No. 22-128

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. 6:21-cv-00165-ADA,
The Honorable Alan D. Albright, United States District Judge

RESPONDENT'S PETITION FOR REHEARING *EN BANC* OF THE PANEL DECISION GRANTING MANDAMUS

Christina N. Goodrich
K&L Gates LLP
10100 Santa Monica Blvd., 8th Floor
Los Angeles, California 90067
Tel: (310) 552-5547
Fax: (310) 552-5001
christina.goodrich@klgates.com

George Summerfield
K&L Gates LLP
70 W. Madison St., Suite 3100
Chicago, Illinois 60602
Tel: (312) 372-1121
Fax: (312) 827-8000
george.summerfield@klgates.com

Attorneys for CPC Patent Technologies PTY Ltd.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number 22-128

Short Case Caption In Re Apple, Inc.

Filing Party/Entity Respondent CPC Patent Technologies PTY Ltd.

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: 05/03/2022

Signature: Christina N. Goodrich

Name: Christina N. Goodrich

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
CPC Patent Technologies PTY Ltd.		Charter Pacific Corporation Limited

☐ 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).

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See Attached		

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).

☐ None/Not Applicable ☐ Additional pages attached

CPC Patent Technologies Pty Ltd. v. HMD Global Oy, W.D. Tex., No. 6:21-cv-00166		

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 to Form 9 (Certificate of Interest)

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).

George C. Summerfield
James A. Shimota
DK Kim
Benjamin Roxborough
Jonah Heemstra
K&L GATES LLP
70 West Madison Street, Suite 3100
Chicago, IL 60602

Stewart Mesher
K&L GATES LLP
2801 Via Fortuna
Austin, TX 78746

Elizabeth Gillman
Rory Hatch
K&L GATES LLP
609 Main St., Suite 4150
Houston, TX 77002

Christina N. Goodrich
Zachary T. Timm
K&L GATES LLP
10100 Santa Monica Blvd., 8th Floor
Los Angeles, CA 90067

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STATEMENT OF COUNSEL PURSUANT TO FED. CIR. R. 35(b)(2)

Based on my professional judgment, I believe the panel decision is contrary to the following decision of the Fifth Circuit Court of Appeals: *In re Lloyd's Register North America, Inc.,* 780 F.3d 283, 290 (5th Cir. 2015).

May 3, 2022

/s/ George C. Summerfield
Signature of Counsel

George C. Summerfield
Printed Name of Counsel

ARGUMENT

The Panel erred in granting mandamus relief because it did not apply the applicable regional circuit precedent. The Panel granted mandamus based upon the district court's mere purported "errors of judgment" in its order denying a motion to transfer pursuant to 28 U.S.C. § 1404(a). Such mere "errors of judgment," even assuming they existed below, do not establish the extraordinary circumstances required for mandamus relief. As explained herein, under controlling Fifth Circuit precedent, a mandamus petitioner must establish that there were "***clear*** abuses of discretion that produce[d] patently erroneous results" in order for mandamus relief to issue. *In re Lloyd's Register North America, Inc.,* 780 F.3d 283, 290 (5th Cir. 2015) (emphasis added), *quoting In re Volkswagen of America, Inc.,* 545 F.3d 304, 309-310 (5th Cir. 2008). Because the Panel did not apply that binding strict standard when it granted mandamus, it committed error requiring rehearing *en banc*.

Rehearing *en banc* is appropriate where, as here, a panel decision is contrary to established law of the Supreme Court of the United States or the precedent of this Court. *See* Fed. R. App. Proc. 35(b); Fed. Cir. R. Rule 35(b). This Court "applies the law of the regional circuit in which the district court sits"—here, the Fifth Circuit—when determining whether a petitioner is entitled to mandamus relief for denial of transfer under § 1404(a). *In re TS Tech USA Corp*., 551 F.3d 1315, 1319 (Fed. Cir. 2008).

The district court denied Apple's motion to transfer pursuant § 1404(a) in a 17-page decision that included a detailed discussion of all relevant public and private interest factors, as well as citations to numerous decisions from the Supreme Court, the Fifth Circuit,[1] and this Court. Despite this detailed discussion, the Panel concluded that the district court abused its discretion in denying transfer pursuant to § 1404(a). *See In re Apple Inc*., No. 2022-128, 2022 WL 1196768, at *1 (Fed. Cir. Apr. 22, 2022).

