Miscellaneous Docket No. 22-137

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-00528-ADA, Honorable Judge Alan D. Albright

BILLJCO, LLC'S COMBINED PETITION FOR REHEARING AND REHEARING *EN BANC*

Brian R. Michalek (brian.michalek@saul.com)
Brian Landry (brian.landry@saul.com)
Joseph M. Kuo (joseph.kuo@saul.com)
Elizabeth A. Thompson (elizabeth.thompson@saul.com)
Saul Ewing Arnstein & Lehr LLP
161 North Clark Street, Suite 4200
Chicago, Illinois 60601
(312) 876-7100
Counsel for Respondent BillJCo, LLC

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number 22-137

Short Case Caption In re Apple, Inc.

Filing Party/Entity BillJCo, LLC

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: 04/01/2022

Signature: Elizabeth A. Thompson

Name: Elizabeth A. Thompson

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
BillJCo, LLC		

☐ 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

Casey Grabenstein	Andrea L. Fair	Brian Michalek
Erin Westbrook	Claire Abernathy Henry	

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

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

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

FEDERAL CASES

FEDERAL STATUTES

STATEMENT OF COUNSEL

Based on my professional judgment, I believe the Panel decision is contrary to the following decisions of this Court: *In re Apple, Inc.*, 818 Fed. Appx. 1001 (Fed. Cir. 2020); *In re Barnes & Noble, Inc.*, 743 F.3d 1381 (Fed. Cir. 2014); *In re HTC Corp.*, 494 Fed. Appx. 81 (Fed. Cir. 2012); *In re Vistaprint*, 628 F.3d 1342 (Fed. Cir. 2010); *In re Apple, Inc.*, 456 Fed. Appx. 907 (Fed. Cir. 2012); and *In re Telular Corp.*, 319 Fed. Appx. 909 (Fed. Cir. 2009).

/s/ Elizabeth A. Thompson

POINTS OF LAW OR FACT OVERLOOKED BY THIS COURT

In granting Apple's petition for mandamus, this Court overlooked, or did not have the benefit of at the time of its ruling, the following points of law and fact: (1) Apple's venue witness, Mark Rollins, was found to be unreliable and uncredible by the District Court in another case the day prior to this Court's ruling; (2) the Court disregarded the high burden a petitioner must satisfy to obtain mandamus relief; (3) the Court placed too heavy an emphasis on the convenience factor in contravention of its prior case law; and (4) the Court improperly ignored the weight entitled to the plaintiff's choice of forum.

INTRODUCTION

The Panel's decision granting Apple's petition for mandamus effectively takes away the right of a Texas plaintiff to bring suit in its home state against a

defendant which has undoubted and repeated ties to the district. Putting aside the Panel's apparent disregard of the extraordinary nature of a writ of mandamus, the decision warrants rehearing for several reasons. ***First***, Apple's petition – and thereby the Panel's decision – was premised on the testimony of Apple's serial witness, Mark Rollins ("Rollins"). But immediately prior to the Panel's decision on May 26, 2022, Rollins was found to be an "unreliable and misleading" witness, who is "spoon [fed]" information from Apple's attorneys to support transfer of venue motions. *Scramoge Technology, Ltd. v. Apple, Inc.*, No. 6:21-cv-00579, 2022 WL 1667561, *2-3 (W.D. Tex. May 25, 2022). So, rehearing pursuant to Federal Rule of Appellate Procedure 40 is necessary to reconsider Apple's motion without reliance on Rollins' improper, legally infirm testimony.

Second, the Panel's decision is in direct conflict with other decisions of the Federal Circuit that have denied petitions for writs of mandamus requesting a venue transfer with fewer ties to the forum district. Indeed, the Panel's decision is wholly inconsistent with prior decisions granting wide discretion to district courts on venue motions. Moreover, that decision improperly places too much emphasis on the convenience factor – a practice this Court has previously rejected. ***Finally***, the Panel's granting of mandamus relief fails to account for the plaintiff's choice of forum in a way that is inconsistent with its prior holdings. As a result of these

conflicts, rehearing *en banc* pursuant to Federal Rule of Appellate Procedure 35 is necessary.

BACKGROUND

The ties of this case to the Western District of Texas ("WDTX") are unmistakable and broad-ranging. The consequences, thus, of this Court's decision granting a writ of mandamus cannot be overstated. Plaintiff BillJCo is a Texas limited liability company with its principal place of business in Flower Mound, Texas. (Appx318.) Bill Johnson is the founder of BillJCo and the inventor or coinventor of all the patents at issue in this litigation. (*Id.*) Mr. Johnson's home is in Flower Mound, Texas, where he has lived for nearly forty years. (Appx319.)

The patents-in-suit focus on beacon technology. (*Id.*) Beacon technology generally relates to a class of hardware transmitters that broadcast their identifier to nearby electronic devices where different information can be received, processed, analyzed, and presented to a user in order to enhance a user or customer experience. (*Id.*) Mr. Johnson worked with several other Texas residents to create and design this technology, including Lev Sofman, a Plano, Texas resident; Craig Newman, a Richardson, Texas resident; and Kevin Watson, a Flower Mound, Texas resident. (Appx319-320.) All three were disclosed as witnesses for BillJCo in this case.

Mr. Johnson's sons, Michael Johnson and Jason Johnson, were also instrumental to the development of the technology at issue. (Appx319-320.) Jason is

a co-inventor of U.S. Patent 8,566,839, which is one of the asserted patents in this case. (*Id.*) Michael helped Mr. Johnson with software development, including a mobile development environment for building beacon applications. (*Id.*) Both of Mr. Johnson's sons are lifelong Texas residents: Michael lives in Austin, Texas and Jason lives in Waco, Texas. (*Id.*) Craig Yudell, a patent attorney, who assisted Mr. Johnson in negotiations and monetization with Apple, lives in Austin, Texas. (*Id.*) Both Mr. Johnson's sons and Yudell were disclosed as witnesses. Finally, Mr. Johnson's documents relating to the patents at issue and his dealings with Apple are in Flower Mound, Texas. (Appx319-320.)

On May 25, 2021, BillJCo brought this patent infringement suit against Apple in the WDTX for the infringement of six patents. (Appx23; Appx30.) Shortly thereafter, and consistent with its apparent practice any time it is sued for patent infringement, Apple moved to transfer the matter to the Northern District of California ("NDCA"). (Appx26.) After full briefing on the motion, on March 1, 2022, the District Court for the Western District of Texas ("District Court") denied the motion, finding that the factors set forth by the Fifth Circuit United States Court of Appeals favored the case remaining in Texas. (Appx19-20.)

On March 30, 2022, Apple brought its Petition seeking a writ of mandamus from this Court ordering the District Court transfer this case to the NDCA. On May 26, 2022, Honorable Judges Alan D. Lourie, Richard G. Taranto, and Todd M.

Hughes (the "Panel") granted Apple's petition. Despite recognizing that BillJCo is a Texas company, run by a Texas resident, and that the patents at issue were all invented by that Texas resident and another Texas resident co-inventor, the Panel found that the District Court had "clearly abused its discretion in concluding that the private and public interest factors did not favor transfer." (ADD002.) First, the Panel found that the District Court had erred in treating Jason Johnson as an unwilling witness versus a willing one; and second, the Panel believed that the District Court placed too much emphasis on Apple's "general presence" in the WDTX. (ADD004.) For the reasons discussed below, this decision was in error and reconsideration or rehearing *en banc* is warranted.

ARGUMENT

I. THE PANEL SHOULD REHEAR THIS CASE BECAUSE MARK ROLLINS' TESTIMONY WAS UNRELIABLE, VAGUE, AND UNSUPPORTED.

Panel rehearing pursuant to Federal Rule of Appellate Procedure 40 is necessary because evidence upon which the Panel relied has since been found unreliable, vague, and unsupported. Rule 40 allows a panel to reconsider its decision if a petitioner can point to facts or law that the panel did not consider. Fed. R. App. Pro. 40(a)(2). Federal appellate courts have considered new facts and evidence as a basis for rehearing under this standard. *NRDC v. EPA*, 464 F.3d 1, 3 (D.C. Cir. 2006) (granting petition for rehearing where parties offered new evidence "that has led us

to change our view of the standing issue"); *United States v. Mageno*, 786 F.3d 768, 774 (9th Cir. 2015) ("Rule 40 applies to a misapprehension of the actual facts.").

The factual support for Apple's motion to transfer was provided by Mark Rollins, a Finance Manager Apple hired in 2019. (Appx75-80.) Apple relied on Rollins' declaration to identify its witnesses who would likely testify at trial and the location of Apple's relevant documents. (*Id.*) With regard to the documents, Rollins testified "I understand that working files and electronic documents concerning the accused features reside on local computers and/or servers located *in or around* NDCA *or which are accessible* in NDCA." (*Id.* (emphasis added)). Rollins repeated this statement verbatim with respect to the location of financial, marketing, and licensing documents. (*Id.*) Rollins also testified that "[t]o *my* knowledge, Apple does not have any unique working files or documents relevant to this case located in Texas." (*Id.* (emphasis added)).

