). This factor is "speculative" and cannot alone outweigh other factors favoring transfer. *Genentech*, 566 F.3d at 1347; *see also Apple*, 979 F.3d at 1344 n.5.

As this Court recently noted, "NDCA and WDTX have historically had comparable times to trial for civil cases." *Apple*, 979 F.3d at 1343-44. And it made clear that the district court may not rely on its "general ability to set a schedule," which does not directly speak to whether "there is an appreciable difference in docket congestion between the two forums." *Adobe*, 823 F. App'x at 932.

Yet the district court essentially relied on its "general ability to set a schedule," *id.*, concluding that the court-congestion factor weighed against transfer because "recently this Court has proved more expeditious" in taking cases to trial. Appx25. The district court cited no evidence of that supposed speed advantage; the only timing data in its opinion concerns the default schedule set at the beginning of a case. *See id.*

Moreover, the district court refused to consider Apple's showing that the patent docket of the Waco Division of the Western District of Texas is now substantially more congested than the Northern District of California, such that this factor should at most be treated as neutral. Indeed, the absolute number of patent cases in the Waco Division—which has one district court judge—exceeded the number of patent cases for the entire Northern District of California—which has more than a dozen. Appx219. In response, the district court stated that Apple had not "articulate[d] with any specificity how the additional 400 intellectual property law cases will affect WDTX's schedule for bringing this case to trial." Appx25-26. This analysis "does not withstand scrutiny," because it ignores that the analysis is targeted toward the

"congestion" of the respective dockets in the transferor and transferee districts, *Adobe*, 823 F. App'x at 932, and the recent, dramatic spike in patent cases in the Western District of Texas is certainly relevant to its docket congestion.

Indeed, the record in this case gives every reason to believe that the spike in patent cases may affect the district court's ability to bring a case to trial on its default schedule. When Apple (in March) asked the district court to hold a hearing on its transfer motion, staff for the court responded that "[t]he earliest that the Court would be able to hold a hearing on this issue would likely be in May, as the Court currently has four trials scheduled in April leaving the rest of its schedule highly impacted." Appx223. And despite telling Apple in February that the court was "working diligently to resolve" Apple's pending motions to stay, transfer, and strike, the court took until the morning of the *Markman* hearing—two-and-a-half months later—to finally resolve the transfer motion. Appx224; Appx1. In contrast, in Apple's case against Koss, the Northern District of California held a hearing on Koss's transfer motion less than six weeks after it was filed and resolved it

from the bench the same day. *See Apple Inc. v. Koss Corp.*, No. 20-CV-5504, Dkts. 24, 30, 39 (N.D. Cal.).

At the very least, there is significant uncertainty surrounding anticipated time to trial in this case. The district court abused its discretion in weighing this factor against transfer rather than treating it as neutral. *See Genentech*, 566 F.3d at 1347.

II. Apple Has No Other Adequate Means To Obtain Relief.

Mandamus is the sole avenue for Apple to obtain relief in this case. "[I]t is clear under Fifth Circuit law that a party seeking mandamus for a denial of transfer clearly meets the 'no other means' requirement." *TS Tech*, 551 F.3d at 1322. As *Volkswagen II* established, "appeal from an adverse final judgment" cannot remedy "an improper failure to transfer the case" because the petitioner "would not be able to show that it would have won the case had it been tried in a convenient [venue]." 545 F.3d at 318-19 (alteration in original); *see Radmax*, 720 F.3d at 287 n.2. This Court has recently and repeatedly confirmed this principle. *See, e.g.*, *HP*, 826 F. App'x at 901 ("In the transfer context, … the possibility of an appeal after judgment is not an

adequate remedy…."); *see also Apple*, 979 F.3d at 1336-37; *TracFone II*, 2021 WL 1546036, at *2.

III. Mandamus Is Appropriate Under The Circumstances.

Mandamus is also "appropriate under the circumstances" because the district court "clearly abused its discretion and reached a patently erroneous result"—and one that may reach "beyond the immediate case." *Volkswagen II*, 545 F.3d at 311, 319. The district court has failed to follow the letter or the spirit of this Court's and the Fifth Circuit's binding precedent. Those errors are exacerbated by the fact that Koss's related claims against other defendants either have been or may be transferred to other districts—including one to Northern California—so that denying transfer here risks wasting judicial resources without any corresponding judicial economy.

As discussed above, the district court has clearly abused its discretion by failing to heed multiple mandates from the Fifth Circuit and this Court on how to prioritize transfer motions and how to interpret the multi-factor § 1404(a) transfer analysis. *See supra* at 21-25, 29-35. In the past year alone, this Court has intervened on numerous occasions to prevent further delay on fully briefed transfer

motions that the district court allowed to "'linger[] unnecessarily on the docket'" as it proceeded with the merits. *In re TracFone Wireless, Inc.*, No. 2021-118, 2021 WL 865353, at *2 (Fed. Cir. Mar. 8, 2021) ("*TracFone I*") (quoting *In re Google Inc.*, No. 2015-138, 2015 WL 5294800, at *1 (Fed. Cir. July 16, 2015)). This routine practice of putting off transfer decisions has "amounted to egregious delay and blatant disregard for precedent." *In re SK hynix Inc.*, 835 F. App'x 600, 600-01 (Fed. Cir. 2021); *TracFone I*, 2021 WL 865353, at *1; *Apple*, 979 F.3d at 1337-38.

This case is yet another example of the district court's persistent practice. It declined to rule on Apple's transfer motion for months after it was fully briefed. Once Apple filed a mandamus petition requesting this Court to order the district court to rule on transfer, the district court issued a new policy announcing that the court would rule on transfer before the *Markman* hearing. This Court denied Apple's mandamus request in light of that new policy, but the district court still delayed its decision on transfer until the morning of the *Markman* hearing.

The district court has similarly ignored well-established precedent on the merits of transfer, requiring this Court's intervention through mandamus to correct the denial of meritorious transfer motions. To take one example, this Court has held three times in the past year that the district court has clearly abused its discretion by misapplying the 100-mile rule and denying transfer by relying on witnesses who are outside either forum and will have to travel regardless. *See TracFone II*, 2021 WL 1546036, at *2-3 (explaining that the district court's transfer analysis was "clearly flawed" because it relied on a "rejected" approach to the 100-mile rule); *HP*, 826 F. App'x at 902 (granting mandamus because the district court's decision fell "far outside the boundaries of a reasonable exercise of discretion" by "fail[ing] to adhere to [this] legal principle"); *Apple*, 979 F.3d at 1342 (holding that the district court erred by "misappli[ng]" the 100-mile rule by weighing against transfer that third-party witnesses "live[d] closer to WDTX than NDCA"). Yet the district court continues to apply this same unlawful approach, including in this case. *See supra* Part IA; *see also*, *e.g.*, *Kuster v. W. Digit. Techs., Inc.*, No. 6-20-CV-00563, 2021 WL 466147, at *7 (W.D. Tex. Feb. 9, 2021) (reciting "the Federal Circuit's holding" that

"additional travel within the United States is not significant to a transfer analysis" but stating that "this is not what the Fifth Circuit has laid out in its 100-mile rule"). Mandamus is appropriate, therefore, to stem the district court's misapplication of venue law and to prevent the district court from repeating its flawed analysis in deciding other cases.

Furthermore, the district court's continued disregard for precedent could have an outsized effect in this case due to Koss's related pending claims concerning the same patents. *See supra* at 3-4. In each case, the defendants challenged the propriety of venue in the Western District of Texas or made compelling showings for transfer to a more convenient venue.

The district court has already dismissed the suit against Skullcandy for improper venue; Koss has refiled that case in the District of Utah. *Koss v. Skullcandy*, No. 21-CV-00203, Dkt. 2 (D. Utah Apr. 1, 2021). In the *Plantronics* matter, the district court—despite its expressed policy to deny stay requests for transfer motions and to proceed on the merits, *see supra* at 9-10—has granted the defendant's motion to stay the case pending its resolution of transfer, suggesting

that it is seriously considering granting the motion and transferring the case to the Northern District of California. *Koss Corp. v. Plantronics, Inc.*, No. 20-CV-0663 (W.D. Tex. Apr. 8, 2021). The *Peag* and *Bose* cases are likely to be dismissed or transferred as well. Bose has shown that it "lacks any place of business" in the Western District of Texas, and sought dismissal or transfer to Massachusetts. *Koss Corp. v. Bose Corp.*, No. 20-CV-0661, Dkt. 20, at 5 (W.D. Tex. Dec. 17, 2020). And in *Peag*, the defendant likewise has no established place of business in the Western District of Texas and has sought dismissal or transfer to the Southern District of California. *Koss Corp. v. PEAG LLC*, No. 20-CV-0662, Dkt. 21, at 1-2 (W.D. Tex. Dec. 23, 2020). As a result, Koss's patents will likely be interpreted by multiple district courts across the country, undercutting the case for judicial economy in retaining Apple's case in Texas. *See* Appx23-24 (citing co-pending cases as a factor weighing against transfer). Meanwhile, if the *Plantronics* matter is transferred to the Northern District of California, both Apple and Plantronics will have missed out on the efficiency of coordinating their related litigation in that forum.

Mandamus is appropriate to correct the district court's clear abuse of discretion, before Apple's rights are further eroded by being made to litigate in a forum with no connection to this case.

CONCLUSION

The Court should grant Apple's petition, vacate the district court's order, and remand with instructions to transfer this case to the Northern District of California.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system on May 17, 2021.

A copy of the foregoing was served upon the following counsel of record and district court judge via FedEx:

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CERTIFICATE OF COMPLIANCE

The petition complies with the type-volume limitation of Fed. R. App. P. 21(d)(1) because this petition contains 7761 words.

This petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this petition has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Century Schoolbook 14-point font.

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Miscellaneous Docket No. ___

IN THE

United States Court of Appeals for the Federal Circuit

IN RE APPLE INC.,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Western District of Texas
No. 6:20-cv-00665-ADA, Hon. Alan D Albright

NON-CONFIDENTIAL APPENDIX TO APPLE INC.'S PETITION FOR WRIT OF MANDAMUS

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Statement Regarding Confidential Material Omitted

Pursuant to Federal Circuit Rule 25.1(e)(1)(B) and the Agreed Protective Order issued in the district court on April 15, 2021, material has been redacted from Appx5-6, Appx9, Appx18-19, Appx26-27. The redacted material contains confidential business information regarding the potential witnesses for the parties.

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

KOSS CORPORATION, ***Plaintiff,***	§	
	§	**6-20-CV-00665-ADA**
v.	§	
APPLE INC, ***Defendant.***	§	

ORDER DENYING DEFENDANT'S MOTION TO TRANSFER

Came on for consideration this date is Apple Inc.'s Motion to Transfer to the Northern District of California ("NDCA") pursuant to 28 U.S.C. § 1404(a). After careful consideration of the Motion, the Parties' briefs, and the applicable law, the Court **DENIES** Defendant Apple's Motion to Transfer.

I. INTRODUCTION

A party seeking a transfer to an allegedly more convenient forum carries a significant burden. *Babbage Holdings, LLC v. 505 Games (U.S.), Inc.*, No. 2:13-CV-749, 2014 U.S. Dist. LEXIS 139195, at *12–14 (E.D. Tex. Oct. 1, 2014) (stating the movant has the "evidentiary burden" to establish "that the desired forum is *clearly more convenient* than the forum where the case was filed" (emphasis added)). The burden that a movant must carry is not that the alternative venue is more convenient, but that it is *clearly more convenient*. *In re Volkswagen, Inc.*, 545 F.3d 304, 314 n.10 (5th Cir. 2008) (hereinafter "*Volkswagen II*") (emphasis added). Apple moved to have this case transferred to NDCA. The Court finds that Apple fails to meet the heavy burden of showing that NDCA is a *clearly more convenient* venue.

II. LEGAL STANDARD

A. Section 1404 Transfer

Title 28 U.S.C. § 1404(a) provides that, for the convenience of parties and witnesses, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented. "Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'" *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)). The party moving for transfer carries the burden of showing good cause. *Volkswagen II*, 545 F.3d at 314 ("When viewed in the context of § 1404(a), to show good cause means that a moving party, in order to support its claim for a transfer, must . . . clearly demonstrate that a transfer is '[f]or the convenience of parties and witnesses, in the interest of justice.'") (quoting 28 U.S.C. § 1404(a)).

"The preliminary question under § 1404(a) is whether a civil action 'might have been brought' in the destination venue." *Volkswagen II*, 545 F.3d at 312. If so, in the Fifth Circuit, the "[t]he determination of 'convenience' turns on a number of public and private interest factors, none of which can be said to be of dispositive weight." *Action Indus., Inc. v. U.S. Fid. & Guar. Co.*, 358 F.3d 337, 340 (5th Cir. 2004). The private factors include: "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive." *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) (hereinafter "*Volkswagen I*") (citing to *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1982)). The public factors include: "(1) the administrative difficulties flowing from

court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws of the application of foreign law." *Id.* Courts evaluate these factors based on "the situation which existed when suit was instituted." *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960).

A plaintiff's choice of venue is not an independent factor in the venue transfer analysis, and courts must not give inordinate weight to a plaintiff's choice of venue. *Volkswagen II*, 545 F.3d at 313 ("[W]hile a plaintiff has the privilege of filing his claims in any judicial division appropriate under the general venue statute, § 1404(a) tempers the effects of the exercise of this privilege."). However, "when the transferee venue is not *clearly more convenient* than the venue chosen by the plaintiff, the plaintiff's choice should be respected." *Id.* at 315; *see also QR Spex, Inc. v. Motorola, Inc.*, 507 F. Supp. 2d 650, 664 (E.D. Tex. 2007) (characterizing movant's burden under § 1404(a) as "heavy") (emphasis added).

III. BACKGROUND

Defendant Apple is a California Corporation with its principal place of business in Cupertino, California. Pl.'s Compl., ECF No. 1 at ¶ 5. Apple's second corporate campus is located in Austin, Texas. *Id.* Apple also has several retail stores within WDTX, notably two in Austin, and three others in San Antonio and El Paso.[1] Apple, among other things, markets audio accessories, including the Apple HomePod, the Apple AirPods and the Apple Beats by Dre. *Id.* at ¶ 8.

Plaintiff Koss Corp. is a Delaware Corporation with its principal place of business in Milwaukee, Wisconsin. *Id.* at ¶ 2. Koss markets headphones and audio accessories that are at

[1]Apple Inc., https://www.apple.com/retail/storelist/ (last visited April 21, 2021).

sold at various retail chains throughout the country, including Walmart stores. *Id.* at ¶ 3. Koss specifically markets the Striva line of wireless headphones. *Id.* at 42.

On July 22, 2020, Koss filed this lawsuit alleging patent infringement against Apple for making, having made, using, importing, supplying, distributing, selling, or offering to sell its products and/or systems, including systems in which its AirPods and/or wireless Beats by Dre-branded headphones are incorporated (the "Accused Headphones"). Pl.'s Compl. at ¶¶ 79–82, 107–110, 121–124, 135–138. Koss also claims patent infringement alleging that Apple has made, had made, used, imported, supplied, distributed, sold, or offered for sale products and/or systems, including systems in which its HomePod and/or Apple Watch products and/or systems are incorporated (the "Accused Networking Devices"). Pl.'s Compl. at ¶¶ 93–96. Specifically, Koss asserts infringement of U.S. Patent Nos. 10,206,025 ("'025 patent"); 10,298,451 ("'451 patent"); 10,469,934 ("'934 patent"); 10,491,982 ("'982 patent"); and 10,506,325 ("'325 patent"). *Id*. Koss asserts that these patents generally relate to "the wireless headphone and wearable technology space." *Id*. at ¶ 69.

On December 21, 2020, Apple filed this Motion to Transfer Venue under 28 U.S.C. § 1404(a). Def.'s Mot. at 1. Specifically, Apple requests that the Court transfer the instant case from the Western District of Texas ("WDTX") to the Northern District of California ("NDCA"). *Id*.

IV. ANALYSIS

As a preliminary matter, neither party contests the fact that venue is proper in NDCA and that this case could have been filed there.

A. The Private Interest Factors Weigh In Favor of Transfer.

i. The Relative Ease of Access to Sources of Proof

After carefully reviewing the Parties' arguments, the Court finds that the relative ease of access to sources of proof factor slightly favors of transfer. "In considering the relative ease of access to proof, a court looks to where documentary evidence, such as documents and physical evidence, is stored." *Fintiv*, 2019 WL 4743678, at *2. "[T]he question is *relative* ease of access, not *absolute* ease of access." *In re Radmax*, 720 F.3d 285, 288 (5th Cir. 2013) (emphases in original).

Apple argues that the location of its own sources of proof strongly favor transfer. Def.'s Mot. at 6. Specifically, Apple delineates three categories of documents: confidential source code; technical documents pertaining to the design and engineering of the accused features; and financial, marketing and licensing documents relevant to the accused products. *Id.* at 6–7. Apple asserts that all three of these relevant document categories are located in California or on servers in California. *Id.* Apple further assures this Court that all documents and source code outside California are either located in foreign countries or in U.S. States other than Texas. *Id.* at 7. Additionally, Apple asserts that its employees researched, developed, and tested the accused products and features almost exclusively in California and performed none of these activities in Texas. *Id.* While Apple acknowledged that it has a second campus in Austin, Apple contends that there are no sources of proof within this District. *Id.* at 8.

In response, Koss asserts that the first factor—access to sources of proof—is neutral. Pl.'s Opp. at 5. Regarding Apple's documents, Koss points to statements made by Apple's employee, Mark Rollins, who stated that Apple "does not have any *unique* working files or documents . . . located in the WDTX." *Id.* (citing Rollins Decl., ECF No. 34-2, ¶ 8). Koss asserts that when questioned further, [redacted]

CONFIDENTIAL MATERIAL OMITTED

[redacted]. Nevertheless, Koss argues that Apple employees in Austin would have access to documents stored on its California servers. *Id.* at 6.

Regarding Koss's documents, Koss notes that while its offices are primarily located in the Midwest, it outsources its IT needs to a Texas company, Synectics. *Id.* Koss asserts that Synectics maintains Koss's website, the servers that backup all of Koss's electronic files, including product development and support files for Koss's Strive line of wireless headphones. *Id.* at 2. Therefore, Koss asserts that all of its own relevant documents are on servers located in Texas. *Id*. at 6.

In its Reply, Apple points out that Koss neither points to any specific documents located on its Texas IT vendor's servers nor states what Apple documents or information are found in the WDTX. *Id*. at 2. Moreover, Apple asserts that Synectics's servers are located in Dallas, outside the Western District of Texas, and, thereby, irrelevant to the instant inquiry. *Id*. (citing *In re Apple*, 979 F.3d 1332, 1346 (Fed. Cir. 2020)). Moreover, Apple claims that Koss's argument—that the location of Apple's documents is irrelevant because of the ease of transferring electronic documents—contradicts Fifth Circuit precedent. *Id.*

The Court agrees with Apple that this factor favors transfer, but only slightly. Generally, in patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer. *See In re Genetech, Inc.*, 556 F.3d 1338, 1345 (Fed. Cir. 2009). Apple has specified sources of proof relevant to infringement—Apple source code and technical, marketing, and licensing documentation—that are located in NDCA. Def.'s Reply at 2. However, the Court notes that this is a unique type of patent infringement case involving market competitors. Both Koss and Apple market headphone and audio accessory products, notably competing lines of

wireless headphone products. As such, Koss's documents—especially those involving the competing Striva products—are more heavily implicated by the damages analysis in this case than it would be for one between non-competitors. *See* 35 U.S.C. § 284; *see also WesternGeco LLC v. ION Geophysical Corp.*, 138 S. Ct. 2129, 2139, 201 L. Ed. 2d 584 (2018) (a patent owner's recovery can include lost profits). While noting that Koss's documents carry particular significance here, by Koss's own admission, the servers housing all of Koss's electronic documents are not located in this District, but in the Northern District of Texas. Pl.'s Opp. at 2. The Court acknowledges that this District is nearer to the Northern District of Texas and, therefore, the ease of access to Koss's documents would be greater in this District than NDCA.

However, Koss incorrectly relies on the dicta of this Court's decision in *Fintiv*. *See* Pl.'s Opp. at 5 ("As this Court has noted, in the modern electronic world, the "location" of documents no longer has a meaningful impact on convenience."). Indeed, in *Fintiv*, this Court noted that "this factor is at odds with the realities of modern patent litigation." *Fintiv v. Apple Inc.*, No. 6:18-cv00372-ADA, 2019 WL 4743678, at *4 (W.D. Tex. Sep. 13, 2019). Despite this fact, the Fifth Circuit has not elected to change its test for resolving this factor—which relies on physical location of electronic documents—and this Court is bound by the Fifth Circuit's precedent.

This Court, having made its determination of this factor solely on the basis of binding precedent, wishes to reiterate the concern it outlined in *Fintiv* as to the Fifth Circuit's precedent on this factor. *See Fintiv, Inc. v. Appl Inc.*, 6:18-cv-00372-ADA, 2019 WL 4743678, at *4 (W.D. Tex. Sep. 13, 2019). In this Court's experience, the vast majority of produced documents in patent litigation cases are electronic documents pulled from a party's server. Documents stored on a server in Mountain View, California can be as easily accessed by a court in Alexandria, Virginia as they can be by a Court in San Jose, California. Thus, in this Court's opinion the

physical location of electronic documents bears little weight in the determination of a convenient venue. Consequently, the Fifth Circuit inserts a rigid test into an otherwise flexible analysis.

Retaining the present framework subverts rather than promotes the stated goals of motions to transfer venue. In close cases, the relative ease of access to sources of proof may serve as the deciding factor in a Court's analysis. Thus, a transferee venue that is in fact no more convenient than the transferor venue, nonetheless, may appear on paper to be clearly more convenient. This thumbs the scales in the movant's favor as to a motion that purportedly defers to the plaintiff's choice of venue when the two venues are comparably convenient. *See In re Volkswagen of Am., Inc.*, 545 F.3d 304, 314 (5th Cir. 2008) (noting that the plaintiff's choice of venue should be respected when the transferee venue is not clearly more convenient that the transferor venue). Although this Court would not decide this case differently were the standard for this factor changed, this Court restates its hope that the Fifth Circuit will considering revisiting and amending its precedent to explicitly give courts the discretion to take into consideration the ease of accessing electronic documents in modern times.

In weighing Apple's relevant documents located in NDCA against Koss's relevant documents located near WDTX, the Court finds that the relative ease of access to sources of proof factor slightly favors transfer.

ii. The Availability of Compulsory Process to Secure the Attendance of Witnesses

After carefully reviewing the Parties' arguments, the Court determines that the availability of compulsory process to secure the attendance of witnesses factor strongly weighs against transfer. "In this factor, the Court considers the availability of compulsory process to secure the attendance of witnesses, particularly non-party witnesses whose attendance may need to be secured by a court order." *Fintiv*, 2019 WL 4743678, at *5 (citing *Volkswagen II*, 545 F.3d

at 316). A court may subpoena a witness to attend trial only (a) "within 100 miles of where the person resides, is employed, or regularly transacts business in person,"; or (b) "within the state where the person resides, is employed, or regularly transacts business in person." Fed. R. Civ. P. 45(c)(1)(A), (B); *Gemalto S.A. v. CPI Card Grp. Inc.*, No. 15-CA-0910, 2015 WL 10818740, at *4 (W.D. Tex. Dec. 16, 2015). Moreover, the ability to compel live trial testimony is crucial for evaluating a witnesses' testimony. *Aguilar-Ayala v. Ruiz*, 973 F.2d 411, 419 (5th Cir. 1992).

Apple contends that the availability of compulsory process favors transfer because one relevant third-party witness, Michael Sagan, lives near Sacramento, California. Def's Mot. at 9. Mr. Sagan is an inventor of three out of four of the asserted patents. *Id.* Conversely, Apple asserts that there are no known relevant third-party witnesses within the subpoena power of this Court. *Id.*

In response, Koss claims that Mr. Sagan has indicated he is willing to travel to Texas at Koss's expense; therefore, Mr. Sagan is a willing witness and should not be considered under this factor. Pl.'s Opp. at 7. Importantly, Koss identifies two third-party witnesses, Thomas Petrone and Hytham Alihassan, who are unwillingly to appear for trial and are subject to the subpoena power of this Court. *Id.* at 7. Mr. Petrone is the co-owner of Koss's IT vendor Synectics who lives and works in Austin and declared that he is unwilling to travel to California for trial. *Id.* at 2 [redacted]. Mr. Alihassan is a former Embedded Software and Firmware Engineer at Red Fusion, the company that initially developed the firmware for Koss's Striva line of headphones. *Id.* at 7. Koss argues that Mr. Alihassan lives and works in Austin and is, therefore, subject to this Court's subpoena power. *Id.* Koss also argues that Mr. Alihassan is a current employee of a Koss competitor Plantronics, Inc. and is unlikely to testify willingly. *Id.*

In its Reply, Apple largely reiterates its arguments adding that Koss provides no evidence that Mr. Sagan will willingly travel to WDTX to testify. Apple asserts that even if Mr. Sagan is currently willing to travel to WDTX, Koss has submitted no evidence that Mr. Sagan will feel the same way when called upon at trial. *Id.* Apple additionally attacks the relevance of Koss's WDTX witnesses and posits that Koss failed to state what specific information or documents it expects these witnesses to produce. *Id.* Apple claims that Mr. Petrone's support of Koss's litigation team and his unwillingness to travel to NDCA are irrelevant to determining this factor. *Id.* at 4–5. Apple also argues that Mr. Alihassan merely worked for a company that at one point worked on Koss's products; consequently, Apple infers that Mr, Alihassan likely has little to no information relevant to this case. *Id.* at 4. Additionally, Apple, for the first time in its Reply, identifies two other California-based witnesses, Clause Zellweger and Jay Wilson. *Id.* at 3. Mr. Zellweger and Mr. Wilson are inventors of prior art that Apple plans to present at trial. *Id.*

After careful consideration of the Parties' arguments, this Court determines that this factor strongly weighs against transfer. The Court attaches weight to this factor to the extent that the third-party witnesses are unwillingly to testify. *Turner v. Cincinnati Insurance Co.*, No. 6:19-cv-642-ADA-JCM, 2020 WL 210809, at *3 (W.D. Tex. Jan. 1, 2020) ("[T]he compulsory process factor weighs against transfer when neither side claims a witness would be unwilling to testify.") (citing *Peregrine Myanmar Ltd. V. Segal*, 89 F.3d 41, 47 (2d Cir. 1996)). Importantly, this Court has made clear that the burden is on the movant to prove unwillingness such that the compulsory process of another venue favors transfer. *See Turner v. Cincinnati Insurance Co.*, No. 6:19-cv-642, 2020 WL 210809, at *3 (W.D. Tex. Jan. 14, 2020) (noting that where no party has alleged or shown a witness's unwillingness, this factor weighs against transfer). The Parties

have identified five third-party witnesses relevant to the instant analysis: Mr. Sagan, Mr. Zellweger, Mr. Wilson, Mr. Petrone, and Mr. Alihassan.

1. Koss's Inventor—Mr. Michael Sagan

First, Koss has represented to the Court that Mr. Sagan is willing to travel to WDTX and will do so at Koss's expense. Pl.'s Opp. at 3, 7. Apple asserts that this representation "is no substitute for evidence" and, therefore, cannot be relied upon to affect the transfer analysis. Def.'s Reply at 3 (citing *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005). Apple cites *Enzo Biochem* in support of its statement that "attorney representation 'is no substitute for evidence.'" The Court notes that *Enzo Biochem* does not, in fact, state that attorney representation is no substitute for evidence, but that "attorney *argument* is no substitute for evidence." *Enzo Biochem*, 424 F. 3d at 1284. Additionally, *Enzo Biochem* is inapposite to the instant case. In *Enzo Biochem*, the Court found that, in the summary judgment context, the movant had sufficiently met its initial burden and the nonmovant's arguments alone were insufficient to meet its *burden to produce* some evidence refuting the movant's claim. *Id.* Here, Koss does not present the Court with mere argument or suggestion of Mr. Sagan's willingness to testify. Koss has affirmatively represented to the Court that Mr. Sagan is willing to travel to Texas to testify at Koss's expense. Such representations were certified to the Court and made under Rule 11. Fed. R. Civ. Pro. 11(a)–(b) (noting that by presenting to the court a document signed by an attorney, the person providing the document certifies, to the best of their knowledge, that factual contentions have evidentiary support or denials of factual contentions are warranted on the evidence).

Nevertheless, Apple, as the movant, carries the burden to prove unwillingness to testify. Even if Koss's representations were insufficient, Apple presents no evidence of its own

supporting its assertion that Mr. Sagan is, or will be, unwilling to testify. *See* Def.'s Mot; *see also* Def.'s Reply. In fact, Apple never denies that Mr. Sagan is unwilling to testify but instead attempts to impose an improper burden on Koss to establish that Mr. Sagan will irrevocably testify at trial. *Id.* At the very most, Apple points out that Koss does not offer evidence that Mr. Sagan will not change his mind. *See* Def.'s Reply at 3. Koss does not have the burden to prove that Mr. Sagan will not change his mind. Such a burden would be impractical and likely impossible to satisfy, with its equivalent being every witness pledging under oath to appear at trial regardless of any and all circumstances that occur between briefing on a motion and trial itself.

Apple does not present evidence of or even allege that Mr. Sagan is an unwilling witness while Koss states under threat of sanctions—in a Rule 11 representation to this Court—that Mr. Sagan has represented that he is a willing witness. *See* Fed. R. Civ. P. 11(b). Therefore, Mr. Sagan is not an unwilling witness properly examined under this factor.

2. Apple's Prior-Art Witnesses—Mr. Zellweger and Mr. Wilson

Next, this Court examines Apple's two prior art witnesses. In the Court's experience, such witnesses are unlikely to be called upon to testify. *Fintiv*, 2019 WL 4743678, at *5 (noting that because prior art witnesses are very unlikely to testify, such witnesses do not count for or against transfer) (citing *East Tex. Boot Co., LLC v. Nike, Inc.*, No. 2:16-cv-0290-JRG-RSP, 2017 WL 2859065, at *4 (E.D. Tex. Feb. 15, 2017)). As witnesses only relevant in the context of prior art, Mr. Zellwegger or Mr. Wilson are highly unlikely to testify at trial. Furthermore, Apple, again, fails to carry its burden as the movant to establish Mr. Zellwegger or Mr. Wilson as unwilling witnesses nor does Apple even claim that these witnesses would be unwilling to travel to this District.

3. Koss's Third-Party Witnesses—Mr. Petrone and Mr. Alihassan

This Court now turns to Koss's witnesses. Koss identifies two third-party witnesses within WDTX: Mr. Petrone and Mr. Alihassan. Pl.'s Opp. at 7. Mr. Petrone is the co-owner of Koss's IT vendor Synectics, who lives and works in Austin and has unequivocally stated that he will not testify in NDCA. *Id*. at 2 (citing Petrone Decl., ECF No. 52-3 at ¶ 16). The Court finds that Koss's IT vendor serves a primarily archival role, it is unlikely that Mr. Petrone will be called to testify at trial. Nevertheless, Mr. Petrone is an established unwilling witness who resides in this District and is, therefore, subject only to this Court's subpoena power and not subject to the subpoena power of the NDCA court.

Mr. Alihassan is a former Embedded Software and Firmware Engineer at Red Fusion, the company that initially developed the firmware for Koss's Striva line of headphones. As a Firmware Engineer who worked at Red Fusion during development of the firmware for Koss's Striva headphones, the Court finds that Mr. Alihassan is a relevant witness regarding the firmware in Koss's Striva headphones in the context of a lost profits damages analysis. Additionally, Mr. Alihassan, as a current employee of a Koss competitor Plantronics, Inc., is unlikely to willingly testify.

Koss has established Mr. Petrone, while unlikely to testify at trial, and Mr. Alihassan as unwilling witnesses who are within this Court's subpoena power but are not subject to NDCA's subpoena power. Apple has failed to sufficiently establish any unwilling witnesses subject to NDCA court's subpoena power. Consequently, this Court determines that the availability of compulsory process factor strongly weighs against transfer.

iii. The Cost of Attendance for Willing Witnesses

The convenience of witnesses is the single most important factor in the transfer analysis. *In re Genentech, Inc.*, 566 F.3d 1338, 1342 (Fed. Cir. 2009). The Court should consider all potential material and relevant witnesses. *See Alacritech Inc. v. CenturyLink, Inc.*, No. 2:16-cv-00693-JRG-RSP, 2017 WL 4155236, at *5 (E.D. Tex. Sep. 19, 2017). The convenience of party witnesses is given little weight. *ADS Sec. L.P. v. Advanced Detection Sec. Servs., Inc.*, No. A-09-CA-773-LY, 2010 WL 1170976, at *4 (W.D. Tex. Mar. 23, 2010), report and recommendation adopted in A-09-CA-773-LY (ECF No. 20) (Apr. 14, 2010). The Fifth Circuit's 100-mile rule states that "[w]hen the distance between an existing venue for trial of a matter and a proposed venue § 1404(a) is more than 100 miles, the factor of inconvenience of witnesses increases in direct relationship to the additional distance to be traveled." *In re TS Tech USA Corp.*, 551 F.3d 1315, 1320 (Fed. Cir. 2008) (quoting *Volkswagen I*, 371 F.3d at 204–05). "Courts properly give more weight to the convenience of non-party witnesses than to party witnesses." *Netlist*, No. 6:20-cv-00194-ADA at 13; *see Moskowitz Family LLC v. Globus Med., Inc.*, No. 6:19-cv-00672-ADA, 2020 WL 4577710, at *4 (W.D. Tex. Jul. 2, 2020). As a preliminary matter, given typical time limits at trial, the Court does not assume that all of the party and third-party witnesses listed in 1404(a) briefing will testify at trial. *Fintiv*, 2019 WL 4743678, at *6. Rather, in addition to the party's experts, the Court assumes that no more than a few party witnesses—and even fewer third-party witnesses, if any—will testify live at trial. *Id.* Therefore, long lists of potential party and third-party witnesses do not affect the Court's analysis for this factor. *Id.*

Apple argues that the convenience and cost of attendance to the relevant witnesses weighs in favor of transfer to NDCA. Def.'s Mot. at 9. Apple claims that all of its employees who worked on the accused features are located in California, naming thirteen of its employees as knowledgeable of the engineering, design, and marketing of the accused products, licensing of

relevant patents, and relevant financial records and patents. *Id.* First, Apple states that these witnesses could travel from Apple's headquarters in Cupertino to the NDCA courthouses in Oakland or San Francisco in less than an hour; alternatively, these same employees could travel to the courthouse in San Jose in approximately fifteen minutes. *Id.* at 10. Conversely, Apple maintains that it would take 5.5 hours for these same employees to take a direct flight to Waco, or these employees would have to take a 3.5 hour flight to either Dallas or Austin followed by a one-hour-and-forty-five minute drive to Waco. *Id.* Additionally, Apple argues that NDCA is more convenient for the Plaintiff's third-party witness, Mr. Sagan who resides in Sacramento. Def.'s Mot. at 10. Apple claims that Mr. Sagan can drive from his home to the courthouse in less than two hours. *Id.* at 11. Conversely, Apple claims that it would take Mr. Sagan five hours or more to reach the courthouse in Waco from his home. *Id.* While Apple concedes that it has offices within WDTX, it maintains that none of the employees responsible for the design engineering, development, or marketing of the accused features work out of such offices. *Id.* at 12.

In response, Koss argues that the convenience to willing witnesses weighs against transfer. First, Koss states that this District is closer to its Midwestern offices than NDCA, and therefore more convenient for its party witnesses. Pl.'s Opp. at 9. However, Koss notes that the convenience of party witnesses is given little weight. *Id.* at 8. Thus, turning to third-party witnesses, Koss notes that two relevant third-party witnesses, Mr. Petrone and Mr. Alihassan live in WDTX. *Id.* Additionally, Koss rebuts Apple's claim that NDCA is a more convenient venue for third-party inventor Mr. Sagan, stating that Koss is covering the cost of Mr. Sagan's travel expenses, therefore, there is negligible convenience to Mr. Sagan if this case were transferred to NDCA. *Id.* Moreover, six of the eight other third-party inventors live in either Wisconsin or

Illinois. *Id*. Koss notes that these witnesses will have to travel to either venue but notes that the cost to travel to WDTX is substantially less than the cost to travel to NDCA, largely because WDTX is closer to these states than NDCA. *Id*.

As to Apple's list of thirteen witnesses, Koss observes that merely presenting a sprawling list of witnesses is not persuasive because it is unlikely that Apple will call each of these thirteen witnesses at trial. *Id.* at 9. Moreover, Koss contends that because Apple has an Austin office, Apple greatly exaggerates the inconvenience to its witnesses of travelling to WDTX. *Id*. Particularly, Koss notes that such witnesses could continue their normal employment in Apple's Austin office. *Id.* Thus, Koss concludes that WDTX is more convenient than NDCA for six third-party inventor witnesses and for the majority of other third-party witnesses and that Apple's contention that NDCA is significantly more convenient is undercut by the availability of its Austin office. *Id*. at 10–11.

In its Reply, Apple points out that Koss does not dispute the time it would take for Apple's employees to travel to the NDCA courthouse or how long it would take for the same witnesses to reach the WDTX courthouse. Pl.'s Reply at 5.

In analyzing the convenience of Apple's party witnesses, Koss's party witnesses, and relevant third-party witnesses, the Court finds that this factor weighs against transfer.

1. Apple's Party Witnesses

The convenience of party witnesses is given little weight. *ADS Sec. L.P. v. Advanced Detection Sec. Servs., Inc.*, No. A-09-CA-773-LY, 2010 WL 1170976, at *4 (W.D. Tex. Mar. 23, 2010), report and recommendation adopted in A-09-CA-773-LY (ECF No. 20) (Apr. 14, 2010). This Court "assumes that no more than a few party witnesses—and even fewer third-party witnesses" will testify and "long lists of potential party and third-party witnesses" do not impact

its analysis. *STC.UNM v. Apple Inc.*, No. 6:19-cv-428-ADA, 2020 WL 4559706, at *6 (W.D. Tex. Apr. 1, 2020). As Koss notes this Court does not determine this factor by mechanically counting the number of witnesses. *See Fintiv*, 2019 WL 4743678, at *4.