In doing so, the Panel used the wrong standard. The Panel relied on mere "errors of judgment," rather than the strict binding standard requiring "***clear*** abuses of discretion that produce patently erroneous results." *Lloyd's,* 780 F.3d at 290 (emphasis added); *See In re Apple Inc.*, 2022 WL 1196768 at *2. In distinguishing between ordinary and "clear" abuses of discretion, the Fifth Circuit is "guided by the principle reiterated in *Volkswagen* that mandamus must not become a means by which the court corrects all potentially erroneous orders." *Lloyd's,* 780 F.3d at 290, *citing Volkswagen,* 545 F.3d at 309, and *Will v. United States,* 389 U.S. 90, 98 n. 6 (1967). Mandamus requires "more than showing that the court misinterpreted the law, misapplied it to the facts, or otherwise engaged in an abuse of

[1] The law of the Fifth Circuit, the regional circuit in this case, governs motions to transfer pursuant to § 1404(a). *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008).

discretion." *Lloyd's,* 780 F.3d at 290. "[E]ven reversible error by itself is not enough to obtain mandamus." *Id.*

As reflective of its focus on mere "error of judgment" in the application of the transfer factors, the Panel discussed the alleged specific knowledge possessed by seven Apple witnesses located in the Northern District of California (*In re Apple*, 2022 WL 119678 at *1-2) the purported lack of relevant information possessed by two Apple witnesses located in the Western District of Texas (*id.* at *1), the relative convenience as between the two forums for an Apple witness located in Florida (*id.* at *2), the distinction between the Mac Pro and MacBook Pro (a distinction not even appreciated by Apple's own declarant) (*id.* at *3), whether electronically stored documents are accessible to Apple employees outside of the Northern District of California (*id.* at *4), and the alleged distinctions between the accused Apple products and products accused of infringement in the co-pending *CPC Patent Technologies Pty Ltd. v. HMD Global Oy*, No. 6:21-cv-00166 (W.D. Tex.) (*id.* at *4) ("*HMD*"). The decision reads much like a garden-variety appellate review for abuse of discretion, if not a *de novo* discussion of the § 1404(a) factors. And, while this discussion may, at first glance, seem like a thorough review of the factual record, as discussed below, the Panel also ***ignored*** clearly relevant facts. In any event, the point is that the Panel should not have required this type of detailed factual parsing

in evaluating whether there was the clear abuse of discretion necessary for mandamus relief.

By way of contrast, in *Lloyd's,* the Fifth Circuit concluded that it was a "clear" abuse of discretion "for a district court to grant or deny a motion to dismiss without written or oral explanation or where, in ruling on a motion to dismiss for [*forum non conveniens*], it 'fails to address and balance the relevant principles and factors of'" that doctrine. *Lloyd's,* 780 F.3d at 290 (citation omitted). The district court decision in that case consisted of a single sentence - "[h]aving considered the motions, submissions, and applicable law, the Court determines that all motions should be denied." *Lloyd's,* 780 F.3d at 288. The district court's 17-page decision denying Apple's motion to transfer this case is hardly analogous to the single-sentence denial in *Lloyd's*.

Relatedly, in *Volkswagen*, which the *Lloyd's* decision cites extensively, the Fifth Circuit concluded that the district court's "clear" error in denying a § 1404(a) transfer comprised the multiple legal errors of "applying the stricter *forum non conveniens* dismissal standard," "treating choice of venue as a § 1404(a) factor," misapplying the factors set forth in *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501 (1947), and disregarding the precedent of the Fifth Circuit in *In re Volkswagen AG,* 371 F.3d 201 (5th Cir. 2004). *Volkswagen*, 545 F.3d at 318. Indeed, the district court in *Volkswagen* referred to the plaintiff's choice of forum, which is ***not*** a § 1404(a)

factor, as "paramount." *Singleton v. Volkswagen of America, Inc.*, 2-06-CV-222, 2006 WL 2634678 at *2 (E.D. Tex. Sept. 12, 2006). Nothing approaching that litany of legal errors appears in the district court's decision in this case.