And, even though he is a finance manager, Rollins testified regarding the location of relevant source code. He stated than any relevant source code was located "in California," without ever explaining where in California. (*Id.*) Rollins also claimed that although Apple has two offices in the WDTX (in Austin and Lockhart, Texas), "none of the Apple employees with relevant information relating to the accused features work at these offices or reside in Texas." (*Id.*)

Like it did in the District Court, Apple relied on Rollins' testimony as the factual backbone for its Petition for Writ of Mandamus. (Pet. at 5-6.) This Court, in turn, relied on the facts contained in Rollins' declaration when it found in Apple's favor, particularly with respect to the private interest factors. (ADD003 ("Apple stated that its documents relating to the research, design, development and operation of the accused products were generated in Northern California and that its source code was developed, and is accessible for inspection, from Northern California and controlled on a need-to-know basis.")).

In its response to Apple's petition, BillJCo urged this Court to disregard Rollins' cookie-cutter statements, that appeared to have been copied nearly verbatim from his other declarations, because they are void of any real factual content. But, neither this Court nor the trial court addressed BillJCo's arguments regarding Rollins. Months after denying Apple's motion to transfer, and only one day before this Court granted Apple's petition for a writ of mandamus, the WDTX considered a declaration from Rollins in another matter: *Scramoge Technology Ltd.*, 2022 WL 1667561, *2-3. In *Scramoge*, the court explicitly held that Rollins lacks credibility. (ADD008.) In so holding, that court pointed to the "similarly vague representations" in the nearly-identical declaration that Rollins provided in this case and the dozens of other declarations that he has provided over the past eighteen months. (ADD009-11.) After reviewing Rollins' serial declarations, the court found that he could not

possibly have firsthand knowledge of the information provided in all these declarations. (*Id.* at 4-6.) According to the court:

> Adequate preparation for all these declarations requires him to have spent weeks or months reviewing patent complaints, asserted patents, and infringement contentions so he could search for and review the relevant corporate documents covering technologies from Bluetooth to biometric security to OLED displays, and then identify and speak with engineers across products from the iPhone 4-12 to MacBooks to Apple Watches to AirPods. The frequency at which he supplies declarations on a wide scope of unrelated, technologically complex topics leads the Court to give him no credibility. Mr. Rollins must rely on his attorneys to selectively spoon feed him information to accomplish what he does.

(*Id.* at 6.)

The court further explained that Rollins had improperly testified regarding technological issues that a "financial manager would typically not know" and he also somehow provided information about the location of documents "known only to respective custodians." (*Id.*) The trial court also explained that Rollins strategically limited the scope of his declaration by basing it on his own personal knowledge as selectively fed by Apples' attorneys. (*Id.*) As a result, the court found that it was not possible to truly understand where relevant documents and witnesses may be located. (*Id.*)

Based on the foregoing, the Panel should re-hear its decision granting Apple's petition for writ of mandamus because the evidence on which it relied has been called into question by the trial court's credibility determination with respect to Rollins. The Court issued its opinion on May 26, 2022, and did not consider the trial

court's contemporaneous finding (one day earlier) that Rollins lacked credibility. Credibility determinations are within the sole purview of the trial court. *See Nilssen v. Osram Sylvania, Inc.*, 504 F.3d 1223, 1231-32 (Fed. Cir. 2007) ("While an opposite conclusion could have been reached, it is not the function of a court of appeals to override district court judgments on close issues, where credibility findings have been made."); *Agfa Corp. v. Creo Prods. Inc.*, 451 F.3d 1366, 1379 (Fed. Cir. 2006) ("This court must defer heavily to the trial court's credibility determinations.").

If this Court had the benefit of the trial court's May 25, 2022 finding regarding Rollins' lack of credibility, the outcome of Apple's petition would have been different. As explained above, Rollins' declaration serves as the evidentiary foundation for Apple's motion to transfer and its petition for a writ of mandamus. Without that evidentiary basis, Apple's effort to transfer collapses on itself. And that should be the result given the incredibly vague, hedging, and waffling statements found in Rollins' declaration. This Court has disregarded these types of vague statements in the past and should do so again, especially in light of the trial court's credibility determination. *In re Apple Inc.*, 743 F.3d 1377, 1378-79 (Fed. Cir. 2014) (disregarding declaration from Apple witness because it "was so general in nature that the court was unable to evaluate its relevance in the transfer analysis.").

At bottom, the Court should reconsider its order granting Apple's petition for a writ of mandamus given the credibility issues that have surfaced with respect to Rollins. In the alternative, the Court should remand this matter to allow the trial court to reconsider its analysis under the private and public interest factors in light of its subsequent findings as to Rollins' credibility.

II. THE COURT SHOULD REHEAR THE CASE *EN BANC* BECAUSE THE PANEL'S DECISION IS INCONSISTENT WITH THE FEDERAL CIRCUIT'S PRIOR VENUE DECISIONS.

Rehearing *en banc* of the Panel's decision in this case is warranted as that decision is in direct conflict with several other decisions of this Court. First, the Panel's decision effectively changes the standard necessary for mandamus to issue from a heavy one not often entertained, to an almost *de novo* review, inconsistent with prior decisions of this Court. Second, the Panel's decision puts undue emphasis on the private interest factors – and, specifically the convenience factor – in finding that venue is more convenient in the NDCA. Finally, the Panel's decision entirely eschews the "*clearly*" more convenient standard, which is intended to protect a plaintiff's choice of forum. *En banc* review is necessary.

A. The Panel's Decision Ignores the Appropriate Deference Owed to the District Court in Conflict with *HTC Corp.*

Despite reciting the highly deferential standard owed to the District Court on a petition for writ of mandamus, the Panel effectively gave that court's decision no deference. Instead, the Panel substituted its own judgment for that of the District

Court, drawing artificial distinctions between witnesses and convenience. Doing so was in conflict with a different panel's decision in *In re HTC Corp.*, 494 Fed. Appx. 81 (Fed. Cir. 2012). There, the court held that though "the presence of a larger number of witnesses and parties in the transferee venue is an important consideration in a §1404(a) analysis," such "general observations do not definitively resolve the issue" because the court is to exercise the "extraordinary remedy [of mandamus] to reach only those circumstances where the district court blatantly deviated from those principles." *In re HTC Corp.*, 494 Fed. Appx. at 83; *see also In re Apple, Inc.*, 456 Fed. Appx. 907, 909 (Fed. Cir. 2012) (mandamus should be granted only where the district court denies a "transfer motion without so much as considering the merits or the court blatantly deviates from… [the §1404] principles.").

Similarly, in *In re Barnes & Noble, Inc.*, 743 F.3d 1381 (Fed. Cir. 2014), another panel of this court found that the district court had "addressed in depth" the various factors relevant to a §1404 motion and it could "discern no clear abuse of discretion in the district court's decision to deny transfer." *Id.* at 1383. The district court's decision in that case was based upon the plaintiff patent holder's presence in the transferor venue and the inconvenience he would suffer in traveling to California for trial. *Id.*

Thus, even though Apple had identified several potential witnesses residing in the transferee venue (through its unreliable witness, Rollins), other witnesses in

the transferor venue and elsewhere were sufficient grounds for the District Court to deny the motion to transfer. Doing so was not such a blatant deviation from that court's discretion so as to warrant mandamus relief.

Yet, the Panel in this case indefensibly ignored the District Court's judgment on the inconvenience the Texas plaintiff would suffer if its Texas owner was required to travel to California, thus improperly considering the matter anew. Instead, the Panel simply found that the District Court "correctly found that the access to sources of proof and willing witness factors both favor the transferee venue" based entirely on the Panel's review of Apple's evidence. (ADD003.) In doing so, the Panel disregarded the fact that the District Court found the access to proof factor did "not heavily favor transfer," wrote Jason Johnson out of the convenience equation entirely, and failed to consider BillJCo's other relevant Texas witnesses like Yudell, Sofman, Watson, and Newman. This methodology is inconsistent with the standards set forth in other mandamus cases of this Circuit.

The Panel also substituted its own assessment of the record for the District Court's. For example, the Panel noted that "*Apple stated* that its documents relating to the research, design, development and operation of the accused products were generated in Northern California and that its source code was developed, and is accessible for inspection, from Northern California." (ADD003 (emphasis added)). But the Panel's assessment of Apple's self-serving statements ignores the District

Court's review of the record, in which it concluded that it was "not convinced that there is much physical evidence, if any, located in the NDCA." (Appx7.)

Accordingly, the Panel coopted the record in a manner inconsistent with its authority and other decisions by this Court. *See, e.g.*, *In re Vistaprint*, 628 F.3d 1342, 1346 (Fed. Cir. 2010) (noting that the Federal Circuit has a "longstanding recognition that a trial judge has a superior opportunity to familiarize himself or herself with the nature of the case and the probable testimony at trial, and ultimately is better able to dispose of these motions [to transfer]."); *In re Telular Corp.*, 319 Fed. Appx. 909, 912 (Fed. Cir. 2009) (district court's decision based upon plaintiff's residence in Texas was not "a clear abuse of discretion or usurpation of judicial power."); *In re Tesco Corp.*, 179 Fed. Appx. 2, 2-3 (Fed. Cir. 2006) (where a party challenges the district court's discretion, "it cannot show that its right to a particular result is clear and indisputable," a prerequisite to mandamus relief). Rehearing *en banc* is necessary to correct this patent error.