As a preliminary matter, the Court finds it highly unlikely that Apple will call the majority of its thirteen employee witnesses at trial. More importantly, the Court disagrees with Apple that all thirteen of Apple's employee witnesses weigh in favor of transfer. Notably, Mr. Dave Shaw, Mr. Robert Boyd, and Mr. Jeff Bruksch reside in the Southern District of California ("SDCA") not NDCA. Def.'s Mot. at 3–4. Specifically, Mr. Shaw lives in San Diego, California, 500 miles from NDCA's court in San Francisco. Mr. Boyd resides in Los Angeles, California which is approximately 400 miles away from NDCA's courthouse in San Francisco. *See id*. Mr. Bruksch lives in Culver City, California which is also approximately 400 miles from NDCA's court in San Francisco. *See id*. The location of these three witnesses undercuts Apple's argument that NDCA is overwhelmingly more convenient than WDTX, as these witnesses—Mr. Shaw especially—must travel significant distances to reach either WDTX or NDCA.

Instructive to this analysis, the Federal Circuit has concluded that witnesses traveling from Iowa would only be "slightly more inconvenienced by having to travel to California" than to Texas. *In re Genentech, Inc.*, 566 F.3d at 1348. Notably, the distance from Iowa to Texas is 550 miles and the distance from Iowa to California is 1,800 miles. Similarly, the distance from San Diego (where Mr. Shaw resides) to San Francisco is 502 miles and the distance from San Diego to Waco is 1,400 miles. Additionally, the Federal Circuit has rejected courts giving more weight to the fact that witnesses "need to travel a greater distance to reach" a venue, noting that non-party witnesses "will likely have to leave home for an extended period" whether or not the case was transferred, and thus such witnesses would only be slightly more inconvenienced by

having to travel to an extra distance. *In re Apple Inc.*, 979 F.3d 1332, 1342 (Fed. Cir. 2020). Relying on Federal Circuit precedent, the Court finds that Mr. Dave Shaw, Mr. Robert Boyd, and Mr. Jeff Bruksch are only slightly more inconvenienced by having to travel to this District as opposed to NDCA. [redacted]

Therefore, such testimony would be duplicative.

Relevant to all thirteen of Apple's employee witnesses is Apple's Austin corporate campus located in this District. In *In Re TracFone*, the Federal Circuit explained the rationale behind the Fifth Circuit's 100-mile Rule stating that "the ultimate 'task of scheduling fact witnesses' is 'to minimize the time when they are removed from their regular work or home responsibilities.'" *In Re TracFone Wireless, Inc.*, No. 2021-136 at 4 (Fed. Cir. April 20, 2021) (citing *Volkswagen I*, 371 F.3d at 205). The Federal Circuit further explained that "this gets increasingly difficult and complicated . . . when the travel time from their home or work site to the court facility is five or six hours one-way as opposed to 30 minutes or an hour." *Id.*

Apple does not contest the convenience of its Austin corporate campus. In fact, Apple boasts that Austin is "home to Apple's largest campus outside of Cupertino, California," similar to a second home.[2] In fact, Apple is currently constructing a new $1 billion, 3-million-square-foot Austin campus (in addition to its existing Austin facilities) which includes two-million-square-feet of office space making it one of the world's largest office buildings.[3] This facility is touted as being capable of housing 15,000 employees.[4] The new Austin facility also includes a

[2]*See* Feature, Apple, *A Landmark Year of Giving from Apple*, Apple.com, https://www.apple.com/newsroom/2020/12/a-landmark-year-of-giving-from-apple/ (last visited April 21, 2021).
[3]Michael Potuck, *Apple plans big upgrade to new $1B Austin campus with 192-room hotel*, 9TO5Mac.com, https://9to5mac.com/2020/05/20/apple-austin-campus-hotel-upgrade/ (last visited April 21, 2021).
[4]*See* Press Release, Apple, *Apple Expands in Austin*, Apple.com, https://apple.com/newsroom/2019/11/apple-expands-in-austin/ (last visited April 21, 2021).

192-room hotel with a six-story design to house Apple employees who presumably travel to Austin for work. *See supra* note 4. Incidentally, Apple's new Austin facility is scheduled to open in 2022, the same year that trial in this case is scheduled. *See* Scheduling Order, ECF No. 30.

The Court strongly believes that the convenience of this new Austin facility, along with its existing Austin facilities, greatly minimizes the time that Apple's employees are removed from their regular work responsibilities. Additionally, travel time from this work site to the Court facility would be comparable, if not less, than the travel time from Apple employees California work sites to a NDCA courthouse. Conversely, Koss has no facilities in California. Pl.'s Opp. at 9.

Additionally, these thirteen witnesses are party witnesses, which are afforded little weight. *See L.P.*, 2010 WL 1170976, at *4. Party witnesses—especially employee witnesses—are afforded little weight because the party can compel their testimony and ensure that they are produced at trial. *Gardipee v. Petroleum Helicopter*, 49 F. Supp. 2d 925, 929 (E.D. Tex. 1999).[5]

2.Koss's Party Witnesses

Koss contends that this District would be less costly for its witnesses because it is closer to its Midwestern offices than NDCA and a less expensive travel destination. Pl.'s Opp. at 9. Apple asserts that Koss provides no support for its assertions and that travel time between the Midwestern offices and Waco is the same as the travel time to San Francisco. Def.'s Reply at 6. As such, the Court finds both venues to be equally convenient to Koss's party witnesses.

3. Third-Party Witnesses

[5]The Parties also address two additional Apple employees, [redacted].

"Courts properly give more weight to the convenience of non-party witnesses than to party witnesses." *Netlist*, No. 6:20-cv-00194-ADA at 13; *see Moskowitz Family LLC v. Globus Med., Inc.*, No. 6:19-cv-00672-ADA, 2020 WL 4577710, at *4 (W.D. Tex. Jul. 2, 2020). Because the Parties cannot compel third-party witnesses to testify in the way they can compel their employee witnesses, the convenience of third-party witnesses is given considerable weight. *See Gardipee*, 49 F. Supp. 2d at 929. However, again, the Court does not find long lists of potential third-party witnesses persuasive in and of themselves. *Fintiv*, 2019 WL 4743678, at *6.

The Court finds that this District would be more convenient for the six third-party inventor witnesses. Based on the Court's experience, inventor testimony is one of the most critical witnesses that will testify live at trial. *Uniloc 2017 LLC v. Apple Inc.*, 6-19-CV-00532-ADA, 2020 WL 3415880, at *6 (W.D. Tex. June 22, 2020). As such the inventors being located closer to WDTX is a significant fact that weighs against transfer with respect to the cost of attendance for willing witnesses factor. *Id.* All six of the inventors hail from two midwestern states, Illinois and Wisconsin, and they are each closer to this District than to NDCA.

Mr. Petrone—co-owner of Koss's IT vendor Synectics—has testified that he would be willing to appear for trial in this District alone. Furthermore, Mr. Petrone lives in Austin and thus this venue is highly convenient.

Koss's discusses the convenience of Mr. Alihassan. The Court finds that —regardless of where this case is tried—Mr. Alihassan will be an unwilling, third-party witness. As such, the Court properly addressed Mr. Alihassan under the availability of compulsory process factor, and it would be improper to address him again under the cost of attendance for willing witnesses factor here. As such, Mr. Alihassan's convenience is not germane to the determination of this factor.

Next, the Court analyzes the convenience of Mr. Sagan, a willing third-party inventor witness. *In re Apple Inc.*, the Federal Circuit cautioned against attributing too much convenience merely because a witness lives closer to a venue. *In re Apple Inc.*, 979 F.3d at 1342. In that case, the inventor and patent prosecutor lived closer to WDTX than the Southern District of Florida, but the Federal Circuit explained that each "will likely have to leave home for an extended period of time and incur travel, lodging, and related costs" regardless of the venue. *In re Apple Inc.*, 979 F.3d at 1342. Here, Koss has represented to the Court that it will be paying for Mr. Sagan's travel expenses to attend trial. Consequently, while Mr. Sagan's travel time to NDCA may be longer than his travel time to WDTX, he will likely have to leave home for an extended period of time and will not incur any travel, lodging, or related costs regardless of the venue. Thus, Mr. Sagan's convenience weighs only slightly in favor of transfer.

Therefore, the Court must weigh (1) the convenience of Apple's party witnesses: thirteen somewhat-duplicative employees several of whom live outside of NDCA; (2) the negligible convenience of Koss's party witnesses; and (3) the convenience of the third-party witnesses: Mr. Petrone, Mr. Sagan, and the other six inventor witnesses (across five patents). As such, the Court finds that the convenience of willing witnesses factor weighs against transfer.

iv. All Other Practical Problems That Make Trial of a Case Easy, Expeditious and Inexpensive

This factor considers the practical problems that make a trial easy, expeditious, and inexpensive for the private parties. *In re Genetech, Inc.*, 566 F.3d at 1342. Further, having a single district court try cases involving the same patents promotes judicial economy. *In re Volkswagen of Am., Inc.*, 566 F.3d 1349, 1351 (Fed Cir. 2009). Permitting two cases involving the same issues to be heard by two different courts wastes time, energy, and money; it is this

kind of waste that § 1404 was intended to avoid. *Continental Grain Co. v. The FBL-585*, 364 U.S. 19, 26 (1960).

Apple argues that there are no other practical problems that would make trial easier, more expeditious, or less expensive in either NDCA or WDTX. Def.'s Mot. at 12. Specifically, Apple asserts that this Court has no prior familiarity with the asserted patents or with Koss in general. *Id*. at 13. Further, as to this case, Apple asserts that this Court has not held any substantive proceedings, but NDCA is currently supervising an arbitration between the Parties over a related confidentiality agreement. *Id*.

Apple argues that Koss's decision to sue multiple co-defendants in this division does not—on its own—weigh against transfer. *Id*. To support this assertion, Apple cites the Federal Circuit's *In re Google* decision noting that allowing a plaintiff's filing of multiple suits in one district to weigh against transfer "would be effectively inoculating a plaintiff against convenience transfer under § 14049(a)." *Id*. (citing *In re Google Inc.*, 2017 WL 977038, at *3 (Fed. Cir. Feb 23, 2017)). Apple further contends that there is a "limited relationship" between the co-pending cases; specifically, there is only one asserted patent that is common to all five cases. *Id*. Moreover, Apple points out that when considering co-pending litigation—as it is here—the Court must also consider the presence of co-pending motions to transfer. *Id*. at 14. Because defendants in related co-pending litigation have also moved to transfer venue, this should be taken into account insofar as co-pending litigation motivates this court's decision. *Id*.

In response, Koss notes that it has multiple patent infringement cases in WDTX over the same patents asserted against Apple. Pl.'s Opp. at 11. Specifically, four of the five patents asserted against Apple in this case are also asserted against at least one other case before this Court. *Id*. Moreover, Koss notes that "simple efficiency suggests that these cases should be heard

by as few judges as possible, to avoid duplication of claim construction, case management, and other time-consuming proceedings." *Id.* While Koss concedes that it cannot inoculate itself against transfer via the filing of multiple related proceedings in this District, Koss also observes that co-pending litigation cannot be ignored merely because the defendants in these related cases have each filed motions to transfer. *Id.* at 12 (citing *Parus Holdings Inc. v. LG Electronics Inc.*, No. 6:19-cv-00432-ADA, 2020 WL 4905809, at *7 (W.D. Tex. Aug. 20, 2020)). Koss argues that because the five defendants in these five related cases have filed motions to transfer to four different districts, the argument that retaining the cases in WDTX would promote judicial economy is strengthened. *Id.* Thus, Koss believes that if this Court retains at least one co-pending case, then this factor weighs heavily against transfer.

In reply, Apple reiterates that Koss cannot inoculate itself against transfer by filing separate related motions and that there is no reason to think that any of the cases will be tried in WDTX in light of the outstanding motions for transfer. Def.'s Reply at 6–7. Thus, Apple would have this Court judge this factor as neutral.

This Court determines that this factor weighs slightly against transfer. There is no question that there are co-pending proceedings that involve a majority of the same patents asserted against Apple. Further, there is no question that there are co-pending motions to transfer. Thus, the salient issue is to what extent the Federal Circuit has cautioned against district courts allowing this factor to play a role in their analysis. This Court determines that Apple overstates the Federal Circuit's holding in *In re Google*. There, the Federal Circuit indeed noted that a plaintiff cannot overcome a motion to transfer venue "*simply* because it filed related suits against multiple defendants in the transferor district." *In re Google*, 2017 WL 977038, at *3 (emphasis added). But the Federal Circuit noted that this "is not to say that judicial economy can

never dominate the court's transfer analysis"; in fact, the Federal Circuit has held "it can play a significant role." *Id.* at *2 (citing *In re Vistaprint Ltd.*, 628 F.3d 1342, 1347 (Fed. Cir. 2010)).

Thus, the Court interprets the Federal Circuit's holding in *Google* not as impacting a district court's determination of *the factor* but rather the district court's *weighing of the factors against other factors*. Here, the Court does not rely solely on the practical-problems factor to outweigh factors that strongly weigh in Apple's favor; rather the Court notes that this factor is one of many that weighs against transfer.

B. The Public Interest Factors Weigh Against Transfer.

i. Administrative Difficulties Flowing From Court Congestion

The relevant inquiry under this factor is actually "[t]he speed with which a case can come to trial and be resolved[.]" *In re Genentech, Inc.*, 566 F.3d 1338, 1347 (Fed. Cir. 2009).

Apple argues that the administrative difficulties flowing from court congestion are neutral and entitled to little weight. Def.'s Mot at 16. Apple first asserts that the Fifth Circuit has characterized this factor as speculative and stated that when "several relevant factors weigh in favor of transfer and other are neutral, then the speed of the transferee district court should not alone outweigh all those other factors." *Id.* (quoting *In re Genentech*, 566 F.3d at 1347). Further, Apple argues that NDCA and WDTX dispose of cases on a roughly equal timeline. *Id.* Apple downplays that this Court has recently disposed of some cases faster than NDCA and claims that this has not always been the case. *Id.* But Apple maintains that "[t]here is no evidence in the record that [NDCA] and this District meaningfully differ in their abilities to expeditiously process cases." *Id.* Consequently, Apple infers that this factor is neutral. *Id.*

In response, Koss asserts that NDCA has not held a patent trial in over a year. Pl.'s Opp. at 12. Moreover, Koss points out that Apple's statistics relate to WDTX as a whole rather than to

just this division; Koss contends that this overlooks the Waco Division's faster time-to-trial. *Id.* at 13. Specifically, "the Waco Division has its own patent-specific Order Governing Proceedings ('OGP') that ensures efficient administration of patent cases" *Id.* (quoting *ParkerVision, Inc. v. Intel Corp.*, No. 6:20-cv-00108-ADA, 2021 WL 401989, at *7 (W.D. Tex. Jan. 26, 2001)). Finally, Koss observes that this Court has already set a trial date for this case that is just thirteen months away. *Id*. Thus, Koss argues that the congestion factor weighs against transfer.

In its reply, Apple argues that "nothing in a court's ability to set a schedule directly speaks to" this factor. Def.'s Reply at 8 (citing *In re Adobe Inc.*, 823 F. App'x 929, 932 (Fed. Cir. 2020)). Moreover, Apple acknowledges that its prior cited evidence speaks only to WDTX in general and not the Waco Division specifically; however, Apple nonetheless argues that the recent explosion in WDTX's docket is attributable to this Court's growing docket. *Id*. Finally, Apple asserts that this Court's growing docket makes it more likely that this factor will favor transfer; thus, Apple concludes that the congestion factor is at least neutral. *Id*.

This Court—convinced by Koss's assessment of the respective time to trial of WDTX and NDCA—determines that this factor weighs against transfer. When assessing the court congestion factor, a court must make its decision on the basis of past data rather than anticipated schedules. *See Adobe*, 823 F. App'x at 932. While Apple claims historically WDTX and NDCA have disposed of cases at comparable rates, recently this Court has proved more expeditious. In this Court's judgment, recent data is more probative in determining court congestion. Further, this Court affords little weight to Apple's observation that this Court has 400 more intellectual property cases than NDCA. First, Apple provides no indication as to the total number of cases handled by both courts. Second, Apple does not articulate with any specificity how the additional 400 intellectual property law cases will affect WDTX's schedule for bringing this case to trial.

When weighing the rate at which WDTX has disposes of patent cases relative to NDCA against the excess of 400 cases that WDTX has over NDCA, this Court gives more weight to the rate of disposal. Thus, this Court finds that this factor weighs against transfer.

ii. Local Interest in Having Localized Interests Decided at Home

Apple argues that California has a local interest in deciding the instant case. Def.'s Mot. at 14. Apple engineers designed the accused products and coded the accused features in California. *Id*. 14–15. Moreover, Apple states that its Austin office is not relevant to the determination of this factor; this factor does not pertain to a party's significant connections to a venue but rather to the connection between the venue and the events giving rise to the cause of action. *Id*. at 15. But Apple alleges that those activities took place in California not Texas. Moreover, apart from product sales, Apple alleges there are no activities relevant to this proceeding that took place in Texas, let alone WDTX. *Id*.

Koss responds by noting that Apple has "a significant number of employees" in this District. Pl.'s Opp. at 13. In fact, this Court has previously found that Apple has over 6,000 employees at its Austin campus, which is Apple's second largest in the U.S. *Fintiv*, 2019 WL 4743678, at *7. Koss further contends that [redacted]. Moreover, Koss observes that Apple has engaged in allegedly infringing activities in this District. *Id.* at 14. Finally, Koss observes that Apple has benefited from its contacts with WDTX's work force, tax benefits, and laws and regulations; from this, Koss determines that it would be unfair for Apple to reap these benefits and deny that WDTX has a substantial interest in deciding this case. *Id*.

In reply, Apple asserts that "the local-interest factor 'most notably regards not merely the Parties' significant connections to each forum writ large, but rather the significant connections

between a particular venue and the events that gave rise to the suit." Def.'s Reply at 7 (quoting *In re Apple Inc.*, 979 F.3d 1332, 1345 (Fed. Cir. 2020)). Apple argues that Koss ignores this standard when it states Apple's general connections to this District. *Id*. Apple contends that these statements on Koss's part do nothing to support a localized interest in WDTX; rather, Koss's statements would support a finding of a localized interest in virtually any judicial district. *Id*. at 8. Thus, Apple concludes that there are strong local interests in California but none here in Texas; as a result, Apple concludes that the localized-interest factor favors transfer. *Id*.

This Court finds that this factor weighs slightly against transfer. As mentioned above, Apple has a significant number of employees within WDTX. Further, Apple is likely one of the largest employers in both NDCA and WDTX, so both districts have a significant interest in this case. Notably, Apple attempts to minimize its local impact in this District. Apple has published several articles publicizing its impact in Austin, "Apple is a hometown business here in Austin . . . a company that is so deeply woven into our community fabric."[6] Even Apple's CEO Tim Cook states, "With the construction of our new campus in Austin now underway, Apple is deepening our close bond with the city and the talented and diverse workforce that calls it home. Responsible for 2.4 million American jobs and counting, Apple is eager to write our next chapter here and to keep contributing to America's innovation story."[7]

Even though the parties dispute whether the Apple employees located within WDTX are knowledgeable about the relevant information for this case, [redacted]. As such, WDTX has a localized interest with respect to Apple.

[6]*See* Feature, Apple, A Landmark Year of Giving From Apple, Apple.com, https://www.apple.com/newsroom/2020/12/a-landmark-year-of-giving-from-apple/ (last visited April 21, 2021).
[7]*See* Press Release, Apple, *Apple Expands in Austin,* Apple.com, https://apple.com/newsroom/2019/11/apple-expands-in-austin/ (last visited April 21, 2021).

Moreover, Koss does "extensive business in Texas, both through direct sales and through sales to Texas companies, and files Texas state tax returns." *Id.* at 14. Additionally, WDTX has a significant localized interest because of the state and local tax benefits received by and pledged to Apple to build a second campus in Austin.

Consequently, given that Apple's presence in both districts is neutral in terms of transfer, but Koss's presence in WDTX weighs against transfer, the Court finds that the local-interest factor slightly weight against transfer.

iii. Familiarity of the Forum With the Law That will Govern the Case

The Parties and this Court agree that this factor is neutral.

iv. Avoidance of Unnecessary Problems of Conflict of Laws or in the Application of Foreign Law

The Parties and this Court agree that this factor is neutral.

V. CONCLUSION

The public factors weigh against transfer with the Court finding two factors weighing against transfer, and the remaining two factors neutral. Importantly, the private factors weigh decidedly against transfer. The two most important factors—the availability of compulsory process and convenience of willing witnesses—weigh against transfer with the availability of compulsory process factor further weighing strongly against transfer. Whereas only the location of sources of proof factor favors transfer. Even if the practical-problems factor were neutral, this Court would determine that the factors, taken together, weigh against transfer. Consequently, Apple has failed to meet the heavy burden of showing that NDCA is a *clearly more convenient* venue warranting transfer.

It is therefore **ORDERED** that Apple's motion for transfer venue to the Northern District of California is **DENIED**.

SIGNED this 22nd day of April, 2021.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

PATENT

U.S. District Court [LIVE]
Western District of Texas (Waco)
CIVIL DOCKET FOR CASE #: 6:20−cv−00665−ADA

KOSS Corporation v. Apple Inc
Assigned to: Judge Alan D Albright
Related Cases: 6:20−cv−00661−ADA
6:20−cv−00662−ADA
6:20−cv−00663−ADA
6:20−cv−00664−ADA
6:21−cv−00089−ADA
6:21−cv−00091−ADA
6:21−cv−00088−ADA
6:21−cv−00092−ADA
Case in other court: USCA Federal Circuit, 21−00135
Cause: 35:271 Patent Infringement

Date Filed: 07/22/2020
Jury Demand: Both
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

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Date Filed	#	Docket Text

03/24/2020	10	STANDING ORDER from U.S. District Judge Alan D. Albright regarding scheduled civil hearings. Signed by Judge Alan D Albright. (Attachments: # 1 Supplemental Standing Order from Chief Judge Garcia re COVID19 Court Procedures)(mc5) (Entered: 07/24/2020)
07/22/2020	1	COMPLAINT (Filing fee $ 400 receipt number 0542−13787985), filed by KOSS Corporation. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J)(Ghavimi, Darlene) (Entered: 07/23/2020)
07/22/2020		Case assigned to Judge Alan D Albright. CM WILL NOW REFLECT THE JUDGE INITIALS AS PART OF THE CASE NUMBER. PLEASE APPEND THESE JUDGE INITIALS TO THE CASE NUMBER ON EACH DOCUMENT THAT YOU FILE IN THIS CASE. (bw) (Entered: 07/23/2020)
07/23/2020	2	REQUEST FOR ISSUANCE OF SUMMONS by KOSS Corporation. (Ghavimi, Darlene) (Main Document 2 replaced on 7/23/2020) (bw). (Entered: 07/23/2020)
07/23/2020	3	Notice of Filing of Patent/Trademark Form (AO 120). AO 120 forwarded to the Director of the U.S. Patent and Trademark Office. (Ghavimi, Darlene) (Main Document 3 replaced on 7/23/2020) (bw). (Entered: 07/23/2020)
07/23/2020	4	Certificate of Interested Parties by KOSS Corporation. (Ghavimi, Darlene) (Entered: 07/23/2020)
07/23/2020	5	MOTION to Appear Pro Hac Vice by Darlene Ghavimi *for Benjamin J. Weed* (Filing fee $ 100 receipt number 0542−13787994) by on behalf of KOSS Corporation. (Ghavimi, Darlene) (Main Document 5 replaced on 7/23/2020) (bw). (Entered: 07/23/2020)
07/23/2020	6	MOTION to Appear Pro Hac Vice by Darlene Ghavimi *for Philip A. Kunz* (Filing fee $ 100 receipt number 0542−13787995) by on behalf of KOSS Corporation. (Ghavimi, Darlene) (Main Document 6 replaced on 7/23/2020) (bw). (Entered: 07/23/2020)
07/23/2020	7	MOTION to Appear Pro Hac Vice by Darlene Ghavimi *for Erik Halverson* (Filing fee $ 100 receipt number 0542−13787996) by on behalf of KOSS Corporation. (Ghavimi, Darlene) (Main Document 7 replaced on 7/23/2020) (bw). (Entered: 07/23/2020)
07/23/2020	8	MOTION to Appear Pro Hac Vice by Darlene Ghavimi *for Peter E. Soskin* (Filing fee $ 100 receipt number 0542−13787997) by on behalf of KOSS Corporation. (Ghavimi, Darlene) (Entered: 07/23/2020)
07/23/2020	9	Summons Issued as to Apple Inc. (bw) (Entered: 07/23/2020)
07/24/2020		Text Order GRANTING 5 Motion to Appear Pro Hac Vice. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT−I (f)(2). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. entered by Judge Alan D Albright. (This is a text−only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 07/24/2020)
07/24/2020		Text Order GRANTING 6 Motion to Appear Pro Hac Vice. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT−I (f)(2). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. entered by Judge Alan D Albright. (This is a text−only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 07/24/2020)

07/24/2020		Text Order GRANTING 7 Motion to Appear Pro Hac Vice. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT−I (f)(2). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. entered by Judge Alan D Albright. (This is a text−only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 07/24/2020)
07/24/2020		Text Order GRANTING 8 Motion to Appear Pro Hac Vice. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT−I (f)(2). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. entered by Judge Alan D Albright. (This is a text−only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 07/24/2020)
07/28/2020	11	SUMMONS Returned Executed by KOSS Corporation. Apple Inc served on 7/27/2020, answer due 8/17/2020. (Ghavimi, Darlene) (Entered: 07/28/2020)
08/07/2020	12	MOTION to Strike 1 Complaint, by Apple Inc. (Attachments: # 1 Exhibit Exhibit 1)(Wingard, Steven) Terminated on 3/31/2021 (lad). (Entered: 08/07/2020)
08/07/2020	13	MOTION to Appear Pro Hac Vice by Steven J. Wingard *for Alan E. Littmann* (Filing fee $ 100 receipt number 0542−13843622) by on behalf of Apple Inc. (Wingard, Steven) (Entered: 08/07/2020)
08/07/2020	14	MOTION to Appear Pro Hac Vice by Steven J. Wingard *for Lauren Abendshien* (Filing fee $ 100 receipt number 0542−13843626) by on behalf of Apple Inc. (Wingard, Steven) (Entered: 08/07/2020)
08/07/2020	15	MOTION to Appear Pro Hac Vice by Steven J. Wingard *for Michael T. Pieja* (Filing fee $ 100 receipt number 0542−13843628) by on behalf of Apple Inc. (Wingard, Steven) (Entered: 08/07/2020)
08/07/2020	16	RULE 7 DISCLOSURE STATEMENT filed by Apple Inc. (Wingard, Steven) (Entered: 08/07/2020)
08/08/2020		Text Order GRANTING 13 Motion to Appear Pro Hac Vice. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT−I (f)(2). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. entered by Judge Alan D Albright. (This is a text−only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 08/08/2020)
08/08/2020		Text Order GRANTING 14 Motion to Appear Pro Hac Vice. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT−I (f)(2). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. entered by Judge Alan D Albright. (This is a text−only entry generated by the court. There is no document

		associated with this entry.) (jy) (Entered: 08/08/2020)
08/08/2020		Text Order GRANTING 15 Motion to Appear Pro Hac Vice. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT−I (f)(2). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. entered by Judge Alan D Albright. (This is a text−only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 08/08/2020)
08/11/2020	17	MOTION to Appear Pro Hac Vice by Darlene Ghavimi *on behalf of Gina A. Johnson* (Filing fee $ 100 receipt number 0542−13849089) by on behalf of KOSS Corporation. (Attachments: # 1 Proposed Order)(Ghavimi, Darlene) (Entered: 08/11/2020)
08/11/2020		Text Order GRANTING 17 Motion to Appear Pro Hac Vice for Attorney Gina A Johnson for KOSS Corporation. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT−I (f)(2). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order entered by Judge Alan D Albright. (This is a text−only entry generated by the court. There is no document associated with this entry.) (sm3) (Entered: 08/11/2020)
08/11/2020	18	Unopposed Motion for leave to File Sealed Document (Attachments: # 1 Proposed Order, # 2 Sealed Document) (Abendshien, Lauren) (Entered: 08/11/2020)
08/12/2020	19	Unopposed MOTION for Extension of Time to File Response/Reply as to 12 MOTION to Strike 1 Complaint, by KOSS Corporation. (Attachments: # 1 Proposed Order)(Ghavimi, Darlene) (Entered: 08/12/2020)
08/12/2020		Text Order GRANTING 18 Motion for Leave to File Sealed Document entered by Judge Alan D Albright. Before the Court is Defendant Apple Inc.'s Unopposed Motion for Leave to File a Sealed Document. The Court GRANTS the motion. The Clerk's Office is directed to file Exhibit 1 to Defendant Apple Inc.'s Motion to Strike, filed August 7, 2020, shall be allowed to be filed under seal. (This is a text−only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 08/12/2020)
08/12/2020		Text Order GRANTING 19 Motion for Extension of Time to File Response/Reply entered by Judge Alan D Albright. Came on for consideration is Plaintiff's Motion. Noting that it is unopposed, the Court GRANTS the Motion. Plaintiff shall have up to and including August 21, 2020 to respond/reply. (This is a text−only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 08/12/2020)
08/12/2020	20	Sealed Document filed. Exhibit 1 to 12 Motion to Strike. (bw) (Entered: 08/13/2020)
08/13/2020	21	MOTION to Appear Pro Hac Vice by Darlene Ghavimi *for James A. Shimota* (Filing fee $ 100 receipt number 0542−13861551) by on behalf of KOSS Corporation. (Ghavimi, Darlene) (Entered: 08/13/2020)
08/14/2020		Text Order GRANTING 21 Motion to Appear Pro Hac Vice for Attorney James A. Shimota for KOSS Corporation. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT−I (f)(2). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby

		granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order entered by Judge Alan D Albright. (This is a text−only entry generated by the court. There is no document associated with this entry.) (sm3) (Entered: 08/14/2020)
08/21/2020	22	Unopposed MOTION for Leave to Exceed Page Limitation by KOSS Corporation. (Attachments: # 1 Ex. 1 Proposed Opposition Brief, # 2 Ex. A to Opposition Brief, # 3 Ex. B to Opposition Brief, # 4 Proposed Order)(Ghavimi, Darlene) (Entered: 08/21/2020)
08/24/2020		Text Order GRANTING 22 Unopposed Motion for Leave to File Excess Pages entered by Judge Alan D Albright. The Clerk is directed to file the attachments associated with the instant motion. (This is a text−only entry generated by the court. There is no document associated with this entry.) (as) (Entered: 08/24/2020)
08/24/2020	23	Response in Opposition to Motion, filed by KOSS Corporation, re 12 MOTION to Strike 1 Complaint, filed by Defendant Apple Inc (Attachments: # 1 Exhibit A, # 2 Exhibit B)(am) (Main Document 23 replaced on 8/24/2020) (am). (Entered: 08/24/2020)
08/28/2020	24	Unopposed MOTION for Leave to Exceed Page Limitation by Apple Inc. (Attachments: # 1 Exhibit A − Proposed Reply, # 2 Exhibit 2 to Reply, # 3 Proposed Order)(Abendshien, Lauren) (Entered: 08/28/2020)
08/31/2020		Text Order GRANTING 24 Unopposed Motion for Leave to File Excess Pages entered by Judge Alan D Albright. The Clerk is directed to enter the attached Reply. (This is a text−only entry generated by the court. There is no document associated with this entry.) (as) (Entered: 08/31/2020)
08/31/2020	25	DEFENDANT APPLE INC'S REPLY IN SUPPORT OF ITS MOTION TO STRIKE PLAINTIFF KOSS CORPORATIONS COMPLAINT filed by Apple Inc (Attachments: # 1 Exhibit)(bw) (Entered: 09/01/2020)
10/20/2020	26	STATUS REPORT *re Case Readiness* by KOSS Corporation. (Ghavimi, Darlene) (Entered: 10/20/2020)
11/09/2020	27	Updated Standing Order Governing Proceedings Patent Cases. Signed by Judge Alan D Albright. (jkda) (Entered: 11/10/2020)
11/18/2020	28	MOTION to Appear Pro Hac Vice by Steven J. Wingard (Filing fee $ 100 receipt number 0542−14197657) by on behalf of Apple Inc. (Attachments: # 1 Proposed Order)(Wingard, Steven) (Entered: 11/18/2020)
11/19/2020		Text Order GRANTING 28 Motion to Appear Pro Hac Vice for Attorney Samuel E. Schoenburg for Apple Inc. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT−I (f)(2). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order entered by Judge Alan D Albright. (This is a text−only entry generated by the court. There is no document associated with this entry.) (mm6) (Entered: 11/19/2020)
11/25/2020	29	Proposed Scheduling Order *(Agreed)* by Apple Inc. (Pieja, Michael) (Entered: 11/25/2020)
11/30/2020	30	SCHEDULING ORDER: Markman Hearing set for 4/22/2021 09:00 AM before Judge Alan D Albright. Joinder of Parties due by 6/3/2021. Amended Pleadings due by 8/12/2021. Dispositive Motions due by 1/27/2022. Pretrial Conference set for 3/31/2022 before Judge Alan D Albright. Jury Selection and Trial set for 4/18/2022 before Judge Alan D Albright. Signed by Judge Alan D Albright. (bw) (Entered: 11/30/2020)
12/10/2020	31	Unopposed Motion for leave to File Sealed Document (Attachments: # 1 Proposed Order to File Under Seal, # 2 Sealed Document Unopposed Motion to File Surreply, #

		3 Proposed Order to File Surreply, # 4 Sealed Document Ex. 1 Proposed Surreply, # 5 Sealed Document Ex. A to Proposed Surreply, # 6 Sealed Document Ex. B to Proposed Surreply, # 7 Sealed Document Ex. C to Proposed Surreply) (Ghavimi, Darlene) (Entered: 12/10/2020)
12/15/2020		Text Order GRANTING 31 Motion for Leave to File Sealed Document entered by Judge Alan D Albright. It is hereby ORDERED that Plaintiffs Motion for Leave to File Under Seal Koss' Motion for Leave to File Sur−Reply Brief in Opposition to Defendants Motion to Strike shall be filed under seal and deemed filed as of the date of this Order. (This is a text−only entry generated by the court. There is no document associated with this entry.) (re) (Entered: 12/15/2020)
12/15/2020	32	Sealed Unopposed Motion to File Surreply filed. (Attachments: # 1 Proposed Order, # 2 Exhibit 1−Proposed Surreply, # 3 Exhibit A, # 4 Exhibit B, # 5 Exhibit C) (bw) (Entered: 12/15/2020)
12/16/2020		Text Order GRANTING 32 Sealed Motion entered by Judge Alan D Albright. Upon consideration of Plaintiff Koss Corporation's Motion for Leave to File a Sur−Reply Brief in Opposition to Defendant's Motion to Strike, it is hereby ORDERED that Plaintiff's Motion is GRANTED. It is further ORDERED that Plaintiffs Sur−Reply Brief in Opposition to Defendant's Motion to Strike shall be deemed filed as of the date of this Order. (This is a text−only entry generated by the court. There is no document associated with this entry.) (re) (Entered: 12/16/2020)
12/18/2020	33	Unopposed MOTION for Leave to Exceed Page Limitation by Apple Inc. (Attachments: # 1 Proposed Order for Unopposed Motion for Leave, # 2 Exhibit 1 − Proposed Motion to Transfer, # 3 Declaration of Samuel E. Schoenburg in Support of Motion to Transfer, # 4 Exhibit A to Motion to Transfer, # 5 Exhibit B to Motion to Transfer, # 6 Exhibit C to Motion to Transfer, # 7 Exhibit D to Motion to Transfer, # 8 Exhibit E to Motion to Transfer, # 9 Exhibit F to Motion to Transfer, # 10 Exhibit G to Motion to Transfer, # 11 Exhibit H to Motion to Transfer, # 12 Exhibit I to Motion to Transfer, # 13 Exhibit J to Motion to Transfer, # 14 Exhibit K to Motion to Transfer, # 15 Exhibit L to Motion to Transfer, # 16 Exhibit M to Motion to Transfer, # 17 Exhibit N to Motion to Transfer, # 18 Exhibit O to Motion to Transfer, # 19 Exhibit P to Motion to Transfer, # 20 Exhibit Q to Motion to Transfer, # 21 Proposed Order for Motion to Transfer)(Pieja, Michael) (Entered: 12/18/2020)
12/21/2020		Text Order GRANTING 33 Motion for Leave to File Excess Pages entered by Judge Alan D Albright. It is hereby ORDERED that Apple is granted leave to file its Motion to Transfer totaling 17 pages. (This is a text−only entry generated by the court. There is no document associated with this entry.) (re) (Entered: 12/21/2020)
12/21/2020	34	MOTION to Transfer Case by Apple Inc. (Attachments: # 1 Declaration of Samuel E. Schoenburg in Support of Motion to Transfer, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J, # 12 Exhibit K, # 13 Exhibit L, # 14 Exhibit M, # 15 Exhibit N, # 16 Exhibit O, # 17 Exhibit P, # 18 Exhibit Q, # 19 Proposed Order)(am) (Main Document 34 replaced on 12/21/2020) (am). (Entered: 12/21/2020)
12/21/2020	35	Opposed MOTION to Stay Case *Pending Resolution of Motion to Strike and Motion to Transfer* by Apple Inc. (Attachments: # 1 Proposed Order)(Pieja, Michael) (Entered: 12/21/2020)
12/23/2020	36	Unopposed MOTION for Extension of Time to File Response/Reply as to 35 Opposed MOTION to Stay Case *Pending Resolution of Motion to Strike and Motion to Transfer* by KOSS Corporation. (Attachments: # 1 Proposed Order)(Ghavimi, Darlene) (Entered: 12/23/2020)
12/28/2020		Text Order GRANTING 36 Motion for Extension of Time to File Response/Reply entered by Judge Alan D Albright. IT IS HEREBY ORDERED, that the deadline for Plaintiff to respond to Defendant's Motion to Stay Case is extended from December 28, 2020 to January 4, 2020. (This is a text−only entry generated by the court. There is no document associated with this entry.) (re) (Entered: 12/28/2020)
12/28/2020	37	NOTICE *of Withdrawal of Counsel* by Apple Inc (Bueno, Kimberly) (Entered: 12/28/2020)