Overall, the Panel's reliance on "[e]rrors of judgment" in granting mandamus relief is not grounded in Fifth Circuit precedent. *See In re Apple, Inc.*, at *2. The decision in *In re Nitro Fluids L.L.C.,* 978 F.3d 1308 (Fed. Cir. 2020), cited by the Panel, points to nothing from the Fifth Circuit reflecting this rule. Rather, this Court's decision in *Nitro Fluids*, cited by the Panel, in turn cites *In re TS Tech USA Corp*., 551 F.3d 1315, 1320 (Fed. Cir. 2008). *See Nitro Fluids,* 978 F.3d at 1310-11. *TS Tech*, apart from not being a Fifth Circuit decision, does not identify "errors in judgment" as a basis for granting mandamus relief.[2]

In fact, given the language from *Lloyd's* that "reversible error by itself is not enough to obtain mandamus," it is reasonable to conclude the contrary – the type of "error of judgment" review conducted by the Panel underlying the issued mandamus relief runs counter to Fifth Circuit law.

The result of this Court's "error in judgment" review also runs counter to the long-standing notion in the Fifth Circuit that "[m]andamus is an extraordinary

[2] In *TS Tech*, this Court granted mandamus because the district court's errors in that case were "essentially identical" to that in *Volkswagen*—including that the district court had erred as a matter of law that choice of forum was a factor relevant to section 1404(a) transfer. *See TS Tech*., 551 F.3d at 1321-22.

remedy, which should be invoked only in the clearest and most compelling cases." *In re Davis*, 730 F.2d 176, 181 (5th Cir. 1984). Including the instant case, this Court in the last 18 months has exercised its mandamus power in ordering § 1404(a) transfer in matters pending in the Western District of Texas in at least the following 18 cases:

Case	**Original Venue**
In re Apple Inc., 979 F.3d 1332 (Fed. Cir. 2020)	W.D. Tex.
In re Intel Corp., 841 Fed. Appx. 192 (Fed. Cir. 2020)	W.D. Tex.
In re Tracfone Wireless, Inc., 852 Fed. Appx. 537 (Fed. Cir. 2021)	W.D. Tex.
In re Samsung Electronics Co., Ltd., 2 F.4th 1371 (Fed. Cir. 2021)	W.D. Tex.
In re Uber Technologies, Inc., 852 Fed. Appx. 542 (Fed. Cir. 2021)	W.D. Tex.
In re Hulu, LLC, No. 2021-142, 2021 WL 3278194 (Fed. Cir. Aug. 2, 2021)	W.D. Tex.
In re Juniper Networks, 14 F.4th 1313 (Fed. Cir. 2021)	W.D. Tex.
In re Google LLC, No. 2021-170, 2021 WL 4427899 (Fed. Cir. Sept. 27, 2021)	W.D. Tex.

In re Apple Inc., No. 2021-187, 2021 WL 4485016 (Fed. Cir. Oct. 2, 2021)[3]	W.D. Tex.
In re Juniper Networks, Inc., No. 2021-156, 2021 WL 4519889 (Fed. Cir. Oct. 4, 2021)	W.D. Tex.
In re Google LLC, No. 2021-171, 2021 WL 4592280 (Fed. Cir. Oct. 26, 2021)	W.D. Tex.
In re Netscout Systems, Inc., No. 2021-173, 2021 WL 4771756 (Fed. Cir. Oct. 13, 2021)	W.D. Tex.
In re Pandora Media, LLC, No. 2021-172, 2021 WL 4772805 (Fed. Cir. Oct. 13, 2021)	W.D. Tex.
In re DISH Network LLC, No. 2021-182, 2021 WL 4911981 (Fed. Cir. Oct. 20, 2021)	W.D. Tex.
In re Atlassian, Corp. PLC., No. 2021-177, 2021 WL 5292268 (Fed. Cir. Nov. 15, 2021)	W.D. Tex.
In re Google LLC, No. 2021-178, 2021 WL 5292667 (Fed. Cir. Nov. 15, 2021)	W.D. Tex.
In re Apple Inc., No. 2021-181, 2021 WL 5291804 (Fed. Cir. Nov. 15, 2021)	W.D. Tex.