B. The Panel's Decision Places Too Heavy an Emphasis on the Convenience Factor in Conflict with *Vistaprint* and *Volkswagen*.

The Panel's decision likewise impermissibly weakens the District Court's discretion in deciding §1404 motions by reweighing the importance of certain factors anew. This usurpation of the District Court's discretion conflicts with other decisions by other panels of this Court. For example, *In re Vistaprint*, 628 F.3d 1342, conflicts with the Panel's decision in this case. Here, the Panel found that the

administrative and legal problems that would be created by transferring the case to the NDCA, alone, could not support the District Court's decision denying transfer. (ADD004.) But a different panel of judges in the Federal Circuit held in *Vistaprint* that "§1404(a) balances a number of case-specific factors, not just convenience… [and] §1404(a) commits the balancing determination to the sound discretion of the trial court based not on per se rules but rather on an 'individualized, case-by-case consideration of convenience and fairness.'" *Vistaprint*, 628 F.3d at 1346.

The Court went on to find that a writ of mandamus should not issue, even where the only factor weighing in favor of the case remaining in the plaintiff's chosen forum was a matter of judicial efficiency. As appropriate on a petition for mandamus and consistent with the deference that is owed a district court upon such a request, the *Vistaprint* panel found that a trial court may properly determine that the public interest factors can be of "paramount consideration." *Id.* at 1347; *see also In re Canrig Drilling Technology, Ltd.*, No. 2015-139, 2015 WL 10936672, *1 (Fed. Cir. Aug. 7, 2015) ("This court has repeatedly noted that judicial economy may play a prominent role in a district court's transfer analysis."); *In re Eli Lilly & Co.*, 541 Fed. Appx. 993, 994 (Fed. Cir. 2013) (giving considerable deference to a district court's evaluation of the role judicial economy should play in a transfer decision and allowing judicial economy to be of "paramount consideration"); *In re Vicor Corp.*, 493 Fed. Appx. 59, 61 (Fed. Cir. 2012) (finding no error in district court's refusal to

transfer case even where the local interest, witness convenience, and location of sources of evidence factors all favored transfer because judicial economy was of "paramount consideration."); *In re Volkswagen of America, Inc.*, 566 F.3d 1349, 1351 (Fed. Cir. 2009) (public interest factor of judicial economy can be of "paramount consideration"). This Panel did not follow that pronouncement and instead substituted its own judgment for that of the District Court. This overriding of the District Court's discretion on which factors to weigh most heavily, too, was in error.

C. The Panel's Decision Disregards the Plaintiff's Choice of Forum in Conflict with *In re Apple, Inc.*

A plaintiff's choice of forum is entitled to weight in the §1404 analysis. But, the Panel gave it none, instead placing emphasis on BillJCo's location in the Eastern – rather than Western – District of Texas. (ADD004.) But *In re Apple, Inc.*, 818 Fed. Appx. 1001 (Fed. Cir. 2020), counsels that a plaintiff's choice of forum is protected by the "elevated 'clearly more convenient' standard that the movant must meet." Likewise, whereas "a plaintiff's choice of venue is not a distinct factor in the venue transfer analysis, it is nonetheless taken into account as it places a significant burden on the movant to show good cause for transfer.'" *In re Volkswagen of Am., Inc.*, 545 F.3d 302, 314 n.10 (5th Cir. 2008); *see also In re Telebrands Corp.*, 773 Fed. Appx. 600, 602 (Fed. Cir. 2016) (refusing to grant mandamus to order transfer of case where district court found a strong local interest in the transferor venue "given it is

where the inventor of the patent lives and works."). "This 'good cause' burden reflects the appropriate deference to which the plaintiff's choice of venue is entitled." *Volkswagen*, 545 F.3d at 315.

Here, the Panel replaced the District Court's judgment with its own and ordered the transfer of the case without any acknowledgment or deference to BillJCo's choice of forum. Doing so all but eradicates the "*clearly*" more convenient standard and allows defendants to drag plaintiffs out of their home court simply because they present a witness or some documentary evidence in the transferee court. Venue thus becomes a tactical game played by large technology companies with nothing to lose at the expense of individuals with everything to lose. Rehearing *en banc* is necessary to ensure a just result.

CONCLUSION

For the reasons discussed herein, the Panel should rehear the petition without reliance on Apple's improper Rollins' testimony, or, the Court should hear the case *en banc* to reconcile the Panel's decision with prior decisions denying mandamus on similar facts.

Respectfully submitted,

BILLJCO, LLC

By: /s/ Elizabeth A. Thompson
One of its attorneys

Brian R. Michalek (brian.michalek@saul.com)
Brian Landry (brian.landry@saul.com)
Joseph M. Kuo (joseph.kuo@saul.com)
Elizabeth A. Thompson (elizabeth.thompson@saul.com)
Saul Ewing Arnstein & Lehr LLP
161 North Clark Street, Suite 4200
Chicago, Illinois 60601
(312) 876-7100
Counsel for Respondent BillJCo, LLC

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: Misc. Docket No. 22-137

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).

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because it meets one of the following:

☑ the filing has been prepared using a proportionally-spaced typeface and includes 3,768 words.

☐ the filing has been prepared using a monospaced typeface and includes _____ lines of text.

☐ the filing contains _____ pages / _____ words / _____ lines of text, which does not exceed the maximum authorized by this court's order (ECF No. _____).

Date: 06/24/2022

Signature: /s/ Elizabeth A. Thompson

Name: Elizabeth A. Thompson

ADDENDUM

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

In re: APPLE INC.,
Petitioner

2022-137

On Petition for Writ of Mandamus to the United States District Court for the Western District of Texas in No. 6:21-cv-00528-ADA, Judge Alan D. Albright.

ON PETITION

Before LOURIE, TARANTO, and HUGHES, *Circuit Judges*.

LOURIE, *Circuit Judge*.

O R D E R

Apple Inc. petitions for a writ of mandamus to direct the United States District Court for the Western District of Texas to transfer this patent infringement suit to the United States District Court for the Northern District of California. BillJCo, LLC opposes the petition. For the reasons that follow, we grant Apple's petition.

BillJCo is a Texas company headquartered in Flower Mound, within the Eastern District of Texas. BillJCo was founded by Bill Johnson to pursue opportunities relating to patents focusing on distributed mobile applications.

BillJCo owns six patents concerning beacon technology, all naming Mr. Johnson as the sole inventor or as co-inventor along with his son, Jason Johnson, who resides in Waco.

In May 2021, BillJCo filed this action in the Western District of Texas, Waco Division, to assert those patents based on Apple's use of its iBeacon protocol. Apple moved to transfer the action to the Northern District of California under 28 U.S.C. § 1404(a), arguing that Apple researched, designed, and developed the accused technology from its headquarters within the transferee venue; that evidence and witnesses would likely be in Northern California; and that neither BillJCo nor this litigation had any meaningful connection to Western Texas. The district court denied the motion, finding that this case could have been brought in the Northern District of California, but disagreeing with Apple that that forum was clearly more convenient.

We apply regional circuit law on transfer motions. *See In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008). In deciding whether the district court should have transferred under § 1404(a), we ask whether "the movant demonstrate[d] that the transferee venue is clearly more convenient" based on an evaluation of the private and public interest factors. *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)) (internal quotation marks omitted). Mindful that the district court is generally better positioned to evaluate the evidence, we review a transfer ruling for a clear abuse of discretion. *See In re Vistaprint Ltd.*, 628 F.3d 1342, 1344–46 (Fed. Cir. 2010).

The district court clearly abused its discretion in concluding that the private and public factors did not favor transfer here. We begin with the private factors: (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 a trial easy,

expeditious, and inexpensive. *Volkswagen*, 545 F.3d at 315 (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981)). Those factors clearly support transfer to Northern California.

The district court correctly found that the access to sources of proof and willing witness factors both favor the transferee venue. Apple stated that its documents relating to the research, design, development and operation of the accused products were generated in Northern California and that its source code was developed, and is accessible for inspection, from Northern California and controlled on a need-to-know basis, which favors transfer even if Apple in theory could offer access to that information at its offices in Austin, Texas. *See In re Apple Inc.*, No. 2021-181, 2021 WL 5291804, at *2 (Fed. Cir. Nov. 15, 2021). Furthermore, the court plausibly found that Northern California would be more convenient overall for the party witnesses.

Among the private factors, the district court's only basis for discounting the convenience of the transferee forum was its general ability to compel the testimony of Jason Johnson. Appx10. But that conclusion clearly overlooks the record in two key respects. First, BillJCo has all along indicated that Jason Johnson is willing to testify in the Western District of Texas, rendering it error to give such weight to the court's ability to compel his testimony. *See* Appx104 ("Mr. Johnson's son, Jason Johnson, is a co-inventor for one of the patents at issue . . . . Another willing non-party witness is . . . ."); Resp. 16 ("[W]hile Jason Johnson may be a willing witness to a trial mere miles from his home (the WDTX), he may not be willing witness at a trial thousands of miles from his home . . . ."). Second, the weight placed on Jason Johnson's presence in Waco by the district court is too great in the context of the record as a whole, given the numerous potential witnesses Apple identified in Northern California. Under these circumstances, the private transfer factors clearly favor transfer.