12/29/2020	38	Unopposed Motion for leave to File Sealed Document (Attachments: # 1 Proposed Order to File Under Seal, # 2 Sealed Document Unopposed Motion for Leave to File Supplemental Brief, # 3 Proposed Order to File Supplemental Brief, # 4 Sealed Document Ex. 1 − Proposed Supplemental Brief) (Pieja, Michael) (Entered: 12/29/2020)
12/30/2020		Text Order GRANTING 38 Motion for Leave to File Sealed Document entered by Judge Alan D Albright. It is hereby ORDERED that Apple's Motion for Leave to File a Supplemental Brief in Support of Its Motion to Strike Koss' Complaint shall be allowed to be filed under seal and considered filed as of the date of this Order. If it has not already done so, Apple is instructed to file a redacted version of its Supplemental Brief within seven days of the issuance of this Order. (This is a text−only entry generated by the court. There is no document associated with this entry.) (re) (Entered: 12/30/2020)
12/30/2020	39	Sealed Motion filed (Attachments: # 1 Proposed Order, # 2 Brief) (bw) (Entered: 12/30/2020)
01/04/2021	40	Response in Opposition to Motion, filed by KOSS Corporation, re 35 Opposed MOTION to Stay Case *Pending Resolution of Motion to Strike and Motion to Transfer* filed by Defendant Apple Inc (Attachments: # 1 Proposed Order)(Ghavimi, Darlene) (Entered: 01/04/2021)
01/06/2021	41	NOTICE *of Withdrawal of Counsel, Lauren Abendshien* by Apple Inc (Pieja, Michael) (Entered: 01/06/2021)
01/06/2021	42	SUPPLEMENTAL MEMORANDUM to 39 Sealed Motion filed *REDACTED VERSION PURSUANT TO DECEMBER 30, 2020 ORDER* by Apple Inc. (Pieja, Michael) (Entered: 01/06/2021)
01/06/2021	43	DEFICIENCY NOTICE: re 41 Notice (Other) (lad) (Entered: 01/06/2021)
01/07/2021	44	Unopposed MOTION to Withdraw as Attorney *Lauren Abendshien* by Apple Inc. (Pieja, Michael) (Entered: 01/07/2021)
01/11/2021	45	REPLY to Response to Motion, filed by Apple Inc, re 35 Opposed MOTION to Stay Case *Pending Resolution of Motion to Strike and Motion to Transfer* filed by Defendant Apple Inc (Attachments: # 1 Exhibit 1 − November 4, 2020 Hearing Transcript (excerpts))(Pieja, Michael) (Entered: 01/11/2021)
01/15/2021	46	MOTION to Appear Pro Hac Vice by Steven J. Wingard (Filing fee $ 100 receipt number 0542−14379690) by on behalf of Apple Inc. (Wingard, Steven) (Entered: 01/15/2021)
01/15/2021	47	MOTION to Appear Pro Hac Vice by Steven J. Wingard (Filing fee $ 100 receipt number 0542−14379754) by on behalf of Apple Inc. (Wingard, Steven) (Entered: 01/15/2021)
01/19/2021		Text Order GRANTING 46 Motion to Appear Pro Hac Vice for Attorney Douglas Winnard for Apple Inc. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT−I (f)(2). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order entered by Judge Alan D Albright. (This is a text−only entry generated by the court. There is no document associated with this entry.) (mm6) (Entered: 01/19/2021)
01/19/2021		Text Order GRANTING 47 Motion to Appear Pro Hac Vice for Attorney Whitney Woodward for Apple Inc. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT−I (f)(2). Pursuant to our

		Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order entered by Judge Alan D Albright. (This is a text−only entry generated by the court. There is no document associated with this entry.) (mm6) (Entered: 01/19/2021)
02/12/2021	49	Standing Order Regarding Filing Documents Under Seal and Redacted Pleadings in Patent Cases. Signed by Judge Alan D Albright. as of 2/12/2021. (bot1) (Entered: 02/24/2021)
02/19/2021	48	BRIEF by KOSS Corporation. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Ghavimi, Darlene) (Entered: 02/19/2021)
02/26/2021	50	SUPPLEMENTAL MEMORANDUM to 34 MOTION to Transfer Case by Apple Inc. (Attachments: # 1 Declaration of Samuel E. Schoenburg, # 2 Exhibit R − Invalidity Charts, # 3 Exhibit S − SEALED, # 4 Exhibit T − Non−Party Witness Profiles and Whitepages, # 5 Exhibit U − US7680267, # 6 Exhibit V − US20080076489)(Pieja, Michael) (Entered: 02/26/2021)
02/26/2021	51	Sealed Document: *Exhibit S* of 50 Supplemental Memorandum, by Apple Inc (Pieja, Michael) (Entered: 02/26/2021)
03/02/2021	52	Sealed Document: *Plaintiff's Opposition* of 34 MOTION to Transfer Case by KOSS Corporation (Attachments: # 1 Proposed Order, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G) (Ghavimi, Darlene) (Entered: 03/02/2021)
03/03/2021	53	Sealed Document: *Notice of Filing Corrected Exhibit D and Exhibit F* of 52 Sealed Document, by KOSS Corporation (Attachments: # 1 Exhibit D to Dkt. 52, # 2 Exhibit F to Dkt. 52) (Ghavimi, Darlene) (Entered: 03/03/2021)
03/05/2021	54	Unopposed MOTION for Extension of Time to File Response/Reply as to 34 MOTION to Transfer Case by Apple Inc. (Attachments: # 1 Proposed Order)(Pieja, Michael) (Entered: 03/05/2021)
03/11/2021	55	Unopposed MOTION for Leave to Exceed Page Limitation *for Reply in Support of Motion 34 to Transfer* by Apple Inc. (Attachments: # 1 Proposed Order, # 2 Reply in Support of Motion to Transfer (REDACTED), # 3 Declaration of Samuel E. Schoenburg in Support of Reply, # 4 Exhibit Y − Relative Travel Costs, # 5 Exhibit Z − PEAG Motion, # 6 Exhibit AA − Koss Motion, # 7 Exhibit BB − DocketNavigator Reports)(Pieja, Michael) (Entered: 03/11/2021)
03/11/2021	56	Sealed Document: Reply in Support of Motion to Transfer and Exhibits W and X thereto of 55 Unopposed MOTION for Leave to Exceed Page Limitation *for Reply in Support of Motion 34 to Transfer* by Apple Inc (Attachments: # 1 Exhibit W, # 2 Exhibit X) (Pieja, Michael) (Entered: 03/11/2021)
03/12/2021	57	BRIEF regarding 48 Brief by Apple Inc. (Attachments: # 1 Exhibit Declaration of Michael T. Pieja, # 2 Exhibit A − Newton (APL−KOSS_00000792−803), # 3 Exhibit B − Penguin (APL−KOSS_00000829−38), # 4 Exhibit C − Hansen Declaration, # 5 Exhibit D − Google Search)(Pieja, Michael) (Entered: 03/12/2021)
03/24/2021	58	ORDER RESETTING Zoom Markman Hearing for 4/23/2021 01:30 PM before Judge Alan D Albright. Signed by Judge Alan D Albright. (bot2) (Entered: 03/24/2021)
03/24/2021	59	STATUS REPORT *REGARDING MOTIONS READY FOR RESOLUTION* by Apple Inc. (Pieja, Michael) (Entered: 03/24/2021)
03/26/2021	60	BRIEF regarding 48 Brief by KOSS Corporation. (Attachments: # 1 Exhibit A)(Ghavimi, Darlene) (Entered: 03/26/2021)
03/30/2021	61	Sealed Order denying 12 . Signed by Judge Alan D Albright. (bw) (Entered: 03/30/2021)
03/30/2021	63	ORDER DENYING DEFENDANT APPLE INCS MOTION TO STRIKE PLAINTIFF KOSS CORPORATIONS COMPLAINT re 12 MOTION to Strike 1 Complaint, filed by Apple Inc. Signed by Judge Alan D Albright. (mg2) (Entered: 04/05/2021)

03/31/2021	62	NOTICE *of Inter Partes Review Petitions* by KOSS Corporation (Ghavimi, Darlene) (Entered: 03/31/2021)
04/07/2021	64	Response in Opposition to Motion, filed by KOSS Corporation, re 34 MOTION to Transfer Case filed by Defendant Apple Inc *PUBLIC VERSION (Redacted)* (Ghavimi, Darlene) (Entered: 04/07/2021)
04/09/2021	65	USCA Federal Circuit Dispositive Court Order denying Petition for Writ of Mandamus. (lad) (Entered: 04/09/2021)
04/09/2021	66	BRIEF regarding 48 Brief by Apple Inc. (Pieja, Michael) (Entered: 04/09/2021)
04/12/2021	67	Unopposed MOTION for Extension of Time to File Answer by Apple Inc. (Attachments: # 1 Proposed Order)(Pieja, Michael) (Entered: 04/12/2021)
04/14/2021	68	NOTICE of Filing Joint Claim Construction Statement by KOSS Corporation (Ghavimi, Darlene) (Entered: 04/14/2021)
04/15/2021	69	Joint MOTION for Protective Order by Apple Inc. (Attachments: # 1 Exhibit A − Proposed Agreed Protective Order)(Pieja, Michael) (Entered: 04/15/2021)
04/15/2021		Text Order GRANTING 67 Motion for Extension of Time to Answer entered by Judge Alan D Albright. Came on for consideration is Defendant's Motion. Noting that it is unopposed, the Court GRANTS the Motion. Defendant shall have up to and including April 27, 2021 to answer or otherwise respond to Plaintiff's Complaint. (This is a text−only entry generated by the court. There is no document associated with this entry.) (hs) (Entered: 04/15/2021)
04/15/2021		Reset Deadlines: Apple Inc answer due 4/27/2021. (lad) (Entered: 04/15/2021)
04/15/2021	70	AGREED PROTECTIVE ORDER REGARDING THE DISCLOSURE AND USE OF DISCOVERY MATERIALS. Signed by Judge Alan D Albright. (bw) (Entered: 04/15/2021)
04/22/2021	71	Sealed Order Denying Defendant's Motion to Transfer Venue to Northern District of California. Signed by Judge Alan D Albright. (mc5) (Entered: 04/23/2021)
04/22/2021	76	Redacted/Public version of 71 Sealed Order Denying Defendant's Motion to Transfer Venue to Northern District of California. Signed by Judge Alan D Albright. (lad) (Entered: 05/03/2021)
04/23/2021	72	Minute Entry for proceedings held before Judge Alan D Albright. Markman Hearing held on 4/23/2021. The Court heard arguments regarding disputed claim terms. TheCourt made ruling on terms and an issue will Order in the future. The Court has set the Jury Trial dateof April 18, 2022 − the Court briefly discussed his trial procedures. (Minute entry documents are not available electronically.) (Court Reporter Lily Reznik.)(bw) (Entered: 04/23/2021)
04/27/2021	73	ANSWER to 1 Complaint, with Jury Demand by Apple Inc.(Pieja, Michael) (Entered: 04/27/2021)
04/29/2021	74	MOTION to Appear Pro Hac Vice by Darlene Ghavimi *on behalf of Amanda Maxfield* (Filing fee $ 100 receipt number 0542−14751441) by on behalf of KOSS Corporation. (Ghavimi, Darlene) (Entered: 04/29/2021)
04/29/2021	75	NOTICE of Attorney Appearance by Joseph Raymond Kolker on behalf of Apple Inc. Attorney Joseph Raymond Kolker added to party Apple Inc(pty:dft) (Kolker, Joseph) (Entered: 04/29/2021)
05/09/2021	77	Transcript filed of Proceedings held on April 23, 2021, Proceedings Transcribed: Videoconference Markman Hearing. Court Reporter/Transcriber: Lily I. Reznik, Telephone number: 512−391−8792 or Lily_Reznik@txwd.uscourts.gov. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed Redaction Request due 6/1/2021, Redacted Transcript Deadline set for 6/9/2021, Release of Transcript

		Restriction set for 8/9/2021, (lr) (Entered: 05/09/2021)
05/11/2021		Text Order GRANTING 74 Motion to Appear Pro Hac Vice for Attorney Amanda C. Maxfield for KOSS Corporation. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT−I (f)(2). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order entered by Judge Alan D Albright. (This is a text−only entry generated by the court. There is no document associated with this entry.) (mm6) (Entered: 05/11/2021)
05/11/2021	78	AMENDED ANSWER to 1 Complaint, *REDACTED, PUBLIC VERSION*, COUNTERCLAIM against KOSS Corporation by Apple Inc. (Pieja, Michael) (Entered: 05/11/2021)
05/11/2021	79	Sealed Document: First Amended Answer, Affirmative Defenses, and Counterclaim to Plaintiff and Counter−Defendant Koss Corporation's Complaint of 78 Amended Answer to Complaint, Counterclaim by Apple Inc (Pieja, Michael) (Entered: 05/11/2021)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

KOSS CORPORATION, Plaintiff, v. APPLE INC., Defendant.	Case No. 6:20-cv-00665 **ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT** **DEMAND FOR JURY TRIAL**

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Koss Corporation ("Koss" or "Plaintiff") files this complaint for patent infringement against Apple Inc. ("Apple" or "Defendant") alleging, based on its own knowledge as to itself and its own actions, and based on information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. This is a civil action arising under the patent laws of the United States, 35 U.S.C. § 1 et seq., including specifically 35 U.S.C. § 271, based on Apple's willful infringement of U.S. Patent Nos. 10,206,025 ("the '025 Patent"), 10,298,451 ("the '451 Patent"), 10,469,934 ("the '934 Patent"), 10,491,982 ("the '982 Patent"), and 10,506,325 ("the '325 Patent") (collectively "the Patents-in-Suit").

THE PARTIES

2. Plaintiff Koss Corporation is a corporation existing under the laws of the State of Delaware having its principal place of business located at 4129 North Port Washington Avenue, Milwaukee, Wisconsin 53212.

3. Koss markets a complete line of high-fidelity headphones and audio accessories. Koss's products, branded under the Koss brand name or private label brands, are sold at various retail chains throughout the United States and the world, including Walmart stores and other large brick-and-mortar establishments, as well as direct to customers in at least the following cities in this District: Alpine, Austin, Del Rio, El Paso, Midland, Odessa, San Antonio, and Waco.

4. Koss also serves as an Original Equipment Manufacturer ("OEM") for a customer in this Judicial District. In this role, Koss manufactures OEM headphones sold under its customer's brand.

5. On information and belief, Apple is a California corporation having a principal place of business located at One Apple Park Way Cupertino, California 95014 and regular and established places of business at 12535 Riata Vista Circle, Austin, Texas and 5501 West Parmer Lane, Austin, Texas.

6. On information and belief, Apple is in the process of building a 15,000-employee, 3-million square foot campus in Austin, Texas.

7. Apple employs thousands of people, including at least hundreds of engineers, who currently work, and will in the future work, at either the Riata Vista Circle location, the West Parmer Lane location, or the new 15,000-employee campus location, in Austin, Texas.

8. On information and belief, Apple presently employs personnel with responsibility for Apple's wearable products, including the Apple AirPods and/or the Apple Beats by Dre product line, in Austin, Texas.

9. On information and belief, Apple employs a senior manager in charge of Demand Management for wearables in the United States, including the Apple AirPods and Apple Beats by Dre products, in Austin, Texas.

10. On information and belief, Apple presently employs personnel with responsibility for online content management related to Apple's wearable products as well as Apple's HomePod product in Austin, Texas.

11. On information and belief, Apple employs an online content manager with responsibility for iPhone, iPad, Apple Watch, HomePod, AirPods, and Apple Beats by Dre in Austin, Texas.

12. On information and belief, Apple employs a software performance engineer in Austin, Texas responsible for activating every iPhone, iPad, Apple Watch, and HomePod worldwide.

13. On information and belief, Apple employs a Specialty Programs Manager in Austin, Texas with responsibility for the Apple Watch Series 3 and the HomePod, among other programs.

14. On information and belief, Apple operates brick-and-mortar retail establishments ("Apple Stores") at Barton Creek Square, Austin, Texas and at Apple Domain Northside, Austin, Texas.

15. Each of these Apple Store locations offers for sale and sells Apple wearable products (including Apple AirPods and Apple Beats by Dre products), Apple Watch products, Apple iPhone products, and Apple HomePod products.

16. On information and belief, the Best Buy store at 4627 S. Jack Kultgen Expy., Waco, TX 76706 also sells Apple wearable products (including Apple AirPods and Apple Beats by Dre products), Apple Watch products, Apple iPhone products, and Apple HomePod products.

17. Apple is registered to do business in the state of Texas and lists CT Corp. System, located at 1999 Bryan St., Suite 900, Dallas, TX 75201 as its registered agent in the State of Texas.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the claims herein arise under the patent laws of the United States, 35 U.S.C. § 1 et seq., including 35 U.S.C. § 271.

19. This Court has personal jurisdiction over Apple in this action because Apple has committed acts of infringement within the State of Texas and within this District through, for example, the sale of Apple AirPods, Apple Beats by Dre products, Apple Watches, Apple iPhones, and Apple HomePods both online and from Apple Stores in this District. Apple regularly transacts business in the State of Texas and within this District. Apple engages in other persistent courses of conduct and derives substantial revenue from products and/or services provided in this District and in Texas, and has purposefully established substantial, systematic, and continuous contacts within this District and should reasonably expect to be sued in a court in this District. For example, Apple has offices in this District and has a registered agent for service in Texas.

20. Apple continues to grow its presence in this District, further cementing its ties to this District. Apple operates a website and various advertising campaigns that solicit sales of the

infringing products by consumers in this District and in Texas. Apple has entered into partnerships with numerous resellers and distributors to sell and offer for sale the Accused Products to consumers in this District, both online and in stores, and offers support service to customers in this District. Given these contacts, the Court's exercise of jurisdiction over Apple will not offend traditional notions of fair play and substantial justice.

21. Venue in the Western District of Texas is proper pursuant to 28 U.S.C. §§ 1391(b), (c) and l400(b). Apple has regular and established places of business in this District, including at 12535 Riata Vista Circle and 5501 West Parmer Lane, Austin, Texas. Apple has committed acts within this judicial district, giving rise to this action. Apple continues to conduct business in this judicial district, including one or more acts of making, selling, using, importing and/or offering for sale infringing products or providing support service to Apple's customers in this District.

KOSS'S LEGACY OF AUDIO INNOVATION

22. Koss was founded in 1953 as a television rental company in Milwaukee, Wisconsin.

23. In 1958, John C. Koss invented the world's first SP/3 Stereophone as part of a "private listening system" that would enable the wearer to listen to a phonograph without disturbing others in the vicinity:

24. The SP/3 Stereophone provided, for the first time, a high-quality stereophonic headphone that approximated the sounds of a concert hall.

25. John C. Koss demonstrated the SP/3 Stereophone at a Wisconsin audio show in 1958. Initially designed to demonstrate the high-fidelity stereo sound that a portable phonograph player delivered, these revolutionary SP/3 Stereophones became the hit of the show.

26. The SP/3 Stereophone has since been enshrined in the Smithsonian Museum's collection in Washington, DC, with John C. Koss delivering the SP/3 for enshrinement along with an explanation of the story of the SP/3 in 1972:

27. Koss's commitment to headphone development continued into the 1960s and beyond. In 1962, Koss developed and brought to market the PRO/4 Stereophone, which was bestowed with *Consumer Union* Magazine's #1 choice award in 1963:

28. Due to the success and quality of the Pro/4, the United States government awarded Koss with a contract to install fifty (50) Pro/4 units in the staff, press, and presidential quarters of Air Force One. Passengers accessing the aircraft's state-of-the-art entertainment system listened to the system using the Pro/4:

29. In 1970, Koss moved its World Headquarters to the current location at 4129 North Port Washington Ave., Milwaukee, Wisconsin:

30. Also in 1970, Koss set the standard for full-size professional headphones with its Pro/4AA:

31. At the time of introduction, the Pro/4AA were regarded as the first dynamic headphones to deliver true full frequency and high-fidelity performance with noise-isolating capabilities.

32. Koss continued improving its Stereophone product line throughout the 1970s and into the 1980s. In 1984, Koss introduced the Porta Pro, an acclaimed product that set performance and comfort standards for on-the-go listening:

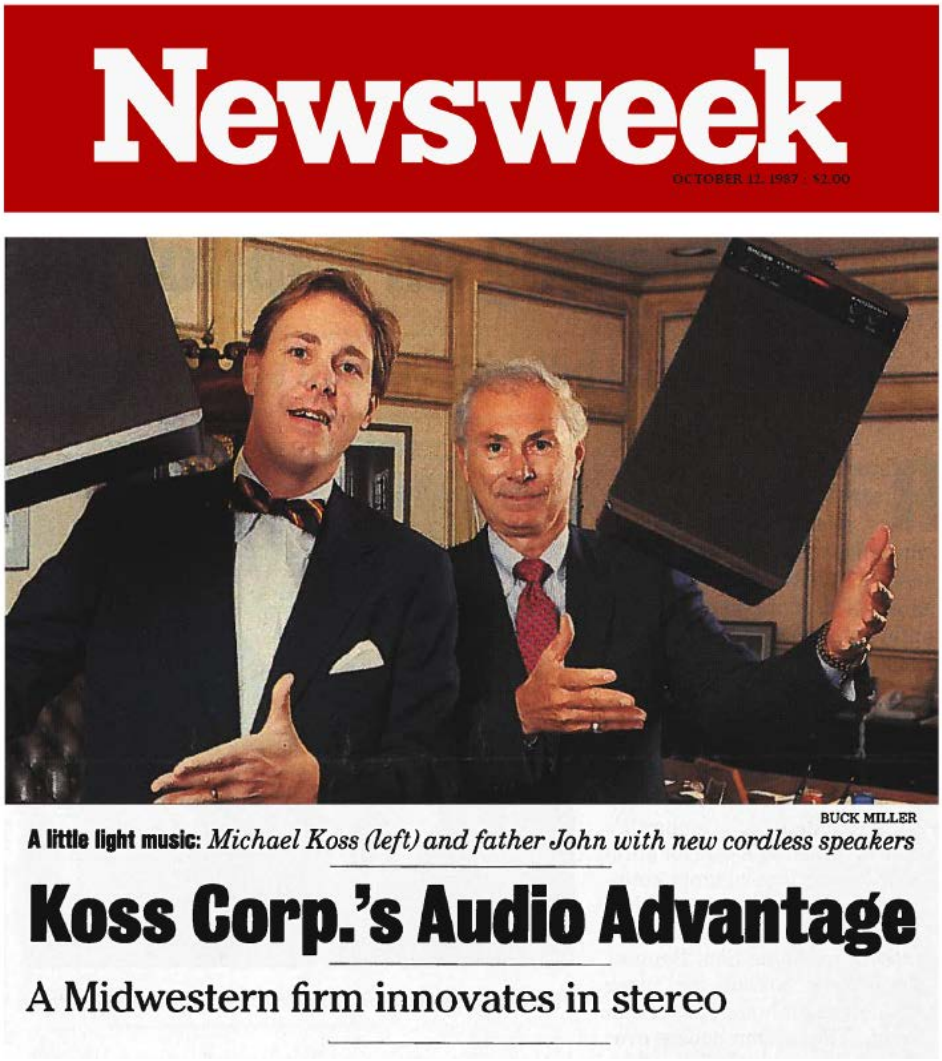
33. The Porta Pro continues to be one of the most popular headphone products around the world, particularly because of its exceptional audio fidelity and performance capabilities. In fact, as recently as 2008, CNET awarded the Porta Pros a four-star rating of 8.3 (out of 10), with a performance score of 9 (out of 10), stating that "there's no denying the sound quality here: they're the ideal companion for mobile audiophiles and home theater enthusiasts." (https://www.cnet.com/reviews/koss-portapro-with-case-review/).

34. In 1965, Koss introduced the award-winning speaker, the Acoustech X, which was heralded as a breakthrough product by Billboard Magazine, touting its concert hall quality and ability to accurately amplify an acoustic guitar to large concert halls. *Acoustic System Succeeds In Classical Guitar Concert*, BILLBOARD, May 27, 1967, at 71.

35. Following on Acoustech X, Koss went on to develop a number of additional products: the world's first computer maximized loudspeaker in 1976; the Kossfire speaker line in

the 1980s; the dynamic audio/video Dynamite bookshelf series speaker line; a line of portable/desktop computer speakers that employed a unique magnetic shield to protect nearby computer video and data equipment; and an amplified portable loudspeaker, the M/100, in early 1987.

36. In 1987, Koss pioneered one of the earliest completely wireless infrared speaker systems: the JCK 5000. In 1986, Koss also unveiled a portable speaker, the KSC/50, which was utilized by thousands of members of the United States military during the Gulf War in 1990. Related to the KSC/50, Koss's KSC/5000 included a built-in amplifier. Those products were profiled in a Newsweek feature on October 12, 1987:



Newsweek

OCTOBER 12, 1987 · $2.00

BUCK MILLER

A little light music: *Michael Koss (left) and father John with new cordless speakers*

Koss Corp.'s Audio Advantage

A Midwestern firm innovates in stereo

37. Over the following years, Koss continued to expand its portable speaker offerings, including by expanding into speakerphones for teleconferencing systems with the Speakeasy line, followed by various additional wireless models for portable use.

38. Elite musicians, including Tony Bennett, Les Brown, and Frank Sinatra Jr., have used Koss headphones, including the Pro/4, while recording and/or performing. Koss's official spokespeople have included music legends Mel "the Velvet Fog" Tormé and Doc Severinsen, the trumpet-playing bandleader for Johnny Carson's Tonight Show band.

39. In 1979, John C. Koss was inducted into the Audio Hall of Fame.

40. In 2000, John C. Koss was inducted into the inaugural class of the Consumer Electronics Hall of Fame.

41. In 2004, John C. Koss was inducted into the Wisconsin Business Hall of Fame.

KOSS DEVELOPS THE FIRST EVER TRUE WIRELESS HEADPHONES

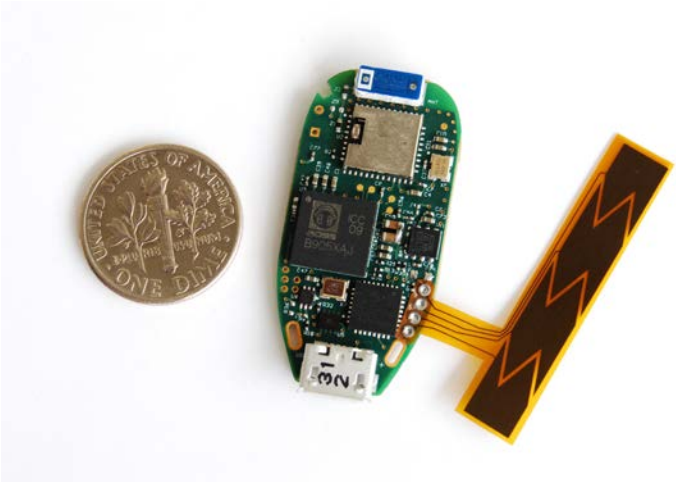
42. Continuing its culture of innovation in high-fidelity audio equipment, in the early 2000s, Koss began developing what became known as the "Striva" project. The vision for the Striva project was borne out of Koss's recognition that wireless headphones were going to be an integral part of peoples' audio consumption. In particular, Koss recognized that as radios were needing progressively less power, and as batteries and other power sources became smaller and more efficient, people would eventually consume audio content through headphones wirelessly connected to some kind of a source, be it a handheld computing device or in the cloud.

43. In the early 2000s, Koss began making substantial monetary investments in the Striva project, with the goal of bringing "True Wireless" listening to its loyal customers as the next in a long series of headphone innovations.

44. Koss recognized that the future was a wireless world, complete with mobile internet connectivity that went beyond traditional hardwired, or computer-based, network topologies. It recognized that wireless ubiquity was coming, and would extend to wearable devices, including Koss's area of expertise: the headphone.

45. With these recognitions in mind, Koss made a substantial commitment to investing in what it saw as the future of headphone technology. This work eventually became the Striva project, and over the course of its work, Koss invested tens of millions of dollars developing chips, fabrication techniques, prototype headphones, and other related technology to bring the Striva vision to life.

46. In particular, Koss's work on Striva resulted in the development of a system-on-chip smaller than a human fingertip that could provide audio and wireless communications processing on a low power budget for incorporation into headphones of various form factors:



47. Koss's work to develop Striva also predicted some of the interactions that modern headphone users take for granted today. In particular, Koss recognized early on that the inclusion of a microphone (with appropriate voice recognition software and circuitry) could provide a convenient, hands-free way to interact with wireless headphones. Koss developed technology that could react to such voice prompts, and in fact implemented prototypes that reacted to users saying "Striva" into a headphone-mounted microphone to begin a voice-based interaction to, for example, switch tracks or adjust headphone volume.

48. Koss also recognized a headphone concept that users today take for granted: different headphones for different applications. In particular, as part of the Striva project, Koss developed different form factors with different performance capabilities depending on anticipated use. Over-ear headphones provided users with higher-quality sound, ambient noise dampening capabilities, and better battery life (due to additional battery real estate), while in-ear headphones provided portability and capability in a smaller, less-intrusive package.

49. Koss developed prototype in-ear headphones that relied on its chip development efforts, with working prototypes from the mid-2000s looking very much like commonly-known consumer products that flood the market a decade-and-a-half later:

50. In 2012, Koss introduced Wi-Fi enabled headphones, the result of its Striva project, which BizTimes hailed as the first wireless headphones to use Wi-Fi transmission and credited Koss with "introducing personal listening to the Internet." (https://biztimes.com/koss-creates-wireless-headphones-for-wi-fi-music-access/).

51. In April 2012, Koss brought to market both an in-ear and over-ear embodiment of the Striva vision, with the Striva Pro model being the first true Wi-Fi over the ear headphones (and mirroring many features and aesthetics modern-day users expect in wireless, over-ear headphones):

52. The Striva Tap, a smaller, in-ear version of the Striva Pro Wi-Fi headphone, provided users with some of the features that modern-day consumers take for granted in in-ear headphones, like independent wireless earphones with touch gestures to control listening preferences by manipulating the surface of the headphones:

53. Koss also developed (though ultimately did not market) a smart speaker that incorporated many of the Striva features, albeit in a non-wearable form factor. The Striva-based

speaker product had a capacitive touch interface to mimic the features of the Striva headphones, and also included a microphone for voice control. In addition, the Striva-based speaker had the capability to be included in a distributed network as part of a precursor to the presently-understood Internet of Things, such that the input devices (e.g., the microphone) could be used to control other items in the distributed network (e.g., light switches). The speaker therefore allowed, for example, a user to say "Striva, turn on the lights," and the lights would turn on.

54. The Striva-based speaker product, referred to as the LS2, exists as a working prototype:

55. Unfortunately, the economic reality of Koss's market position did not permit it to bring its Striva-based product vision to the masses. In particular, due to events abroad (and Koss's reliance on sales into those foreign countries), Koss's supply chain and customer base were thrown into upheaval in the late-2000's and early-2010's.

56. Moreover, Koss conducted market research during the mid-2000's, and concluded that given the market that was likely to develop for wireless headphones, larger companies with more manufacturing capability would become a substantial threat to bringing Striva fully to

market. As a result, Koss invested substantially on part-purchasing, machinery, fabrication, and the like.

57. The circumstances above, and other circumstances outside of Koss's control, meant that the advanced features first developed for Striva were not able to be fully experienced by the majority of the purchasing public.

58. Koss brings the instant lawsuit because the industry has caught up to Koss's early-2000s vision: the technology Koss developed as part of its substantial Striva investment has become standardized, with whole listening ecosystems having been built around the techniques Koss conceived of over a decade ago.

59. More fundamentally, Koss is responsible for creating an entire headphone industry beginning from its release of the pioneering Stereophone as a ubiquitous way to consume information in 1958. Apple and others are reaping enormous benefits due to John C. Koss's vision, and Koss Corporation's commitment to that vision, for more than six decades.

APPLE'S LATE FORAY INTO THE WIRELESS HEADPHONE SPACE

60. In 2014, Apple announced its multi-billion dollar acquisition of Beats Music and Beats Electronics, a headphone and speaker company formed in 2008. Beats' first wireless headphone, Beats by Dr. Dre Wireless, was released in late 2012.

61. On September 7, 2016, amid much fanfare and nearly four (4) years after Striva hit the market and two years after Apple's purchase of Beats, Apple released the Apple AirPods. Apple touted the AirPods as its "new wireless headphones that use advanced technology to reinvent how we listen to music, make phone calls, enjoy TV shows and movies, play games and interact with Siri, providing a wireless audio experience [it claims was] not possible before." (https://www.apple.com/newsroom/2016/09/apple-reinvents-the-wireless-headphones-with-

airpods/). The AirPods "automatically connect[] to all your Apple devices simply and seamlessly, and let[] you access Siri with just a double tap" and allow a user to "seamlessly switch from a call on [an] iPhone to listening to music on [an] Apple Watch." (*Id.*). The AirPods also permit a user to use a vocal trigger ("Hey, Siri") to alter the listening experience, much like the technology Koss pioneered with Striva in the mid-2000's.

62. Also on September 7, 2016, Apple released the Powerbeats Wireless ear-clip headphones under the brand Beats by Dre. Powerbeats Wireless were marketed towards athletes and featured an ear-clip hanger bar (also known as an ear-hook) which provided a secure fit for active use. Powerbeats Wireless are considered wireless because they do not need to be physically plugged into a device to play music, they are not considered to be "True Wireless" because the two ear-clip headphones were connected to one another by a cable. On April 3, 2019, Apple introduced Powerbeats Pro under the brand Beats by Dre. Unlike Powerbeats Wireless, Powerbeats Pro are True Wireless ear-clip headphones. Powerbeats Pro feature the Apple H1 Chip, which among other things, enables users the ability to initiate requests to a network server.

63. On information and belief, before the AirPods and the Powerbeats Wireless and Pro, Apple did not have a commercially available True Wireless headphone product.

THE PATENTS-IN-SUIT

64. On February 12, 2019, U.S. Patent No. 10,206,025, entitled "System with Wireless Earphones," was duly and legally issued by the United States Patent and Trademark Office. A true and accurate copy of the '025 Patent is attached hereto as Exhibit A.

65. On May 21, 2019, U.S. Patent No. 10,298,451, entitled "Configuring Wireless Devices for a Wireless Infrastructure Network," was duly and legally issued by the United States

Patent and Trademark Office. A true and accurate copy of the '451 Patent is attached hereto as Exhibit B.

66. On November 5, 2019, U.S. Patent No. 10,469,934, entitled "System with Wireless Earphones," was duly and legally issued by the United States Patent and Trademark Office. A true and accurate copy of the '934 Patent is attached hereto as Exhibit C.

67. On November 26, 2019, U.S. Patent No. 10,491,982, entitled "System with Wireless Earphones," was duly and legally issued by the United States Patent and Trademark Office. A true and accurate copy of the '982 Patent is attached hereto as Exhibit D.

68. On December 10, 2019, U.S. Patent No. 10,506,325, entitled "System with Wireless Earphones," was duly and legally issued by the United States Patent and Trademark Office. A true and accurate copy of the '325 Patent is attached hereto as Exhibit E.

69. The Patents-in-Suit represent Koss's significant investment into the wireless headphone and wearable technology space, including its commitment in the form of decades of research and millions of dollars.

APPLE'S KNOWLEDGE OF THE PATENTS-IN-SUIT

70. On September 7, 2017 Koss informed Apple that it was infringing U.S. Patent No. 9,729,959, a parent of several of the Patents-in-Suit.

71. Over the following two and a half years, Koss and its representatives met with Apple a total of four times in Apple's California offices and in the course of those meetings, as well as several additional email exchanges, provided Apple with claim charts identifying how Apple infringed certain of Koss's patents, including each of the Patents-in-Suit.

72. Prior to the filing of the instant Complaint, Koss informed Apple of its belief that Apple was infringing each of the Patents-in-Suit.

73. Nevertheless, Apple has not taken a license to the Patents-in-Suit.

74. On information and belief, Apple has not altered the functionality of any of its products to avoid infringement of the Patents-in-Suit.

FIRST CAUSE OF ACTION

(Infringement of the '025 Patent)

75. Koss incorporates by reference and realleges each and every allegation of Paragraphs 1 through 74 as if set forth herein.

76. Koss owns all substantial rights, interest, and title in and to the '025 Patent, including the sole and exclusive right to prosecute this action and enforce the '025 Patent against infringers, and to collect damages for all relevant times.

77. The '025 Patent generally describes wireless earphones that comprise a transceiver circuit for receiving streaming audio from a data source, such as a digital audio player or a computer, over a wireless network.

78. The written description of the '025 Patent describes in technical detail each of the limitations of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patentably distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

79. Apple has made, had made, used, imported, supplied, distributed, sold, and/or offered for sale products and/or systems, including systems in which its AirPods and/or wireless Beats by Dre-branded products and/or systems are incorporated ("Accused Headphones").

80. As set forth in the attached non-limiting Claim chart (Exhibit F), Apple has infringed and is infringing at least Claim 1 of the '025 Patent by making, having made, using,

importing, supplying, distributing, selling, and/or offering for sale the Accused Headphones. In particular, the use of the Accused Headphones by Apple to, for example, demonstrate those products in brick-and-mortar Apple Stores in Austin, Texas or to, for example, test those products, constitute acts of direct infringement of Claim 1 of the '025 Patent.

81. Apple actively induces infringement of at least Claim 1 of the '025 Patent by selling the Accused Headphones with instructions as to how to use the Accused Headphones in a system such as that recited in the '025 Patent. Apple aids, instructs, or otherwise acts with the intent to cause an end user to use the Accused Headphones. Apple knew of the '025 Patent and knew that its use and sale of the Accused Headphones infringe at least Claim 1 of the '025 Patent.