[3] Vacating intra-district transfer order.

In re Apple Inc., No. 2022-128, 2022 WL 1196768 (Fed. Cir. April 22, 2022)	W.D. Tex.

The foregoing table shows that this Court has ordered an "extraordinary" mandamus transfer remedy at an average pace of once a month between November 2020 and April 2022. In comparison, over that same time period, this Court has not granted ***any*** *en banc* rehearings in any appeal from any patent case from any district court, the U.S. International Trade Commission, or the Patent Trial and Appeal Board. This alone may not be surprising, as this Court has labeled *en banc* rehearing as "extraordinary." *See, e.g., Newport News Shipbuilding and Dry Dock Co. v. Garrett*, 6 F.3d 1547, 1550 n.1 (Fed. Cir. 1993). However, the statistical difference between mandamus transfer orders issued to the Western District of Texas alone and granted *en banc* rehearings is telling, and can only be explained by the "error in judgment" mandamus test that various panels of this Court have adopted, either expressly or *sub silencio*.

In any event, putting aside this marked statistical disparity, the Panel's "error of judgment" review for mandamus purposes is not grounded in controlling Fifth Circuit law. *See In re Ford Motor Co*., 591 F.3d 406, 414 (5th Cir. 2009) ("Mandamus is an appropriate remedy for 'exceptional circumstances amounting to a judicial usurpation of power or a clear abuse of discretion.'"), *quoting Volkswagen*, 545 F.3d at 309 (en banc); *see also In re Google LLC*, 855 F. App'x 767, 768 (Fed.

Cir. 2021) (Explaining that this Court "must deny mandamus unless it is clear 'that the facts and circumstances are without any basis for a judgment of discretion.'"); *In re Medtronic, Inc.*, No. 2022-107, 2021 WL 6112980, at *3 (Fed. Cir. Dec. 27, 2021) (denying mandamus on § 1404(a) motion where petitioner failed to show denial of transfer motion amounted to "patently erroneous result").

Finally, the "error of judgment" review employed by the Panel risks its own factual error on review. In this case, the Panel simply ignored the following facts clearly weighing against transfer:

1) Despite Apple's protestations that sensitive documents, such as source code, are only accessible in the Northern District of California, Apple produced that source code at its counsel's offices in San Diego. Appx451;

2) The witness located in Florida was a co-founder of the company Apple acquired for the technology accused of infringement in this case, and is likely to have a significant amount of the information relevant to this case. Appx2; Appx106;

3) One of Apple's employee-witnesses with knowledge about the programming of the accused products is located in the Czech Republic, and there is no demonstrated incremental convenience to that witness

in traveling to California as opposed to Texas. Appx7-19; Petition at 18;

4) Apple failed to explain how each of the seven employee-witnesses it identified had relevant information such that each would be required to appear at trial. Appx5; Response to Petition at 27-28;

5) Judge Albright has issued a standing order allowing any witness to appear at trial remotely, arguably making the Western District of Texas the most convenient forum for ***any*** witness, irrespective of where he or she is located. Appx548; and

6) The universe of prior art relied upon by Apple (which literally encompasses hundreds of different combinations) is virtually identical to that relied upon in *HMD*, and having a single court adjudicate invalidity would clearly serve judicial economy, irrespective of the similarities of the accused products in the two co-pending cases. Appx14.

Logically, if the Panel's mandamus review had been limited to clear error of the type resulting in patently erroneous results, rather than a recounting of what the Panel believed to be the ***facts*** relevant to the § 1404(a) factors, the foregoing factual omissions would be of no moment. However, because the Panel opted to delve into

the factual minutiae below, searching for mere "errors of judgment," these factual omissions loom large.

In short, the Panel erred when it misapplied controlling Fifth Circuit law, opting rather to issue mandamus relief based upon mere "errors of judgment" by the district court in applying the § 1404(a) factors. Accordingly, CPC respectfully requests that rehearing be granted, the Panel's grant of mandamus relief be vacated, and this action be returned to the Western District of Texas.

Dated this 3rd day of May, 2022.