We now turn to the public interest factors: (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. *Volkswagen*, 545 F.3d at 315 (citing *Piper Aircraft*, 454 U.S. at 241 n.6). These factors generally focus on any potential administrative and legal problem or advantage offered by one forum over another in handling the case. *Piper Aircraft*, 454 U.S. at 241. In this case, none of these considerations is sufficient to override the striking imbalance in favor of transfer on the private interest factors.

While recognizing that the Northern District of California had a local interest in resolving this matter because the accused products were researched, designed, and developed from that district, the district court nonetheless concluded that the local interest factor weighed slightly in favor of the Western District of Texas. There are two fundamental problems with the district court's analysis that demonstrate a clear abuse of discretion even under the highly deferential standard of review. First, the court incorrectly gave equal consideration to the fact that "BillJCo is headquartered in Flower Mound, Texas" where the patented invention was developed. Appx18. Since Flower Mound is in the Eastern District of Texas, not the Western District of Texas, BillJCo's office in Texas gives plaintiff's chosen forum no comparable local interest. *See In re Google LLC*, No. 2021-171, 2021 WL 4592280, at *6 (Fed. Cir. Oct. 6, 2021) (finding error with district court's reliance on plaintiff's incorporation and office in Texas, where the office was located outside the Western District).

Second, the court assigned too much weight to Apple's "substantial general presence in this District." Appx19. As our precedent has made clear, an assessment of the local interest factor must focus on whether there are "'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)) (emphasis in *Apple*)). Nothing in the court's opinion or the record offers any indication that Apple's in-district offices had any involvement in the research, design, or development of the accused technology. The court's reliance on these offices, which lack such a connection to the locus of the events giving rise to the dispute, amounts to a clear abuse of discretion. The upshot is that this factor also favors transfer.

The district court also weighed the court congestion factor here against transfer based on its faster time to trial. But precedent does not permit giving such speculation about whether a court can reach trial faster more weight than all the remaining factors. *See In re Genentech, Inc.*, 566 F.3d 1338, 1347 (Fed. Cir. 2009) (holding 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").

Under the circumstances in this case, we conclude that the district court's ruling that Apple had failed to show that the transferee venue was clearly more convenient amounted to a clear abuse of discretion.

Accordingly,

IT IS ORDERED THAT:

The petition is granted to the extent that the district court's order denying Apple's motion is vacated and the district court is directed to grant a transfer of the case to the Northern District of California.

FOR THE COURT

May 26, 2022
Date

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

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

SCRAMOGE TECHNOLOGY LTD., *Plaintiff,*	§	
v.	§	**Civil No. 6:21-cv-00579-ADA**
APPLE INC., *Defendant.*	§	

MEMORANDUM OPINION AND ORDER – PUBLIC VERSION

This opinion memorializes the Court's decision on Defendant Apple Inc.'s ("Apple" or "Defendant") Motion to Transfer Venue from the Western District of Texas ("WDTX") to the Northern District of California ("NDCA") under 28 U.S.C. § 1404(a). Dkt. No. 37. After careful consideration of the relevant facts, applicable law, and the parties' briefs (Dkt. Nos. 67, 72), the Court **GRANTS** Defendant's Motion to Transfer and finds that Mark Rollins lacks credibility before this Court.

I. BACKGROUND

Plaintiff Scramoge Technology Ltd. ("Scramoge" or "Plaintiff") filed this lawsuit accusing Defendant of patent infringement. Dkt. No. 1. Scramoge alleges infringement of U.S. Patent Nos. 10,622,842 ("the '842 Patent"), 9,806,565 ("the '565 Patent"), 10,804,740 ("the '740 Patent"), 9,843,215 ("the '215 Patent"), and 10,424,941 ("the '941 Patent") (collectively, "Asserted Patents"). Dkt. No. 1 ¶ 1. Broadly speaking, these patents cover aspects of wireless charging technology including wireless power coils that inductively charge, communication antennas related to power coils, the configuration of the coil, and magnetic layers used in a wireless charger. The accused products include the iPhone 8, 8 Plus, X, XR, XS, XS Max, 11, 11 Pro, 11 Pro Max, SE (second generation), 12, 12 mini, 12 Pro, 12 Pro Max, AirPods (second generation) and

AirPods Pro ("Accused Products"). *Id.* ¶¶ 9, 23. The parties later stipulated to a dismissal of the '941 Patent from this case.

Scramoge is an Irish corporation with its principal place of business in Ireland. *Id.* ¶ 2.

Apple is a California corporation with a principal place of business in Cupertino, California and regular and established places of business at 12545 Riata Vista Circle, Austin, Texas 12801 Delcour Dr., Austin, Texas; 12801 Delcour Dr., Austin, Texas; and 3121 Palm Way, Austin, Texas 78758. *Id.* ¶¶ 5-6.

II. LEGAL STANDRD

In patent cases, motions to transfer under 28 U.S.C. § 1404(a) are governed by the law of the regional circuit. *In re TS Tech USA Corp*., 551 F.3d 1315, 1319 (Fed. Cir. 2008). 28 U.S.C. § 1404(a) provides that, "[f]or the convenience of parties and witnesses, in the interest of justice, 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 preliminary question under Section 1404(a) is whether a civil action might have been brought in the transfer destination venue. *In re Volkswagen, Inc.*, 545 F.3d 304, 312 (5th Cir. 2008) (en banc) ("*Volkswagen II*"). If the destination venue would have been a proper venue, then "[t]he determination of 'convenience' turns on a number of public and private interest factors, none of which can be said to be of dispositive weight." *Action Indus., Inc. v. U.S. Fid. & Guar. Co.*, 358 F.3d 337, 340 (5th Cir. 2004). 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 (1981)). 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." *Volkswagen I*, 371 F.3d at 203.

The burden to prove that a case should be transferred for convenience falls on the moving party. *Volkswagen II*, 545 F.3d at 314. The burden that a movant must carry is not that the alternative venue is more convenient, but that it is clearly more convenient. *Id.* at 315. Although the plaintiff's choice of forum is not a separate factor entitled to special weight, respect for the plaintiff's choice of forum is encompassed in the movant's elevated burden to "clearly demonstrate" that the proposed transferee forum is "clearly more convenient" than the forum in which the case was filed. *Id*. at 314-315. While "clearly more convenient" is not necessarily equivalent to "clear and convincing," the moving party "must show materially more than a mere preponderance of convenience, lest the standard have no real or practical meaning." *Quest NetTech Corp. v. Apple, Inc.*, No. 2:19-cv-118, 2019 WL 6344267, at *7 (E.D. Tex. Nov. 27, 2019).

III. REPEAT DECLARANT MARK ROLLINS LACKS CREDIBILITY

Plaintiff argues that Apple's Declarant, Mr. Mark Rollins, provided a vague, incomplete, and generally unreliable declaration. Dkt. No. 67, *passim*. On reply, Apple responds that the attacks on Mr. Rollins are "baseless." Dkt. No. 72 at 1. The Court agrees with Plaintiff and resolves all conflicting evidence, where provided, against Mr. Rollins. The Court credits Mr. Rollins's declaration only for its unrebutted statements.

Plaintiff argues that Mr. Rollins repeatedly makes the same type of vague and unreliable statements across multiple declarations. Dkt. No. 67 at 2-3 (citing to similarly vague representations in the Declaration of Mark Rollins in support of Defendant Apple Inc.'s Motion to Transfer Venue, *Billjco, LLC v. Apple Inc.*, No. 6:21-CV-00528-ADA (W.D. Tex. Sept. 10, 2021), Dkt. No. 26-1 (describing Apple's work on Bluetooth Low Energy iBeacon technology and products ranging from the iPhone 4s to the iPhone 12)).

The Court takes these allegations seriously because Mr. Rollins frequently and repeatedly submitted unreliable and misleading declarations to this Court. *E.g.*, Declaration of Mark Rollins in Support of Defendant Apple Inc.'s Motion to Transfer Venue, *Neonode Smartphone LLC v. Apple Inc.*, No. 6:20-cv-00505-ADA (W.D. Tex. Nov. 5, 2020), Dkt. No. 27-3 (describing Apple's work on user interface elements of Apple's smartphones and iPads); Declaration of Mark Rollins, *Koss Corp. v. Apple Inc.*, No. 6:20-cv-665-ADA (W.D. Tex. Dec. 21, 2020), Dkt. No. 34-2 (describing Apple's work on HomePods, AirPods, PowerBeats, Beats Solo, firmware, and source code); Declaration of Mark Rollins in Support of Defendant Apple Inc.'s Motion to Transfer Venue, *CPC Patent Tech. PTY LTD. v. Apple Inc.*, No. 6:21-CV-165-ADA, (W.D. Tex. May 4, 2021), Dkt. No. 22-2 (describing Apple's work on biometric security technology); Declaration of Mark Rollins in Support of Defendant Apple Inc.'s Motion to Transfer Venue, *Gesture Tech. Partners LLC v. Apple, Inc.*, No. 6:21-cv-121-ADA (W.D. Tex. July 30, 2021), Dkt. No. 21-1 (describing Apple's work on camera technology in products including the iPhone 5-12 and many models and generations of iPads); Declaration of Mark Rollins in Support of Defendants' Motion to Transfer Venue, *Red Rock Analytics LLC v. Apple Inc.*, No. 6:21-cv-346-ADA-DTG (W.D. Tex. Aug. 24, 2021), Dkt. No. 45-17 (describing Apple's use of I-Q gain imbalance and 5G transceivers); Declaration of Mark Rollins in Support of Apple's Motion to Transfer Venue,