82. Apple is also liable for contributory infringement of at least Claim 1 of the '025 Patent by providing, and by having knowingly provided, a material part of the instrumentalities, namely the Accused Headphones, used to infringe Claim 1 of the '025 Patent. The Accused Headphones have no substantial non-infringing uses. When an end user uses the Accused Headphones in combination with, for example, an Apple iPhone and/or an Apple Watch, the end user directly infringes Claim 1 of the '025 Patent. Apple knew that the Accused Headphones were especially made for use in an infringing manner prior to the filing of this lawsuit. For at least the reasons set forth above, Apple contributes to the infringement of the '025 Patent by others.

83. Koss has been damaged as a result of the infringing conduct by Apple alleged above. Thus, Apple is liable to Koss in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

84. Apple's infringement of the '025 Patent has caused, and will continue to cause, Koss to suffer substantial and irreparable harm.

85. Apple has been aware that it infringes the ’025 Patent since at least March 6, 2019. Upon information and belief, Apple was aware of its infringement of the ’025 Patent at least as early as February 12, 2019, when the ’025 Patent issued, through Apple’s own freedom-to-operate analysis, initiated, in part, due to the communications Apple was having with Koss at that time.

86. On information and belief, to the extent Apple did not learn of the ’025 Patent on or around February 12, 2019, Apple was willfully blind to its infringement of the ’025 Patent.

87. Apple’s infringement of the ’025 Patent is, has been, and continues to be, willful, intentional, deliberate, and/or in conscious disregard of Koss’s rights under the patent.

88. Koss has complied with 35 U.S.C. § 287 with respect to the ’025 Patent.

SECOND CAUSE OF ACTION

(Infringement of the ’451 Patent)

89. Koss incorporates by reference and realleges each and every allegation of Paragraphs 1 through 88 as if set forth herein.

90. Koss owns all substantial rights, interest, and title in and to the ’451 Patent, including the sole and exclusive right to prosecute this action and enforce the ’451 Patent against infringers, and to collect damages for all relevant times.

91. The ’451 Patent generally describes a credentialed system for accessing an ad hoc communications link between an electronic device, such as a speaker or medical device, and a mobile computing device.

92. The written description of the ’451 Patent describes in technical detail each of the limitations of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patentably distinct from

and improved upon what may have been considered conventional or generic in the art at the time of the invention.

93. Apple has made, had made, used, imported, supplied, distributed, sold, or offered for sale products and/or systems, including systems in which its HomePod and/or Apple Watch products and/or systems are incorporated ("Accused Networking Devices").

94. As set forth in the attached non-limiting Claim chart (Exhibit G), Apple has infringed and is infringing at least Claim 1 of the '451 Patent by making, having made, using, importing, supplying, distributing, selling, and/or offering for sale the Accused Networking Devices. In particular, the use of the Accused Networking Devices by Apple to, for example, demonstrate those products in brick-and-mortar Apple Stores in Austin, Texas or to, for example, test those products, constitute acts of direct infringement of Claim 1 of the '451 Patent.

95. Apple actively induces infringement of at least Claim 1 of the '451 Patent by selling the Accused Networking Devices with instructions as to how to use the Accused Networking Devices in a system such as that recited in the '451 Patent. Apple aids, instructs, or otherwise acts with the intent to cause an end user to use the Accused Networking Devices. Apple knew of the '451 Patent and knew that its use and sale of the Accused Networking Devices infringe at least Claim 1 of the '451 Patent.

96. Apple is also liable for contributory infringement of at least Claim 1 of the '451 Patent by providing, and by having knowingly provided, a material part of the instrumentalities, namely the Accused Networking Devices, used to infringe Claim 1 of the '451 Patent. The Accused Networking Devices have no substantial non-infringing uses. When an end user uses the Accused Networking Devices in combination with, for example, an Apple iPhone, the end user directly infringes Claim 1 of the '451 Patent. Apple knew that the Accused Networking Devices

were especially made for use in an infringing manner prior to the filing of this lawsuit. For at least the reasons set forth above, Apple contributes to the infringement of the '451 Patent by others.

97. Koss has been damaged as a result of the infringing conduct by Apple alleged above. Thus, Apple is liable to Koss in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

98. Apple's infringement of the '451 Patent has caused, and will continue to cause, Koss to suffer substantial and irreparable harm.

99. Apple has been aware that it infringes the '451 Patent since at least August 5, 2019. Upon information and belief, Apple was aware of its infringement of the '451 Patent at least as early as May 21, 2019, when the '451 Patent issued, through Apple's own freedom-to-operate analysis, initiated, in part, due to the communications Apple was having with Koss at that time.

100. On information and belief, to the extent Apple did not learn of the '451 Patent on or around May 21, 2019, Apple was willfully blind to its infringement of the '451 Patent.

101. Apple's infringement of the '451 Patent is, has been, and continues to be, willful, intentional, deliberate, and/or in conscious disregard of Koss's rights under the patent.

102. Koss has complied with 35 U.S.C. § 287 with respect to the '451 Patent.

THIRD CAUSE OF ACTION

(Infringement of the '934 Patent)

103. Koss incorporates by reference and realleges each and every allegation of Paragraphs 1 through 102 as if set forth herein.

104. Koss owns all substantial rights, interest, and title in and to the ’934 Patent, including the sole and exclusive right to prosecute this action and enforce the ’934 Patent against infringers, and to collect damages for all relevant times.

105. The ’934 Patent generally describes wireless earphones that comprise a transceiver circuit for receiving streaming audio from a data source, such as a digital audio player or a computer, over a wireless network.

106. The written description of the ’934 Patent describes in technical detail each of the limitations of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patentably distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

107. Apple has made, had made, used, imported, supplied, distributed, sold, or offered for sale products and/or systems, including systems in which its AirPods and/or wireless Beats by Dre-branded products and/or systems are incorporated (“Accused Headphones”).

108. As set forth in the attached non-limiting Claim chart (Exhibit H), Apple has infringed and is infringing at least Claim 1 of the ’934 Patent by making, having made, using, importing, supplying, distributing, selling, and/or offering for sale the Accused Headphones. In particular, the use of the Accused Headphones by Apple to, for example, demonstrate those products in brick-and-mortar Apple Stores in Austin, Texas or to, for example, test those products, constitute acts of direct infringement of Claim 1 of the ’934 Patent.

109. Apple actively induces infringement of at least Claim 1 of the ’934 Patent by selling the Accused Headphones with instructions as to how to use the Accused Headphones in a system such as that recited in the ’934 Patent. Apple aids, instructs, or otherwise acts with the intent to

cause an end user to use the Accused Headphones. Apple knew of the '934 Patent and knew that its use and sale of the Accused Headphones infringe at least Claim 1 of the '934 Patent.

110. Apple is also liable for contributory infringement of at least Claim 1 of the '934 Patent by providing, and by having knowingly provided, a material part of the instrumentalities, namely the Accused Headphones, used to infringe Claim 1 of the '934 Patent. The Accused Headphones have no substantial non-infringing uses. When an end user uses the Accused Headphones in combination with, for example, an Apple iPhone and/or an Apple Watch, the end user directly infringes Claim 1 of the '934 Patent. Apple knew that the Accused Headphones were especially made for use in an infringing manner prior to the filing of this lawsuit. For at least the reasons set forth above, Apple contributes to the infringement of the '934 Patent by others.

111. Koss has been damaged as a result of the infringing conduct by Apple alleged above. Thus, Apple is liable to Koss in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

112. Apple's infringement of the '934 Patent has caused, and will continue to cause, Koss to suffer substantial and irreparable harm.

113. Apple has been aware that it infringes the '934 Patent since at least October 30, 2019. Upon information and belief, Apple was aware of its infringement of the '934 Patent at least as early as November 5, 2019, when the '934 Patent issued, through Apple's own freedom-to-operate analysis, initiated, in part, due to the communications Apple was having with Koss at that time.

114. On information and belief, to the extent Apple did not learn of the '934 Patent on or around November 5, 2019, Apple was willfully blind to its infringement of the '934 Patent.

115. Apple's infringement of the '934 Patent is, has been, and continues to be, willful, intentional, deliberate, and/or in conscious disregard of Koss's rights under the patent.

116. Koss has complied with 35 U.S.C. § 287 with respect to the '934 Patent.

FOURTH CAUSE OF ACTION

(Infringement of the '982 Patent)

117. Koss incorporates by reference and realleges each and every allegation of Paragraphs 1 through 116 as if set forth herein.

118. Koss owns all substantial rights, interest, and title in and to the '982 Patent, including the sole and exclusive right to prosecute this action and enforce the '982 Patent against infringers, and to collect damages for all relevant times.

119. The '982 Patent generally describes wireless earphones that comprise a transceiver circuit for receiving streaming audio from a data source, such as a digital audio player or a computer, over a wireless network.

120. The written description of the '982 Patent describes in technical detail each of the limitations of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patentably distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

121. Apple has made, had made, used, imported, supplied, distributed, sold, or offered for sale products and/or systems, including systems in which its AirPods products and/or systems are incorporated ("Accused AirPods").

122. As set forth in the attached non-limiting Claim chart (Exhibit I), Apple has infringed and is infringing at least Claim 1 of the '982 Patent by making, having made, using,

importing, supplying, distributing, selling, and/or offering for sale the Accused AirPods. In particular, the use of the Accused AirPods by Apple to, for example, demonstrate those products in brick-and-mortar Apple Stores in Austin, Texas or to, for example, test those products, constitute acts of direct infringement of Claim 1 of the '982 Patent.

123. Apple actively induces infringement of at least Claim 1 of the '982 Patent by selling the Accused AirPods with instructions as to how to use the Accused AirPods in a system such as that recited in the '982 Patent. Apple aids, instructs, or otherwise acts with the intent to cause an end user to use the Accused AirPods. Apple knew of the '982 Patent and knew that its use and sale of the Accused AirPods infringe at least Claim 1 of the '982 Patent.

124. Apple is also liable for contributory infringement of at least Claim 1 of the '982 Patent by providing, and by having knowingly provided, a material part of the instrumentalities, namely the Accused AirPods, used to infringe Claim 1 of the '982 Patent. The Accused AirPods have no substantial non-infringing uses. When an end user uses the Accused AirPods in combination with, for example, an Apple iPhone and/or an Apple Watch, the end user directly infringes Claim 1 of the '982 Patent. Apple knew that the Accused AirPods were especially made for use in an infringing manner prior to the filing of this lawsuit. For at least the reasons set forth above, Apple contributes to the infringement of the '982 Patent by others.

125. Koss has been damaged as a result of the infringing conduct by Apple alleged above. Thus, Apple is liable to Koss in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

126. Apple's infringement of the '982 Patent has caused, and will continue to cause, Koss to suffer substantial and irreparable harm.

127. Apple has been aware that it infringes the ’982 Patent since at least December 6, 2019. Upon information and belief, Apple was aware of its infringement of the ’982 Patent at least as early as November 26, 2019, when the ’982 Patent issued, through Apple’s own freedom-to-operate analysis, initiated, in part, due to the communications Apple was having with Koss at that time.

128. On information and belief, to the extent Apple did not learn of the ’982 Patent on or around November 26, 2019, Apple was willfully blind to its infringement of the ’982 Patent.

129. Apple’s infringement of the ’982 Patent is, has been, and continues to be, willful, intentional, deliberate, and/or in conscious disregard of Koss’s rights under the patent.

130. Koss has complied with 35 U.S.C. § 287 with respect to the ’982 Patent.

FIFTH CAUSE OF ACTION

(Infringement of the ’325 Patent)

131. Koss incorporates by reference and realleges each and every allegation of Paragraphs 1 through 130 as if set forth herein.

132. Koss owns all substantial rights, interest, and title in and to the ’325 Patent, including the sole and exclusive right to prosecute this action and enforce the ’325 Patent against infringers, and to collect damages for all relevant times.

133. The ’325 Patent generally describes wireless earphones that comprise a transceiver circuit for receiving streaming audio from a data source, such as a digital audio player or a computer, over a wireless network.

134. The written description of the ’325 Patent describes in technical detail each of the limitations of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patentably distinct from

and improved upon what may have been considered conventional or generic in the art at the time of the invention.

135. Apple has made, had made, used, imported, supplied, distributed, sold, or offered for sale products and/or systems, including systems in which its AirPods products and/or systems are incorporated ("Accused AirPods").

136. As set forth in the attached non-limiting Claim chart (Exhibit J), Apple has infringed and is infringing at least Claim 1 of the '325 Patent by making, having made, using , importing, supplying, distributing, selling, and/or offering for sale the Accused AirPods. In particular, the use of the Accused AirPods by Apple to, for example, demonstrate those products in brick-and-mortar Apple Stores in Austin, Texas or to, for example, test those products, constitute acts of direct infringement of Claim 1 of the '325 Patent.

137. Apple actively induces infringement of at least Claim 1 of the '325 Patent by selling the Accused AirPods with instructions as to how to use the Accused AirPods in a system such as that recited in the '325 Patent. Apple aids, instructs, or otherwise acts with the intent to cause an end user to use the Accused AirPods. Apple knew of the '325 Patent and knew that its use and sale of the Accused AirPods infringe at least Claim 1 of the '325 Patent.

138. Apple is also liable for contributory infringement of at least Claim 1 of the '325 Patent by providing, and by having knowingly provided, a material part of the instrumentalities, namely the Accused AirPods, used to infringe Claim 1 of the '325 Patent. The Accused AirPods have no substantial non-infringing uses. When an end user uses the Accused AirPods in combination with, for example, an Apple iPhone and/or an Apple Watch, the end user directly infringes Claim 1 of the '325 Patent. Apple knew that the Accused AirPods were especially made

for use in an infringing manner prior to the filing of this lawsuit. For at least the reasons set forth above, Apple contributes to the infringement of the '325 Patent by others.

139. Koss has been damaged as a result of the infringing conduct by Apple alleged above. Thus, Apple is liable to Koss in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

140. Apple's infringement of the '325 Patent has caused, and will continue to cause, Koss to suffer substantial and irreparable harm.

141. Apple has been aware that it infringes the '325 Patent since at least December 6, 2019. Upon information and belief, Apple was aware of its infringement of the '325 Patent at least as early as December 10, 2019, when the '325 Patent issued, through Apple's own freedom-to-operate analysis, initiated, in part, due to the communications Apple was having with Koss at that time.

142. On information and belief, to the extent Apple did not learn of the '325 Patent on or around December 10, 2019, Apple was willfully blind to its infringement of the '325 Patent.

143. Apple's infringement of the '325 Patent is, has been, and continues to be, willful, intentional, deliberate, and/or in conscious disregard of Koss's rights under the patent.

144. Koss has complied with 35 U.S.C. § 287 with respect to the '325 Patent.

JURY DEMAND

Koss hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

WHEREFORE, Koss requests that:

A. The Court find that Apple has directly infringed the Patents-in-Suit and hold Apple liable for such infringement;

B. The Court find that Apple has indirectly infringed the Patents-in-Suit by inducing its customers to directly infringe the Patents-in-Suit and hold Apple liable for such infringement;

C. The Court find that Apple has indirectly infringed the Patents-in-Suit by contributing to Apple's customers' direct infringement of the Patents-in-Suit and hold Apple liable for such infringement;

D. The Court award damages pursuant to 35 U.S.C. § 284 adequate to compensate Koss for Apple's past infringement of the Patents-in-Suit, including both pre- and post-judgment interest and costs as fixed by the Court;

E. The Court increase the damages to be awarded to Koss by three times the amount found by the jury or assessed by the Court;

F. The Court declare that this is an exceptional case entitling Koss to its reasonable attorneys' fees under 35 U.S.C. § 285; and

G. The Court award such other relief as the Court may deem just and proper.

Dated: July 23, 2020

Respectfully submitted,

/s/ *Darlene F. Ghavimi*

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ATTORNEYS FOR PLAINTIFF KOSS CORPORATION

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

KOSS CORPORATION, Plaintiff, v. APPLE INC., Defendant.	Case No. 6:20-cv-00665 **JURY TRIAL DEMANDED**

DEFENDANT APPLE INC.'S MOTION TO STRIKE PLAINTIFF KOSS CORPORATION'S COMPLAINT

I. INTRODUCTION

Koss Corporation's ("Koss") Complaint repeatedly reveals and relies on confidential communications that Koss is contractually prohibited from using in this litigation. Because Koss' Complaint hinges on disclosures that violate its contractual obligations, the Complaint should be stricken pursuant to Federal Rule of Civil Procedure 12(f).

As the Complaint (improperly) discloses, in 2017, Koss demanded that Apple Inc. ("Apple") take a license to its patents; the parties then engaged in discussions regarding Koss' allegations of infringement. But missing from the Complaint is a critical fact: the discussions between Koss and Apple occurred *pursuant to a confidentiality agreement* that Koss insisted Apple sign. The Confidentiality Agreement forbids the parties from mentioning the licensing discussions in litigation for any reason, including to support the filing of a complaint—a prohibition that survives the termination of the Agreement. Apple honored the Confidentiality Agreement and engaged in good-faith discussions about why it did not infringe Koss' patents and why those

patents are invalid. Koss, on the other hand, defied its duties and, in filing its Complaint, willfully breached the very agreement it had insisted Apple sign. Throughout the Complaint, Koss divulges its confidential communications with Apple. These communications form the *only* factual basis for essential elements of its allegations of induced infringement, contributory infringement, and willfulness. Koss' patent-infringement lawsuit is incurably infected by these contractual violations. The Complaint should therefore be stricken, in full, from the Court's docket.

II. BACKGROUND

As revealed in its Complaint, Koss approached Apple in 2017 about a purported desire to discuss a license to one of Koss' patents. (*See* Dkt. No. 1, Compl. ¶¶ 70–73.) As the Complaint also reveals, Apple engaged in licensing discussions with Koss over the next few years. Koss sent Apple emails and presentations claiming that Apple infringed the five patents-in-suit here. (*See id.* ¶ 71.) And Apple responded, laying out its positions as to why it did not infringe and why the patents are invalid. (*See id.* ¶¶ 85, 99, 113, 127, 141.) What Koss omits from its Complaint, however, is that these discussions and exchanges occurred under a confidentiality agreement that Koss itself demanded, and on which Apple relied.

The Confidentiality Agreement, which became effective on the date Koss and Apple began their discussions (*see* Ex. 1 at preamble), prohibited either party from using in litigation—for any reason—the content or existence of any of the parties' "Communications":

> 5. RESTRICTIONS ON USE OF COMMUNICATIONS. . . . [T]he Parties agree not to use or attempt to use any Communications, or the existence thereof, in a litigation or any other administrative or court proceeding for any purpose.

(Ex. 1 § 5.) "Communications," in turn, were defined broadly to include any exchange of information between the parties relating to the "Purpose," or even any description of the content of such exchanges:

> 1. DEFINITION OF COMMUNICATIONS. "Communications" means communications, discussions, presentations, documents, or notes exchanged between the Parties in any form, whether before or during the Term [of the Confidentiality Agreement], in connection with the Purpose, including any other materials reflecting the content thereof.

(*Id.* § 1 (emphasis omitted).) The "Purpose" encompassed any discussions and evaluations regarding "a potential license, acquisition or other transactions relating to patents that [Koss] represents it owns or controls." (*Id.* at preamble.) When Koss filed this action on July 22, 2020, Section 5 of the Confidentiality Agreement was still in force, and it remains in force today.[1]

III. ARGUMENT

A. Koss' Complaint Repeatedly Breaches The Parties' Confidentiality Agreement By Referring To And Relying On Communications Protected Under That Agreement.

Despite the explicit terms of the Confidentiality Agreement, Koss's Complaint refers repeatedly to prior "communications, discussions, presentations, documents, or notes exchanged between" Koss and Apple regarding a potential license to Koss' patents. In fact, Koss' Complaint is riddled with allegations it was legally barred from making against Apple. For instance, Koss alleges that:

- "On September 7, 2017 Koss informed Apple that it was infringing U.S. Patent No. 9,729,959, a parent of several of the Patents-in-Suit." (Dkt. No. 1, Compl. ¶ 70);
- "Koss and its representatives met with Apple a total of four times in Apple's California offices and in the course of those meetings, as well as several additional email exchanges, provided Apple with claim charts identifying how Apple infringed certain of Koss's patents, including each of the Patents-in-Suit." (*Id.* ¶ 71);
- "Prior to the filing of the instant Complaint, Koss informed Apple of its belief that Apple was infringing each of the Patents-in-Suit." (*Id.* ¶ 72);

[1] On July 8, 2020, Koss notified Apple of its termination of the Confidentiality Agreement. Under the terms of the contract, the Confidentiality Agreement thus ended on July 22. (Ex. 1 § 14.) The Confidentiality Agreement also provided, however, that the restriction on the parties' use of "Communications" (per Section 5) "*shall survive termination* and for the avoidance of doubt, shall run with the patents." (*Id.* (emphasis added).)

- "Apple knew of the '025 Patent and knew that its use and sale of the Accused Headphones infringe at least Claim 1 of the '025 Patent" (*id.* ¶ 81)—and identical allegations for each of the four other asserted patents. (*See id.* ¶¶ 95, 109, 123, 137);

- "Apple knew that the Accused Headphones were especially made for use in an infringing manner prior to the filing of this lawsuit" (*id.* ¶ 82)—and identical allegations for each of the four other asserted patents. (*See id.* ¶¶ 96, 110, 124, 138); and

- "Apple has been aware that it infringes the '025 Patent since at least March 6, 2019. . . . Apple was aware of its infringement of the '025 Patent . . . through Apple's own freedom-to-operate analysis, initiated, in part, due to the communications Apple was having with Koss" (*id*. ¶ 85)—and identical allegations for each of the four other asserted patents (*see id.* ¶¶ 99, 113, 127, 141).

In total, Koss' Complaint includes at least eighteen separate allegations that improperly reveal, describe, and substantively rely on its pre-suit "Communications" with Apple. Each of these allegations therefore violates Koss' obligations under its Confidentiality Agreement with Apple.

Prohibited references to the parties' pre-suit communications form the core of Koss' Complaint, and Koss makes no attempt to avoid relying on them. To the contrary, much of Koss' Complaint relies *solely* on these communications and cites no other facts to support its allegations. For example, to plead that Apple induced infringement of Koss' patents, Koss needed to allege that Apple knew of the patents before suit. *Omega Pats., LLC v. CalAmp Corp.*, 920 F.3d 1337, 1349 (Fed. Cir. 2019) ("Liability for inducement can only attach if the defendant knew of the patent and knew . . . that the induced acts constitute . . . infringement.") (citations and internal quotation marks omitted). It attempted to do so only by referring to the parties' protected communications. (Dkt. No. 1, Compl. ¶¶ 81, 95, 109, 123, 137.) To plead that Apple contributed to infringement of Koss' patents, Koss again needed to allege pre-suit knowledge. *Fujitsu Ltd. v. Netgear Inc.*, 620 F.3d 1321, 1326 (Fed. Cir. 2010) ("To establish contributory infringement, the patent owner must show . . . that the accused infringer had knowledge of the patent . . . .") (citation omitted). And again, Koss attempted to do so only by referring to the parties' protected communications. (Dkt. No. 1, Compl. ¶¶ 82, 96, 110, 124, 138.) And finally, to plead that Apple

acted willfully, Koss went to the well yet again—it based its willfulness allegations solely on communications it had explicitly agreed not to use. (*Id.* ¶¶ 85, 99, 113, 127, 141.) None of Koss' claims for induced, contributory, and willful infringement for any of the five patents-in-suit cites any facts other than those that constitute a direct violation of the parties' Confidentiality Agreement.

B. The Appropriate Remedy For Koss' Deliberate Violation Of The Confidentiality Agreement Is To Strike Koss' Complaint.

Koss should not be permitted to benefit from its own contractual violations, and to prevent such an inequitable result, the entire Complaint should be stricken. This Court may strike from a complaint allegations, like Koss', that are "immaterial [and] impertinent" to this suit. Fed. R. Civ. P. 12(f). Indeed, courts have repeatedly stricken as "immaterial"—and "potentially prejudicial"—allegations relating to confidential discussions such as those at issue here. *IP Cube Partners Co. v. Telecomm. Sys.*, No. 15-cv-6334, 2016 WL 3248500, at *4 (S.D.N.Y. June 13, 2016) (striking allegations concerning conduct during settlement negotiations); *see, e.g.*, *Grid One Sols. v. Elster Amco Water*, No. 15-cv-3452, 2015 WL 8294040, at *4 (N.D. Cal. Dec. 9, 2015) (striking allegations concerning confidential settlement communications).

In this case, Koss' improper disclosure and violation of the Confidentiality Agreement is so pervasive that striking the entire Complaint is warranted. Where, as here, a party has violated a confidentiality agreement in pleading its case, "striking the [complaint] in full is the most effective and efficient way to steer th[e] litigation . . . so that [the plaintiff] can satisfy its pleading requirements . . . and also comply with the terms of the" agreement or stipulated order. *GVB MD v. Aetna Health Inc.*, No. 19-22357, 2020 WL 1692635, at *2, 4 (S.D. Fla. Apr. 7, 2020) (striking a complaint in its entirety, with leave to amend). An effective dismissal is also the most equitable remedy here: Koss' induced-, contributory-, and willful-infringement claims for every single

patent-in-suit rely solely on material included in violation of the Confidentiality Agreement. These allegations make up the overwhelming bulk of Koss' claims against Apple, and thus "taint the entire pleading," *Hunt v. Sunny Delight Beverages Co.*, No. 8:18-cv-557, 2018 WL 6786265, at *4–5 (C.D. Cal. Dec. 18, 2018) (declining to "sift through the [complaint] to determine if any allegations [were] divorced from Plaintiffs' misconduct" under Rule 11, and thus striking the complaint in full, without prejudice). But for Koss' willful violation of the parties' Confidentiality Agreement, it would not have been able to file its Complaint in this case.

Faced with Koss' manifest willingness to violate the parties' Confidentiality Agreement, Apple has sought relief by filing a lawsuit in the Northern District of California. That lawsuit seeks an injunction prohibiting Koss from further breaches of the Confidentiality Agreement. Because Koss' Complaint in this Court was filed in violation of the parties' Confidentiality Agreement, and should therefore be stricken, Apple's California complaint also seeks a declaratory judgment intended to resolve the parties' disputes regarding Koss' patents in the forum where those disputes arose. But the improper filing of Koss' Complaint in this Court requires a remedy only this Court can provide—for as long as Koss' Complaint remains on record, Koss will have continued to "use" certain information in violation of its contractual obligations.

IV. CONCLUSION

After signing the Confidentiality Agreement, Apple rightfully expected that it could engage in licensing discussions with Koss, and that those discussions would not later be twisted and used against it. Koss' Complaint flaunts the parties' Confidentiality Agreement and seeks to profit from its own contractual breaches. The Complaint should be stricken in full from the Court's docket.

Date: August 7, 2020

Respectfully submitted,

By: */s/ Steve Wingard*

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PROOF OF SERVICE

I hereby certify that, on August 7, 2020, I served a copy of the foregoing via email, and electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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/s/ *Steve Wingard*
Steve Wingard

EXHIBIT 1

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is entered into and is effective as of August 6, 2017 (the "Effective Date") by and between Apple Inc., having its principal place of business at 1 Infinite Loop, Cupertino, California 95014, and its affiliates ("Apple") and Koss Corporation, a Delaware corporation, having its principal place of business at 4129 N. Port Washington Rd., Milwaukee, WI 53212, its affiliates and successors in interest to the Patents (collectively "Company") (each of Apple and Company a "**Party**" and together "**Parties**").

WHEREAS, the Parties have discussed or intend to discuss and evaluate a potential license, acquisition or other transactions relating to patents that Company represents it owns or controls (the "**Patents**") (the "**Purpose**"); and

WHEREAS, for their mutual benefit, the Parties have disclosed or intend to disclose certain confidential information relating to the Purpose;

The Parties agree as follows:

1. **DEFINITION OF COMMUNICATIONS.** "**Communications**" means communications, discussions, presentations, documents, or notes exchanged between the Parties in any form, whether before or during the Term, in connection with the Purpose, including any other materials reflecting the content thereof.

REDACTED

5. **RESTRICTIONS ON USE OF COMMUNICATIONS.** In addition to Section 4, the Parties agree not to use or attempt to use any Communications, or the existence thereof, in a litigation or any other administrative or court proceeding for any purpose.

REDACTED

REDACTED

REDACTED

[redacted]

14. TERM AND TERMINATION. This Agreement shall terminate three (3) years from the Effective Date or fourteen (14) calendar days after one Party receives written notice of termination from the other Party, whichever comes first (the period of time starting on the Effective Date and ending with the date of termination defined as the "Term"). Termination of this Agreement shall not relieve Recipient of its confidentiality and use obligations with respect to Discloser's Confidential Information and Communications disclosed prior to the date of termination. Sections 4 (Nondisclosure and Nonuse of Confidential Information), 5 (Restrictions on Use of Communications), 6 (Ownership of the Patents), 8 (Use in Certain Proceedings), 9 (Legally Required Disclosures), 10 (Subject to FRE 408), 15 (Export Controls), and 17 (No Assignment) shall survive termination and for the avoidance of doubt, shall run with the patents such that any successor in interest to any patents discussed is additionally bound to the obligations therein.

REDACTED

[redacted]

REDACTED

REDACTED

[redacted]

Understood and agreed to by the authorized representatives of the Parties:

Apple

Apple Inc.

By (Signature)

Jeffrey V. Lasker
Senior Counsel, IP Transactions
Printed Name and Title

4/27/2018
Date

Company

Koss Corporation

By (Signature)

Michael J. Koss, Jr. (VP Marketing - Product)
Printed Name and Title

4/25/2018
Date

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

KOSS CORPORATION, Plaintiff, v. APPLE INC., Defendant.	Case No. 6:20-cv-00665-ADA **JURY TRIAL DEMANDED**

DEFENDANT APPLE INC.'S OPPOSED MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA

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I. INTRODUCTION

In this case, a plaintiff incorporated in Delaware, based in Wisconsin, and owning patents prosecuted by attorneys in Pittsburgh has (in breach of a contract negotiated and signed in California) sued a California-based corporation for selling allegedly-infringing products that were engineered, developed, designed, and marketed in California. The Western District of Texas is not a convenient forum for this dispute. The Northern District of California, however, is.

The vast bulk of the relevant evidence and proof in this matter is located in California. Apple engineers who designed and developed the accused products and features are based in California. The relevant technical documents describing these features, and the source code embodying them, are likewise in California. And one of the asserted patents' inventors even lives in California.

In contrast, no witness, document, or evidence relevant to this dispute is located in this District, or anywhere in Texas. Koss is not a Texas corporation. It has no Texas employees, plants, or offices. It stores no documents in Texas. It did not conceive, reduce to practice, prosecute, or commercialize the asserted patents in Texas. And no witness with any relevant information is within the subpoena power of this Court. Although Koss has suggested that Apple's presence in Austin—however untethered to the dispute here—favors this venue, that argument is foreclosed by Federal Circuit precedent and factually incorrect as confirmed by sworn testimony.

As no evidence in this case can be expected to come from Texas, this District is an inconvenient venue in which to try it. The Northern District of California is clearly more convenient, and pursuant to 28 U.S.C. § 1404(a), Apple requests the Court transfer this case there.

II. BACKGROUND

Apple is a California corporation, employing more than 35,000 people who work in or around its headquarters in Cupertino. (Ex. A, Declaration of Mark Rollins ("Rollins Decl.") ¶ 3; Compl., Dkt. No. 1, ¶ 5.) Apple's primary management, research and development, marketing, finance, and sales personnel are in or near Cupertino. (Rollins Decl. ¶ 3.)

Koss appears to accuse at least the following Apple products and features of infringement (*see* Compl. ¶¶ 79–82, 107–10, 121–24, 135–38; Ex. B, 11/6/20 Koss Preliminary Infringement Contentions):

Accused Product	Accused Feature	Asserted Patent(s)
Apple HomePod	Configuration to access a home Wi-Fi network	'451 Patent
Apple AirPods and AirPods Pro **Powerbeats and Powerbeats Pro** **Beats Solo Pro, Solo3, and Studio3**[1]	Receive audio from another Apple device	'025, '934, '982, '325 Patents
	Siri functionality	'025, '934, '982, '325 Patents
	Firmware upgrades	'025, '934, '982, '325 Patents
	Physical structure and design	'025, '934, '982, '325 Patents (selected products)
	Switch between audio sources	'025, '934, '982 Patents
AirPods Pro	Switch between noise-control modes	'025, '934, '982 Patents

Nearly all the U.S.-based engineers who worked on these features did so in California—and none did so in Texas. (Rollins Decl. ¶¶ 8–18.) The relevant marketing, licensing, and finance personnel are also in California. (*Id.* ¶¶ 19–22.) Indeed, each of the thirteen Apple employees listed below works in California and has information relevant to this case. Not one works in Texas, works with anyone in Texas in connection with the accused products or features, or has even traveled to Texas as part of that work (*Id.* ¶¶ 9–22):

[1] Unless noted, references to "AirPods" include both AirPods and AirPods Pro, and references to "Beats products" include Powerbeats, Powerbeats Pro, Solo Pro, Solo3, and Studio3.

Name	Title	Relevance
Bob Bradley	Software Development Engineer, Sensing and Connectivity Group	Knowledgeable about the research, design, and development of the HomePod set-up process. Mr. Bradley and all of the individuals who worked on this feature are located in the Northern District.
Dave Shaw	Bluetooth Systems Engineer, Core Bluetooth Group	Knowledgeable about the operation of the AirPods, including how Apple AirPods receive audio content from another Apple device. Mr. Shaw and all other U.S.-based individuals who worked on this feature are located in California.[2]
Baptiste Paquier	Software Development Engineer Manager, IMG Audio	Knowledgeable about the research, design, and development of Siri on Apple's AirPods, and how AirPods switch between noise-control modes. Mr. Paquier and all of the individuals who worked on this feature are located in the Northern District.
Ariane Cotte	Software Development Manager, System Firmware & Diagnostics Group	Knowledgeable about the research, design, and development of the process for how Apple AirPods receive firmware upgrades. Ms. Cotte and all of the individuals who worked on this feature are located in the Northern District.
Arun Chawan Ethan Huwe	Product Design Engineers, Apple Audio PD Group or Technology Development Group	Knowledgeable about the research, design, and development of the physical structure and design of the Apple AirPods and AirPods Pro, respectively. Messrs. Chawan and Huwe and all of the individuals who worked on this feature are located in the Northern District.
Aarti Kumar	Software Engineering Manager, Sensing and Connectivity Group	Knowledgeable about the research, design, and development of the process by which Apple AirPods and Beats products switch between paired audio sources. Ms. Kumar and all individuals who worked on this feature are located in the Northern District, except one individual who is located in Seattle.
Robert Boyd	Product Design Engineering Manager, Beats HW Mechanical Engineering	Knowledgeable about the research, design, and development of the physical structure and design of the PowerBeats Pro. Mr. Boyd and all of the individuals who worked on this feature are located in the Northern District or in Los Angeles.
Marco Pontil	Senior Manager, Beats Software Division	Knowledgeable about the research, design, and development of the process by which Beats products receive audio content and firmware upgrades, switch between audio sources, and use Siri. Mr. Pontil and all individuals who worked on these features work in the Northern District or in Culver City, California, except one individual located in Boston.

[2] Although Mr. Shaw has moved to San Diego, California, he worked primarily in the Northern District while working on the accused AirPods, and when Koss filed this suit. (Rollins Decl. ¶ 10.)

Name	Title	Relevance
Linda Frager	Product Marketing Manager, Home & Audio Product Marketing	Knowledgeable about the marketing of the Apple HomePod and AirPods. Ms. Frager and her team are located in the Northern District.
Jeff Bruksch	Product Portfolio Manager, Beats NPI Product Management	Knowledgeable about the marketing of the Beats products. Mr. Bruksch is located in Culver City, California.
Jeff Lasker	Principal Counsel, IP Transactions	Knowledgeable about Apple's patent licensing and pre-suit communications between the parties, including the parties' Confidentiality Agreement. Mr. Lasker is located in the Northern District.
Mark Rollins	Finance Manager	Knowledgeable about Apple's financial records and about financial data relating to the sales of Apple's AirPods, Beats Products, and HomePods. Mr. Rollins is located in the Northern District.

Moreover, Apple's source code and its relevant technical, marketing, and financial documents are also in California. (*Id.* ¶¶ 8–22.)

Beyond Koss' infringement claims, this case also involves Koss' breach, by including certain allegations in its Complaint, of a contract signed in California. In 2017 Koss approached Apple, purportedly to negotiate a potential license of one of Koss' patents. (Compl. ¶¶ 70–73.) According to Koss, "[o]ver the following two and a half years, Koss and its representatives met with Apple a total of four times in Apple's California offices." (*Id.* ¶ 71.) These discussions involved emails and presentations from Koss to Apple, in California, and Apple's responses refuting Koss' allegations. (8/7/20 Mot. to Strike, Dkt. No. 12 at 2.) These communications all took place under a confidentiality agreement that Koss insisted Apple sign. (*Id.*; *see* Confidentiality Agreement, Dkt. No. 12-1.) Koss' Complaint depended on—indeed, rested certain claims solely on—protected communications, thus breaching the Confidentiality Agreement. (Dkt. No. 12 at 2–5.) The Apple employees knowledgeable about the parties' negotiations and the Confidentiality Agreement are in California. (Rollins Decl. ¶ 19.)

Koss itself has no discernable connection to this District. Koss is an audio-products company incorporated in Delaware, with its only known office in Milwaukee, Wisconsin. (Compl. ¶ 2.) Although Koss alleges certain tenuous connections to Texas through unnamed companies it allegedly does business with (*id.* ¶¶ 3–4), Koss itself has no known or identifiable Texas offices or employees, nor has it appointed a Texas business agent or a representative for service. (Ex. C, Franchise Tax Account Status for Koss Corp.)

III. LEGAL STANDARD

A court may grant a motion to transfer "[f]or the convenience of parties and witnesses" and "in the interest of justice . . . ." 28 U.S.C. § 1404(a). The "preliminary question" is whether a civil action "might have been brought" in the judicial district to which a transfer is requested. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 312 (5th Cir. 2008) ("*Volkswagen II*").