Respectfully submitted:
/s/ Christina N. Goodrich

Christina N. Goodrich
K&L GATES LLP
10100 Santa Monica Blvd., 8th Floor
Los Angeles, CA 90067
(310) 552-5647
(310) 552-5001 (fax)
christina.goodrich@klgates.com

George Summerfield
K&L Gates LLP
70 W. Madison St., Suite 3100
Chicago, Illinois 60602
(312) 372-1121
(312) 827-8000 (fax)
george.summerfield@klgates.com

Attorneys for Petitioner–Appellant, CPC Patent Technologies PTY Ltd.

FORM 19. Certificate of Compliance with Type-Volume Limitations **Form 19**
July 2020

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number: 22-128

Short Case Caption: In re Apple Inc.

Instructions: When computing a word, line, or page count, you may exclude any items listed as exempted under Fed. R. App. P. 5(c), Fed. R. App. P. 21(d), Fed. R. App. P. 27(d)(2), Fed. R. App. P. 32(f), or Fed. Cir. R. 32(b)(2).

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Date: 05/03/2022

Signature: /s/ Christina N. Goodrich

Name: Christina N. Goodrich

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ADDENDUM – PANEL OPINION

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

In re: APPLE INC.,
Petitioner

2022-128

On Petition for Writ of Mandamus to the United States District Court for the Western District of Texas in No. 6:21-cv-00165-ADA, Judge Alan D. Albright.

ON PETITION

Before DYK, REYNA, and CHEN, *Circuit Judges*.

DYK, *Circuit Judge*.

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 transfer this case to the United States District Court for the Northern District of California. CPC Patent Technologies PTY Ltd. opposes. Because the district court clearly abused its discretion in evaluating the transfer motion, we grant the petition and direct transfer.

BACKGROUND

CPC filed this suit in the Waco Division of the Western District of Texas, alleging that Apple's mobile phones, tablets, and computing products equipped with Touch ID, Face ID, or Apple Card features infringe three of CPC's patents relating to biometric security. It is undisputed that CPC, an Australian-based investment company, does not have any meaningful connection to the Western District of Texas and that the inventor of the asserted patents also resides outside of the United States.

Apple moved to transfer under 28 U.S.C. § 1404(a) to the Northern District of California. Apple noted that its employees responsible for the design, development, and engineering of the accused functionality reside in the Northern District of California, where Apple maintains its headquarters, or outside of Western Texas, in the Czech Republic and Florida; its employees most knowledgeable about the marketing, licensing, and financial issues relating to the accused products were also located in the Northern District of California; and, to its knowledge, no Apple employee involved in the development of the accused functionality worked from Western Texas.

On February 8, 2022, the district court denied Apple's motion. After finding that the threshold requirement for transfer under § 1404(a) that the action "might have been brought" in the Northern District of California was satisfied, the district court analyzed the private and public interest factors that traditionally govern transfer determinations. The district court determined that the factor concerning the convenience of willing witnesses slightly favored transfer. Conversely, the district court determined that the factor accounting for the availability of compulsory process weighed strongly against transfer and that the court congestion and practical problems factors also weighed against transfer based on its ability to quickly reach trial, Appx15, and CPC having another pending suit

alleging infringement in the Western District of Texas against a different defendant. The remaining transfer factors, the court found, favored neither forum.

Notably, the district court recognized that Apple had identified seven witnesses in the Northern District of California, but the district court found that inconvenience was mostly counterbalanced by the presence of two Apple employees in Austin that CPC had insisted as having relevant information and an Apple party witness in Florida the court said would "find it about twice as inconvenient to travel to NDCA than to WDTX because Texas sits halfway from Florida to California." Appx11–12. In addition, the court relied on its ability to compel the third party "Mac Pro manufacturer in Austin to attend trial," finding that product is "properly accused and its assembly relevant to infringement" and that the product's manufacturer "is likely to testify about technical information or assembly information that is relevant to infringement and production information that may affect damages." Appx9–10. It also relied on that manufacturer as a basis for weighing the local interest and sources of proof factors as neutral. Appx17 ("The third-party Mac Pro manufacturer in Austin will want to know if it is making a patented product . . . ."); Appx8 (noting the Mac Pro manufacturer "is likely to have electronic documents, such as technical documents needed to assemble the accused product").