Logantree LP v. Apple Inc., No. 6:21-cv-397-ADA (W.D. Tex. Sept. 3, 2021), Dkt. No. 23-1 (describing Apple's work on the Apple watch); Declaration of Mark Rollins in Support of Defendant Apple Inc.'s Motion to Transfer Venue, *Identity Security LLC v. Apple Inc.*, No. 6:21-cv-460-ADA (W.D. Tex. Sept. 10, 2021), Dkt. No. 27-1 (describing Apple's work on microprocessors, iPhones 5S and later, MacBooks that contain specific chips, and Secure Enclave); Declaration of Mark Rollins in Support of Defendant Apple Inc.'s Motion to Transfer Venue, *Traxcell Tech., LLC v. Apple Inc.*, No. 6:21-cv-74-ADA (W.D. Tex. Sept. 21, 2021), Dkt. No. 34-1 (describing Apple's work on navigation technology); Declaration of Mark Rollins in Support of Defendant Apple Inc.'s Motion for Forum Non Conveniens, *MemoryWeb, LLC v. Apple, Inc.*, No. 6:21-cv-531-ADA (W.D. Tex. Oct. 13, 2021) Dkt. No. 26-1 (describing Apple's work on file and photo organization in iPads, iPhones, iPods, and MacBooks); Declaration of Mark Rollins in Support of Defendant Apple Inc.'s Motion to Transfer Venue, *Future Link Systems, LLC v. Apple Inc.*, No. 6:21-cv-263-ADA-DTG (W.D. Tex. Nov. 17, 2021), Dkt. No. 36-2 (describing Apple's work on ARM-compliant bus and interconnect technology such as AMBA and DRAM memory chips including DDR3, DDR4, GDDR5, GDDR6, and HBM); Declaration of Mark Rollins, No. 6:21-cv-620-ADA (W.D. Tex. Dec. 10, 2021), Dkt. No. 23-1 (describing the use of beamforming technology in iPhones, iPads, MacBooks, Macs, and Apple TV devices); Declaration of Mark Rollins in Support of Defendant Apple Inc.'s Motion to Transfer Venue, *Sonrai Memory LTD. v. Apple, Inc.*, No. 6:21-cv-401-ADA (W.D. Tex. Dec. 29, 2021), Dkt. No. 29-2 (describing the use of charge pump circuitry in Apple's products); Declaration of Mark Rollins in Support of Apple Inc.'s Motion to Transfer Venue, No. 6:21-cv-603-ADA-DTG (W.D. Tex. Feb. 11, 2022), Dkt. No. 29-1 (describing Apple's work on wireless voice and data communication technology used in

iPhones, iPads, Apple TV, and Apple Watch).[1] He submits his declarations to support venue motions, not to qualify as a technical expert.

Mark Rollins works as a finance manager at Apple and works at Apple's office in Cupertino, California. Dkt. No. 37-1 ("Rollins Decl.") ¶ 1. Based on the volume of his declarations, he also works as Apple's professionally paid venue witness, preparing two or three venue declarations per month. Adequate preparation for all these declarations requires him to have spent weeks or months reviewing patent complaints, asserted patents, and infringement contentions so he could search for and review the relevant corporate documents covering technologies from Bluetooth to biometric security to OLED displays, and then identify and speak with engineers across products from the iPhone 4-12 to MacBooks to Apple Watches to AirPods. The frequency at which he supplies declarations on a wide scope of unrelated, technologically complex topics leads the Court to give him no credibility. Mr. Rollins must rely on his attorneys to selectively spoon feed him information to accomplish what he does. The Court gives this professional venue witness the same skepticism that it gives to a professional, career expert witnesses who repeatedly works only for a single client.

Mr. Rollins began working as a finance manager at Apple in 2019. Rollins Decl. ¶ 1. Based on this statement, the Court finds that he lacks personal knowledge of Apple's operations and product development before 2019 and that he lacks personal knowledge of Apple's operations outside of financial topics. To make up for his lack of personal knowledge, Mr. Rollins routinely makes his declaration based on a combination of his personal knowledge, his review of corporate

[1] This string cite omits supplemental declarations, declarations before Nov. 5, 2020, recent declarations not yet examined by the Court, and other various declarations submitted by Mr. Rollins. The quantity and scope of declarations by Mr. Rollins far exceeds what the Court identifies here.

records maintained by Apple, and discussions with Apple employees. Rollins Decl. ¶ 2. In other words, Mr. Rollins reviews attorney-selected documents and talks to attorney-selected witnesses to form his beliefs. The Rollins Declaration does not identify which corporate records Mr. Rollins reviewed.

As a result of his preparation, Mr. Rollins routinely offers information about topics a financial manager would typically not know. A financial manager at Apple might naturally know about Apple's profits, royalties, the locations of financial statements, and the locations of other Apple employees with financial information related to damages. The Rollins Declaration purports to state the locations of technical and marketing data stored typically known only to respective custodians of those documents, such as engineers and marketing personnel. Rollins Declaration ¶ 7. Mr. Rollins identifies the names and locations of engineers typically known to human resources personnel or engineering managers. *Id.* ¶¶ 6-12. The Rollins Declaration offers expert opinions that certain engineers' work is unrelated to the accused technology in asserted patents. *Id.* It offers legal predictions about witnesses who will appear at trial, as typically decided by attorneys after the conclusion of discovery. *Id.* ¶ 13. His attorney-assisted declarations routinely use the Bluebook format to cite documents. *Id.* ¶ 5 (*"See, e.g.,*"). The Rollins Declaration states technical facts typically known only to electrical engineers and typically admissible only after expert qualification:

> Qi charging uses in-band communications that enables the charged device to communicate with the charger. More specifically, Qi charging uses a power transmitting coil in the charger that is inductively coupled to a power receiving coil in the charged device. During the charging process, the charged device can, for example, alter the impedance of the power receiving coil which can be sensed by the charger via the inductive couple. Thus, during charging the charged device communicates with the charger via the inductive couple (i.e., in-band communications). Data including the need for more power, less power, device compatibility, digitized data, etc. can be transmitted.

Id. ¶ 11 n.1.

Worst of all, the Rollins Declaration uses language that carefully limits the scope of declared facts to his personal, selectively fed knowledge. For example, the Mr. Rollins's supplemental declaration states, "I am not aware of any Apple employees located in WDTX who worked on the research, design, or development of the Accused Features." Dkt. No. 72-1 ¶ 3. Then, his qualified statements are cited by Apple's attorneys in transfer motions as though they are authoritative truths. *E.g.,* Dkt. No. 72 at 1 ("Apple's sources of proof are located in or around NDCA. There are no sources of proof located in WDTX. *See* Mot. at 10; Rollins Decl. ¶ 3.")[2] The only evidentiary value that paragraph three of the supplemental Rollins declaration offers is that one attorney-prepared, financial manager at Apple lacks personal knowledge about the thousands of Apple engineers who work in the WDTX—information that a financial manager at Apple has no reason to know without thorough investigation. Except for a vague statement that he reviewed unidentified corporate records and spoke to certain employees, the Rollins Declaration contains no description of the methodology he used to find all Apple engineers who work in WDTX and to then determine their relevance. Rollins Decl. ¶ 2. So, Court has no reason to rely on Mr. Rollins as an authoritative or knowledgeable declarant on this topic.

As an example of an uninformed statement, Mr. Rollins declares, "[t]o the best of my knowledge . . . the Apple employees with relevant information regarding the Accused Features and Accused Products are located in NDCA, San Diego, CA, and Auckland, New Zealand" based on his "personal knowledge, my review of corporate records . . . and/or my discussions with Apple

[2] Apple's reply brief (Dkt. No. 72) uses "Rollins Decl." to refer to Dkt. No. 72-1. Apple's opening brief (Dkt. No. 37) uses "Rollins Decl." to refer to Dkt. No. 37-1.

employees." Dkt. No. 37-1 ¶¶ 2, 17. Scramoge convincingly rebuts Mr. Rollins's statement by identifying six relevant Apple witnesses located in Austin (Alexander Pollard, John Tolman, Matthew Marks, Jeremy Meyers, Zao Yang, and Andrew O'Connell) and by supporting each argument with evidence. Dkt. No. 67 at 7-8 (citing exhibits). Thus, Mr. Rollins must not have been given any corporate records that mention these Apple witnesses nor talked to individuals before making his declaration. The Court finds that the "best" of Mr. Rollins's knowledge is based on a deficient investigation.

In summary, the scope, content, and frequency of declarations submitted by Mr. Rollins shows that they are attorney-crafted documents full of hearsay with little to no evidentiary value.[3] Despite serious problems with large swatches of the Rollins Declaration, Scramoge's Opposition only asks the Court to give no weight to certain contested parts of the Rollins Declaration. The Court finds this appropriate. In its analysis below, the Court only credits the unchallenged portions of the Rollins Declaration.