A series of private and public interest factors govern the remainder of the transfer analysis. *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) ("*Volkswagen I*"). The private factors include: "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive." *Id.* The public interest factors include: "(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws of the application of foreign law." *Id*. The transferee venue need only be "*clearly* more convenient," not "*far* more convenient," for transfer to be appropriate. *In re Toyota Motor Corp.*, 747 F.3d 1338, 1341 (Fed. Cir. 2014).

IV. THE NORTHERN DISTRICT OF CALIFORNIA IS CLEARLY A MORE CONVENIENT VENUE TO LITIGATE THIS CASE THAN THIS DISTRICT

A. This Case Could Have Been Brought In The Northern District.

As any patent suit may be brought in "the judicial district where the defendant resides," 28 U.S.C. § 1400(b), and Apple is headquartered in Cupertino, California, within the Northern District of California (*see* Rollins Decl. ¶ 3), venue would be proper in the Northern District.

B. The Private Interest Factors Favor Transfer.

Apple's relevant witnesses and documents are in the Northern District. An important third-party witness, one of the inventors of the patents-in-suit, lives in California. Meanwhile, no known relevant Apple, Koss, or third-party witnesses or documents are in this District, and Koss has no presence of any kind here. The private interest factors thus heavily favor transfer.

1. Relevant Sources Of Proof Are In The Northern District Of California

The location of Apple's sources of proof strongly favors transfer. "This factor relates to the ease of access to non-witness evidence, such as documents and other physical evidence . . . ." *In re Apple Inc.*, 979 F.3d 1332, 1339 (Fed. Cir. 2020). "In patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer. Consequently, the place where the defendant's documents are kept weighs in favor of transfer to that location." *In re Genentech, Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009) (internal quotation marks omitted). Despite advances in technology that simplify transfer of some electronic files, "precedent dictates the Court consider where sources of proof are physically located." *CloudofChange, LLC v. NCR Corp.*, 2020 WL 6439178, at *3 n.2 (W.D. Tex. Mar. 17, 2020); *see Volkswagen II*, 545 F.3d at 316.

Apple's relevant U.S. sources of proof are located in the Northern District of California. Apple's highly confidential source code for the accused features of Apple's HomePod, AirPods, and Beats products is stored in, or on servers accessible to Apple employees in, California. (Rollins

Decl. ¶¶ 8–16); *Parity Networks, LLC v. Juniper Networks, Inc.*, 2018 WL 9539505, at *2 (E.D. Tex. Aug. 10, 2018) (concluding the sources-of-proof factor favors transfer where "specific sources of proof," including source code, were located at defendant's California headquarters). Likewise, Apple's relevant non-source code documents are in California. Here, Koss has accused specific features of Apple's AirPods, HomePod, and certain Beats products. (*See* Compl. ¶¶ 79–82, 107–10, 121–24, 135–38; Ex. B at 2–3.) Technical documents pertaining to the design and engineering of these features are on servers and computers in California. (Rollins Decl. ¶¶ 8–18.) Apple's financial, marketing, and licensing documents relevant to the accused products are also located in California. (*Id.* ¶¶ 19–22.) Although some source code, documents, or witnesses regarding some accused features are in Israel or certain non-Texas states (*see id.* ¶ 8), "[t]he comparison between the transferor and transferee forums is not altered by the presence of other witnesses and documents in places outside both forums" where, as here, the vast majority of relevant evidence resides in the transferee forum, and none reside in the transferor forum. *In re Toyota Motor*, 747 F.3d at 1340.

In addition to the current location of relevant documents, "the Court will look to the location where the allegedly infringing products were researched, designed, developed and tested" to evaluate the ease of access factor. *XY, LLC v. Trans Ova Genetics, LC*, 2017 WL 5505340, at *13 (W.D. Tex. Apr. 5, 2017); *see also Affinity Labs of Texas, LLC v. Blackberry Ltd.*, 2014 WL 10748106, at *6 (W.D. Tex. June 11, 2014) (noting that "a court should also be mindful of the location of the activities surrounding the research, development, and production of the accused products"). Here, the accused products and features were researched, developed, and tested almost exclusively in California; no part of the research and design took place in or near Texas. (Rollins Decl. ¶¶ 8–16.) This confirms that the access-to-proof factor favors transfer.

In contrast to the many sources of proof in California, none are located within this District. Koss has no presence in Texas and has not even claimed to have documents here. And because the patents-in-suit were allegedly conceived by inventors from California, Wisconsin, and Illinois, and prosecuted by attorneys in Pennsylvania, there is no reason to believe that documents relating to the patents or the inventors' work are in Texas. (*See* Ex. D, Inventor LinkedIn and Whitepages; Ex. E, Excerpted File Histories of Asserted Patents.)

Similarly, Apple has no known relevant documents in Texas. While Apple maintains offices in Austin, the legally-mandated inquiry is where documents *relevant to this case* are located—and none of *those* are in Texas. (Rollins Decl. ¶¶ 8–22); *City of New Orleans Emps.' Ret. Sys. ex rel. BP P.L.C. v. Hayward*, 508 F. App'x 293, 297 (5th Cir. 2013) (affirming transfer to where "the relevant documents . . . could be found," despite presence of documents "of questionable relevance" in the transferor forum (quotations omitted)); *Volkswagen II*, 545 F.3d at 316 (analyzing only location of documents "relating to the accident" at issue). To confirm the location of its relevant documents, Apple interviewed many knowledgeable witnesses: software engineers, hardware engineers, product managers, marketing, licensing, and finance personnel, and a Texas-based human resources supervisor. (Rollins Decl. ¶¶ 8–23.) All confirmed the same thing: Apple's relevant documents and witnesses are in California; whatever Apple documents or employees are located in Austin are not relevant to the claims or defenses in this case. (*Id.*)

It also does not follow that Apple's documents must be accessible in Austin simply because they are electronic. Access to Apple's source code, for instance, is tightly controlled on a need-to-know basis. (Rollins Decl. ¶¶ 8–16.) No Apple employees who work on the accused functionalities, or the code for them, live in Texas. (*Id.*) And based on Apple's extensive investigation to date, there is no evidence that the relevant code ever could or should be—or ever

has been—accessed from Texas. Given the many relevant sources of proof in California, and the lack of any in this District, the access-to-proof factor weighs heavily in favor of transfer.

2. The Compulsory-Process Factor Favors Transfer

Transfer is favored where the transferee court has subpoena power over a greater number of third-party witnesses. *In re Hoffmann-La Roche Inc.*, 587 F.3d 1333, 1337–38 (Fed. Cir. 2009); *Volkswagen II*, 545 F.3d at 316–17. A subpoena may compel an individual to testify at trial or in a deposition only "within the state" or "within 100 miles of where the person resides, is employed, or regularly transacts business in person." Fed. R. Civ. P. 45(c)(1).

Here, the Northern District has subpoena power over at least one highly relevant witness. Michael Sagan, an inventor of all but one of the patents-in-suit, lives near Sacramento, California. (Ex. D at 1–3.) This is within the statewide subpoena power of a court sitting in the Northern District. Fed. R. Civ. P. 45(c)(1). Conversely, there are no known relevant third-party witnesses within the subpoena power of this Court. Therefore, the compulsory-process factor favors transfer.

3. Convenience Of Both Party And Non-Party Witnesses Favors Transfer

The convenience and cost of attendance to the relevant witnesses is the most important factor in the transfer analysis. *In re Genentech*, 566 F.3d at 1343. "[C]ourts consider the convenience of both party and non-party witnesses." *Adaptix, Inc. v. HTC Corp.*, 937 F. Supp. 2d 867, 875 (E.D. Tex. 2013) (citation omitted).

Of the party witnesses, the Apple employees who work on relevant aspects of the accused products and features are located in California. (Rollins Decl. ¶¶ 8–22.) Apple's investigation has revealed at least thirteen separate employees in California who are knowledgeable about the engineering, design, development, or marketing of the accused products, the licensing of relevant patents, and relevant financial records and practices. (*Id.*; *see infra* at 2–4.) None of these employees work in Texas, work with anyone in Texas, or travels to Texas in connection with their

work on the accused products. (Rollins Decl. ¶¶ 8–22.) It would be significantly more convenient for each of these witnesses to attend trial in California than in Texas. Where the distance between two districts exceeds 100 miles, "the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled." *Volkswagen I*, 371 F.3d at 204–05. Here, Waco is at least 1,700 miles from the Northern District. (Ex. F, Apple Witness Travel Times at 1.) It would take witnesses leaving Apple's Cupertino headquarters less than an hour to reach the courthouses in Oakland or San Francisco, and a mere fifteen minutes by car to reach the courthouse in San Jose. (*Id*. at 12–14.)[3] A trip to Waco, on the other hand, would be five times as long: a 5.5-hour flight to Waco or a 3.5-hour flight to either Dallas or Austin plus a one hour, forty-minute trip by car to Waco. (*Id*. at 2–11.) Further, a trial in the Northern District would not require Apple's witnesses to incur meal or lodging costs, or to be away from home, family, and work overnight. Conversely, the inconvenience of a trial in Waco is, as the Fifth Circuit put it, "obvious": "'Additional distance means additional travel time; and additional travel time increases the probability for meal and lodging expenses; and additional travel time with overnight stays increases the time which these fact witnesses must be away from their regular employment.'" *Volkswagen II*, 545 F.3d at 317 (quoting *Volkswagen I*, 371 F.3d at 205). And the convenience of Apple's witnesses cannot be discounted simply because they are employed by a party. "[N]either the Fifth Circuit nor the Federal Circuit has adopted or commented on [a] distinction" between party and non-party witnesses. *Two-Way Media LLC v. AT & T Inc.*, 636 F. Supp. 2d 527, 538 (S.D. Tex. 2009).

The Northern District is also clearly more convenient for at least one key non-party witness: Michael Sagan, an inventor of four of the five patents-in-suit. (Ex. D at 1–3.) "Because

[3] For Mr. Shaw, a trip from San Diego to these courts would take under two hours. (Ex. F at 15.)

inventors' testimony is extremely important, inventors are key witnesses and the Court gives greater weight to their convenience." *VLSI Tech. LLC v. Intel Corp.*, 2019 WL 8013949, at *4 (W.D. Tex. Oct. 7, 2019). Mr. Sagan could drive from his home near Sacramento to the Northern District courthouses in two hours or less—about the length of his daily commute—whereas it would take him five or more hours to reach this District. (Ex. D at 1–3; Ex. G, Koss Witness Travel Times at 1–13.)

By contrast, there are no relevant witnesses for whom trial in this District would be more convenient. The remaining inventors of the patents-in-suit hail from Illinois or Wisconsin. (Ex. D at 4–25.) Their travel times to this Court and the Northern District are roughly equal. (Ex. G at 14–30.) And even if Koss claims that it would take a few more minutes (in a five- or six-hour trip) for these witnesses to reach the Northern District, these marginal differences do not impact the transfer analysis. *In re Genentech, Inc.*, 566 F.3d at 1344. Inventors living in Wisconsin or Illinois "will be required to travel a significant distance no matter where they testify," and "there are a substantial number of [other] witnesses residing within the transferee venue who would be unnecessarily inconvenienced by having to travel away from home to testify in the [Western] District of Texas." *Id.*

Nor does Koss have any witnesses in this District who could tip the balance. Koss is a Delaware corporation whose sole known office is in Milwaukee. (Compl. ¶ 2.) It has no known offices or employees anywhere in Texas. Koss' Wisconsin witnesses would, like the Midwest-based inventors, find travel to this District no more convenient than travel to the Northern District. While Koss allegedly manufactures products for an unnamed Texas company (*id.* ¶ 4), it has not alleged that this production occurs in Texas, that whatever is produced relates to the technologies at issue, or that any personnel in Texas are involved in the production. Nor do allegations that Koss products "are sold at various retail chains throughout the United States and the world," including

in Texas, bear any relevance. (*Id.* ¶ 3.) "Interests that 'could apply virtually to any judicial district or division in the United States,' such as the nationwide sale of infringing products, are disregarded in favor of particularized local interests" in the transfer analysis. *Tex. Data Co. v. Target Brands, Inc.*, 771 F. Supp. 2d 630, 646 (E.D. Tex. 2011) (quoting *Volkswagen II*, 545 F.3d at 318).

Similarly, no Apple employee in Texas is responsible for the design, engineering, development, or marketing of the accused features. (*See* Rollins Decl. ¶ 23–24.) Koss alleges that unnamed Apple employees in Austin have unspecified "responsibility for Apple's wearable products," or have purportedly worked as managers for the accused products. (Compl. ¶¶ 8–13.) But Apple's signed, sworn declaration directly refutes these vague, generic allegations: no one who has "responsibility for" the accused features, or who "managed" the accused products, is in Texas. (Rollins Decl. ¶¶ 8–22.) Moreover, Bodie Nash, a human resources manager at Apple's Austin offices who has supported all of Apple's teams there, confirmed that the job descriptions in Koss' complaint either did not exist in Austin, or did not relate to the design, development, or engineering of any accused features. (*Id.* ¶ 23.) Nor can the mere existence of Apple's Austin office somehow balance out Apple's specific list of relevant California witnesses. The question is not whether Apple has employees in Texas—it is whether any of those employees have information that is "relevant and material" to this case. *In re Genentech*, 566 F.3d at 1343. Because the evidence here shows that the answer is "no" (*see* Rollins Decl. ¶¶ 8–24), Apple's Austin presence should be given no weight. The Northern District is, thus, significantly more convenient for Apple's witnesses and at least one key third-party witness, whereas this District is not more convenient for any witnesses. The witness-convenience factor thus strongly favors transfer.

4. Other Practical Problems Associated With Trying This Case Are Neutral

No "other practical problems" exist in this case that would make trial more "easy, expeditious and inexpensive" in either California or this District. *Volkswagen I*, 371 F.3d at 203.

As an initial matter, the Court has no prior familiarity with the patents-in-suit, with any related patents, or with Koss in general. Nor has the Court yet invested resources in this case: no substantive proceedings have taken place. Indeed, should the Court grant Apple's pending motion to strike Koss' complaint for breaching its Confidentiality Agreement with Apple, this case may need to start afresh, if it continues at all. (*See* Dkt. No. 12.) On the other hand, the Northern District is already supervising an arbitration between the parties concerning breach of the very same Confidentiality Agreement. (*See* Ex. H, 12/15/20 Admin. Mot. for Leave, *Apple Inc. v. Koss Corp.*, No. 4:20-cv-05504-JST (N.D. Cal.).) If anything, transferring this case to the Northern District would better serve judicial economy by consolidating disputes over the same contract before the same court.

Although Koss has sued other defendants over the patents-in-suit here, the mere fact of co-pending litigation, alone, does not weigh against transfer. "To hold otherwise, [the Court] would be effectively inoculating a plaintiff against convenience transfer under § 1404(a) simply because it filed related suits against multiple defendants in the transferor district. This is not the law under the Fifth Circuit." *In re Google Inc.*, 2017 WL 977038, at *3 (Fed. Cir. Feb. 23, 2017). This is especially true where, as here, these cases share a "limited relationship" with one another, and the proposed transferee district is "where most of the identified witnesses reside and where the other convenience factors clearly favor." *In re Zimmer Holdings, Inc.*, 609 F.3d 1378, 1382 (Fed. Cir. 2010). Here, not only are the accused products in each of Koss' cases different, but of the five patents at issue, only the '025 Patent is asserted against all of Apple's co-defendants. Another—the '451 Patent—is not asserted against any other defendant. (*Compare* Compl. ¶ 1, *with* Exs. I–L, at ¶ 1 (complaints in co-pending cases).) On the other hand, Koss asserts one patent against all other co-defendants—U.S. Patent No. 10,368,155—that it does not assert against Apple. (*Id.*)

Further, it is uncertain whether any co-pending litigation will even continue in this District, as all but one other defendant is already challenging venue here. "In considering the presence of co-pending litigation, the Court must also consider the presence of co-pending motions to transfer." *Parus Holdings Inc. v. LG Elecs. Inc.*, 2020 WL 4905809, at *7 (W.D. Tex. Aug. 20, 2020). Skullcandy, Inc.—a Delaware corporation based in Utah with no offices, employees, or property in Texas—has moved to dismiss or transfer for improper venue. (Ex. M, 9/8/20 Mot. to Dismiss, *Koss Corp. v. Skullcandy, Inc.*, No. 6:20-cv-00664-ADA (W.D. Tex.) at 2.) Another defendant, Bose, is doing likewise because it too has no presence in Texas. (Ex. N, 12/17/20 Mot. to Dismiss or Transfer, *Koss Corp. v. Bose Corp.*, No. 6:20-cv-00661-ADA (W.D. Tex.).) Apple understands that yet another defendant, Plantronics, is planning to move to transfer to the Northern District of California. Koss' remaining case here is so undeveloped that the defendant's answer has not yet come due, "meaning any increase in judicial economy from the Court's experience in these early stages of litigation is likely to be limited." *Parus Holdings*, 2020 WL 4905809 at *7. (Ex. O, Docket Report, *Koss Corp. v. PEAG LLC*, No. 6:20-cv-00662-ADA (W.D. Tex.) at 12/11/20 Text Order.) For all these reasons, the other-practical-problems factor is neutral.

C. The Public Interest Factors Favor Transfer.

California has a strong local interest in this case because the events and products that gave rise to this suit are centered there. As the remaining public interest factors are neutral or should be given little weight, the public interest factors favor transfer.

1. California, Where This Case Arises, Has A Strong Local Interest

In evaluating the local-interest factor, "if there are significant connections between a particular venue and the events that gave rise to a suit, this factor should be weighed in that venue's favor." *In re Acer Am. Corp.*, 626 F.3d 1252, 1256 (Fed. Cir. 2010). Here, as set forth above, the Apple employees who designed and engineered the accused products, coded and developed the

accused features, and marketed the finished results, work in California, not Texas. (*See supra* at 9–10; Rollins Decl. ¶¶ 8–22.) Koss' infringement claims thus "call into question the reputation of individuals that work in the [California] community." *GeoTag, Inc. v. Starbucks Corp.*, 2013 WL 890484, at *6 (E.D. Tex. Jan. 14, 2013) (citing *In re Hoffmann-La Roche*, 587 F.3d at 1338); *see also Am. GNC Corp. v. GoPro, Inc.*, 2018 WL 6074395, at *21 (S.D. Cal. Nov. 6, 2018) (the Northern District, where allegedly infringing products were designed, "clearly has the stronger interest as to GoPro" despite GoPro offices in transferor district); *ORD Structure Innovations, LLC v. Oracle Corp.*, 2011 WL 4435667, at *4 (N.D. Ill. Sept. 22, 2011) (California's local interest favored transfer because "the majority of the accused products were developed in Northern California, and Oracle is headquartered there," despite Oracle having "offices within this district").

Crucially, Koss' generic allegations about Apple's presence in this District do not impact the local-interest factor. "This factor most notably regards not merely the parties' significant connections to each forum writ large, but rather the 'significant connections between a particular venue and *the events that gave rise to a suit.*'" *In re Apple Inc.*, 979 F.3d at 1345 (quoting *In re Acer*, 626 F.3d at 1256). Here, as set forth above, those connections are to California, not Texas.

Moreover, California has a uniquely strong local interest here, because this suit implicates not only products developed and designed in California, but also negotiations and breach of a confidentiality agreement in California. As Koss has alleged, before this case, Koss and Apple met "in Apple's California offices" to discuss potential licenses for the patents Koss now asserts. (Compl. ¶ 71.) The parties' discussions in California were subject to a Confidentiality Agreement that barred Koss from ever using them against Apple in litigation. As set forth in Apple's Motion To Strike (Dkt. No. 12), Koss repeatedly breached this agreement by using protected communications to plead, for instance, that Apple induced infringement of Koss' patents, a claim that required Koss to allege Apple's pre-suit knowledge of the patents. Koss fulfilled that

requirement ***solely*** by referring to the parties' protected communications. (Compl. ¶¶ 81, 95, 109, 123, 137; *see* Confidentiality Agreement § 5, Dkt. No. 12-1.) Unquestionably, this case shares a strong nexus with California. *See In re Acer*, 626 F.3d at 1256.

Conversely, Texas has no local interest in this suit. Nothing that occurred here—beyond product sales that occur daily in stores nationwide—is even allegedly connected to Koss' claims. No witnesses or documents relevant to the accused products or features are in Texas. (*Supra* at 2–12.) Apple personnel in Texas even confirmed that no relevant Apple employees are located here, despite Koss' red-herring allegations to the contrary. (Rollins Decl. ¶ 23.) Nor does Koss—which employs no one in Texas, owns no land in Texas, and has no Texas office—have any connection to this District. There is, thus, no local interest in having this case decided in Texas.

2. Administrative Difficulties Flowing From Court Congestion Are Neutral And Should Be Given Little Weight

The Fifth Circuit has found that the court-congestion "factor appears to be the most speculative," and when "several relevant factors weigh in favor of transfer and others are neutral, then the speed of the transferee district court should not alone outweigh all of those other factors." *In re Genentech*, 566 F.3d at 1347 (citation omitted). Further, where a court does consider court congestion in deciding a transfer motion, it must do so based on past data rather than anticipated schedules. *In re Adobe Inc.*, 823 F. App'x 929, 932 (Fed. Cir. 2020).

Here, the Northern District of California and this District dispose of cases on a roughly equal timeline, both before court action (4.3 months in WDTX versus 6 months in NDCA) and during or after pretrial (14.5 months in WDTX versus 14.3 months in NDCA). (Ex. P, U.S. Courts, Statistics & Reports, Table C-5 (Sept. 30, 2020).) While this District has recently disposed of some cases faster than the Northern District, *id.*, that has not historically been the case. *See In re Apple*, 979 F.3d at 1350; *Uniloc USA Inc. v. Box, Inc.*, 2018 WL 2729202, at *4 (W.D. Tex. June 6, 2018)

(as of 2018, "the average time to trial in Northern California is marginally faster than in Western Texas"). More recently, the patent docket here has ballooned far past that in the Northern District of California: over the last year, just 445 intellectual property cases were commenced in the Northern District, compared to 849 in this District. (Ex. Q, U.S. Courts, Statistics & Reports, Table C-3 (Sept. 30, 2020).) Thus, there is no evidence in the record that the Northern District of California and this District meaningfully differ in their abilities to expeditiously process cases. The court-congestion factor is thus neutral. *See In re Genentech*, 566 F.3d at 1347.

3. The Remaining Public-Interest Factors Are Neutral

The other two public-interest factors—familiarity with the governing law and avoiding conflict-of-law problems—are neutral. *See Volkswagen I*, 371 F.3d at 203. As between California and Texas, "neither district has a demonstrated advantage in applying federal patent law." *DataQuill, Ltd. v. Apple Inc.*, 2014 WL 2722201, at *5 (W.D. Tex. June 13, 2014). Nor would this case implicate a conflict of law. These remaining factors are, therefore, neutral.

V. CONCLUSION

The Northern District of California is clearly more convenient than this District to litigate this case. Most relevant witnesses and sources of proof are in the Northern District. This suit arises out of products designed in California, licensing negotiations in California, and breach of a contract signed in California. This District, meanwhile, has none of these connections to the case. As this case "feature[es] most witnesses and evidence closer to the transferee venue with few or no convenience factors favoring the venue chosen by the plaintiff," *In re Nintendo Co.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009), Apple requests the Court grant its motion to transfer.

Date: December 18, 2020

Respectfully submitted,

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Counsel for Defendant Apple Inc.

CERTIFICATE OF CONFERENCE

I certify that on December 17, 2020, counsel for Defendant Apple Inc. conferred with counsel for Plaintiff Koss Corporation regarding the foregoing Motion to Transfer. Plaintiff's counsel stated that Koss opposes Apple's motion to transfer this case from this District to the Northern District of California. Discussions have conclusively ended in an impasse, leaving an open issue for the Court to resolve.

Date: December 18, 2020

/s/ Michael T. Pieja
Michael T. Pieja (*pro hac vice*)

PROOF OF SERVICE

I hereby certify that, on December 18, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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/s/ *Michael T. Pieja*
Michael T. Pieja (*pro hac vice*)

EXHIBIT A

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

KOSS CORPORATION, Plaintiff, v. APPLE INC., Defendant.	Case No. 6:20-cv-00665-ADA **JURY TRIAL DEMANDED**

DECLARATION OF MARK ROLLINS

I, Mark Rollins, hereby declare as follows:

1. I am over 18 years of age and competent to make this declaration. I am employed as a Finance Manager at Apple Inc. ("Apple") and my primary workplace is in Sunnyvale, California. I have been employed by Apple since 2019.

2. I provide this declaration in support of Apple's Motion to Transfer Venue to the Northern District of California. Unless otherwise indicated below, the statements in this declaration are based upon my personal knowledge, my review of corporate records maintained by Apple in the ordinary course of business, and/or my discussions with Apple employees. If called to testify as a witness in this matter, I could and would testify competently and truthfully to each of the statements in this declaration under oath.

3. Apple is a California corporation and was founded in 1976. Apple is a global business headquartered in Cupertino, California, which is in the Northern District of California (NDCA). I understand that the NDCA includes the following counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, and Sonoma. Apple's management and primary research and development facilities are located in or near Cupertino, including surrounding cities such as

Sunnyvale, all of which are located in the NDCA. The primary operation, marketing, sales, and finance decisions for Apple also occur in or near Cupertino, and Apple business records related to product revenue are located there. As of December 2020, Apple has more than 35,000 employees who work in or near its Cupertino headquarters.

4. I understand that on July 22, 2020, Koss Corporation ("Koss") filed a patent-infringement action against Apple in the United States District Court for the Western District of Texas ("WDTX"). In its WDTX Complaint, Koss alleges infringement of U.S. Patent No. 10,298,451 ("the '451 Patent"), entitled "Configuring Wireless Devices for a Wireless Infrastructure Network," and U.S. Patent Nos. 10,206,025 ("the '025 Patent"), 10,469,934 ("the '934 Patent"), 10,491,982 ("the '982 Patent") and 10,506,325 ("the '325 Patent"), all entitled "System with Wireless Earphones" (collectively, the "Asserted Patents"). WDTX Compl. ¶ 1 and Asserted Patents.

5. I understand that on August 7, 2020, Apple sued Koss in the NDCA. In its NDCA Complaint, Apple alleges that, by filing its WDTX lawsuit, Koss breached a Confidentiality Agreement between the parties, and seeks to enjoin Koss from any further breaches of this kind. NDCA Compl. ¶¶ 60–67. Through its NDCA Complaint, Apple also seeks a declaration that it has not infringed the Asserted Patents. NDCA Compl. ¶¶ 68–92.

6. I understand that the WDTX Complaint alleges that the '451 Patent generally relates to "a credentialed system for accessing an ad hoc communications link between an electronic device, such as a speaker or medical device, and a mobile computing device." WDTX Complaint ¶ 91. Based on Koss' Preliminary Infringement Contentions as served on November 6, 2020, I understand that Koss alleges that Apple's HomePod infringes the '451 Patent. *Id.* Ex. B-1. Specifically, I understand that the Preliminary Infringement Contentions appear to refer to the configuration of an Apple HomePod to access a home Wi-Fi network as infringing the '451 Patent. *Id.*

7. I understand that the WDTX Complaint alleges that the '025, '934, '982, and '325 Patents "describe[] wireless earphones that comprise a transceiver circuit for receiving streaming

audio form a data source, such as a digital audio player or a computer, over a wireless network." WDTX Complaint ¶¶ 77, 105, 119, 133. Based on Koss' Preliminary Infringement Contentions, I understand that Koss alleges that Apple's AirPods and AirPods Pro (collectively, the "AirPods Products") infringe the '025, '934, and '982 Patents, the PowerBeats Pro product infringes the '025, '934, and '325 Patents, and the PowerBeats and Beats Solo Pro, Solo3, and Sudio3 products infringe the '025 and '934 Patents (collectively, with the PowerBeats Pro, the "Beats Products," and with the AirPods Products and Apple HomePod, the "Accused Products"). *Id.* at Exs. A-1 through -7, C-1 through -7, D-1 and -2, and E-1. Specifically, I understand that the Preliminary Infringement Contentions appear to refer to: how the AirPods Products and Beats products receive audio content from another Apple device, the AirPods Products' and Beats Products' Siri functionality, how the AirPods Products and Beats Products receive firmware upgrades, the physical structure and design of the AirPods Products, PowerBeats Pro product ('025, '934, and '325 Patents), and PowerBeats product ('025 Patent only), and how the AirPods Pro switch between noise-control modes ('025, '934, and '982 Patents) as infringing those patents, *id.* (collectively, with the accused feature discussed above in paragraph 6, the "Accused Features").

8. As set forth below, I understand that all of Apple's United States-based engineers who participated in or are knowledgeable about the research, design, and development of the Accused Features work in California, except for one individual who is located in Seattle, one who is located in Boston, and one who has since relocated to New York. I am not aware of any Apple employees located in the WDTX who currently work or have worked on the design or development of the Accused Features. I understand that working files, electronic and paper documents concerning the Accused Features reside on local computers located in California or on servers accessible in California (and, for certain Accused Features, Seattle, Boston, New York, and Israel) only by Apple employees. To my knowledge, Apple does not have any unique working files or documents relevant to this case located in the WDTX. As described below, I further understand that the source code for the software on Apple's HomePod, AirPods Products, and Beats Products, including the code relating to the Accused Features that concern such software was developed and

tested in California and, for one Accused Feature, Israel. I understand that access to this source code is controlled on a need-to-know basis, and that the source code can be accessed by Apple employees working on the Accused Features in California and, for certain Accused Features, Seattle, Boston, and Israel. I am not aware of any code relating to the Accused Features that was developed, coded or tested in the WDTX.

9. I spoke with Bob Bradley, who is a Software Development Engineer in the Sensing and Connectivity group at Apple. Mr. Bradley works in the NDCA. Mr. Bradley and his prior team were responsible for the research, design, and development of the HomePod set-up process, which is among the Accused Features. Mr. Bradley confirmed that all Apple employees who have worked on this Accused Feature work in the NDCA. None of Mr. Bradley's prior team members who have worked on this Accused Feature (1) has ever lived in Texas while working on the Accused Feature, (2) is currently located in Texas, or (3) works with any individuals located in Texas with respect to the Accused Feature. Mr. Bradley has never traveled to Texas in connection with his work on the Accused Feature. Based on my conversation with Mr. Bradley, I understand that related working files, electronic and paper documents, and business records reside on local computers and/or servers either located in or around the NDCA or accessible in the NDCA. To my knowledge, Apple does not have any unique such working files or documents located in the WDTX that are relevant to this case. Based on my conversation with Mr. Bradley, I further understand that the source code for the software on Apple's HomePod relating to this Accused Feature was developed and tested in the NDCA. I understand that access to this source code is controlled on a need-to-know basis, and that the source code can be accessed by Apple employees working on the Accused Feature in the NDCA. I am not aware of any code relating to the Accused Feature that was developed, coded or tested in the WDTX.

10. I spoke with Dave Shaw, who is a Bluetooth Systems Engineer in the Core Bluetooth group at Apple. Mr. Shaw recently transitioned to this group from the Audio Products Firmware group at Apple. Mr. Shaw worked in the NDCA while on the Audio Products Firmware team and when Koss filed its WDTX Complaint, but has recently transitioned his primary

workplace from the NDCA to San Diego, California. Mr. Shaw and his prior team were responsible for the operation of Apple AirPods Products, and Mr. Shaw is knowledgeable about the process for how Apple AirPods Products receive audio content from another Apple device, which is among the Accused Features. Mr. Shaw confirmed that all Apple employees who have worked on this Accused Feature work in California, with the exception of several engineers who have worked on certain aspects of this Accused Feature who reside in Israel. Mr. Shaw is aware of no Apple employee who has worked on this Accused Feature who (1) has ever lived in Texas while working on the Accused Feature, (2) is currently located in Texas, or (3) works with any individuals located in Texas with respect to the Accused Feature. Mr. Shaw has never traveled to Texas in connection with his work for Apple. Based on my conversation with Mr. Shaw, I understand that related working files, electronic and paper documents, and business records reside on local computers and/or servers either located in or accessible in California or Israel. To my knowledge, Apple does not have any unique such working files or documents located in the WDTX that are relevant to this case. Based on my conversation with Mr. Shaw, I further understand that the source code for the software on Apple AirPods Products relating to this Accused Feature was developed and tested in the NDCA and, for certain aspects of this Accused Feature, Israel. I understand that access to this source code is controlled on a need-to-know basis, and that the source code can be accessed by Apple employees working on the Accused Feature in California and, for certain aspects of the Accused Feature, Israel. I am not aware of any code relating to the Accused Feature that was developed, coded or tested in the WDTX.

11. I spoke with Baptiste Paquier, who is the Software Development Engineer Manager of the IMG (Interactive Media Graphics) Audio group at Apple. Mr. Paquier works in the NDCA. Mr. Paquier and his team are responsible for the research, design, and development of the Siri functionality implemented in Apple's AirPods Products and the Beats Products, which is among the Accused Features. Mr. Paquier confirmed that all Apple employees who have worked on this Accused Feature work in the NDCA or in Culver City, California. None of Mr. Paquier's team members who have worked on this Accused Feature (1) has ever lived in Texas while working on

the Accused Feature, (2) is currently located in Texas, or (3) works with any individuals located in Texas with respect to this Accused Feature. Mr. Paquier has never traveled to Texas in connection with his work on this Accused Feature. Based on my conversation with Mr. Paquier, I understand that related working files, electronic and paper documents, and business records reside on local computers and/or servers either located in or around the NDCA or accessible in the NDCA. To my knowledge, Apple does not have any unique such working files or documents located in the WDTX that are relevant to this case. Based on my conversation with Mr. Paquier, I further understand that the source code for the software on Apple AirPods Products and Beats Products relating to this Accused Feature was developed and tested in the NDCA and in Culver City, California. I understand that access to this source code is controlled on a need-to-know basis, and that the source code can be accessed by Apple employees working on the Accused Feature in the NDCA. I am not aware of any code relating to the Accused Feature that was developed, coded or tested in the WDTX.

12. I further understand from my conversation with Mr. Paquier that he and his team worked on the research, design, and development of the process for how Apple AirPods Pro switch between noise-control modes, which is also among the Accused Features. Mr. Paquier confirmed that all Apple employees who have worked on this Accused Feature work in the NDCA or in Culver City, California. Mr. Paquier is aware of no Apple employee who has worked on this Accused Feature who (1) has ever lived in Texas while working on the Accused Feature, (2) is currently located in Texas, or (3) works with any individuals located in Texas with respect to this Accused Feature. Mr. Paquier has never traveled to Texas in connection with his work on this Accused Feature. Based on my conversation with Mr. Paquier, I understand that related working files, electronic and paper documents, and business records reside on local computers and/or servers either located in California or accessible in California. To my knowledge, Apple does not have any unique such working files or documents located in the WDTX that are relevant to this case. Based on my conversation with Mr. Paquier, I further understand that the source code for the software on Apple AirPods Pro relating to this Accused Feature was developed and tested in the

NDCA and Culver City, California. I understand that access to this source code is controlled on a need-to-know basis, and that the source code can be accessed by Apple employees working on the Accused Feature in the NDCA and Culver City, California. I am not aware of any code relating to the Accused Feature that was developed, coded or tested in the WDTX.

13. I spoke with Ariane Cotte, who is a Software Development Manager of the System Firmware & Diagnostics group at Apple. Ms. Cotte works in the NDCA. Ms. Cotte and her team are responsible for the research, design, and development of the process for how Apple AirPods Products receive firmware upgrades, which is among the Accused Features. Ms. Cotte confirmed that all Apple employees who have worked on this Accused Feature work in the NDCA. None of Ms. Cotte's team members who have worked on this Accused Feature (1) has ever lived in Texas while working on the Accused Feature, (2) is currently located in Texas, or (3) works with any individuals located in Texas with respect to the Accused Feature. Ms. Cotte has never traveled to Texas in connection with her work on the Accused Feature. Based on my conversation with Ms. Cotte, I understand that related working files, electronic and paper documents, and business records reside on local computers and/or servers either located in or around the NDCA or accessible in the NDCA. To my knowledge, Apple does not have any unique such working files or documents located in the WDTX that are relevant to this case. Based on my conversation with Ms. Cotte, I further understand that the source code for the software on Apple AirPods Products relating to this Accused Feature was developed and tested in the NDCA. I understand that access to this source code is controlled on a need-to-know basis, and that the source code can be accessed by Apple employees working on the Accused Feature in the NDCA. I am not aware of any code relating to the Accused Feature that was developed, coded or tested in the WDTX.

14. I spoke with Arun Chawan, who is a Product Design Engineer in the Apple Audio PD (Product Design) group at Apple. Mr. Chawan works in the NDCA. Mr. Chawan and his team are responsible for the development of the physical structure and design of the Apple AirPods, which is among the Accused Features. Mr. Chawan confirmed that all Apple employees who have worked on this Accused Feature work in the NDCA. None of Mr. Chawan's team members who

have worked on this Accused Feature (1) has ever lived in Texas while working on the Accused Feature, (2) is currently located in Texas, or (3) works with any individuals located in Texas with respect to the Accused Feature. Mr. Chawan has never traveled to Texas in connection with his work on the Accused Feature. Based on my conversation with Mr. Chawan, I understand that related working files, electronic and paper documents, and business records reside on local computers and/or servers either located in or around the NDCA or accessible in the NDCA. To my knowledge, Apple does not have any unique such working files or documents located in the WDTX that are relevant to this case.