On balance, the court determined that Apple had "failed to meet the burden of proving that NDCA is 'clearly more convenient' than WDTX," and thus, this case should "proceed in WDTX, where Apple employs thousands of people, where Apple is building a 15,000 employee campus, where a third-party manufactures the accused product, where two of Apple's witnesses reside, where other witnesses find it more convenient to travel to, where the parties can reach trial sooner, and where a related case is pending." Appx17. For those reasons, the court denied Apple's transfer motion. This petition followed.

DISCUSSION

Our review is governed by the law of the regional circuit, which in this case is the United States Court of Appeals for the Fifth Circuit. *See In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008). Fifth Circuit law provides that a motion to transfer venue pursuant to section 1404(a) "should be granted if 'the movant demonstrates that the transferee venue is clearly more convenient.'" *In re Radmax, Ltd.*, 720 F.3d 285, 288 (5th Cir. 2013) (quoting *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) (en banc)). The Fifth Circuit generally reviews a district court's decision to deny transfer for an abuse of discretion. *See Volkswagen*, 545 F.3d at 310. A district court abuses its discretion "if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). "Errors of judgment in weighing relevant factors are also a ground for finding an abuse of discretion." *In re Nitro Fluids L.L.C.*, 978 F.3d 1308, 1310 (Fed. Cir. 2020) (citing *TS Tech*, 551 F.3d at 1320). "We may grant mandamus when the denial of transfer was a clear abuse of discretion under governing legal standards." *Nitro*, 978 F.3d at 1311 (citations omitted). Applying those standards, we agree that Apple has shown clear entitlement to transfer to the Northern District of California here.

The district court noted that "[t]he most important factor in the transfer analysis is the convenience of the witnesses." Appx10 (citing *In re Genentech, Inc.*, 566 F.3d 1338, 1336, 1342 (Fed. Cir. 2009)). And the court acknowledged that Apple identified a significant number of witnesses residing in Northern California, including an Apple employee who worked at the company that created the Touch ID technology acquired by Apple, Appx127; two employees who work on the research, design, and development of the accused features, Appx127–28; two employees who work on the marketing and promotion of the accused features, Appx129–30; an employee knowledgeable about

Apple's licensing of intellectual property, Appx130; and an employee knowledgeable about sales and financial information concerning the accused products, *id*.

The court, however, found that this factor tilted only slightly in favor of transfer. We agree with Apple that this conclusion was erroneous. The court relied on two Apple employees in Austin that CPC indicated it may wish to call as potential witnesses. But it is far from clear that either of those employees has relevant or material information. One of the employees identified as being knowledgeable about Touch ID said during his deposition that the internal Apple authentication application he worked on was entirely different from the functionality that appears to be the focus of the infringement allegations. Appx329–30. The other employee was found to be a potential witness only on the basis that he had "knowledge about surveys of customer satisfaction with" Apple Card. Appx3. And even without second guessing the district court's conclusion in these respects, this factor still strongly favors transfer where the transferee venue would be more convenient for the witnesses overall.

The court also pointed to an Apple witness in Florida who the court concluded would find it "about twice as inconvenient" to attend trial in the Northern District of California than in the Western District of Texas. Appx11. The sole basis for the district court's conclusion was that "Texas sits halfway from Florida to California." Appx11–12. But we have repeatedly rejected the view that "the convenience to the witnesses should be weighed purely on the basis of the distance the witnesses would be required to travel, even though they would have to be away from home for an extended period whether or not the case was transferred." *In re Pandora Media, LLC*, No. 2021-172, 2021 WL 4772805, at *6 (Fed. Cir. Oct. 13, 2021) (collecting cases); *In re Apple Inc.*, 979 F.3d 1332, 1341–42 (Fed. Cir. 2020). Here too, while trial in Northern California will require the Apple employee in Florida to spend significant time away

from home, trial in Western Texas will undoubtedly impose a similar burden on the Apple employee. The willing witness factor accordingly weighs firmly in favor of transfer.

The district court also clearly erred in its determination that the compulsory process factor strongly weighed against transfer based on its ability to compel the testimony of a third-party manufacturer of an accused product. Critical to the district court's conclusion was its finding that the "Mac Pro" was "properly accused and its assembly relevant to infringement." Appx9–10. That finding, however, is entirely unsupported by the record. It is undisputed that CPC has not accused the Mac Pro of infringement in this litigation. Indeed, Apple states without challenge from CPC that the Mac Pro is not even compatible with Touch ID, Face ID, or Apple Card.