IV. ANALYSIS

A. Plaintiff could have brought this case in the Northern District of California

The threshold determination in the § 1404(a) analysis is whether this case could initially have been brought in the destination venue. Defendant asserts that this case could have originally been brought in the NDCA because Defendant has its headquarters there. Plaintiff does not contest

[3] As a trial court intimately familiar with the facts in cases before it, this Court noticed Mr. Rollins's offenses across many cases and has long treated Mr. Rollins with skepticism, especially given Apple's history of avoiding discovery obligations. *E.g.,* Dkt. No. 67 at 4 (describing Apple's refusal to fully respond to a venue interrogatory). Scramoge is the only recent plaintiff to seriously challenge Apple's repeated use of similar declarations by Mr. Rollins. The history detailed herein exposes the offenses in Mr. Rollins's sealed declarations so that other courts and administrative agencies can similarly discount his credibility.

this point. This Court finds that venue would have been proper in the NDCA. Thus, the Court proceeds with its analysis of the private and public interest factors to determine if the NDCA is clearly more convenient than the WDTX.

1. The private interest factors favor transfer.

a. The relative ease of access to sources of proof favors 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 Inc. v. Apple Inc.*, No. 6:18-cv-00372, 2019 WL 4743678, at *2 (W.D. Tex. Sept. 10, 2019). "[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). "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 Apple Inc*., 979 F.3d 1332, 1340 (Fed. Cir. 2020).

i. The ease of accessing physical evidence favors transfer

Mr. Rollins declared that Apple's paper files "reside on local computers and/or serves either located in or around NDCA or accessible in NDCA." Rollins Decl. ¶¶ 7, 12, 16. Plaintiff correctly points out that this statement in the Rollins Declaration makes no sense because paper files do not reside on computers. Mr. Rollins did not identify any paper files with particularity, and Apple's Reply did not do so either. Thus, the Court gives no weight to the location of nonexistent paper files that supposedly reside on computers.

Mr. Rollins declares that "relevant hardware components associated with the Accused Features were developed and tested in California and New Zealand." *Id.* ¶ 7. Plaintiff does not have evidence to the contrary but argues that Mr. Rollins's declaration fails to identify the location of the hardware today. In its reply, Defendant fails to identify the specific nature or location of

hardware components today but argues that any actual hardware would still be in California or New Zealand. Because Mr. Rollins's declaration about the testing location of the hardware remains unrebutted and because Plaintiff has not supplied the Court any evidence showing that the hardware has moved to some other location, the Court finds that it is likely that physical testing evidence remains in California and New Zealand. This vaguely identified hardware somewhere in California causes this factor to favor transfer.

ii. The ease of accessing electronic evidence favors transfer

Scramoge does not challenge Mr. Rollins's personal understanding that "electronic documents concerning the Accused Features reside on local computers and/or serves either located in or around NDCA." Rollins Decl. ¶ 7. Apple argues that Mr. Rollins must be correct because the NDCA is where the research, design, and development of the accused products took place. Scramoge argues that any electronic evidence in servers in the NDCA would be equally accessible from Apple's campus in Austin within the WDTX. Because Mr. Rollins's statement remains unrebutted by other evidence, the Court finds that Apple likely has some relevant electronic documents stored in the NDCA.

Scramoge notes that Apple refused to respond to an interrogatory that sought to identify each of Apple's "data servers that store documents related to any components/materials of the Accused Products." Scramoge did not seek to compel a response to this request or ask for an adverse inference that some of these data servers are in Austin. Instead, Scramoge argues that remote access to electronic documents from Apple's Austin campus must be convenient because Apple also remotely accesses its electronic documents from New Zealand. It true that Apple will likely have similarly easy access to its own electronic documents stored in the NDCA from Apple's campus in Austin *if Apple has employees there* authorized to access the electronic documents.

With respect to the same defendant, the Federal Circuit ruled that the correct analysis under this factor is look to the location of Apple's servers in combination with the locations of individuals who can access those servers. *In re Apple Inc.*, No. 2022-128, 2022 WL 1196768, at *4 (Fed. Cir. Apr. 22, 2022) ("Apple had the capability of accessing its own electronic documents from its Austin offices. . . . But we rejected very similar reasoning in *In re Apple Inc.*, No. 2021-181, 2021 WL 5291804, at *2 (Fed. Cir. Nov. 15, 2021)"); *In re Google LLC*, No. 2021-178, 2021 WL 5292267, at *2 (Fed. Cir. Nov. 15, 2021) (ruling a Court should also consider "the location of document custodians and location where documents are created and maintained, which may bear on the ease of retrieval.") Under this factor, Scramoge has not identified the custodians in Austin who have access to the electronic documents in the NDCA servers. Dkt. No. 67 at 4-5. Thus, the Court finds that the electronic documents are more conveniently accessed in the NDCA. This factor weighs in favor of transfer.

b. The availability of compulsory process to secure the attendance of witnesses favors transfer.

Under the Federal Rules, 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, if the person . . . is commanded to attend a trial and would not incur substantial expense." Fed. R. Civ. P. 45(c)(1)(A), (B)(ii); *Gemalto S.A. v. CPI Card Grp. Inc.*, No. 15-CA-0910, 2015 WL 10818740, at *4 (W.D. Tex. Dec. 16, 2015). Under this factor, the Court focuses on non-party witnesses whose attendance may need to be secured by a court order." *Fintiv Inc.*, No. 6:18-cv-00372, 2019 WL 4743678 at *14 (citing *Volkswagen II*, 545 F.3d at 316). This factor "weigh[s]

heavily in favor of transfer when more third-party witnesses reside within the transferee venue than reside in the transferor venue." *In re Apple*, 581 F. App'x 886, 889 (Fed. Cir. 2014).

Apple argues that Afshin Partovi of Sunnyvale, California is a potential prior art witness subject to the subpoena power of the NDCA. The Court finds Afshin Partovi irrelevant under this factor because Scramoge dropped the patent that Afshin Partovi is relevant to.

Ms. Fan Wang was Apple's power design lead and has relevant knowledge of Apple's power adapter designs. She left apple to start a company called Alpha Cen Inc. Scramoge argues that she resides in Austin, Texas because her LinkedIn profile lists her location as "Austin, Texas, United States." Dkt. No. 67-4. Apple argues that she resides in Shanghai, China because the LinkedIn page lists Alpha Cen Inc.'s location as Shanghai, China. Apple's Reply cites to the Rollins Declaration to confirm Ms. Wang's location in Shanghai. Dkt. No. 72 at 3. Here, the Court finds Mr. Rollins's declaration and his supplemental declaration are wrong in view of Scramoge's evidence that Ms. Wang is in Austin. Ms. Wang's LinkedIn page shows *her personal* location as Austin, Texas and her *company's* location in Shanghai. Dkt. No. 67-4. The Court takes judicial notice that clicking on the "Alpha Cen" logo on the exhibited LinkedIn page navigates to the company's LinkedIn web page, which contains an "About" tab that shows Alpha Cen Inc. has locations in both Shanghai and Austin. *Id.*; Alpha Cen Inc.: About, LINKEDIN, https://www.linkedin.com/company/alpha-cen-inc/about (last visited May 4, 2022). The Court find that Ms. Wang resides in Austin, Texas. Ms. Wang's presence in Austin weighs against transfer and exemplifies how Mr. Rollins lacks the knowledge needed to give the types of statements that Apple relies on. The "discussions with Apple employees" Mr. Rollins used to form the basis of his knowledge must not have included discussions with any of Ms. Wang's power

design colleagues in Austin. Dkt. No. 37-1 ¶ 2. Mr. Rollins must not have been provided any "corporate records" about power design employees in Austin, either. *Id.*

Apple argues that four other prior art witnesses reside in the NDCA. Apple raises these witnesses for the first time in its reply. Scramoge did not seek leave to respond in a sur-reply, move to strike new arguments raised on reply, or otherwise rebut this argument. Thus, the Court finds that four relevant prior art witnesses reside in the NDCA's subpoena power.

In conclusion, the ability to compel four witnesses in the NDCA outweighs the ability to compel Ms. Wang here in Austin. This factor favors transfer.

c. The cost of attendance and convenience for willing witnesses slightly favors transfer.

The most important factor in the transfer analysis is the convenience of the witnesses. *In re Genentech, Inc.*, 566 F.3d at 1342. When analyzing this factor, the Court should consider all potential materials and relevant witnesses. *Alacritech Inc. v. CenturyLink, Inc.*, No. 2:16-CV-00693, 2017 U.S. Dist. LEXIS 152438, 2017 WL 4155236, at *5 (E.D. Tex. Sept. 19, 2017).

This factor appropriately considers the cost of attendance of all willing witnesses including both party and non-party witnesses. *In re Pandora*, No. 2021-172, 2021 WL 4772805, at *2-3 (Fed. Cir. Oct. 13, 2021). "Courts properly give more weight to the convenience of non-party witnesses than to party witnesses." *Netlist, Inc. v. SK Hynix Inc.*, No. 6:20-CV-00194-ADA, 2021 WL 2954095, at *6 (W.D. Tex. Feb. 2, 2021).