15. I spoke with Ethan Huwe, who is a Lead Product Design Engineer in the Technology Development group at Apple. Mr. Huwe recently transitioned to this group from the Audio PD group at Apple. Mr. Huwe and his prior team work in the NDCA. Mr. Huwe and his prior team were responsible for the research, design, and development of the physical structure and design of the Apple AirPods Pro, which is among the Accused Features. Mr. Huwe confirmed that all Apple employees who have worked on this Accused Feature work in the NDCA, with the exception of one individual who worked in the NDCA but has since relocated to New York. None of the Apple employees who have worked on this Accused Feature (1) has ever lived in Texas while working on the Accused Feature, (2) is currently located in Texas, or (3) works with any individuals located in Texas with respect to the Accused Feature. Mr. Huwe has never traveled to Texas in connection with his work on the Accused Feature. Based on my conversation with Mr. Huwe, I understand that related working files, electronic and paper documents, and business records reside on local computers and/or servers either located in or around the NDCA or accessible in the NDCA. To my knowledge, Apple does not have any unique such working files or documents located in the WDTX that are relevant to this case.

16. I spoke with Aarti Kumar, who is a Senior Engineering Manager of the Sensing and Connectivity group at Apple. Ms. Kumar and her team are responsible for the research, design, and development of the process for how Apple AirPods Products and Beats Products switch between paired audio sources, which is among the Accused Features. Ms. Kumar confirmed that

all Apple employees who have worked on this Accused Feature work in the NDCA, with the exception of one individual located in Seattle, Washington. None of Ms. Kumar's team members who have worked on this Accused Feature (1) has ever lived in Texas while working on the Accused Feature, (2) is currently located in Texas, or (3) works with any individuals located in Texas with respect to the Accused Feature. Ms. Kumar has never traveled to Texas in connection with her work on the Accused Feature. Based on my conversation with Ms. Kumar, I understand that related working files, electronic and paper documents, and business records reside on local computers and/or servers either located in or around the NDCA and Seattle, Washington, or accessible in the NDCA and Seattle, Washington. To my knowledge, Apple does not have any unique such working files or documents located in the WDTX that are relevant to this case. Based on my conversation with Ms. Kumar, I further understand that the source code for the software on Apple AirPods Products and Beats Products relating to this Accused Feature was developed and tested in California. I understand that access to this source code is controlled on a need-to-know basis, and that the source code can be accessed by Apple employees working on the Accused Feature in the NDCA and Seattle, Washington. I am not aware of any code relating to the Accused Feature that was developed, coded or tested in the WDTX.

17. I spoke with Robert Boyd, who is a Product Design Engineering Manager in the Beats HW ME (Hardware Mechanical Engineering) group. Mr. Boyd works in Los Angeles, California. Mr. Boyd and his team are responsible for the development of the physical structure and design of the PowerBeats Pro product, which is among the Accused Features. Mr. Boyd confirmed that all Apple employees who have worked on these Accused Features work in the NDCA or in Los Angeles, California. None of Mr. Boyd's team members who have worked on these Accused Features (1) has ever lived in Texas while working on the Accused Feature, (2) is currently located in Texas, or (3) works with any individuals located in Texas with respect to the Accused Features. Mr. Boyd has never traveled to Texas in connection with his work on the Accused Features. Based on my conversation with Mr. Boyd, I understand that related working files, electronic and paper documents, and business records reside on local computers and/or

servers either located or in accessible in California. To my knowledge, Apple does not have any unique such working files or documents located in the WDTX that are relevant to this case.

18. I spoke with Marco Pontil, who is a Senior Manager in the Beats Software Division at Apple. Mr. Pontil works in the NDCA. Mr. Pontil and his team are responsible for the research, design, and development of the process for how Beats Products receive audio content from another Apple device, the Siri functionality on the Beats Products, the process by which the Beats Products receive firmware upgrades, and the process by which certain Beats Products switch between audio sources, all of which are among the Accused Features in this case. Mr. Pontil confirmed that all Apple employees who have worked on these Accused Features work in the NDCA or in Culver City, California, with the exception of one individual working on wired firmware upgrades who is located in Boston. None of Mr. Pontil's team members who have worked on the Accused Features (1) has ever lived in Texas while working on the Accused Features, (2) is currently located in Texas, or (3) works with any individuals located in Texas with respect to the Accused Features. Mr. Pontil has never traveled to Texas in connection with his work on the Accused Features. Based on my conversation with Mr. Pontil, I understand that related working files, electronic and paper documents, and business records reside on local computers and/or servers either located in or accessible in California. To my knowledge, Apple does not have any unique such working files or documents located in the WDTX that are relevant to this case.

19. I spoke with Jeff Lasker, who is a Principal Counsel, IP Transactions, at Apple. Mr. Lasker has been a member of the IP Transactions team since joining Apple in 2014. Mr. Lasker works in the NDCA and has lived and worked in the NDCA since joining Apple. Mr. Lasker is knowledgeable about Apple's patent-licensing activities, including licensing related to headphone technologies and technologies concerning the configuration of wireless devices. Since Mr. Lasker joined Apple in 2014, the IP Transactions team has been located predominantly in the NDCA. Mr. Lasker is not aware of any IP Transactions team member who has lived in Texas during that time period. Mr. Lasker confirmed that no IP Transactions team member works with any Apple employees located in Texas with respect to patent-licensing for Apple. Mr. Lasker has never

traveled to Texas in connection with his work for Apple. Based on my conversation with Mr. Lasker, I understand that related working files, electronic and paper documents, and business records reside on local computers and/or servers either located in or around the NDCA or accessible in the NDCA To my knowledge, Apple does not have any unique such working files or documents located in the WDTX that are relevant to this case. Mr. Lasker is also knowledgeable about pre-suit negotiations and communications between the parties, including the Confidentiality Agreement entered into by the parties. Mr. Lasker confirmed that all members of the IP Transactions team responsible for handling that matter have worked in the NDCA during their handling of that matter. None of the Apple employees who were involved in handling that matter has ever lived in Texas during their involvement with this work. Based on my conversation with Mr. Lasker, I understand that related working files, electronic and paper documents, and business records reside on local computers and/or servers either located in or around the NDCA or accessible in the NDCA. To my knowledge, Apple does not have any unique such working files or documents located in the WDTX that are relevant to this case.

20. I spoke with Linda Frager, who is a Product Marketing Manager in the Home & Audio Product Marketing group at Apple. Ms. Frager and her team work in the NDCA. Ms. Frager and her team are responsible for the product marketing of the Apple HomePod and AirPods Products. Ms. Frager confirmed that she is aware of no Apple employee who has worked on the product marketing of the Apple HomePod or AirPods Products who (1) has ever lived in Texas while working on the marketing of either Accused Product, (2) is currently located in Texas, or (3) works with any individuals located in Texas with respect to the marketing of either Accused Product. Ms. Frager has never traveled to Texas in connection with her work on the marketing of the Apple HomePod or AirPods Products. Based on my conversation with Ms. Frager, I understand that related working files, electronic and paper documents, and business records reside on local computers and/or servers either located in or around the NDCA or accessible in the NDCA. To my knowledge, Apple does not have any unique such working files or documents located in the WDTX that are relevant to this case.

21. I spoke with Jeff Bruksch, who is a Product Portfolio Manager of the Beats NPI Product Management group. Mr. Bruksch works in Culver City, California. Mr. Bruksch and his team are responsible for the product marketing of the Beats Products. Mr. Bruksch confirmed that no Apple employee who has worked on product marketing for the Beats Products (1) has ever lived in Texas while working on the marketing of that product, (2) is currently located in Texas, or (3) works with any individuals located in Texas with respect to the marketing of those products. Mr. Bruksch has never traveled to Texas in connection with his work on the marketing of that product. Based on my conversation with Mr. Bruksch, I understand that related working files, electronic and paper documents, and business records reside on local computers and/or servers either located in California or accessible in California. To my knowledge, Apple does not have any unique such working files or documents located in the WDTX that are relevant to this case.

22. I am knowledgeable about Apple's sales and financial information concerning the Accused Products. My primary workplace is in the NDCA. The primary place of work for employees on my team is the NDCA. No Apple employee on my team (1) has ever lived in Texas while working on that team, (2) is currently located in Texas, or (3) works with any individuals located in Texas with respect to financials relevant to the Accused Products. I have never traveled to Texas in connection with my work on this team. Documents concerning sales and financial information for these products reside on local computers and/or servers either located in or around the NDCA or accessible in the NDCA. To my knowledge, Apple does not have any unique such working files or documents located in the WDTX that are relevant to this case.

23. I spoke with Bodie Nash, who is a People Business Partner at Apple in Austin, Texas, who supports functions within Apple Care and Apple's Retail Contact Center. Previously, Mr. Nash was the People Leader for Apple's Austin offices and supported all teams in Austin. Mr. Nash confirmed that no teams in Austin work or have worked on the design, engineering, development, or marketing of the Accused Features, or on patent-licensing activities for Apple. I understand that Koss's WDTX Complaint alleges that Apple employs certain personnel or teams at its Austin, Texas offices that allegedly have various responsibilities for some Accused Products.

WDTX Compl. ¶¶ 8-13. Although the Complaint does not name individual employees, to the extent Koss's allegations were specific enough to evaluate, Mr. Nash further confirmed that to his knowledge, either the job functions described by Koss do not exist in Austin, or the individuals or teams that Koss appeared to be referring to were not involved in the design, engineering, development, or marketing of the Accused Features, or in patent-licensing activities for Apple.

24. As of the date of this declaration, Apple operates over 270 retail stores in the United States, more than 50 of which are in California, including 19 stores in the NDCA. Apple has two retail stores in Austin, two retail stores in San Antonio, and one retail store in El Paso, located in the WDTX. I am not aware of any retail employee in these retail stores who was ever involved in the research, design, development, or marketing of the Accused Features. To the extent that any of the Accused Products are sold or used in the WDTX, they are and were sold and used nationwide, and are not used in any manner or degree differently than they are used elsewhere. Apple has non-retail offices in Austin and Lockhart, Texas (located in the WDTX) and Dallas and Garland, Texas (located in the Northern District of Texas). To the best of my knowledge, no employees in these offices currently have, or has had, responsibilities for the design, development, engineering, licensing, or marketing of the Accused Features.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 17th day of December, 2020, in Santa Clara, California.

Mark Rollins

EXHIBIT B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

KOSS CORPORATION, Plaintiff, v. APPLE, INC., Defendant.	Case No. 6:20-cv-00665

PLAINTIFF KOSS CORPORATION'S
PRELIMINARY INFRINGEMENT CONTENTIONS

Pursuant to this Court's sample order governing patent cases,[1] Plaintiff Koss Corporation ("Koss") hereby provides its initial infringement contentions and accompanying claim charts ("Infringement Contentions") to Defendant Apple, Inc. ("Apple" or "Defendant").

I. INTRODUCTION

These Infringement Contentions are based in whole or in part on Koss' current knowledge, its current understanding of the proper construction of the asserted claims of U.S. Patent Nos. 10,206,025 ("the '025 Patent"); 10,298,451 ("the '451 Patent"); 10,469,934 ("the '934 Patent"); 10,491,982 ("the '982 Patent"); and 10,506,325 ("the '325 Patent") (collectively, the "Koss Patents-in-Suit"), and its investigation to date. As fact discovery has not yet begun, and will not

[1] A schedule has yet to be entered in this case, however Koss provides these Initial Infringement Contentions consistent with the Default Schedule for this Court, which requires preliminary infringement contentions seven days before the case management conference.

until after the *Markman* process under this Court's default schedule, and as Defendant's core technical documents are not scheduled to be produced until seven weeks after the CMC (which is deemed to have been held on November 13, 2020), these contentions are preliminary and Koss reserves its right to supplement upon the discovery of additional information.

Further, given that the parties have not yet identified proposed terms for construction from the Koss Patents-in-Suit or provided proposed constructions for terms in the Koss Patents-in-Suit, and that the Court has not yet made any claim construction ruling in this action, Koss' Infringement Contentions herein may be made in a variety of alternatives, and not all interpretations are intended to be consistent with each other and/or Koss' other contentions in this action, and should not be otherwise construed. Koss' Infringement Contentions do not constitute admissions or adoptions of any particular claim scope or construction. Koss' Infringement Contentions may apply a variety of constructions in order to provide as full a disclosure as possible in advance of claim construction. Koss objects to any attempt to deduce claim construction positions from these Infringement Contentions.

II. OVERVIEW OF THE INFRINGEMENT CONTENTIONS

Koss contends certain Apple-branded and Apple-sold products and/or systems (collectively, "Accused Products") infringe, directly and/or indirectly, either literally or under the doctrine of equivalents, the following claims of the '025 Patent, the '451 Patent, the '934 Patent, the '982 Patent and the '325 Patent:

- Claims 1–56 of the '025 Patent;
    - Apple- and Beats- branded headphones, including Airpods, Airpods Pro, Powerbeats Pro, Powerbeats, Solo Pro, Solo3, Studio3, and any other product that functions in substantially the same manner as reflected in the attached charts, A-1–A-7.
- Claims 1–7, 9–14, and 16–21 of the '451 Patent;

- Apple HomePod, and any other product that functions in substantially the same manner as reflected in the attached chart, B-1.

- Claims 1–62 of the '934 Patent; and
  - Apple- and Beats- branded headphones, including Airpods, Airpods Pro, Powerbeats Pro, Powerbeats, Solo Pro, Solo3, Studio3, and any other product that functions in substantially the same manner as reflected in the attached charts, C-1 - C-7.

- Claims 1–20 of the '982 Patent.
  - Apple- and Beats- branded headphones, including Airpods, Airpods Pro, and any other product that functions in substantially the same manner as reflected in the attached charts, D-1–D-2.

- Claims 1–18 of the '325 Patent;
  - Apple- and Beats- branded headphones, including Powerbeats Pro, and any other product that functions in substantially the same manner as reflected in the attached chart, E-1.

The claim charts attached hereto as Exhibits A-1–E-1 respectively illustrate how the Accused Products satisfy the various elements of the asserted claims. Koss reserves the right to prove infringement by relying on documents and/or portions of documents other than those cited in Exhibits A-1–E-1, which are intended to be merely exemplary. Koss further reserves the right to supplement and/or amend these Infringement Contentions as appropriate and as permitted under this Court's model schedule, including in response to any non-infringement or claim construction theory asserted by Defendant, in response to any claim construction order issued by the Court, following or in the course of fact or expert discovery, and/or upon the discovery of additional relevant evidence or information.

Koss further reserves the right to prove infringement of any claim limitation under the doctrine of equivalents in the event that claim limitation is deemed not to be satisfied literally, whether due to claim construction or any other reason. Koss additionally reserves the right to supplement and/or amend its Infringement Contentions relating to indirect infringement.

III. ADDITIONAL DISCLOSURES

Pursuant to the default schedule, Koss also provides the following disclosures regarding the earliest priority date for the above identified asserted claims in this action. Koss reserves the right to supplement these dates should additional evidence be uncovered during discovery. Further produced herewith are copies of the file histories of the Patents-in-Suit.

Asserted Patent/Claims	Date	Bates Range of Supporting Documents
Claims 1–56 of the '025 Patent	At least as early as January 1, 2007	KOSS_002718 - KOSS_002909
Claims 1–7, 9–14, and 16-21 of the '451 Patent	At least as early as July 12, 2010	KOSS_002910 - KOSS_002916
Claims 1–62 of the '934 Patent	At least as early as January 1, 2007	KOSS_002718 - KOSS_002909
Claims 1–20 of the '982 Patent	At least as early as January 1, 2007	KOSS_002718 - KOSS_002909
Claims 1–18 of the '325 Patent	At least as early as January 1, 2007	KOSS_002718 - KOSS_002909

Koss further has certain hard copy documents and product-type prototypes available for Defendant's inspection in Milwaukee, Wisconsin upon request at a to-be-negotiated date.

Additionally, accompanying this disclosure is a Koss privilege log as well as copies of the file histories of the Patents-in-Suit, found at bates range KOSS_000001 - KOSS_002717.

Dated: November 6, 2020

Respectfully submitted,

/s/ *Darlene F. Ghavimi*

Darlene F. Ghavimi (TX Bar No. 24072114)
K&L GATES LLP
2801 Via Fortuna, Suite #350
Austin, TX 78746
Tel.: (512) 482-6919
Fax: (512) 482-6859
darlene.ghavimi@klgates.com

Benjamin E. Weed (admitted *pro hac vice*)
Philip A. Kunz (admitted *pro hac vice*)
Erik J. Halverson (admitted *pro hac vice*)
Gina A. Johnson (admitted *pro hac vice*)
K&L GATES LLP
Suite 3300
70 W. Madison Street
Chicago, IL 60602
Tel.: (312) 372-1121
Fax: (312) 827-8000
benjamin.weed@klgates.com
philip.kunz@klgates.com
erik.halverson@klgates.com
gina.johnson@klgates.com

Peter E. Soskin (admitted *pro hac vice*)
K&L GATES LLP
Suite 1200
4 Embarcadero Center
San Francisco, CA 94111
Tel.: (415) 882-8046
Fax: (415) 882-8220
peter.soskin@klgates.com

ATTORNEYS FOR PLAINTIFF KOSS CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on November 6, 2020, via electronic mail to counsel of record for Defendant at the following addresses:

Stephen E. McConnico (State Bar No. 13450300)
Steven J. Wingard (State Bar No. 00788694)
Kim Bueno (State Bar No. 24065345)
Stephen L. Burbank (State Bar No. 24109672)
SCOTT DOUGLASS & MCCONNICO
Colorado Tower
303 Colorado St., Ste. 2400
Austin, TX 78701
Tel: (512) 495-6300
Fax: (512) 495-6399
smcconnico@scottdoug.com
swingard@scottdoug.com
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sburbank@scottdoug.com

Michael T. Pieja
Alan E. Littmann
Lauren Abendshien
GOLDMAN ISMAIL TOMASELLI BRENNAN & BAUM LLP
200 South Wacker Dr., 22nd Floor
Chicago, IL 60606
Tel: (312) 681-6000
Fax: (312) 881-5191
mpieja@goldmanismail.com
alittmann@goldmanismail.com
labendshien@goldmanismail.com

/s/ Darlene F. Ghavimi
Darlene F. Ghavimi

EXHIBIT D

Search

Message More...

Michael Sagan · 3rd

Product Design & Development

San Francisco, California, United States · 500+ connections · Contact info

Autodesk

Northwestern University

About

Specialties: Industrial Design, Product Development, Project Management, Brand Strategy, 3D Visualization, Creativity

Experience

Autodesk
5 yrs 11 mos

Technical Solutions Executive: Automotive
Mar 2018 – Present · 2 yrs 9 mos
San Francisco, California

Customer Success Manager: Fusion 360 Team
Jan 2015 – Feb 2018 · 3 yrs 2 mos
San Francisco, California

Sr Concept Artist & Modeler
Acme Design, Inc.
Dec 2011 – 2014 · 3 yrs
Greater Chicago Area

Sr Manager of Product Design & Development

Michael John Sagan

Monitor

50s Antelope, CA

View Cell Phone Number View Background Report

Phone Numbers

LANDLINES (8)

(608) 985-8056 (608) 655-8041 Show 6 More

CELL PHONES (1) PREMIUM

( ) -
View Cell Phone Numbers

View Michael's Phone Numbers

Addresses

MICHAEL'S CURRENT ADDRESS OTHER LOCATIONS

8622 Aspen Ridge Ct
Antelope, CA 95843 Map

Loomis, CA
Pueblo, CO
Rocklin, CA
Fairfield, CA

View Full Address History

Relatives & Associates · Michael has **4 relatives** and **4 associates**.

MICHAEL'S RELATIVES

Timothy J Anton Age 50s

Andrew D Sagan Age 40s

Lindsey West Age 30s

Show 5 More

View All Relatives & Associates

Criminal & Traffic Records Properties 6

View Michael's Background Report

Criminal & Traffic Records in Whitepages background reports may include:

- Arrests, warrants, and verdicts
- Mugshots when available
- Traffic violations, incl. DUIs and DWIs

There are **6 Property Records** associated with Michael, which may include:

- Property ownership info
- Details about the mortgages
- Eviction records

Public Records 6

There are **6 Public Records** associated with Michael, which may include:

- Bankruptcy info
- Details about foreclosures
- Liens and judgments

Licenses & Permits

Licenses & Permits in Whitepages background reports may include:

- Professional licenses
- Hunting permits
- Concealed weapon permits

Birth, Death, and Divorce Records for Michael John Sagan

Sponsored by Ancestry.com

Michael John Sagan
Antelope, CA
View Birth Records

Michael John Sagan
Antelope, CA
View Death Records

Michael John Sagan
Antelope, CA
View Divorce Records

Search

Connect Message More...

Michael Koss · 3rd

President/CEO at Koss Corporation

Milwaukee, Wisconsin, United States · 500+ connections · Contact info

Koss Corporation

Beloit College

Experience

President/CEO
Koss Corporation
Feb 1977 – Present · 43 yrs 10 mos

Board Member
Beloit College
1995 – 2009 · 14 yrs

International President
YPO-WPO
2000 – 2001 · 1 yr

Education

Beloit College
BA, Anthropology, Art
1972 – 1976

University School Milwaukee
1968 – 1972

Michael J oss Jr Monitor

60s River Hills, WI

View Cell Phone Number View Background Report

Phone Numbers

LANDLINES (4)

(414) 354-1 89 (414) 96 -1566 Show More

CELL PHONES (4) PREMIUM

( ) - View Cell Phone Numbers ( ) - Show More

View Michael's Phone Numbers

Addresses

MICHAEL'S CURRENT ADDRESS

2800 W Bradley Rd
River Hills, WI 5321

Map

OTHER LOCATIONS

Milwaukee, WI
Tampa, FL
Winchester, WI

View Full Address History

Relatives & Associates · Michael has relatives and associates.

MICHAEL'S RELATIVES

Jessica E Hillstrom Age 30s

John Koss Age 60s

Charles J Koss Age 30s

Show More

View All Relatives & Associates

Criminal & Traffic Records Properties

View Michael's Background Report

Criminal & Traffic Records in Whitepages background reports may include:

- Arrests, warrants, and verdicts
- Mugshots when available
- Traffic violations, incl. DUIs and DWIs

There are **1 Property Records** associated with Michael, which may include:

- Property ownership info
- Details about the mortgages
- Eviction records

Public Records

Public Records in Whitepages background reports may include:

- Bankruptcy info
- Details about foreclosures
- Liens and judgments

Licenses & Permits

There is **1 Licenses & Permits** associated with Michael, which may include:

- Professional licenses
- Hunting permits
- Concealed weapon permits

Looking for a different Michael

Michael J
Age 30s
River Hills, WI

Birth, Death, and Divorce Records for Michael J oss Jr

Sponsored by Ancestry.com

Michael J oss Jr
River Hills, WI
View Birth Records

Michael J oss Jr
River Hills, WI
View Death Records

Michael J oss Jr
River Hills, WI
View Divorce Records

View Michael's Background Report

Search

Message More...

Michael Pelland · 3rd

Marketing Director at Soda Sense

Princeton, Wisconsin, United States · 375 connections ·

Contact info

Soda Sense

About

It's really simple.... I make stuff go. If you are stuck, spending lots o' time and money trying to generate customers and top-line (like I was) then:

Step One: Stop spending money on Digital Marketing Firms.
Step Two: Stop punching yourself in the face.
Step Three: Reach out... I may be interested. If I'm not, I may be able to help nudge you in the correct direction.

Result: Rocket goes up.

Learn More @MichaelPelland.com

Experience

Marketing Director and eCommerce Architect
Soda Sense · Full-time
Mar 2020 – Present · 9 mos
Green Bay, Wisconsin, United States

I'll work on filling this section out at some point, but the crux is two orders of magnitude growth in less than a year. Migration to Shopify Plus, Hubspot Enterprise for both marketing and customer service and working on building to eight figures -MRR- ASAP!

Not too shabby for me and my kiddo - Hunter.

Michael J Pelland

(Michael Pellard)

Monitor

50s Princeton, WI

View Cell Phone Number View Background Report

Phone Numbers

LANDLINES ( )

(15) 2 6-6606 (630) 924- 481 Show More

CELL PHONES ( ) PREMIUM

( ) - View Cell Phone Numbers ( ) - Show 5 More

View Michael's Phone Numbers

Addresses

MICHAEL'S CURRENT ADDRESS

N4626 Wildwood Ln
Princeton, WI 54968

Map

OTHER LOCATIONS

Townsend, WI
Roselle, IL
Streamwood, IL
Wheaton, IL

View Full Address History

Relatives & Associates

Michael has **4 relatives** and **associates**.

MICHAEL'S RELATIVES

Eli abeth A Henning Age 50s

John J Pelland Age 0s

Matthew G Pelland Age 40s

Show 6 More

View All Relatives & Associates

Criminal & Traffic Records

Properties

View Michael's Background Report

There are **Criminal & Traffic Records** associated with Michael, which may include:

- Arrests, warrants, and verdicts
- Mugshots when available
- Traffic violations, incl. DUIs and DWIs

There are **Property Records** associated with Michael, which may include:

- Property ownership info
- Details about the mortgages
- Eviction records

Public Records

There are **11 Public Records** associated with Michael, which may include:

- Bankruptcy info
- Details about foreclosures
- Liens and judgments

Licenses & Permits

Licenses & Permits in Whitepages background reports may include:

- Professional licenses
- Hunting permits
- Concealed weapon permits

Birth, Death, and Divorce Records for Michael J Pelland

Sponsored by Ancestry.com

Michael J Pelland
Princeton, WI
View Birth Records

Michael J Pelland
Princeton, WI
View Death Records

Michael J Pelland
Princeton, WI
View Divorce Records

Search

Message More...

Steve Reckamp · 3rd

Engineer/architect who innovates products and solutions for Fortune 500 and cutting-edge companies.

Crystal Lake, Illinois, United States · 299 connections · Contact info

Intelligent Medical Objects

University of Illinois at Urbana-Champaign

About

I've never met a technology I couldn't harness! I am a creative, solution-oriented developer and I love a challenge.

— With 13 patents granted and pending, I know how to navigate IP and forge new revenue streams.... see more

Experience

Software Engineer 3
Intelligent Medical Objects
Sep 2019 – Present · 1 yr 3 mos
Greater Chicago Area

Lead Staff Software Engineer
Continental
Jan 2015 – Aug 2019 · 4 yrs 8 mos
Deer Park, IL

Create system architecture, analyze requirements, select SOC/hardware strategies, define processor and memory budgets, and develop concepts of operations. Streamline development processes. Design tools for data analysis, development, and testing. Mentor system architects, developers, and scrum masters. ...see more

Director of Engineering

Steven Robert Reckamp

Monitor

40s Crystal Lake, IL

View Cell Phone Number View Background Report

Phone Numbers

LANDLINES ( )

(815) 384-5832 (21) 384-5832 Show More

CELL PHONES ( ) PREMIUM

( ) - View Cell Phone Numbers ( ) -

View Steven's Phone Numbers

Addresses

STEVEN'S CURRENT ADDRESS OTHER LOCATIONS

5608 Smith Rd
Crystal Lake, IL 60014 Map

Champaign, IL
Hoffman Estates, IL
Sun Prairie, WI
Woodstock, IL

View Full Address History

Relatives & Associates · Steven has relatives and associates.

STEVEN'S RELATIVES

Paula N Reckamp Age 0s

Michael C Reckamp Age 40s

Greg Reckamp Age 50s

Show 5 More

View All Relatives & Associates

Criminal & Traffic Records Properties 4

View Steven's Background Report

There are **Criminal & Traffic Records** associated with Steven, which may include:

- Arrests, warrants, and verdicts
- Mugshots when available
- Traffic violations, incl. DUIs and DWIs

There are **4 Property Records** associated with Steven, which may include:

- Property ownership info
- Details about the mortgages
- Eviction records

Public Records

Public Records in Whitepages background reports may include:

- Bankruptcy info
- Details about foreclosures
- Liens and judgments

Licenses & Permits

Licenses & Permits in Whitepages background reports may include:

- Professional licenses
- Hunting permits
- Concealed weapon permits

Birth, Death, and Divorce Records for Steven Robert Reckamp

Sponsored by Ancestry.com

Steven Robert Reckamp
Crystal Lake, IL
Birth records

Steven Robert Reckamp
Crystal Lake, IL
Death records

Steven Robert Reckamp
Crystal Lake, IL
View Divorce Records

Search

-

Message More...

Greg Hallingstad · 3rd

Sr. Electronics Design Engineer at i3 Product Development

Madison, Wisconsin, United States · 196 connections · Contact info

i3 Product Development

University of Wisconsin-Platteville

About

Wicked smart Hardware Design Engineer (at least that's what I tell myself)

Hardware Designs:
Low power Wi-Fi headphones (Koss Striva) with capactive touch UI
Android powered clock radio with a 12 watt audio amplifier
Battery powered Wi-Fi speaker with capacitive touch interface
50 watt high frequency/precion current LED driver for a professional photography application
Battery powered Wi-FI force sensor with a high precision analog front end
WiFi distributed audio system with a 5 channel 70 watt amplifier
Optical mouse sensor system to measure length of paper
4 port USB2.0 hub
8 cell Ni-Mh charger
DC/DC converters

Hardware and Firmware:
Paper towel lockout system using a PIC microcontroller
PID control system for a motorized tension system on a pair of headphones
Wi-Fi snowplow and salt spreader controller for 12/24 volt automotive system
Low power wireless temperature sensor using the Synapse RF Engine
Video recording system using an SAM9 CPU

Technical Skills:
Atmel AVR/Microchip PIC/TI Sitara Cortex A8/C8051/ARM9
USB2.0/LPDDR/I2C/SPI/I2S/MMC/Compact flash/Ethernet/SDRAM/NAND flash/Capacitive touch
JTAG/ICP programmers and debuggers
Altium Designer/MPLAB/AVR studio/Code Composer Studio/OrCAD/Eclipse/Subversion
Ni-MH and Li battery designs
Some C and assembly with focus on embedded systems
Figuring out why stuff doesn't work along with verifying designs

whitepages
SEARCH. FIND. KNOW.

PEOPLE PHONE ADDRESS BUSINESS

Gregory J Hallingstad Deforest WI

Log In Sign Up

regory J Hallingstad

Monitor

(Greg Hallingstad)

30s Deforest, WI

View Cell Phone Number View Background Report

Phone Numbers

LANDLINES (1)

(224) 698- 123

CELL PHONES ( ) PREMIUM

( ) -
View Cell Phone Numbers

( ) -

Show More

View regory's Phone Numbers

Addresses

RE OR 'S CURRENT ADDRESS

68 1 Old Amsterdam Way
Deforest, WI 53532 Map

OTHER LOCATIONS

Stoughton, WI
Gays Mills, WI
Watertown, WI
Madison, WI

View Full Address History

Relatives & Associates · Gregory has 1 relative and associates.

RE OR 'S RELATIVE

Jon M Hallingstad
Age 60s

Name 8y b
Age 8w

Name ot0w9e
Age 2r

Show 3 More

View All Relatives & Associates

Criminal & Traffic Records

Properties

View regory's Background Report

There are **Criminal & Traffic Records** associated with Gregory, which may include:

- Arrests, warrants, and verdicts
- Mugshots when available
- Traffic violations, incl. DUIs and DWIs

There is **1 Property Records** associated with Gregory, which may include:

- Property ownership info
- Details about the mortgages
- Eviction records

Public Records

Public Records in Whitepages background reports may include:

- Bankruptcy info
- Details about foreclosures
- Liens and judgments

Licenses & Permits

Licenses & Permits in Whitepages background reports may include:

- Professional licenses
- Hunting permits
- Concealed weapon permits

Birth, Death, and Divorce Records for regory J Hallingstad

Sponsored by Ancestry.com

regory J Hallingstad
Deforest, WI
View Birth Records

regory J Hallingstad
Deforest, WI
View Death Records

regory J Hallingstad
Deforest, WI
Divorce records

View regory's Background Report

Search

Message More...

Jeff Bovee · 3rd

Senior Marketing Product Manager at Wahl Clipper Corporation

Sterling, Illinois, United States · 500+ connections · Contact info

Wahl Clipper Corporation

Baker College Center for Graduate Studies

About

Results driven and accomplished, strategic leader with twenty years of product development and marketing management experience spanning multiple industries, markets, and channels to the customer. Innovative problem solver successful in guiding new ventures through from inspiration to mature revenue generating businesses.

Activity

See all

1,124 followers

Wow! Nice

Jeff commented

Experience

Senior Marketing Product Manager

Wahl Clipper Corporation

Feb 2012 – Present · 8 yrs 10 mos

Sterling, IL

Leading the Men's Grooming strategic business unit and driving Wahl from the #3 brand in US sales in 2011 to the #1 position in less than three years. Implemented continuous new product development and re-positioning strategies to build a position of enduring leadership in the market while growing top line sales 140%.

Je ery Bovee

(Jeff Bovee)

Monitor

50s Sterling, IL

View Cell Phone Number View Background Report

Phone Numbers

LANDLINES ( )

(815) 615-0282 (815) 632-3633 Show More

CELL PHONES ( ) PREMIUM

( ) -
View Cell Phone Numbers ( ) -

View Je ery's Phone Numbers

Addresses

d d

JEFFER 'S CURRENT ADDRESS OTHER LOCATIONS

3 06 E 20th St
Sterling, IL 61081 Map

Columbiana, OH
Lake Geneva, WI
Richmond, IL
Twin Lakes, WI

View Full Address History

Relatives & Associates · Jeffery has relatives and 4 associates.

JEFFER 'S RELATIVES

Julie Anne Hill
Age 50s

Judith A Bovee
Age 0

Janet K Chaffin
Age 50s

Show 4 More

View All Relatives & Associates

Criminal & Traffic Records

Properties

View Je ery's Background Report

Criminal & Traffic Records in Whitepages background reports may include:

- Arrests, warrants, and verdicts
- Mugshots when available
- Traffic violations, incl. DUIs and DWIs

There are **8 Property Records** associated with Jeffery, which may include:

- Property ownership info
- Details about the mortgages
- Eviction records

Public Records

There is **1 Public Records** associated with Jeffery, which may include:

- Bankruptcy info
- Details about foreclosures
- Liens and judgments

Licenses & Permits

Licenses & Permits in Whitepages background reports may include:

- Professional licenses
- Hunting permits
- Concealed weapon permits

Birth, Death, and Divorce Records for Jeffery Bovee

Search

Connect More...

Morgan Lowery · 3rd

Technology Strategist at i3 Product Development

Madison, Wisconsin, United States · 233 connections · Contact info

i3 Product Development

University of Wisconsin-Platteville

About

I have experience with many fields in consumer and commercial electronics. The devices include implementation and design low cost 8-bit microcontrollers to high powered 32-bit system with external high speed RAM and NVM interfaces. I have experience with both analog and digital systems with peripherals including: ADC, DAC, audio amplifiers and filters, motor controllers, LCD controllers, cameras, LED drivers, battery charging, power supplies, and power management. I also have experience with the use of temperature, capacitive, inductive, magnetic, and optical sensors inputs

Experience

i3 Product Development
4 yrs

Technology Strategist
Full-time
Nov 2019 – Present · 1 yr 1 mo
Sun Prairie

Director of Technology
Dec 2016 – Nov 2019 · 3 yrs
Middleton, WI

Senior Electronics Engineer
InForm Product Development
Sep 2014 – Dec 2016 · 2 yrs 4 mos

Morgan J Lowery

Monitor

30s Deforest, WI

View Cell Phone Number View Background Report

Phone Numbers

LANDLINES (1)

(608) 348-6252

CELL PHONES PREMIUM

( ) -
View Cell Phone Numbers

View Morgan's Phone Numbers

Addresses

MOR AN'S CURRENT ADDRESS

609 Greenfield Dr
Deforest, WI 53532

Map

OTHER LOCATIONS

Lodi, WI
Horicon, WI
Platteville, WI

View Full Address History

Relatives & Associates · Morgan has **4 relatives** and **4 associates**.

MOR AN'S RELATIVES

Michael J Lowery Age 0s

Myles J Lowery Age 30s

Mary J Staber-Lowery Age 60s

Show 5 More

View All Relatives & Associates

Criminal & Traffic Records

Properties 3

View Morgan's Background Report

Criminal & Traffic Records in Whitepages background reports may include:

- Arrests, warrants, and verdicts
- Mugshots when available
- Traffic violations, incl. DUIs and DWIs

There are **Property Records** associated with Morgan, which may include:

- Property ownership info
- Details about the mortgages
- Eviction records

Public Records

Public Records in Whitepages background reports may include:

- Bankruptcy info
- Details about foreclosures
- Liens and judgments

Licenses & Permits

Licenses & Permits in Whitepages background reports may include:

- Professional licenses
- Hunting permits
- Concealed weapon permits

Birth, Death, and Divorce Records for Morgan J Lowery

Sponsored by Ancestry.com

Morgan J Lowery
Deforest, WI
View Birth Records

Morgan J Lowery
Deforest, WI
View Death Records

Morgan J Lowery
Deforest, WI
View Divorce Records

Search

Message More...

Joel Haynie · 3rd

Chief Technology Officer at CLOCworks

Greater Madison Area · 500+ connections · Contact info

CLOCworks

University of Wisconsin-Madison

About

I love to solve illusive, challenging, and diverse problems with creative and unique solutions. I'm a curious designer and a life long learner. I have a proven ability to quickly understand very complex systems with minimal guidance. I've been privileged to work on varied platforms and technologies. This experience aids in architecting solutions that have optimized performance while balancing costs. I work hard to make the workplace fun, interesting, and enjoyable. I'm thankful for the many experiences working with technical and non-technical customers at all levels in an organization.
joel@haynie.com

I've learned and created with:
- Languages: Assembly, C, C++, C#, Python, MatLab, JavaScript, Java, Scala
- Frameworks: Akka, QT, SciPy, Scikit-learn,
- Protocols: TCP/IP, TLS, HTTPS, MPEG, ZMQ, AMQP, PKS
- Tools: IntelliJ, PyCharm, SVN, Git, Gradle, Jenkins
- OS: FreeRTOS, Linux, Windows
- Cloud / Big Data: Map-Reduce, Spark, TensorFlow, Docker, Kubernetes, Azure
- Persistence: HDFS, Redis, MongoDb, MySQL

Experience

Chief Technology Officer

CLOCworks
Apr 2019 – Present · 1 yr 8 mos
Madison, Wisconsin Area

Chief Technology Officer (CTO)
- Working with customers to build full stack systems solutions
- Leading technical direction of CLOCworks team.