The court's confusion appears to have been caused by CPC incorrectly alleging, in its opposition to Apple's transfer motion, that Apple issued a press release indicating that the MacBook Pro would be manufactured in Austin.* However, the press release attached to CPC's filing clearly stated that the Mac Pro, not the accused MacBook Pro, would be produced in Austin. Apple states without dispute that the accused MacBook Pro is not manufactured in Austin. Because no other party was identified as relevant under the compulsory process factor, this court agrees with

---

* CPC argues that the confusion actually stems from statements made by one of Apple's employees during a deposition. The employee accidentally stated "Mac Pro" when he meant to say "MacBook Pro" in one statement. Apple points out, however, that this meaning was made clear one question later when he correctly described the MacBook Pro. Reply at 5. Apple also noted that the parties discussed the error in a later meet-and-confer. *Id*. Regardless of the source of confusion, it remains clear that the district court's conclusion is not supported by the record.

Apple that there is no basis here to conclude that the factor weighs against transfer.

The district court similarly erred in its analysis of the local interest factor. The district court correctly recognized that the Northern District of California had a local interest in resolving this dispute because research, design, and development of the accused functionality occurred in that district. Appx16; *see Apple*, 979 F.3d at 1345. Despite this finding, the court held that the local interest factor weighed in favor of neither of the two forums. But it failed to provide any plausible basis for that conclusion. The district court first connected this case to the Mac Pro manufacturer, *see* Appx17, but, as noted above, that manufacturer has no connection to this case.

The court's second and only other stated rationale for its decision was Apple's "thousands of employees in Austin," *id*., and echoing CPC's argument, the fact that "advertising and sale of the accused products occurs in WDTX," Appx16. But those activities are immaterial to the local interest analysis in this case. We have held that a party's "general presence in a particular district" does not alone "give that district a special interest in the case." *In re Google LLC*, No. 2021-171, 2021 WL 4592280, at *5 (Fed. Cir. Oct. 6, 2021); *see also In re Juniper Networks, Inc.*, 14 F.4th 1313, 1320 (Fed. Cir. 2021); *Apple*, 979 F.3d at 1345. Rather, "what is required is that there be 'significant connections between a particular venue and *the events that gave rise to a suit*.'" *Google*, 2021 WL 4592280, at *5 (citations omitted). Here, no such connection between the Western District of Texas and the events giving rise to this infringement suit is reflected by the record. We have also explained that "the sale of an accused product offered nationwide does not give rise to a substantial interest in any single venue." *In re Hoffmann-La Roche Inc.*, 587 F.3d 1333, 1338 (Fed. Cir. 2009). Thus, the local interest factor favors transfer.

The access to sources of proof factor should likewise have been weighed in favor of transfer, not neutral, as the district court found it. Apple submitted a sworn declaration stating that "working files, electronic documents, and any hard copy documents concerning the Accused Features reside on local computers and/or servers either located in or around" the Northern District of California, the Czech Republic, and Florida, where Apple's employees who are knowledgeable about the design and development of those features work. Appx125. Apple also informed the court that relevant source code associated with the accused functionality was developed at these Apple offices and that "this source code is controlled on a need-to-know basis." Appx126. Apple also informed the court that its documents concerning the marketing, licensing, and financial records related to the accused products would be in the Northern District of California. *See* Appx129. Apple added that it was unaware of any relevant source code or documents being created or stored from its offices in Western Texas. *See* Appx125–26, Appx129.

Aside from erroneously relying on the presence of potential evidence from the Mac Pro manufacturer (irrelevant to this case as we addressed above), the district court faulted Apple for not clearly showing that the bulk of the documentary evidence was located or stored in the Northern District of California. Appx7–8. Even so, with nothing on the other side of the ledger in the Western District of Texas, the Northern District of California would still have a comparative advantage with regard to the ease of access to the sources of proof located within that district. *See Juniper*, 14 F.4th at 1321 ("We have held that the fact that some evidence is stored in places other than either the transferor or the transferee forum does not weigh against transfer."); *In re Toyota Motor Corp.*, 747 F.3d 1338, 1340 (Fed. Cir. 2014) ("The comparison between the transferor and transferee forums is not altered by the presence of

other witnesses and documents in places outside both forums.").

The district court also supported its decision to weigh the sources of proof factor as neutral based on its view that Apple had the capability of accessing its own electronic documents from its Austin offices. Appx8. But we rejected very similar reasoning in *In re Apple Inc.*, No. 2021-181, 2021 WL 5291804, at *2 (Fed. Cir. Nov. 15, 2021). There, despite Apple having identified source code to which access was restricted to employees working at its Northern District of California headquarters and no potential evidence in the Western District of Texas, the district court found the factor neutral based on its view that Apple could give employees in Austin the proper credentials to access the information from Apple's offices in Austin. In finding the court erred, we explained that "[t]he district court should have compared the ease of access in the Western District of Texas *relative* to the ease of access in the Northern District of California." *Id.* (citing *Juniper*, 14 F.4th at 1321). The district court here similarly failed to ask the correct question, and in doing so, improperly discounted the relative convenience of the transferee venue with regard to sources of proof. The court therefore erred in not weighing this factor in favor of transfer.

When we turn to the remaining factors, we see no sound basis for keeping this case in the Western District of Texas. We have "rejected as a general proposition that the mere co-pendency of infringement suits in a particular district automatically tips the balance in the non-movant's favor." *In re NetScout Sys., Inc.*, No. 2021-173, 2021 WL 4771756, at *5 (Fed. Cir. Oct. 13, 2021); *see In re Samsung Elecs. Co., Ltd.*, 2 F.4th 1371, 1379–80 (Fed. Cir. 2021); *In re EMC Corp.*, 501 F. App'x 973, 976 (Fed. Cir. 2013). Here, the district court appears to have overstated the concern about waste of judicial resources and risk of inconsistent results in light of CPC's co-pending suit in the Western District of Texas. That suit involves a different defendant with

different hardware and different software and thus is likely to involve significantly different discovery and evidence. *See Samsung*, 2 F.4th at 1379–80. Thus, any "incremental gains in keeping [this] case[] in the Western District of Texas" are insufficient "to justify overriding the inconvenience to the parties and witnesses" if the case were transferred to the Northern District of California. *Id.* at 1380.

Finally, there is no sound basis for the district court here to premise its denial of transfer on the court congestion factor. We have held that when other relevant factors weigh in favor of transfer or are neutral, "then the speed of the transferee district court should not alone outweigh all of those other factors." *Genentech*, 566 F.3d at 1347. Under this relevant precedent, we conclude that the evidence cited by the district court to support its conclusion that the Western District of Texas could schedule a trial sooner than if trial was held in the Northern District of California is insufficient to warrant keeping this case in plaintiff's chosen forum, given the striking imbalance favoring transfer based on the convenience factors and lack of any cited reason for why a more rapid disposition of the case that might be available in the Western District of Texas would be important enough to be assigned significant weight in the analysis.

Accordingly,

IT IS ORDERED THAT:

The petition is granted. The district court's February 8, 2022 order is vacated, and the district court is directed to transfer this matter to the United States District Court for the Northern District of California.

FOR THE COURT

April 22, 2022
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Untied States Court of Appeals for the Federal Circuit by using appellate CM/ECF system on May 3, 2022 and caused service of same to be made on the following counsel of record via the same method:

Seth M. Sproul
Fish & Richardson P.C.
12860 El Camino Real
Suite 400
San Diego, CA 92130
sproul@fr.com

Melanie L. Bostwick
Monica Haymond
Lauren A. Weber
Orrick, Herrington & Sutcliffe LLP
1152 15th Street NW
Washington, DC 20005
mbostwick@orrick.com
mhaymond@orrick.com
lauren.weber@orrick.com

I caused a copy of the foregoing to be served upon the district court judge via FedEx:

Hon. Alan D. Albright
United States District Court for the Western District of Texas
800 Franklin Avenue, Room 301
Waco, Texas 76701
Telephone: (254) 750-1501

K&L GATES LLP

/s/ Christina N. Goodrich
Christina N. Goodrich
Counsel for Respondent