"When 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 or inconvenience to witnesses increases in direct relationship to the additional distance to be travelled." *Volkswagen II*, 545 F.3d at 317 (quoting *Volkswagen I*, 371 F.3d at 203). The Federal Circuit has stated that courts should not

apply this 100-mile rule "rigidly" in some cases where witnesses would be required to travel a significant distance no matter where they testify. *In re Apple*, 979 F.3d at 1342 (discussing witnesses traveling from New York) (citing *Volkswagen II*, 545 F.3d at 317).

"[T]he inquiry should focus on the cost and inconvenience imposed on the witnesses by requiring them to travel to a distant forum and to be away from their homes and work for an extended period of time." *In re Google, LLC*, No. 2021-170, slip op. at 9 (Fed. Cir. Sept. 27, 2021). The Federal Circuit indicated that time away from an individual's home is a more important metric than distance. *Id.* Time and distance frequently and naturally overlap because witnesses usually take more time to travel farther away, thereby increasing the time away from home.

i. Apple's witnesses identified by Scramoge

Mr. Hartnett lives in Austin and works on the design of in-band communication systems used for the communications between the iPhone inductive charging module and the charger. Dkt. No. 37-1 ¶ 11. Mr. Hartnett thus has relevant information to infringement of the '565 Patent, which claims "a short-range communication antenna" as an element of a wireless power receiver. His knowledge of communications between the iPhone inductive charging module relates to infringement of the claimed antenna. Apple admits that Mr. Hartnett works on a communication system that has power transmit and receive coils but argues that Mr. Hartnett's work is not relevant because his work does not involve an NFC antenna. The Court finds this argument unconvincing because the claim element covers any "short-range communication antenna," not just an NFC antenna. In a supplemental declaration, Mr. Rollins admits that Mr. Hartnett [---REDACTED---]

Dkt. No. 72-1 ¶ 4. This supplemental declaration supports Scramoge's argument that Mr. Hartnett is relevant to the patented technology.[4]

Scramoge identifies six other relevant Apple witnesses located in Austin, including Alexander Pollard, John Tolman, Matthew Marks, Jeremy Meyers, Zao Yang, and Andrew O'Connell. Alexander Pollard is a global supply manager who "manages the supply of certain components in the iPhone related to inductive charging." Dkt. No. 67-1 ¶ 5; Dkt. No. 67-5. John Tolman is an engineering product manager who worked on wireless charging technology. Dkt. No. 67-6. Matthew Marks is a global supply manager for Apple and has relevant information about Apple's costs of manufacturing the accused wireless chargers. Dkt. No. 67-7; Dkt. No. 67-8 at 7. Jeremy Meyers is a senior manager in battery product development and is responsible for managing technology development programs and new product introduction for battery cell engineering. Dkt. No. 67-9. Zao Yang and Andrew O'Connell are power electronic engineering managers who have relevant knowledge of the benefits of the accused technology. Dkt. No. 67-10; Dkt. No. 67-11.

Apple argues in its Reply that these six witnesses have no relevance to the case. Dkt. No. 72 at 5-6. Apple supports its argument by relying on the Rollins Declaration and the supplemental Rollins Declaration, which this Court found to be unreliable whenever Scramoge has any opposing evidence. Because Scramoge has evidence showing the relevance of these six witnesses, the Court finds that these six witnesses are relevant to this case.

[4] Mr. Rollins lacks the credentials to offer an expert opinion about whether in-band communications are related to short range communications. He appears to believe that these are exclusive. *See* Dkt. No. 72-1 ¶ 4. His uninformed belief lacks foundation and is wrong.

In summary, Scramoge identified seven relevant Apple witnesses in Austin who would find travel within the WDTX more convenient than travel to the NDCA.

ii. Apple's witnesses identified by Apple

Ruben Larsson, Brandon Garbus, and their teams have relevant technical information about the accused products. Dkt. No. 37 at 3-4. Ruben Larsson works in the NDCA, and the location of his team is not provided in the Rollins Declaration. Rollins Decl. ¶ 9. Brandon Garbus is in San Diego, California, and the location of his team remains unclear.[5] *Id.* ¶ 10. Mr. Rollins's personal knowledge is that that Mr. Larsson's team and Mr. Garbus's team are not in the WDTX. Rollins Decl. ¶¶ 9-10.

Mr. Rollins, Vitor Silva, and Krista Grewal have relevant, non-technical information. When not serving as Apple's full-time venue witness, Mr. Rollins works as a financial manager and has knowledge of financial information relating to this case. His employees are in the NDCA. Rollins Decl. ¶ 16. Vitor Silva is knowledgeable about Apple's marketing, and he and "his entire team are located in NDCA." *Id.* ¶ 14. Krista Grewal has information about licensing related to this case, and she and "virtually all employees on her team are located in NDCA with the exception of two employees who work remotely in Colorado." *Id.* ¶ 15.

Rohan Dayal is a relevant hardware manager in the NDCA, and team is in the NDCA and in New Zealand. *Id.* ¶ 8. However, he and his team no longer have relevance to this case because Scramoge dismissed the asserted patent that he relates to.

[5] Paragraph 10 of the Rollins Declaration cites back to paragraph 8 for the location of the Wireless Charging Technology Group. Paragraph 8 identifies the location of *Mr. Dayal's Apple Watch* team, not the location of the entire Wireless Charging Technology Group and not the location of Mr. Garbus's *iPhone* team.

Neil Shah in the NDCA supervises Alexander Pollard and has knowledge about the supply chain for the accused iPhone and AirPods for at least the same reasons argued by Scramoge. Dkt. No. 72 at 5-6. Jeremy Meyers's "entire team is located in NDCA including his managers and direct reports," not including Jeremy Meyers himself. Dkt. No. 72-1 at ¶ 8. Jeremy Meyers's teammates are relevant for the same reasons Jeremy Meyers is relevant.

In conclusion, Apple identifies two relevant technical witnesses (Ruben Larsson and Brandon Garbus), five non-technical witnesses (Mr. Rollins, Vitor Silva, Krista Grewal, Rohan Dayal, and Neil Shah), and four teams of unknown sizes (Mr. Rollins's team, Vitor Silva's team, Krista Grewal's team, and Jeremy Meyers's team) who will find it more convenient to travel to the NDCA for trial. Of these, the convenience of Neil Shah and the convenience of Jeremy Meyers's team in the NDCA counterbalance the convenience of Alexander Pollard and Jeremy Meyers in the WDTX. Without more information about the remaining three teams of unknown sizes, the Court assumes that each team is small and has mostly duplicative knowledge with a named representative member. Still, these teams weigh slightly in favor of transfer.

iii. Other witnesses identified by Scramoge

Scramoge identifies the following witnesses who have knowledge relevant to this case: Gerald Padian in New York, Ciaran O'Gara in Ireland, Aoife Butler in Ireland, Sean O'Sullivan in Ireland, Richard Tashjian in New York, Daniel Kim in Virginia, Michael Messinger in D.C., and Khaled Shami in D.C.

Scramoge argues that these witnesses near the east coast and in Ireland would find travel to the NDCA less convenient than to Texas under this Court's reasoning in *CPC Patent Techs. PTY Ltd. v. Apple Inc.*, No. 6:21-cv-00165, Dkt. No. 82 (W.D. Tex. Feb. 8, 2022). The Federal Circuit recently overruled this argument and found that that Apple's witnesses in Florida would

not find it more convenient to travel to Texas than to California despite Texas being halfway between Florida and California. *In re Apple Inc.*, No. 2022-128, 2022 WL 1196768, at *3 (Fed. Cir. Apr. 22, 2022). Under the same reasoning, the east coast witnesses and Ireland witnesses identified by Scramoge would find it equally inconvenient to travel to California as they would here.

iv. Conclusion

When applying the Federal Circuit's recent ruling, the Court finds Scramoge's eight witnesses on the east coast and in Ireland would be equally inconvenienced regardless of where they travel to. After balancing the remaining witnesses and teams identified Apple and Scramoge, the Court finds that this factor tilts slightly in favor of transfer.

d. All other practical problems that make trial of a case easy, expeditious, and inexpensive is neutral.

When considering the private interest factors, courts must consider "all other practical problems that make trial of a case easy, expeditious and inexpensive." *Volkswagen II*, 545 F.3d at 315. "Particularly, the existence of duplicative suits involving the same or similar issues may create practical difficulties that will weigh heavily in favor or against transfer." *PersonalWeb Techs., LLC v. NEC Corp. of Am., Inc.*, No. 6:11-cv-655, 2013 WL 9600333, at *5 (E.D. Tex. Mar. 21, 2013). "[W]here there is a co-pending litigation . . . involving the same patent-in-suit, . . . pertaining to the same underlying technology and accusing similar services, . . . the Federal Circuit cannot say the trial court clearly abuses its discretion in denying transfer." *In re Vistaprint Ltd.*, 628 F.3d at 1346 n.3. Judicial economy arising from multiple lawsuits filed on the same day in the same venue may be relevant, but such copending suits are not to be over-weighed if they are

also the subject of motions to transfer. *In re Atlassian Corp. PLC*, No. 2021-177, 2021 WL 5292268, at *4 (Fed. Cir. Nov. 15, 2021).