Joel L Haynie

40s Deforest, WI Monitor

View Cell Phone Number View Background Report

Phone Numbers

LANDLINES (6)

(608) 846-1553 (303) 4-1535 Show 4 More

CELL PHONES (4) PREMIUM

( ) - View Cell Phone Numbers ( ) - Show More

View Joel's Phone Numbers

Addresses

JOEL'S CURRENT ADDRESS

6858 Moonstone Ct
Deforest, WI 53532 Map

OTHER LOCATIONS

Longmont, CO
Sumter, SC
Erie, CO
Ladysmith, WI

View Full Address History

Relatives & Associates · Joel has relatives and associates.

JOEL'S RELATIVES

Linda Gretencord Age 60s
Bradley W Haynie Age 50s
Justina L Hautamaki Age 40s
Show More

View All Relatives & Associates

Criminal & Traffic Records Properties

View Joel's Background Report

Criminal & Traffic Records in Whitepages background reports may include:

- Arrests, warrants, and verdicts
- Mugshots when available
- Traffic violations, incl. DUIs and DWIs

There are **Property Records** associated with Joel, which may include:

- Property ownership info
- Details about the mortgages
- Eviction records

Public Records

Public Records in Whitepages background reports may include:

- Bankruptcy info
- Details about foreclosures
- Liens and judgments

Licenses & Permits

Licenses & Permits in Whitepages background reports may include:

- Professional licenses
- Hunting permits
- Concealed weapon permits

Birth, Death, and Divorce Records for Joel L Haynie

Sponsored by Ancestry.com

Joel L Haynie
Deforest, WI
View Birth Records

Joel L Haynie
Deforest, WI
View Death Records

Joel L Haynie
Deforest, WI
View Divorce Records

View Joel's Background Report

EXHIBIT E

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	ISSUE DATE	PATENT NO.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/962,305	02/12/2019	10206025	080188PCTUSCON8	4086

26285 7590 01/23/2019

K&L GATES LLP-Pittsburgh
210 SIXTH AVENUE
PITTSBURGH, PA 15222-2613

ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment is 0 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (http://pair.uspto.gov).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Application Assistance Unit (AAU) of the Office of Data Management (ODM) at (571)-272-4200.

APPLICANT(s) (Please see PAIR WEB site http://pair.uspto.gov for additional applicants):

Michael J. Koss, Milwaukee, WI;
Koss Corporation, Milwaukee, WI;
Michael J. Pelland, Princeton, WI;
Michael Sagan, Fairfield, CA;
Steven R. Reckamp, Crystal Lake, IL;
Gregory J. Hallingstad, Deforest, WI;
Jeffrey K. Bovee, Sterling, IL;
Morgan J. Lowery, Deforest, WI;

IR103 (Rev. 10/09)

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), by mail or fax, or via EFS-Web.

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Alexandria, Virginia 22313-1450

By fax, send to: (571)-273-2885

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26285 7590 12/19/2018
K&L GATES LLP-Pittsburgh
210 SIXTH AVENUE
PITTSBURGH, PA 15222-2613

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(Typed or printed name)

(Signature)

(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/962,305	04/25/2018	Michael J. Koss	080188PCTUSCON8	4086

TITLE OF INVENTION: SYSTEM WITH WIRELESS EARPHONES

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	SMALL	$500	$0.00	$0.00	$500	03/19/2019

EXAMINER	ART UNIT	CLASS-SUBCLASS
DOAN, KIET M	2641	381-074000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-09 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list
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(2) The name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

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3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

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(A) NAME OF ASSIGNEE: KOSS CORPORATION

(B) RESIDENCE: (CITY and STATE OR COUNTRY): MILWAUKEE, WISCONSIN

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☒ Corporation or other private group entity ☐ Government

4a. Fees submitted: ☒ Issue Fee ☒ Publication Fee (if required) ☐ Advance Order - # of Copies _____

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☒ Applicant asserting small entity status. See 37 CFR 1.27

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NOTE: This form must be signed in accordance with 37 CFR 1.31 and 1.33. See 37 CFR 1.4 for signature requirements and certifications.

Authorized Signature /Mark G. Knedeisen/ Date December 28, 2018

Typed or printed name Mark G. Knedeisen Registration No. 42,747

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APPLICATION NO.	ISSUE DATE	PATENT NO.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
16/057,360	05/21/2019	10298451	120223CON6	9075

26285 7590 05/01/2019

K&L GATES LLP-Pittsburgh
210 SIXTH AVENUE
PITTSBURGH, PA 15222-2613

ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

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Michael J. Pelland, Princeton, WI;
Joel L. Haynie, DeForest, WI;

IR103 (Rev. 10/09)

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26285 7590 03/11/2019
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PITTSBURGH, PA 15222-2613

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(Typed or printed name)

(Signature)

(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
16/057,360	08/07/2018	Michael J. Koss	120223CON6	9075

TITLE OF INVENTION: CONFIGURING WIRELESS DEVICES FOR A WIRELESS INFRASTRUCTURE NETWORK

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	SMALL	$500	$0.00	$0.00	$500	06/11/2019

EXAMINER	ART UNIT	CLASS-SUBCLASS
LEE, JAE YOUNG	2466	370-329000

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(A) NAME OF ASSIGNEE	(B) RESIDENCE: (CITY and STATE OR COUNTRY)
KOSS CORPORATION	MILWAUKEE, WISCONSIN

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☒ Corporation or other private group entity ☐ Government

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Authorized Signature /Eric T. Wang/ Date April 4, 2019

Typed or printed name Eric T. Wang Registration No. 76,055

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APPLICATION NO.	ISSUE DATE	PATENT NO.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
16/375,879	11/05/2019	10469934	080188PCTUSCON10	1056

26285 7590 10/16/2019

K&L GATES LLP-Pittsburgh
210 SIXTH AVENUE
PITTSBURGH, PA 15222-2613

ISSUE NOTIFICATION

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Koss Corporation, Milmaukee, WI;
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Steven R. Reckamp, Crystal Lake, IL;
Gregory J. Hallingstad, Deforest, WI;
Jeffery K. Bovee, Sterling, IL;
Morgan J. Lowery, Deforest, WI;

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(Typed or printed name)

(Signature)

(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
16/375,879	04/05/2019	Michael J. Koss	080188PCTUSCON10	1056

TITLE OF INVENTION: SYSTEM WITH WIRELESS EARPHONES

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	SMALL	$500	$0.00	$0.00	$500	12/05/2019

EXAMINER	ART UNIT	CLASS-SUBCLASS
DOAN, KIET M	2641	455-428000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-09 or more recent) attached. **Use of a Customer Number is required.**

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1 K&L Gates LLP
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4a. Fees submitted: ☒ Issue Fee ☐ Publication Fee (if required) ☐ Advance Order - # of Copies _____

4b. Method of Payment: *(Please first reapply any previously paid fee shown above)*

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NOTE: This form must be signed in accordance with 37 CFR 1.31 and 1.33. See 37 CFR 1.4 for signature requirements and certifications.

Authorized Signature /Mark G. Knedeisen/ Date September 16, 2019

Typed or printed name Mark G. Knedeisen Registration No. 42,747

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APPLICATION NO.	ISSUE DATE	PATENT NO.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
16/528,701	11/26/2019	10491982	080188PCTUSCON11	6980

26285 7590 11/06/2019

K&L GATES LLP-Pittsburgh
210 SIXTH AVENUE
PITTSBURGH, PA 15222-2613

ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

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(Signature)
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
16/528,701	08/01/2019	Michael J. Koss	080188PCTUSCON11	6980

TITLE OF INVENTION: SYSTEM WITH WIRELESS EARPHONES

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
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Authorized Signature /Mark G. Knedeisen/ Date October 11, 2019

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APPLICATION NO.	ISSUE DATE	PATENT NO.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
16/528,703	12/10/2019	10506325	080188PCTUSCON12	8304

26285 7590 11/20/2019

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Michael Sagan, Fairfield, CA;
Steven R. Reckamp, Crystal Lake, IL;
Gregory J. Hallingstad, Deforest, WI;
Jeffery K. Bovee, Sterling, IL;
Morgan J. Lowery, Deforest, WI;

IR103 (Rev. 10/09)

PART B - FEE(S) TRANSMITTAL

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26285 7590 10/02/2019
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(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
16/528,703	08/01/2019	Michael J. Koss	080188PCTUSCON12	8304

TITLE OF INVENTION: SYSTEM WITH WIRELESS EARPHONES

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	SMALL	$500	$0.00	$0.00	$500	01/02/2020

EXAMINER	ART UNIT	CLASS-SUBCLASS
DOAN, KIET M	2641	455-428000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

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(1) The names of up to 3 registered patent attorneys or agents OR, alternatively,
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2
3

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document must have been previously recorded, or filed for recordation, as set forth in 37 CFR 3.11 and 37 CFR 3.81(a). Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE: KOSS CORPORATION

(B) RESIDENCE: (CITY and STATE OR COUNTRY): MILWAUKEE, WISCONSIN

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☒ Corporation or other private group entity ☐ Government

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

KOSS CORPORATION, Plaintiff, v. APPLE INC., Defendant.	Case No. 6:20-cv-00665-ADA **JURY TRIAL DEMANDED**

DEFENDANT APPLE INC.'S OPPOSED MOTION TO STAY PENDING RESOLUTION OF ITS MOTION TO STRIKE AND MOTION TO TRANSFER

TABLE OF CONTENTS

Defendant Apple Inc. ("Apple") respectfully moves to stay this case pending a decision on its Motion to Strike (Dkt. No. 12) and Motion to Transfer (Dkt. No. 34).

I. BACKGROUND

Plaintiff Koss Corporation ("Koss") breached a confidentiality agreement with Apple when it filed this suit on July 22, 2020. (Compl., Dkt. No. 1.) Because that agreement contractually prohibited Koss from revealing several protected communications that formed the basis of many of its claims, Apple moved to strike Koss' complaint on August 7, 2020. (Mot. to Strike, Dkt. No. 12.) That Motion has since been briefed. (*See* Dkt. Nos. 23, 25.) Separately, on December 18, 2020, Apple moved this Court to transfer this case to the Northern District of California. (Mot. to Transfer, Dkt. No. 34 (together with Mot. to Strike, the "Motions").) Briefing on Apple's Motion to Transfer is expected to take at least until January 15, 2021. (*See* 11/30/20 Scheduling Order, Dkt. No. 30, at 2.)

This case is at a very early stage and, should the Court grant Apple's Motion to Strike, may not continue at all. Meanwhile, no proceedings, substantive or otherwise, have been held before this Court. In fact, the only activity on the merits of Koss' infringement claims has been the exchange of preliminary infringement contentions.

However, several other substantive deadlines are quickly approaching. Apple's preliminary invalidity contentions and preliminary technical and sales disclosures are due January 15, 2021. (*Id.*) The claim construction process begins a week later and continues apace into February. (*Id.*) Claim construction briefing begins on February 19, 2021, and a *Markman* hearing is currently scheduled for April 22, 2021. (*Id.*)

II. LEGAL STANDARD

"[T]he power to stay proceedings" is "incidental to a district court's inherent power 'to control the disposition of the causes on its docket with economy of time and effort for itself, for

counsel, and for litigants.'" *In re Beebe*, No. 95-20244, 1995 WL 337666, at *2 (5th Cir. 1995) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)); *see also McKnight v. Blanchard*, 667 F.2d 477, 479 (5th Cir. 1982) (explaining the district court's "general discretionary power to stay proceedings before it in the control of its docket and in the interests of justice").

Courts in this District usually consider three factors to determine whether a stay is warranted: (1) potential prejudice to the non-moving party; (2) the hardship and inequity the moving party would suffer if the action is not stayed; and (3) the judicial resources saved by avoiding duplicative litigation. *YETI Coolers, LLC v. Home Depot U.S.A., Inc.*, No. 1:17-cv-00342-RP, 2018 WL 2122868, at *1 (W.D. Tex. Jan. 8, 2018).

III. THIS CASE SHOULD BE STAYED PENDING A RULING ON APPLE'S MOTION TO STRIKE AND MOTION TO TRANSFER

Temporarily staying this case would allow the Court to address preliminary matters first: whether Koss' claims should continue in their current form, and whether this case should continue before this Court at all. Each of these issues ought to be settled before the parties, and the Court, engage in the detailed work of litigating Koss' claims. Federal appellate precedent has confirmed the need to address preliminary matters before moving ahead to the merits. Apple therefore respectfully requests the Court grant a short stay pending a ruling on Apple's Motions.

A. The Court Should Address Preliminary Motions Before Substance

Resolution of either of Apple's Motions may obviate the need for the Court or the parties to expend undue resources on this case. For just this reason, federal appellate courts have recognized the clear imperative to dispose of preliminary matters before turning to the merits.

Both the Federal Circuit and the Fifth Circuit have left no doubt as to the importance of deciding Apple's transfer motion before reaching substantive matters. "[O]nce a party files a transfer motion, disposing of that motion should unquestionably take top priority." *In re Apple*

Inc., 979 F.3d 1332, 1337 (Fed. Cir. 2020); *see also In re Horseshoe Ent.*, 337 F.3d 429, 433 (5th Cir. 2003) (courts should make timely filed transfer motions a "top priority" before commencing substantive work). The reason for doing so is straightforward: providing clarity on these threshold matters "prevent[s] the waste of time, energy, and money and . . . protect[s] litigants, witnesses and the public against unnecessary inconvenience and expense." *In re Google Inc.*, No. 2015-138, 2015 WL 5294800, at *1 (Fed. Cir. July 16, 2015) (internal quotation marks omitted).

This rationale applies with equal force to Apple's Motion to Strike, which would, if granted, fundamentally alter the course of this litigation. Several of Koss' claims rely heavily—even exclusively—on protected communications that Koss is contractually barred from revealing in this suit. (*See* Mot. to Strike at 4–5.) For instance, claims that Apple supposedly induced infringement of Koss' patents required Koss to allege that Apple knew about the patents prior to the lawsuit. But the only way Koss could support those allegations was by revealing communications that Koss promised "not to use or attempt to use . . . , or [to reveal] the existence thereof, in a litigation or any other administrative or court proceeding for any purpose." (Redacted Confidentiality Agreement, Dkt. No. 12-1, § 5.) Resolving Apple's Motion to Strike would, at the least, require Koss to significantly amend its pleadings, if not to dismiss this case altogether. For all these reasons, substantive matters in this case should wait until Apple's Motions are decided.

B. All Relevant Factors Favor a Stay Pending a Decision on Apple's Motions

A temporary stay in this case will not harm Koss, while failure to grant a stay would unquestionably prejudice Apple. Further, as discussed, the Court can preserve valuable resources by disposing of these matters before expending time and energy on the merits of this case. Because all three factors that courts in this District consider when deciding a stay are met here, *YETI Coolers*, 2018 WL 2122868, at *1, the Court should stay this case.

1. Factor One: A Stay Will Not Prejudice Koss

First, Koss will not suffer any prejudice from a stay. Apple's proposed stay is limited to the time involved in the Court's consideration of Apple's Motions. Koss does not currently market or sell any products that practice the patented technologies or include features similar to those that it accuses of infringement. (*See* Compl., ¶ 55 (explaining that as of nearly a decade ago, "the economic reality of Koss's market position did not permit it to bring its Striva-based product vision to the masses").) Thus, Koss does not compete with Apple with respect to any of the patented technologies at issue in this suit. Further, Koss has sought only money damages in this case, not injunctive relief. (*Id*. at 33.) Koss will, therefore, not suffer any prejudice from a short stay until this Court rules on Apple's pending Motions. And to the extent Koss contends that it will face any economic disadvantage from a stay, it can be made whole, if it ultimately succeeds on the merits, by an award of prejudgment interest. *Underwater Devices Inc. v. Morrison-Knudsen Co.*, 717 F.2d 1380, 1389 (Fed. Cir. 1983), *overruled on other grounds by In re Seagate Tech., LLC*, 497 F.3d 1360 (Fed. Cir. 2007); *see also Transmatic, Inc. v. Gulton Indus., Inc.*, 180 F.3d 1343, 1347–48 (Fed. Cir. 1999). Moreover, Koss has not yet invested significant resources litigating in this forum, as no proceeding has taken place thus far. Indeed, Koss would save the time and expense of litigating claims that cannot go forward in this case should its claims be narrowed or dismissed after the Court decides Apple's Motion to Strike. Thus, Koss cannot contend that a stay would prejudice any investments of time or resources it has already made in this case.

2. Factor Two: Apple Will Suffer Hardship Absent a Stay

On the other hand, Apple will suffer hardship if a stay is not granted. Several important deadlines on the merits of Koss' claims loom shortly after the start of the new year. And either of Apple's pending Motions may significantly impact the future, if any, of this case. For instance, relief on Apple's Motion to Strike may narrow the issues Koss can raise or the claims Koss can

assert. This, in turn, may limit the expenditure of time and resources Apple is incurring to prepare its invalidity defenses and claim construction positions.

Moreover, should the Court later transfer this case, Apple will be prejudiced by being unnecessarily "forced to expend resources litigating substantive matters in an inconvenient venue while a motion to transfer" is pending. *In re Google*, 2015 WL 5294800, at *1. Further, if Apple engages in initial discovery or provides contentions here while its Motion to Transfer is pending, it may need to redo some of that work if the case proceeds and is later transferred to the Northern District of California, whose rules and requirements differ from those of this Court.[1] Staying this case until the Court rules on Apple's Motions would avoid this risk of hardship to Apple.

3. Factor Three: A Stay Will Conserve Judicial Resources

Finally, as discussed, a stay would best serve the interests of judicial economy. By considering Apple's Motion to Transfer now, this Court may avoid "needlessly expending its energies familiarizing itself with the intricacies of a case that the transferee judge may have to duplicate" should the Court grant Apple's motion. *Sparling v. Doyle*, No. EP-13-CV-00323-DCG, 2014 WL 12489985, at *4 (W.D. Tex. Mar. 3, 2014) (quotation marks omitted). Likewise, resolution of Apple's Motion to Strike will advance judicial economy by ensuring that the claims at issue are properly narrowed before litigating further, whether before this Court or a transferee court.

IV. CONCLUSION

The Federal Circuit's guidance counsels strongly in favor of staying this case until the Court rules on Apple's Motion to Transfer and Motion to Strike. A stay would ensure that neither

[1] *See* U.S. District Court for the Northern District of California, Patent Local Rules, https://www.cand.uscourts.gov/wp-content/uploads/local-rules/patent-local-rules/Patent_Local_Rules_11-2020.pdf.

the Court, nor Koss, nor Apple would have to expend resources until it was clear what claims will ultimately be litigated, where, and under what rules. For these reasons, Apple respectfully requests the Court stay this case until it rules on Apple's pending Motion to Transfer and Motion to Strike.

Date: December 21, 2020

Respectfully submitted,

By: */s/ Michael T. Pieja*

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Counsel for Defendant Apple Inc.

CERTIFICATE OF CONFERENCE

I certify that on December 17, 2020, counsel for Defendant Apple Inc. conferred with counsel for Plaintiff Koss Corporation regarding the foregoing Motion to Stay. Plaintiff's counsel stated that Koss opposes Apple's motion to stay this case pending the Court's ruling on Apple's motion to strike and motion to transfer. Discussions have conclusively ended in an impasse, leaving an open issue for the Court to resolve.

Date: December 21, 2020

/s/ Michael T. Pieja
Michael T. Pieja (*pro hac vice*)

PROOF OF SERVICE

I hereby certify that, on December 21, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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

KOSS CORPORATION, Plaintiff, v. APPLE INC., Defendant.	Case No. 6:20-cv-00665-ADA **JURY TRIAL DEMANDED**

SUPPLEMENT TO APPLE INC.'S MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA REGARDING RECENTLY DISCOVERED INFORMATION

Defendant Apple Inc. ("Apple") respectfully submits this supplement to address recently-discovered information in support of its Motion to Transfer Venue. (Dkt. No. 34.) In particular, two newly-discovered, non-party witnesses with knowledge of physical prior art products, as well as samples of those products, are located in the Northern District of California. This reinforces that the compulsory process, witness convenience, and availability-of-proof factors favor transfer.

Between 2006 and 2008, Plantronics Inc., which now operates as Poly, sold headphone models named Explorer, Calisto Pro, Voyager, and Discovery. Apple identified these four products from documents that Poly produced to Apple between December 23, 2020, and February 19, 2021. Because these products were sold before April 2008, they are prior art to U.S. Patent Nos. 10,206,025; 10,469,934; 10,491,982; and 10,506,325. These products anticipate or render obvious certain of Plaintiff Koss Corporation's ("Koss") asserted claims, as detailed in the examples set forth in Exhibits R and S.[1]

[1] Apple plans to promptly supplement its Invalidity Contentions to add references to this newly-discovered information.

This evidence supports Apple's Motion to Transfer for several reasons:

First, Plantronics was headquartered, and its successor Poly is headquartered, in Santa Cruz, California, within the Northern District. Poly, in Santa Cruz, has physical samples of the Explorer, Calisto Pro, Voyager, and Discovery products. It also has documents relating to these products, as shown by its production of such documents and samples to Apple. (*See* Exs. R, S.) These documents and samples are sources of proof relating to Apple's invalidity defense, and their location in the Northern District weighs in favor of transfer there.

Second, multiple witnesses with knowledge of Plantronics's prior-art products are located in the Northern District and subject to compulsory process there. The availability of compulsory process to secure the testimony of non-party witnesses at trial weighs heavily in favor of transfer. *In re Genetech, Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009). This factor recognizes that "the ability to compel live trial testimony is crucial for evaluating a witness['s] testimony." *Parus Holdings Inc. v. LG Elecs. Inc.*, No. 6:19-cv-00432-ADA, 2020 WL 4905809, at *4 (W.D. Tex. Aug. 20, 2020) (citing *Aguilar-Ayala v. Ruiz*, 973 F.2d 411, 419 (5th Cir. 1992)).

Documents produced by Poly provide evidence that two individuals in the Northern District—Claude Zellweger and Jay Wilson—have knowledge about the prior-art Plantronics products. Specifically, these two individuals are the inventors of physical products that Apple will show are invalidating prior art at trial. Mr. Zellweger lives in San Francisco and is the former co-owner and principal of One & Co., a San Francisco industrial design company that did work for Plantronics. (*See* Ex. T, Non-Party Witness Profiles and Whitepages at 1–5.) Mr. Wilson lives in Santa Cruz (*id.* at 6–12) and was a Senior Director for Plantronics from 2002 to 2009 (*id.* at 7). Poly's production indicates that Wilson's work for the company concerned industrial design. Messrs. Zellweger and Wilson are named inventors on patents that describe the prior-art

Plantronics products. (Ex. U, U.S. Pat. No. 7,680,267; Ex. V, U.S. Pat. App. No. 2008/0076489.)

Accordingly, Messrs. Zellweger and Wilson reside outside the subpoena power of this Court but are subject to the subpoena power of the courts in the Northern District of California. Therefore, the availability of compulsory process over these two additional third-party witnesses further weighs in favor of transfer. *See In re Genetech*, 566 F.3d at 1345.

Finally, if Koss argues that Messrs. Zellweger and Wilson may appear for trial voluntarily, their location still supports transfer. The convenience of testifying at trial for willing witnesses is an important factor in the transfer analysis. (Dkt. No. 34 at 9–12.) And the location of "potentially important non-party witnesses such as inventors [and] prior art witnesses" is relevant to the witness-convenience factor. *U.S. Ethernet Innovations, LLC v. Acer, Inc.*, No. 6:09-cv-448-JDL, 2010 WL 2771842, at *9 (E.D. Tex. July 13, 2010). Because Messrs. Zellweger and Wilson live within the Northern District, and the Northern District is over 1,700 miles from this District, it would be substantially more convenient for them to testify in the Northern District.

Date: February 26, 2021

Respectfully submitted,

By: */s/ Michael T. Pieja*

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The undersigned hereby certifies that a true and correct copy of **SUPPLEMENT TO APPLE INC.'S MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA REGARDING RECENTLY DISCOVERED INFORMATION** has been served on February 26, 2021, to all counsel of record who are deemed to have consented to electronic service.

/s/ *Michael T. Pieja*
Michael T. Pieja (*pro hac vice*)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

KOSS CORPORATION, Plaintiff, v. APPLE, INC., Defendant.	Case No. 6:20-cv-00665-ADA **PUBLIC VERSION**

PLAINTIFF KOSS CORPORATION'S OPPOSITION TO APPLE'S MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA

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Cases

Statutes

Plaintiff Koss Corporation ("Koss") opposes Apple, Inc.'s ("Apple's") Motion to Transfer to the Northern District of California pursuant to 28 U.S.C. § 1404(a).

I. INTRODUCTION

Apple contends that it would be more convenient to litigate this case in the Northern District of California, but its motion to transfer fails to satisfy Apple's high burden to establish that the Northern District of California is *clearly more convenient* than the Western District of Texas. Apple asserts that transfer is proper because it claims that some of the employees most knowledgeable about the accused products live and work in the Bay Area, and because one of the eight inventors of the patents-in-suit lives in Sacramento.

Apple's arguments fail to meet the high burden required for transfer under the public and private interest factors. In fact, analyzing all relevant facts reveals (1) Apple's substantial, intentional, and ongoing presence in this district; (2) that Apple employees in this district have relevant knowledge about development of the accused products; (3) that Koss filed five separate cases in this district with overlapping patents, and that all five cases are presently pending before this Court; (4) Koss has substantial ties to this district; (5) Koss documents are located in Texas; (6) this district is more convenient for Koss witnesses than the Northern District of California; and (7) two third party witnesses reside in this district. The evidence thus falls far short of a demonstration that litigation in the Northern District of California is clearly more convenient than litigating here, in Koss' venue of choice.

II. BACKGROUND

Koss sued five companies in the Western District of Texas for patent infringement: Apple, Bose Corporation, JLAB Audio, Plantronics, Inc., and Skullcandy, Inc. (Dkt. 34-10, 34-11, 34-12, and 34-13). These complaints assert overlapping patents; claim construction briefing has

commenced for the Apple, Plantronics, and JLAB defendants; and a *Markman* hearing is set for April 22, 2021. (Dkt. 30). Each defendant has moved to dismiss for lack of venue or to transfer its case to another forum, and only Plantronics and Apple request transfer to the Northern District of California.

Koss is a Delaware corporation with offices in Wisconsin. (Dkt. 1, ¶ 2). Koss' connections to Texas, however, go back decades. Since the late 1960's, Texas-based RadioShack has been one of the most important, if not the most important, customer of Koss headphone products. (Ex. A, Koss' Verified Interrogatory Responses, p. 6). Koss continues to have significant sales to Texas to customers such as HEB, AAFES (Army and Air Force Exchange Service), Securus Technologies, Academy Ltd., Simba Industries, First Texas Products, Aves Audiovisual Systems, Nolans Office & Promotional Products, Woot, Inc., Duckwall-Alco Stores, and others. (*Id*. at 6-7). Since 2017, Koss has sold [redacted] to customers located in Texas, including several such customers headquartered in Austin. As a result of Koss' sales to customers in Texas, Koss pays Texas state income tax and files Texas state tax returns. (*Id*. at 7).

For the past 25 years, Koss has used a Texas-based third party entity, Synectics International, Inc. ("Synectics"), to manage its IT needs. (Ex. B, Declaration of Thomas Petrone, ¶¶ 5-13). Synectics developed and maintains Koss' website, maintains the servers that backup all of Koss' electronic files and communications, and store Koss' archival records, including product development and support files for Koss' Striva line of wireless headphones. (*Id*.) Synectics has offices in this district, Austin and Georgetown, headquarters in Farmers Branch, Texas, and servers located in Dallas. (*Id*.) Synectics' co-owner, Thomas Petrone is a relevant third-party witness who lives and works in Austin and is unwilling to travel to California for trial. (*Id*.)

Apple acknowledges that there are eight named inventors on the patents-in-suit. (Dkt. 34-1, § 6 and Dkt. 34-5). One of those inventors, Michael Sagan, lives near Sacramento, California, and the remaining seven in Wisconsin and in Illinois. (Dkt. 34, p. 10). However, Koss' counsel represents Mr. Sagan and Mr. Sagan will travel to Texas willingly for trial at Koss' expense. Further, the firmware for one relevant line of Koss wireless headphones, the Striva line, was initially developed by a company called Red Fusion. A former employee of Red Fusion who has relevant information, Mr. Hytham Alihassan, works and lives in Austin. (Ex. C, Alihassan LinkedIn profile). None of these factors support Apple's allegation that California is clearly more convenient, and in fact cut against such a finding.

Apple is headquartered in the Northern District of California, but has a large and growing presence in Austin. *See Solas OLED Ltd. v. Apple Inc.*, No. 6:19-cv-00537-ADA, 2020 WL 3440956, at *7 (W.D. Tex. Jun. 23, 2020). Apple employees in Austin work on various aspects of the accused products. [redacted] And finally, Apple's job postings make clear that its Austin campus will continue to work on both technical and financial aspects of the Accused Products. On its website, Apple advertises such job openings and the postings are searchable by both location and relevant products and services. Selecting "Austin" as the location and three of the accused products (AirPods, Beats, and HomePods) as "Products and Services" yields 17 job postings. These postings, collected as Ex. E,

include numerous hardware engineering positions and a business development position, confirming the propriety of Apple defending its patent infringement in this district.

III. LEGAL STANDARD

The party moving to transfer a case for convenience has a high burden to show "good cause," meaning it must demonstrate that the transferee venue is clearly more convenient. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 314 (5th Cir. 2008) ("*Volkswagen II*"). "[W]hen the transferee venue is not clearly more convenient than the venue chosen by the plaintiff, the plaintiff's choice should be respected." *Id.* at 315. To determine whether another venue is clearly more convenient, the court must first determine whether the action "might have been brought" in the judicial district to which transfer is requested. *Volkswagen II, of Am., Inc.*, 545 F.3d at 312. If so, then the "[t]he determination of 'convenience' turns on a number of public and private interest factors, none of which can be said to be of dispositive weight." *Action Indus., Inc. v. U.S. Fid. & Guar. Co.*, 358 F.3d 337, 340 (5th Cir. 2004). The private factors include: "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive." *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) ("Volkswagen I") (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1982)). The public factors include: "(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws of the application of foreign law." *Id.* Although courts may "consider undisputed facts outside the pleadings, they must draw all reasonable inferences and resolve all factual conflicts in favor of the non-moving party." *Parus Holdings Inc. v. LG Electronics Inc.*, No. 6:19-

CV-00432, 2020 WL 4905809, at *2 (W.D. Tex. Aug. 20, 2020) (citing *Weatherford Tech. Holdings, LLC v. Tesco Corp.*, No. 2:17-CV-00456-JRG, 2018 WL 4620636, at *2 (E.D. Tex. May 16, 2019).

IV. ARGUMENT

This case clearly belongs in the Western District of Texas and Apple has not met its heavy burden to show otherwise. On consideration of the private and public convenience factors, Apple's motion should be denied.

A. The Private Factors Weigh Against Transfer

The private interest factors collectively weigh against transfer—one factor is neutral and the other three weigh against transfer.

1. The relative ease of access to sources of proof

The location of documents and other physical evidence, as considered by this factor, is neutral but also not entitled to much weight. As this Court has noted, in the modern electronic world, the "location" of documents no longer has a meaningful impact on convenience. *Fintiv, Inc. v. Apple Inc.*, No. 6:18-cv-00372-ADA, 2019 WL 4743678, at *4 (W.D. Tex. Sep. 13, 2019) ("this factor is at odds with the realities of modern patent litigation" where "all (or nearly all) produced documents exist as electronic documents on a party's server"). Contrary precedent fails to account for the prevalence of remote access to documents relied upon during the pandemic.

Apple contends that most of the Apple documents relevant to this case are stored on servers in the Northern District of California. Apple submitted a declaration from an Apple employee, Mark Rollins, who stated that Apple "does not have any *unique* working files or documents relevant to this case located in the WDTX." (Dkt. 34-2, ¶ 8, emphasis added.) The word "unique" is notable. [redacted]

[redacted]

Moreover, Apple employees in Austin would certainly have access to documents stored on its California servers. Documents relevant to this case, therefore, could readily be downloaded or printed at Apple facilities in Austin as readily as Apple facilities in Northern California. *See MV3 Partners LLC v. Roku Inc.*, No. 6:18-CV-00308-ADA, 2019 WL 10981851, at *2 (W.D. Tex. Jun. 25, 2019) ("Other than stating that its documents are accessible from California, Roku does not provide any additional arguments regarding why it would be difficult or burdensome to make such documents available in Texas. Further, Roku does not explain why its Austin office would have difficulty gaining access to such documents."). Similarly, while Koss' offices are primarily located in the Midwest, its IT needs are handled by a Texas company, Synectics, and Koss documents are stored on its servers. Thus, while Koss documents are of course accessible from multiple locations, they are "located" in Texas, just as Apple asserts that certain of its documents are "located" in California.

Apple states that its source code is located in California (Dkt. 34, p. 8), but Mr. Rollins admitted in his declaration that the "source code can be accessed by Apple employees working on the Accused Features in California and, for certain Accused Features, Seattle, Boston, and Israel." (Dkt. 34-2, ¶ 8). Conspicuously, Mr. Rollins does not claim that Apple's source code cannot be accessed from Apple facilities in Austin. In any event, the location of source code is irrelevant to a convenience analysis because no matter where it is located, the source code inspection would take place at a location of Apple's choosing. Similarly, the location of Striva source code would

take place at a location of Koss's choosing. Because all relevant documents can be accessed remotely, this factor is neutral and, ultimately, should not be given significant weight.

2. The availability of compulsory process to secure the attendance of witnesses

At least two third party witnesses live in this district, in Austin, Texas. The availability of compulsory process over these witnesses tips this factor against transfer. Mr. Thomas Petrone, the co-owner of Synectics, the company that developed Koss' website and stores Koss documents, lives and works in Austin. Attending trial in California would be too great a burden for Mr. Petrone. (*See* Ex. B, ¶ 16). Mr. Alihassan, an individual who formerly worked at the company that designed firmware for Koss's Striva product, lives and works in Austin, Texas. Coincidentally, Mr. Alihassan is currently employed by another defendant in another case brought by Koss, and as such will very likely be an unwilling witness in either venue. To the extent he is an unwilling participant, Koss would only be able to secure Mr. Alihassan's attendance at trial by way of compulsory process of this court; the same would not be true in the Northern District of California.

Apple points to three potential witnesses that live within the subpoena power of the Northern District of California. (Dkt. 34, p. 9).[1] Michael Sagan, an inventor on three of the four asserted patents, lives in Sacramento, California. And, the seven other inventors of the asserted patents all of whom live in either Wisconsin or Illinois. Mr. Sagan's location in California does not help Apple because, as mentioned above, Koss' counsel is representing Mr. Sagan who has indicated he is willing to travel to Texas at Koss' expense.

Late last Friday, Apple suddenly identified two "important" prior art witnesses who live in in the Northern District of California. (Dkt. 50). These witnesses are former employees of

Plantronics, with knowledge of the development of a Plantronics product. (*Id.*). Even though Apple may have just learned of the existence of these individuals, it is interesting that Plantronics (who clearly had knowledge of these individuals) did not identify these individuals as potential third party witnesses in its motion to transfer. However, Apple's late identification of these witnesses does not impact the transfer analysis. As this Court has stated repeatedly, "prior art witnesses are generally unlikely to testify at trial, and the weight afforded their presence in this transfer analysis is minimal." *Cloud of Change, LLC v. NCR Corp.*, No. 6:19-cv-00513, 2020 WL 6439178, at *4 (W.D. Tex. Mar. 17, 2020) *see also Fintiv, Inc.*, 2019 WL 4743678, at *5; *Parus*, 2020 WL 4905809, at *4.

3. The cost of attendance for willing witnesses

Proper analysis of this factor concentrates on the cost of attendance to non-party witnesses, and the cost to party witnesses is given little weight. *See ADS Sec. L.P. v. Advanced Detection Sec. Servs., Inc.*, No. A-09-CA-773-LY, 2010 WL 1170976, at *4 (W.D. Tex. Mar. 23, 2010).

Most importantly, two non-party potential witnesses live in this district, Mr. Alihassan and Mr. Petrone, so the cost to these witnesses is minimal and strongly favors keeping the case in this venue. Seven of the eight inventors of the asserted patents live in either Illinois or Wisconsin, and although these witnesses will have to incur some travel expense, the expense (flight and accommodations) of traveling to Texas is much less than to San Francisco, California. The last inventor is located in the Northern District of California, but Koss is covering the cost of Mr. Sagan's travel expenses. Two purported prior art witnesses are located in the Northern District of California, but prior art witnesses are not likely to attend trial so any cost to them can be reduced or ignored. *See Cloud of Change*, 2020 WL 6439178 at *4.

For Koss witnesses and experts, keeping this case in this District would be less costly than transferring to California. Waco is closer to its Midwestern offices than California, and a less expensive travel destination. Koss has sued five defendants in this district for infringement. Trying multiple cases here, in a single Court, would be far more convenient for Koss witnesses (both fact and expert) than traveling to forums scattered across the country. If these cases are transferred to five different forums, then: (a) Koss witnesses would have to complete logistical planning anew for each case; and (b) the five cases would likely run on different schedules, with greatly separated trial dates, requiring witnesses to repeat planning and preparations over a longer period of time. Separating the cases would also make it difficult to consolidate discovery, likely resulting in additional depositions for each witness.

Apple contends that it has thirteen potential witnesses who live and work in the Bay Area, for whom trial in the Northern District of California would be more convenient. (Dkt. 34, p. 9). First, it is unlikely that Apple will call thirteen fact witnesses at trial. As this Court has stated, convenience determinations should not be made "by mechanically counting witnesses proffered by both sides," as that "could become an invitation for parties in future cases to simply 'game' the system by reciting long lists of potential witnesses—who ultimately may not have any relevant information—in order to support or counter a transfer motion." *Fintiv*, 2019 WL 4743678, at *4. Assuming that Apple does call a few of its California employees for live testimony at trial, Apple exaggerates the inconvenience to these witnesses. Since Apple has extensive facilities in Austin (while Koss has no facilities in California), these employees would not have to sit in hotels waiting to testify. They could instead work at Apple's Austin campus. It is incongruous for Apple to develop an extensive campus in Austin, with attendant tax benefits, but still contend this District is an "inconvenient" forum for its employees. *See STC.UNM v. Apple Inc.*, No. 6:19-cv-00428-

ADA, 2020 WL 4559706, at *6 (W.D. Tex. Apr. 1, 2020) ("Apple's substantial presence in Austin" weakens the strength of its witness convenience assertion).

Moreover, some of Apple's Austin employees may indeed be trial witnesses. [redacted] And Apple's job postings demonstrate that work on the accused products, including hardware engineering, is ongoing. (Ex. E). These facts undercut Apple's assertion that all relevant employees are in California. *See SCT.UNM v. Apple, Inc.*, No. 6:19-cv-00428-ADA, 2020 WL 4559706, at *8 (W.D. Tex. Apr. 1, 2020) ("while Apple claims that all its employees with relevant knowledge are in the NDCA, the Austin job-posting requiring that Apple engineers have "strong knowledge" of the 802.11ac standard demonstrates that the employees and business Apple conducts within this District will be affected by the determinations regarding the standard and infringement made in this case.").

Importantly, [redacted] These individuals may be important witnesses with knowledge relevant to Koss' willful infringement claims against Apple.

The witness convenience factor, therefore weighs against transfer. Texas is more convenient than California for the majority of the inventor witnesses and two third-party potential witnesses. Texas is more convenient for all of Koss witnesses and experts, and although Apple's California fact witnesses would of course prefer California, any inconvenience to them is reduced by the presence of Apple's Austin campus in this district. Moreover, there may very well be Apple witnesses located in Austin as well, [redacted]

[redacted] At the least, Apple has failed to demonstrate that there are no relevant Apple witnesses located in Austin. *See Parus*, 2020 WL 4905809, at *2 (Courts may "consider undisputed facts outside the pleadings, but it must draw all reasonable inferences and resolve all factual conflicts in favor of the non-moving party."). The witness convenience factor, therefore, weighs against transfer because Texas is more convenient and less costly for the majority of non-party and party witnesses.

4. All other practical problems that make trial of a case easy, expeditious and inexpensive

This factor strongly favors retaining the case in the Western District of Texas. As discussed above, Koss has sued five separate defendants in this District for infringement of overlapping patents. Four of the five patents asserted against Apple in this case are also asserted against other defendants. Simple efficiency suggests that these cases should be heard by as few judges as possible, to avoid duplication of claim construction, case management, and other time consuming proceedings. *See In re Volkswagen of Am., Inc.*, 566 F.3d 1349, 1351 (Fed. Cir. 2009) (Volkswagen III) ("Judicial economy is served by having the same district court try the cases involving the same patents."); *Continental Grain Co. v. The FBL-585*, 364 U.S. 19, 26 (1960) ("To permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy, and money that § 1404(a) was designed to prevent."); *SCT.UNM*, 2020 WL 4559706, at *7 ("keeping these cases together would promote consistency as the same Court would hold *Markman* hearings and provide claim constructions for the same patent—avoiding the potential of having the same patent claims interpreted to have different meanings by various Courts.").

In its Motion, Apple points out that the other four defendants are also moving to transfer or dismiss, and argues that "the mere fact of co-pending litigation" should not prevent transfer,

citing *In re Google Inc.*, 2017 WL 977038, at *3 (Fed. Cir. Feb. 23, 2017). Although a plaintiff cannot inoculate its case against transfer merely by filing co-pending litigation, co-pending litigation may not be ignored merely because the other defendants have also moved to transfer. *See Parus*, 2020 WL 4905809, at *7 ("Each defendant has the burden to show that its chosen venue is more convenient than the WDTX, and the Court will provide an independent evaluation of its motion to transfer on the merits."). This is especially true where the five defendants seek to transfer their cases to four different jurisdictions.

So long as more than one of the co-pending cases can be reasonably retained in this District, Koss submits that the efficiency factor weighs heavily against transfer. *See Solas*, 2020 WL 3440956, at *7 ("With two districts already hearing claims regarding these patents and this district hearing four claims regarding these patents (three of which are on a common schedule), an additional venue would increase the expense and difficulty for parties involved and result in the increased expenditure of judicial resources. *See Volkswagen III*, F.3d at 1351. Therefore, the Court finds that the 'all other practical problems' factor weighs heavily against transfer.").

B. The Public Factors Weigh Against Transfer

1. The administrative difficulties flowing from court congestion

Apple argues that the Northern District of California and the Western District of Texas have historically disposed of cases in roughly the same amount of time, and that the court congestion factor is therefore neutral. (Dkt. 34, pp. 16-17). Apple ignores the fact that the Northern District of California has not held a patent trial in over a year, and is unlikely to do so anytime soon. On the other hand, it is unquestionable that the Waco division of this district is advancing cases to trial and has equipped its courtroom to effectively handle safety considerations of the COVID pandemic. *In re Apple* states that "[t]o the extent that court congestion matters, what is

important is the speed with which a case can come to trial and be resolved." 979 F.3d 1332, 1343 (Fed. Cir. 2020). Right now, the parties know when the case is likely to reach trial, whereas it is unknowable how long cases will take to reach trial (at least in the near future) if that happens at all. Further, *In re Apple* states "the ability to transfer a case to a district with numerous cases involving some overlapping issues weighs at least slightly in favor of such a transfer." *Id*. at 1344.

Apple's statistics are skewed because they reflect the entire Western District of Texas, and "may overlook a faster time-to-trial within the Waco Division." *ParkerVision, Inc. v. Intel Corp.*, No. 6:20-cv-00108-ADA, 2021 WL 401989, at *7 (W.D. Tex. Jan. 26, 2001). As this Court noted in *ParkerVision*, "the Waco Division has its own patent-specific Order Governing Proceedings ('OGP') that ensures efficient administration of patent cases," and order lacking elsewhere in the district. *Id.* Moreover, as in *ParkerVision*, this Court has already set a trial date for this matter that is only 13 months away. *Id.* It is highly likely, therefore, that this case will be resolved more quickly in Waco than in the Northern District of California. The court congestion factor, therefore, weighs against transfer.

2. The local interest in having localized interests decided at home

Apple emphasizes that the accused products were largely developed in the Northern District of California, giving that forum an interest in the case. Dkt. 34, p. 14-15 (citing *In re Apple Inc.*, 979 F.3d at 1345). The Western District of Texas, however, also has a significant interest in the case. First, Apple has a "significant number of employees" in Austin, giving this district "a significant interest in this case." *ParkerVision*, 2021 WL 401989, at *7 ("Intel has a significant number of employees in both Oregon and the Western District of Texas, so both districts have a significant interest in this case. As such, the Western District of Texas has a localized interest with respect to Intel."). [redacted]

[redacted] Second, Apple sells the accused products in this District, including through five Apple stores located in Austin, San Antonio, and El Paso. (Dkt. 34-2, ¶ 24). Third, Koss does extensive business in Texas, both through direct sales and through sales to Texas companies, and files Texas state tax returns. (Ex. A, pp. 6-7). Fourth, the third party that manages Koss' website, backup storage, and IT is located here. (*Id.*, p. 7). And finally, and not to be discounted, Apple has availed itself of the talent pool, the tax benefits, the laws and regulations, and the benefits of being in this district. It is only fair that, in return for all of these benefits, that this district has an interest in deciding the merits of this case. Koss therefore submits that this factor is generally neutral.[2]

3. The familiarity of the forum with the law that will govern the case; the avoidance of unnecessary problems of conflict of laws of the application of foreign law

The parties agree that these final two factors are neutral.

V. CONCLUSION

Apple has failed to demonstrate that the Northern District of California would be "clearly more convenient" than this Court. *Volkswagen II*, 545 F.3d at 315. There are witnesses in both forums, and Apple has a substantial presence in both forums. The case will reach trial faster here, and overlapping, co-pending cases against other defendants make litigating here more efficient. The Court should therefore deny Apple's Motion to Transfer.

[2] Apple argues that its breach of contract action against Koss, which it filed in the Northern District of California after this litigation began, creates an additional "localized interest" for California. This argument is disingenuous given that Apple claims that the alleged "breach" was the filing of the Complaint *in this district*. However, Apple has chosen to resolve that contract action through binding arbitration, not litigation.

Dated: March 2, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on March 2, 2021, via electronic mail to counsel of record for Defendant at the following addresses:

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

KOSS CORPORATION, Plaintiff, v. APPLE INC., Defendant.	Case No. 6:20-cv-00665-ADA **JURY TRIAL DEMANDED**

DEFENDANT APPLE INC.'S REPLY IN SUPPORT OF ITS MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA

[*PUBLIC VERSION*]

Apple produced detailed, particularized evidence that the witnesses and documents relevant to this case are in California, not Texas. By contrast, despite extensive discovery, Koss has articulated no credible link to any relevant person or document in this District. Instead of facts, Koss resorts to vague speculation of what documents "would certainly" be in Texas, or which individuals "may very well" be here. (Opp'n at 6, 10, Dkt. No. 52.) In fact, Koss' opposition shows just how weak this litigation's ties to Texas are. To gin up some Texas presence, Koss is reduced to pointing to a member of [redacted] But Koss makes no argument why a support contractor would have information material to Koss' case, let alone be called to testify. Similarly, of the three other individuals with alleged Texas ties, there is no evidence that one ever worked with Koss or its products, and the other two do not, in fact, live or work in Texas. On any score supported by evidence, California is clearly the more convenient forum to litigate this case.

I. THE EVIDENCE CONFIRMS THE NORTHERN DISTRICT OF CALIFORNIA IS CLEARLY A MORE CONVENIENT VENUE THAN THIS DISTRICT

The record before the Court supports only one conclusion: the vast bulk of relevant evidence in this case is in California, and none is in this District. Koss' unsupported attorney argument to the contrary "is insufficient to create a genuine dispute as to any material fact." *Robuck v. Bank of Am., N.A.*, 2014 WL 1342861, at *3 n.5 (W.D. Tex. Apr. 3, 2014). Koss' speculation and conjecture cannot overcome the robust record of credible evidence that Apple has built. On every factor affecting the Court's analysis, the evidence supports transfer.

A. The Private Interest Factors Favor Transfer.

1. The Vast Bulk Of Evidence Is In California, And None Is In This District

The evidence demonstrates that Apple's relevant sources of proof are in California. (Rollins 12/17/20 Decl., ¶¶ 8–22, Dkt. No. 34-2.) In addition, physical samples of key Plantronics

prior art are housed in the Northern District. (Suppl. Mem. at 2, Dkt. No. 50.) In contrast, no evidence has surfaced of any relevant documents—Apple's, Koss', or otherwise—in this District. As to Apple's documents, Koss can only speculate that relevant material "may very well be located in Austin," or that Apple employees in Austin "would certainly have access" to relevant documents. (Opp'n at 6.) Not only is Koss' unsupported conjecture entitled to no weight, but the record reflects the opposite. For instance, Apple's technical documents and source code for the accused features, as well as marketing, licensing, and finance documents for the accused products, are located in California. (Dkt. No. 34-2, ¶¶ 8–22.) Moreover, Apple restricts access to relevant source code on a need-to-know basis, and none of the engineers with a need to know are in Texas or even travel to Texas for work. (*Id.* ¶¶ 8–13, 16; Rollins 1/8/21 Dep., 48:1–49:18, Dkt. No. 53-2.) There is no evidence that any relevant Apple source code has ever been or could be accessed in Texas. Tellingly, having served written discovery and taken two depositions, Koss still has not identified a single Apple document in Texas that it claims is relevant.

Koss makes no attempt to argue that any of its own documents are in this District. Although Koss refers to [redacted] servers, it has not identified what, if any, information stored there is relevant here. (*See* Dkt. No. 52-3, ¶ 11; Opp'n at 2, 6.) Moreover, those servers are not entitled to any weight because they are in the Northern, not Western, District of Texas. *See In re Apple*, 979 F.3d 1332, 1346 (Fed. Cir. 2020). And even if Koss' [redacted] servers contain some pertinent information, Apple possesses "the bulk of the relevant documents for this case," and has shown that they are in California, easily outweighing Koss' speculation about documents in Texas. *Solas OLED Ltd. v. Apple Inc.*, 2020 WL 3440956, at *3 (W.D. Tex. June 23, 2020) (citation omitted).

Koss' suggestion that the location of proof is irrelevant because electronic documents can be accessed remotely is contrary to binding authority. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 316 (5th Cir. 2008) ("*Volkswagen II*"); (Opp'n at 6). As the Court has consistently acknowledged,

"current precedent dictates the Court consider where sources of proof are *physically* located." *CloudofChange, LLC v. NCR Corp.*, 2020 WL 6439178, at *3 (W.D. Tex. Mar. 17, 2020); *Fintiv, Inc. v. Apple Inc.*, 2019 WL 4743678, at *4 (W.D. Tex. Sept. 13, 2019) (recognizing same). Because the strong majority of relevant documents are in California, and none has been identified in this District, this factor decisively favors transfer.

2. The Compulsory-Process Factor Heavily Favors Transfer

Apple has named three highly relevant third-party witnesses who reside in California and are thus within the subpoena power of the Northern District of California. One, Michael Sagan, an inventor on four of the five patents asserted against Apple, lives outside Sacramento, California. (LinkedIn Profile and Whitepages at 1–2, Dkt. No. 34-5.) Koss represents that Mr. Sagan is willing to travel to Texas at Koss' expense. (Opp'n at 7.) But Koss' lawyers' representation "is no substitute for evidence," and cannot be relied upon to affect the transfer analysis. *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005). And Koss certainly provides no evidence that Mr. Sagan will feel the same when faced with a request to attend trial in this District in a year's time. In contrast, it is undisputed that Mr. Sagan is within the subpoena power of the California courts. (Opp'n at 7.) Further, Koss cites no authority—and Apple is aware of none—suggesting that a subjective preference by a third party to testify in a venue far from his home can trump the objective convenience afforded by a closer venue.

Two other California-based witnesses—Claude Zellweger and Jay Wilson—are inventors on Plantronics prior art that Apple plans to present at trial. (LinkedIn Profiles and Patents, Dkt. Nos. 50-4, -5, -6.) Koss argues that witnesses with knowledge of relevant prior art are entitled to little weight. (Opp'n at 8.) But no appellate authority supports a distinction between prior art witnesses and other types of witnesses. In fact, the opposite is true. The Federal Circuit in *In re Genentech* considered the relative convenience of *all* identified witnesses, party and non-party,

prior art and other. 566 F.3d at 1343. In so doing, the *Genentech* Court refused to speculate about which witnesses with relevant information were more likely to testify. As the *Genentech* Court put it: "Requiring a defendant to show that the potential witness has more than relevant and material information at this point in the litigation or risk facing denial of transfer on that basis is unnecessary." *Id.* Further, Apple specified why Mr. Zellweger and Mr. Wilson have relevant information by charting features of the relevant Plantronics products against illustrative claims of four of Koss' asserted patents. (Dkt. Nos. 50-2, 51.) The Northern District's subpoena authority over these witnesses supports transfer.

By contrast, the two Texas witnesses identified by Koss have no relevant or material information. Koss first asserts that Mr. Hytham Alihassan briefly worked for a company that, in turn, once worked on Koss products. (Opp'n at 7.) But Koss does not argue that Mr. Alihassan himself ever worked on a Koss product, nor does the LinkedIn profile that Koss submitted so much as mention Koss. (*Id.*; Dkt. No. 52-4.) Koss thus provides no basis for believing that Mr. Alihassan has any information relevant to this case. Therefore, Mr. Alihassan affects neither the compulsory process factor nor the convenience of willing witnesses.

Koss also identifies Mr. Thomas Petrone as a witness. (Opp'n at 7.) But as with Mr. Alihassan, Koss never identifies any information Mr. Petrone has that is relevant to this case. Mr. Petrone does not work on any product or technology at issue, but rather runs a completely different company that provides IT services to Koss. [redacted] There is thus no reason to believe that Mr. Petrone would have any relevant information to offer at trial, no matter where it is held.

[redacted]

[redacted] The logic that led the Fifth Circuit to conclude that "convenience of counsel is not a factor to be assessed in determining whether to transfer a case under § 1404(a)" extends equally to the convenience of counsel's discovery team. *In re Volkswagen AG*, 371 F.3d 201, 206 (5th Cir. 2004) ("*Volkswagen I*"). Thus, [redacted]

[redacted]

As three non-party witnesses with relevant and material information are in California, and not one is in Texas, the compulsory process factor heavily favors transfer to the Northern District.

3. Convenience Of Witnesses Strongly Favors Transfer

Apple's Motion identified thirteen engineering, marketing, licensing, and finance personnel who work for Apple in California and have knowledge pertinent to this case. (Dkt. No. 34-2, ¶¶ 8–22.) Koss cannot—and did not try to—dispute that these employees would find travel to courthouses an hour or less from their California workplaces to be far more convenient and far less costly than relocating hundreds of miles, potentially for several days, for a trial in Waco. (*See* Apple Witness Travel Times, Dkt. No. 34-7); *Volkswagen I*, 371 F.3d at 205.

Koss' guess that "some" Apple employees in Austin "may indeed be trial witnesses" is as unsupported as its other speculation about evidence that may, or may not, be in Texas. (Opp'n at 10.) Koss points to Hoyt Fleming and Tim Kohler, both involved in Apple's pre-suit negotiations with Koss. (*Id.*) But these witnesses do not live or work in Texas. (Ex. X, Rollins 3/11/21 Decl., ¶ 7.) Instead, Mr. Fleming lives in Idaho, and Mr. Kohler lives in the Northern District. (*Id.*) And the testimony Koss cites merely confirms that the deponent in fact did not know where these individuals work. [redacted]

Beyond that, Koss' vague gestures toward unspecified Apple employees who do work in Texas unrelated to this case is unavailing. [redacted]

[redacted]

[redacted] This activity is wholly separate from the feature Koss has accused of infringement, which involves how wireless headphones trigger Siri. (*See* 7/22/20 Compl., ¶ 61, Dkt. No. 1.) Apple's job postings also play no role in the analysis. (*See* Opp'n at 10.) For one, the postings necessarily represent jobs that *have not been filled*, and thus provide no evidence that any relevant individuals work in Austin. Moreover, the postings are for unrelated customer-support or component-testing roles, are not specific to any Apple product, and in many cases could ultimately be filled in any of a number of cities, including Cupertino, California. (Ex. X, ¶¶ 4–6.)

As for Koss' witnesses and the Midwestern inventors of the asserted patents, Apple submitted evidence that travel to Texas is no more convenient than travel to California. (Witness Travel Times, Dkt. No. 34-8.) Koss provided no support for its contrary assertion. (Opp'n at 9.) Koss' allegation, again without evidence, that these witness' expenses would be less in Texas than in California is wrong. (*Id.*; Ex. Y, Relative Travel Costs.) And in any case, this Court has stated that expenses are entitled to "very little persuasive weight under analysis of this factor." *USC IP P'ship, L.P. v. Facebook, Inc.*, 2021 WL 860007, at *4 (W.D. Tex. Mar. 8, 2021).

Thus, despite extensive discovery including multiple interrogatories, a privilege log, and two depositions, Koss "has failed to identify specific witnesses, outline the substance of their testimony, [or] provide more than general allegations" that any relevant witnesses would find this District more convenient than the Northern District. *MV3 Partners LLC v. Roku, Inc.*, 2019 WL 10981851, at *4 (W.D. Tex. June 25, 2019). Witness convenience strongly favors transfer.

4. The Other-Practical-Problems Factor Is Neutral

For the practical problems factor and others, such as witness convenience, Koss would have the Court give undue weight to Koss' decision to file five separate suits here. (Opp'n at 9,

11.) But binding precedent expressly forecloses "inoculating a plaintiff against convenience transfer under § 1404(a) simply because it filed related suits against multiple defendants in the transferor district." *In re Google Inc.*, 2017 WL 977038, at *3 (Fed. Cir. Feb. 23, 2017). Instead, the Court must independently judge the merits of this Motion based on the record in this case.

Further, there is no reason to believe *any* of Koss' cases will be tried here. All four other defendants have now moved to transfer or dismiss. (*See* Mot. at 13–14, Dkt. No. 34; Ex. Z, Mot. to Dismiss or Transfer, *Koss Corp. v. PEAG, LLC*, No. 6:20-cv-662-ADA (W.D. Tex. Dec. 23, 2020), Dkt. No. 21.) That three of the four co-pending motions seek non-discretionary transfer for improper venue makes it all the more likely that these cases will not remain before this Court. Moreover, Koss itself actively sought relief in the Northern District of California by filing a motion there relating to an ongoing arbitration with Apple. (Ex. AA, Koss Mot. to Stay Arb., *Apple Inc. v. Koss Corp.*, 4:20-cv-5504 (N.D. Cal. Jan. 27, 2001), Dkt. No. 63.) As any efficiencies from retaining this case in this District are speculative, this factor is, at worst, neutral.

B. The Public Interest Factors Favor Transfer.

1. California Has A Strong Local Interest, While This District Has None

Recent Federal Circuit precedent clarified that the local-interest factor "most notably regards not merely the parties' significant connections to each forum writ large, but rather the 'significant connections between a particular venue and *the events that gave rise to a suit*.'" *In re Apple Inc.*, 979 F.3d 1332, 1345 (Fed. Cir. 2020) (quoting *In re Acer Am. Corp.*, 626 F.3d 1252, 1256 (Fed. Cir. 2010)). Koss disregards this authority in its kitchen-sink attempt to find something—anything—that might imbue this District with an interest, however small, in this case. (Opp'n at 13–14.) Koss' supposed connections to this District—such as its sales and outsourced IT department, and Apple's generalized presence and benefits from being located here—are in no way connected to the "events that g[i]ve rise to [this] suit." *In re Apple*, 979 F.3d at 1345. They

are, instead, the very kind of "connections to [a] forum writ large" that the Federal Circuit has held insufficient to establish a localized interest in a particular suit. *Id.* Apple's retail and sales activities here likewise cannot support a localized interest, because the same "rationale could apply virtually to any judicial district or division in the United States." *Volkswagen II*, 545 F.3d at 318. In sharp contrast, there is a strong localized interest in California, where all accused products were designed, developed, engineered, marketed, and financed. This factor weighs in favor of transfer.

2. The Court-Congestion Factor Is Neutral

While Koss analyzes court congestion via the future schedule set in this case, the Federal Circuit has clearly stated that "[n]othing about the court's general ability to set a schedule directly speaks to" this factor. *In re Adobe Inc.*, 823 F. App'x 929, 932 (Fed. Cir. 2020). Actual statistics for the timing of case dispositions in this District versus the Northern District of California show relative parity to date. (Dkt. Nos. 34-17, 34-18.) Further, this District's growing docket augurs changed circumstances by the time this case is due for trial. This District saw 288 patent cases filed or assigned to it in 2019, and 855 patent cases filed or assigned in 2020. (Ex. BB, DocketNavigator Reports at 1.) Virtually all of those cases can be attributed to growth in the Waco Division's docket. (*Id.* at 2.) Meanwhile, the patent case load of the Northern District of California has remained relatively stable, and saw more than 500 fewer patent cases filed last year than were filed here. (*Compare id.* at 2 to *id.* at 3.) If anything, these statistics suggest that this District's docket is becoming significantly more congested than the Northern District's. For all these reasons, this "most speculative" factor is, at least, neutral. *In re Genentech*, 566 F.3d at 1347.

3. The Remaining Public-Interest Factors Are Neutral

The parties agree the two remaining public-interest factors are neutral.

II. CONCLUSION

Apple respectfully requests this case be transferred to the Northern District of California.

Date: March 11, 2021

Respectfully submitted,

By: */s/ Michael T. Pieja*

Michael T. Pieja (*pro hac vice*)
Alan E. Littmann (*pro hac vice*)
Doug Winnard (*pro hac vice*)
Samuel E. Schoenburg (*pro hac vice*)
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Counsel for Defendant Apple Inc.

PROOF OF SERVICE

The undersigned hereby certifies that a true and correct copy of **DEFENDANT APPLE INC.'S REPLY IN SUPPORT OF ITS MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA** has been served on March 11, 2021, to all counsel of record who are deemed to have consented to electronic service.

/s/ *Michael T. Pieja*
Michael T. Pieja (*pro hac vice*)

From: Hannah Santasawatkul <Hannah_Santasawatkul@txwd.uscourts.gov>
Sent: Thursday, April 22, 2021 11:44 PM
To: Michael Pieja; Steve Wingard
Cc: gina.johnson@klgates.com; jim.shimota@klgates.com; benjamin.weed@klgates.com; erik.halverson@klgates.com; philip.kunz@klgates.com; darlene.ghavimi@klgates.com; Alan Littmann; Steve McConnico; Stephen Burbank
Subject: RE: Koss Corp. v. Apple Inc; 6:20-cv-00665-ADA

Good evening Counsel,

The Court has filed the Order on the pending Motion to Transfer Venue. You should be receiving the order when the clerks' office files it first thing in the morning. The order has been sealed, please provide the Court with a redacted version of the order to be filed. If I do not receive a redacted order from you by April 30, the Court will assume that the order contains no confidential information and unseal it. We look forward to seeing you tomorrow.

Best,
Hannah

From: Hannah Santasawatkul
Sent: Thursday, April 22, 2021 6:48 PM
To: Michael Pieja <MPIEJA@goldmanismail.com>; Steve Wingard <swingard@scottdoug.com>
Cc: gina.johnson@klgates.com; jim.shimota@klgates.com; benjamin.weed@klgates.com; erik.halverson@klgates.com; philip.kunz@klgates.com; darlene.ghavimi@klgates.com; Alan Littmann <alittmann@goldmanismail.com>; Steve McConnico <smcconnico@scottdoug.com>; Stephen Burbank <sburbank@scottdoug.com>
Subject: RE: Koss Corp. v. Apple Inc; 6:20-cv-00665-ADA

Good evening Counsel,

Thank you for checking in with me. Yes, the Court will be issuing an order on the Motion to Transfer prior to the Markman which will be go forward as scheduled. I apologize for the confusion.

Best,
Hannah

From: Michael Pieja <MPIEJA@goldmanismail.com>
Sent: Thursday, April 22, 2021 3:29 PM
To: Hannah Santasawatkul <Hannah_Santasawatkul@txwd.uscourts.gov>; Steve Wingard <swingard@scottdoug.com>
Cc: gina.johnson@klgates.com; jim.shimota@klgates.com; benjamin.weed@klgates.com; erik.halverson@klgates.com; philip.kunz@klgates.com; darlene.ghavimi@klgates.com; Alan Littmann <alittmann@goldmanismail.com>; Steve McConnico <smcconnico@scottdoug.com>; Stephen Burbank <sburbank@scottdoug.com>
Subject: Re: Koss Corp. v. Apple Inc; 6:20-cv-00665-ADA

CAUTION - EXTERNAL:

Dear Ms. Santasawatkul:

On behalf of Apple, I respectfully request clarification regarding the Markman hearing set to occur tomorrow in Koss Corporation v. Apple Inc., Case No. 6:20-cv-665. Apple previously filed a motion to change venue, which remains pending. In view of the Court's Standing Order regarding the pre-Markman resolution of such motions, we wanted to confirm whether tomorrow's hearing would be going forward. I sincerely apologize in advance for troubling yourself and the Court regarding this matter. Sincerely,

Michael Pieja
200 South Wacker Dr., 22nd Floor, Chicago, IL 60606
P 312-881-5954 C 415-420-8963
mpieja@goldmanismail.com

GOLDMAN ISMAIL TOMASELLI BRENNAN & BAUM LLP

From: Hannah Santasawatkul <Hannah_Santasawatkul@txwd.uscourts.gov>
Date: Tuesday, March 16, 2021 at 4:15 PM
To: Steve Wingard <swingard@scottdoug.com>
Cc: Mike Pieja <MPIEJA@goldmanismail.com>, "gina.johnson@klgates.com" <gina.johnson@klgates.com>, "jim.shimota@klgates.com" <jim.shimota@klgates.com>, "benjamin.weed@klgates.com" <benjamin.weed@klgates.com>, "erik.halverson@klgates.com" <erik.halverson@klgates.com>, "philip.kunz@klgates.com" <philip.kunz@klgates.com>, "darlene.ghavimi@klgates.com" <darlene.ghavimi@klgates.com>, Alan Littmann <alittmann@goldmanismail.com>, Steve McConnico <smcconnico@scottdoug.com>, Stephen Burbank <sburbank@scottdoug.com>
Subject: RE: Koss Corp. v. Apple Inc; 6:20-cv-00665-ADA

Counsel,

Thank you for letting us know. At this time, the Court will not be holding a hearing on the motion to transfer. The earliest that the Court would be able to hold a hearing on this issue would likely be in May, as the Court currently has four trials scheduled in April leaving the rest of its schedule highly impacted.

However, in the interest of resolving this issue quickly for you, we are reviewing the Motion and hope to have an order to you well in advance of the Markman hearing.

Best,
Hannah

From: Steve Wingard <swingard@scottdoug.com>
Sent: Friday, March 12, 2021 11:23 AM
To: Hannah Santasawatkul <Hannah_Santasawatkul@txwd.uscourts.gov>; TXWDml_LawClerks_WA_JudgeAlbright <TXWDml_LawClerks_WA_JudgeAlbright@txwd.uscourts.gov>
Cc: Michael Pieja <MPIEJA@goldmanismail.com>; gina.johnson@klgates.com; jim.shimota@klgates.com; benjamin.weed@klgates.com; erik.halverson@klgates.com; philip.kunz@klgates.com; darlene.ghavimi@klgates.com; alittmann@goldmanismail.com; Steve McConnico <smcconnico@scottdoug.com>; Stephen Burbank <sburbank@scottdoug.com>
Subject: Koss Corp. v. Apple Inc; 6:20-cv-00665-ADA

CAUTION - EXTERNAL:

Dear Ms. Santasawatkul,

Respectfully, Apple writes to advise that yesterday it filed its reply in support of its motion to transfer in the above-referenced case. The Court requested that we let it know when briefing had concluded so that the Court may determine whether a hearing is necessary before a ruling on Apple's pending motions—including its motions to strike, to transfer, and to stay—before the Markman hearing in six weeks.

If you have any questions, let us know.

Thanks very much,

Steve Wingard
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512-495-6322
swingard@scottdoug.com

Mike Pieja
Goldman Ismail Tomaselli Brennan & Baum LLP
312-881-5954
mpieja@goldmanismail.com

From: Hannah Santasawatkul <Hannah_Santasawatkul@txwd.uscourts.gov>
Sent: Thursday, February 11, 2021 11:23 AM
To: Steve Wingard <swingard@scottdoug.com>; TXWDml_LawClerks_WA_JudgeAlbright <TXWDml_LawClerks_WA_JudgeAlbright@txwd.uscourts.gov>
Cc: Michael Pieja <MPIEJA@goldmanismail.com>; gina.johnson@klgates.com; jim.shimota@klgates.com; benjamin.weed@klgates.com; erik.halverson@klgates.com; philip.kunz@klgates.com; darlene.ghavimi@klgates.com; ereigplessis@winston.com; kvidal@winston.com; keash@winston.com; slerner@winston.com; Barry Shelton (bshelton@sheltoncoburn.com) <bshelton@sheltoncoburn.com>; alittmann@goldmanismail.com; Steve McConnico <smcconnico@scottdoug.com>; Stephen Burbank <sburbank@scottdoug.com>
Subject: RE: Request for Teleconference in Koss Corp. v. Apple Inc; 6:20-cv-00665-ADA

EXTERNAL

Good morning Counsel,

The Court is well aware of the pending motions and I can assure you that we are working diligently to resolve them ahead of the Markman hearing.

The Court notes that venue discovery is a week from closing. Accordingly, Plaintiff's Response is due March 2 and Defendant's Reply is due March 9. The Court will be in trial this coming week which will conclude February 24 at the earliest.

March 9th is when the Motion to Transfer will be ripe and it would be an inefficient use of the Court's resources to hold a hearing prior to that date. But please let us know when briefing on the Motion to Transfer has concluded so that we may determine, after reviewing the fully briefed motion, whether a hearing is necessary.

Please let me know if you have any other questions. Have a great rest of your week and stay warm!

Best,
Hannah

Hannah Santasawatkul
Law Clerk to the Honorable Alan D Albright
United States District Court, Western District of Texas
Direct: 254-750-1520
Hannah_Santasawatkul@txwd.uscourts.gov

From: Steve Wingard <swingard@scottdoug.com>
Sent: Wednesday, February 10, 2021 5:42 PM
To: TXWDml_LawClerks_WA_JudgeAlbright <TXWDml_LawClerks_WA_JudgeAlbright@txwd.uscourts.gov>
Cc: Michael Pieja <MPIEJA@goldmanismail.com>; gina.johnson@klgates.com; jim.shimota@klgates.com; benjamin.weed@klgates.com; erik.halverson@klgates.com; philip.kunz@klgates.com; darlene.ghavimi@klgates.com; ereigplessis@winston.com; kvidal@winston.com; keash@winston.com; slerner@winston.com; Barry Shelton (bshelton@sheltoncoburn.com) <bshelton@sheltoncoburn.com>; alittmann@goldmanismail.com; Steve McConnico <smcconnico@scottdoug.com>; Stephen Burbank <sburbank@scottdoug.com>
Subject: Request for Teleconference in Koss Corp. v. Apple Inc; 6:20-cv-00665-ADA

CAUTION - EXTERNAL:

Dear Ms. Santasawatkul,

Apple respectfully requests a teleconference with the Court to address two pending motions. The first is Apple's Motion to Strike Koss's Complaint, Dkt. 12, which has been ripe since Koss's opposition was filed on August 24, 2020, *see* Local Rule CV-7(f)(2), and fully briefed since the Court accepted Koss's Sur-Reply on December 16, 2020. The second is Apple's Motion to Stay Pending Resolution of Motion to Strike and Motion to Transfer, Dkt. 35, which has been ripe since Koss's opposition was filed on January 4, 2021.

These threshold motions are both ripe for resolution and should be resolved before the Court proceeds to rule on substantive issues such as claim construction. Claim construction briefing is set to commence next week, and the *Markman* hearing is just 10 weeks away, scheduled for April 22, 2021. Apple respectfully seeks a hearing to resolve its threshold motions so that the parties and the Court may conserve their resources if, as Apple believes it has demonstrated, Koss's operative complaint should be stricken in full and, in all events, this litigation should proceed in another venue. Although Apple's transfer motion is not yet fully briefed due to the policies outlined in the Court's Standing Order Regarding Venue and Jurisdictional Discovery Limits for Patent Cases (Nov. 19, 2020), the parties have been working diligently to complete venue discovery and expect it to conclude no later than February 16, with Koss's response to the transfer motion due shortly thereafter. Koss will not suffer any prejudice from the short stay that would be required to allow this Court to issue an opinion on the transfer motion before proceeding to take up substantive issues such as claim construction.

If you have any questions or need more information, let me or Mr. Pieja know.

Thanks much,

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Mike Pieja
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mpieja@goldmanismail.com

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

In re: APPLE INC.,
Petitioner

2021-135

On Petition for Writ of Mandamus to the United States District Court for the Western District of Texas in No. 6:20-cv-00665-ADA, Judge Alan D. Albright.

ON PETITION

Before PROST, *Chief Judge*, DYK and WALLACH, *Circuit Judges*.

PER CURIAM.

O R D E R

Apple Inc. petitions for a writ of mandamus directing the United States District Court for the Western District of Texas to rule on Apple's pending motion to transfer and to stay all other proceedings until that motion is resolved. KOSS Corporation opposes the petition. Apple replies.

KOSS Corporation filed this patent infringement suit in the Western District of Texas against Apple. On December 21, 2020, Apple moved to transfer the case to the United States District Court for the Northern District of

California. Apple also moved to stay all other proceedings. The parties proceeded to engage in venue-related discovery. On February 26, 2021, Apple filed a supplement to its transfer motion. KOSS filed its opposition to the transfer on March 2, 2021. Apple filed its reply on March 11, 2021. On March 22, 2021, Apple filed this petition. The following day, the district court issued a standing order stating that it will rule on pending inter-district transfer motions before conducting a claim construction hearing. *See* Western District of Texas, Waco Division, Standing Order Regarding Motion for Inter-District Transfer (Mar. 23, 2021) ("The Court will not conduct a Markman hearing until it has resolved the pending motion to transfer."). In this case, that hearing currently is scheduled for April 23, 2021.

Issuance of a writ of mandamus is a "drastic" remedy, "reserved for really extraordinary causes." *Ex parte Fahey*, 332 U.S. 258, 259–60 (1947). A party seeking a writ bears the heavy burden of demonstrating that it has no "adequate alternative" means to obtain the desired relief, *Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296, 309 (1989), and that the right to issuance of the writ is "clear and indisputable," *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 666 (1978) (internal quotation marks omitted). Even when those two requirements are met, the court must still be satisfied that the issuance of the writ is appropriate under the circumstances. *Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 542 U.S. 367, 381 (2004). Apple has not met this demanding standard for relief.

In light of the district court's March 23, 2021 standing order, Apple's focal concern that the district court would proceed to the *Markman* hearing before resolving the transfer motion is no longer an issue. *See, e.g.*, Pet. at 11 ("It has not indicated that it will postpone the impending *Markman* hearing . . . ."); *id.* at 20 ("Apple has no more reassurance that its pending transfer motion will be resolved pre-*Markman* than SK hynix did in similar circumstances." (citing *In re SK hynix Inc.*, 835 F. App'x 600 (Fed.

Cir. 2021)); *id.* at 21 ("The district court is proceeding with one of the most important merits-stage steps in a patent case, while declining to defer that step . . . ."). While Apple notes in its reply that the new standing order does not offer the prospect of postponing any deadline except the *Markman* hearing, Apple neither identifies specifically what those other deadlines are nor identifies any legal authority establishing a clear legal right to such relief under these circumstances.

Accordingly,

IT IS ORDERED THAT:

The petition is denied.

FOR THE COURT

April 09, 2021
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

s25

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system on May 17, 2021.

A copy of the foregoing was served upon the following counsel of record and district court judge via FedEx:

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ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Melanie L. Bostwick
Melanie L. Bostwick
Counsel for Petitioner