Here, the Court has two co-pending cases that involve the same patents and involve similar allegations of infringement of wireless charging technology. *Scramoge Tech. Ltd. v. Samsung Elecs. Co., Ltd.*, No. 6:21-cv-00454-ADA (W.D. Tex. Apr. 30, 2021) involves two overlapping patents. *Scramoge Tech. Ltd. v. Google LLC*, No. 6:21-cv-00616-ADA (W.D. Tex. June 15, 2021) involves three overlapping patents. The Court consolidated claim construction in these three cases. Accordingly, this factor weighs against transfer because keeping the case promotes judicial efficiency. However, the Court does not give this factor dispositive weight.

2. The public interest factors are neutral.

The Court finds the public interest factors neutral overall because the administrative difficulties that weigh against transfer cancel out the greater local interest of the NDCA. The parties agree the remaining two public interest factors are neutral.

a. Administrative difficulties flowing from Court congestion weigh against transfer.

This factor concerns "whether there is an appreciable difference in docket congestion between the two forums." *Parsons v. Chesapeake & Ohio Ry. Co.*, 375 U.S. 71, 73 (1963); *Parkervision, Inc. v. Intel Corp.*, No. 6:20-CV-00108, 2021 WL 401989, at *6 (W.D. Tex. Jan. 26, 2021). The Court considers the "speed with which a case can come to trial and be resolved." *In re Genentech, Inc.*, 566 F.3d at 1347. Additionally, court congestion is considered "the most speculative" factor, and when "relevant factors weigh in favor of transfer and others are neutral, then the speed of the transferee district court should not alone outweigh all those other factors." *Id.*

Apple argues that the time to trial is comparable—25.9 moths for NDCA versus 25.3 months for WDTX. Apple notes that this Court has more pending patent cases and speculates that the caseload will delay this Court's ability to hold trials. However, Apple relies on out-of-date statistics in an appellate decision from 2020, before the NDCA felt the full impact of halting trials due to COVID-19. More recent statistics show that the average time to trial in patent cases in the NDCA is now 45.2 months. *Billjco, LLC v. Apple Inc.*, No. 6:21-CV-00528-ADA, 2022 WL 607890, at *8 (W.D. Tex. Mar. 1, 2022). Apple speculates that this Court's larger patent caseload will delay this Court's ability to hold trials. Despite this Court's larger patent caseload, this Court has consistently reached trials faster than the NDCA by reaching trial in about two years from case filings. *See, e.g., MV3 Partners v. Roku,* 6-18-CV-00308 (W.D. Tex., filed Oct. 16, 2018) (23.7 months from case filing to trial); *CloudofChange, LLC*, No. 6-19-CV-00513 (W.D. Tex., filed August 30, 2019) (20.3 months from case filing to trial); *VLSI Tech. LLC v. Intel Corp.*, No. 6-21-CV-00057 (W.D. Tex., filed Apr. 11, 2019) (22.4 months from case filing to trial); *Freshub, Inc. et al v. Amazon.Com Inc.*, No. 6-21-CV-00511 (W.D. Tex., filed Jun. 24, 2019) (23.7 months from case filing to trial); *ESW Holdings, Inc. v. Roku, Inc*., No. 6-19-CV-00044 (W.D. Tex., filed Feb. 8, 2019) (25.9 months from case filing to trial); *Profectus v. Google*, 6-20-CV-00101 (W.D. Tex., filed Feb. 10, 2020) (19.6 months from case filing to trial); *Jiaxing Super Lighting v. CH Lighting Tech.*, 6-20-cv-00018 (W.D. Tex., filed Jan. 10, 2020) (21.7 months from case filing to trial); *VideoShare v. Google LLC*, 6-19-CV-663 (W.D. Tex., filed Nov. 15, 2019) (23.8 months from case filing to trial); *NCS Multistage v. Nine Energy*, No. 6-20-cv-277 (W.D. Tex., filed Mar. 24, 2020) (21.8 months from case filing to trial); *EcoFactor, Inc. v. Google LLC*, No. 6-20-cv-00075 (W.D. Tex., filed Jan. 31, 2020) (24 months from case filing to trial); *Densys Ltd. v. 3Shape Trio A/S*, 6-19-CV-00680 (W.D. Tex., filed Nov. 26, 2019) (28.3 months from case filing to trial);

Appliance Computing III, Inc. v. Redfin Corp., No. 6-20-cv-00376-ADA (W.D. Tex., filed May 11, 2020) (24 months from case filing to trial).

In conclusion, this factor disfavors transfer. The Court weighs this as a single factor that does not outweigh multiple other factors.

b. The local interest in having localized interests decided at home favors transfer.

Under this factor, the Court must evaluate whether there is a local interest in deciding local issues at home. *Volkswagen II*, 545 F.3d at 317. Local interests in patent case "are not a fiction." *In re Samsung Elecs. Co.*, Nos. 2021-139, 2021-140, 2021 U.S. App. LEXIS 19522, at *20 (Fed. Cir. June 30, 2021). "A local interest is demonstrated by a relevant factual connection between the events and the venue." *Word to Info, Inc. v. Facebook, Inc.*, No. 3:14-cv-04387-K, 2015 WL 13870507, at *4 (N.D. Tex. Jul. 23, 2015). Accordingly, "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). "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*, 979 F.3d at 1344 (quoting *In re Acer Am. Corp.*, 626 F.3d 1252, 1256 (Fed. Cir. 2010)) (emphasis in original). But courts should not heavily weigh a party's general contacts with a forum that are untethered from the lawsuit, such as a general presence in the district. *Id.* Moreover, "little or no weight should be accorded to a party's 'recent and ephemeral' presence in the transferor forum, such as by establishing an office in order to claim a presence in the district for purposes of litigation." *In re Juniper Networks, Inc.*, 14 F.4th 1313, 1320 (Fed. Cir. 2021) (quoting *In re Microsoft Corp.*, 630 F.3d 1361, 1365 (Fed. Cir. 2011)). To determine which district has the stronger local interest, the Court looks to where the events forming the basis for infringement occurred. *See* i*d*.

Apple argues that the NDCA has a local interest in this case because Apple is a California corporation, has its headquarters there. Apple argues that "all the Accused Products [were] designed, developed, tested, and marketed in and from Apple's Cupertino headquarters in the NDCA," and that nearly all the research, design, and development occurred in NDCA, with a small amount occurring in San Diego, California, and New Zealand. Dkt. No. 37 at 16.

Scramoge argues that Austin has a local interest because this District houses Apple's second largest U.S. campus with over 6,000 employees here. Scramoge argues that Apple's emphasis on the place where the Accused Products were designed is inconsistent with controlling Fifth Circuit precedent. The Fifth Circuit held that the site of the tort (a car accident) must be given appropriate consideration for this factor. *Volkswagen I*, 371 F.3d at 205. The tort in this case is patent infringement. The Federal Circuit addressed this argument. Judge Moore dissented that Apple committed to expanding up to 15,000 employees in Austin—more than the 8,000 in Cupertino—in addition to retail stores and its own hotel. *In re Apple*, 979 F.3d at 1351 ("The majority dismisses Apple's and its manufacturer's significant presence in the district. Neither this court nor the Fifth Circuit has held that an accused infringer's general presence in a district is irrelevant to the district's local interest in resolving the case."). The majority nonetheless held that Apple lacked a local interest in the WDTX due to "Apple's general contacts with the forum that are untethered to the lawsuit, such as Apple's general presence in WDTX." *Id.* at 1345 (Prost, C.J. and Hughes, J.). This Court cannot overrule the majority opinion of the Federal Circuit.

Scramoge then argues that Apple incorrectly suggested that the Accused Products were designed solely in the NDCA. Scramoge's opposition identifies several people outside of the disputed venues and further identifies Mr. Tolman and Mr. Hartnett as who engineers who developed the features of the accused products. The Court finds that Mr. Tolman and Mr. Harnett

reside in the WDTX and designed features of the accused products. But even so, more of Apple's engineers and their teams are in the NDCA. Thus, the NDCA's local interest outweighs the WDTX's local interest.

In conclusion, this factor favors transfer to NDCA and cancels out the faster time here in the WDTX.

c. Familiarity of the forum with the law that will govern the case is neutral.

The parties agree this factor is neutral.

d. Avoidance of unnecessary problems of conflict of laws or in the application of foreign law is neutral.

The parties agree this factor is neutral.

V. Conclusion

The Court resolves the challenge to the credibility of Mr. Mark Rollins by finding that he has little to no credibility as a declarant. The Court resolved factual disputes against Mr. Rollins whenever Scramoge presented any evidence that contradicted his statements.

The relative ease of access to sources of proof, the availability of compulsory process favor transfer, and the convenience of witnesses slightly favors transfer. The presence of copending cases weighs against transfer. The faster time to trial here cancels out the local interest of the NDCA. All other factors are neutral.

After weighing the four total factors favoring transfer against the two that favor keeping the case, the Court finds that Apple has met its burden to show that the NDCA is clearly more convenient.

The parties are reminded to meet and confer to provide a redacted version of this Order in accordance with the Court's Standing Order Regarding Filing Documents Under Seal. The parties are reminded not to redact public information, such as public information available on LinkedIn.

The Clerk of the Court is hereby ORDERED to transfer this case to the Northern District of California.

SIGNED this 25th day of May, 2022.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE