

1 George A. Riley (SB# 118304) – griley@omm.com
 Luann L. Simmons (SB# 203526) – lsimmons@omm.com
 2 Anne E. Huffsmith (SB# 236438) – ahuffsmith@omm.com
 O’MELVENY & MYERS LLP
 3 Two Embarcadero Center, 28th Floor
 San Francisco, California 94111
 4 Telephone: (415) 984-8700
 Facsimile: (415) 984-8701
 5

6 Attorneys for Defendants APPLE INC. and QUATTRO
 WIRELESS, INC.

7 Additional parties and counsel listed in the signature block

8 **UNITED STATES DISTRICT COURT**
 9 **SOUTHERN DISTRICT OF CALIFORNIA**

11 STREETSPLACE, INC., a Delaware
 12 Corporation,
 13 **Plaintiff,**
 14 **v.**
 15 GOOGLE INC., a Delaware Corporation,
 16 ADMOB, INC., a Delaware Corporation,
 17 APPLE INC., a California Corporation,
 18 QUATTRO WIRELESS, INC., a Delaware
 Corporation, NOKIA CORPORATION, a
 19 foreign corporation, NOKIA INC., a
 20 Delaware Corporation, NAVTEQ
 CORPORATION, a Delaware Corporation,
 21 MILLENIAL MEDIA, INC., a Delaware
 Corporation, JUMPTAP, INC., a Delaware
 Corporation, and DOES 1 through 20,
 22 inclusive,
 23 **Defendants.**

Case No. 10-CV-1757 (LAB)

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 MOTION TO TRANSFER VENUE TO
 THE NORTHERN DISTRICT OF
 CALIFORNIA**

Judge: Hon. Larry A. Burns
 Hearing Date: March 14, 2010
 Time: 11:15 AM
 Courtroom: 9, 2nd Floor
 Action Filed: August 23, 2010

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1 **I. INTRODUCTION**

2 None of the named parties to this action—neither Plaintiff nor any of the Defendants—are
3 headquartered in or have any material connection to the Southern District of California. None of
4 the potential witnesses are located in the Southern District of California, nor is any of the
5 foreseeable evidence. Plaintiff, a Malaysia resident, appears to have brought this case in the
6 Southern District of California solely to convenience its attorneys whose offices are located in
7 San Diego (a fact that is wholly irrelevant to determining the proper forum in which to litigate
8 this case). The Southern District of California has no connection to the patent dispute underlying
9 this action aside from the fact that the Defendants’ accused products and services are available via
10 the Internet here—just as they are in every other judicial district in the country.

11 By contrast, the Northern District of California has a strong connection to this dispute.
12 Five of the nine named Defendants are headquartered or have offices in the Northern District of
13 California. Four of these Defendants design and develop their allegedly infringing services in the
14 Northern District of California, and all of their relevant documents and witnesses are located in
15 the Northern District of California. Defendants have also identified several non-party witnesses
16 who reside in the Northern District of California, beyond the subpoena power of this Court.
17 Transfer to the Northern District of California would significantly increase the convenience for
18 the majority of the witnesses and decrease the total cost to the parties related to witness
19 attendance at trial. For these reasons and the reasons stated below, this Court should transfer this
20 action to the Northern District of California.

21 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

22 On August 23, 2010, Streetspace, Inc. (“Streetspace”) filed its complaint initiating this
23 action. Streetspace alleges that the nine named Defendants infringe U.S. Patent No. 6,847,969
24 (the “’969 patent”) by:

25 making, using, selling, importing and/or offering for sale (among other things) a
26 method and/or system for providing personalized and/or targeted online
27 advertising services based on location, users’ profiles and/or usage history . . .
28 and/or by making, using, selling, importing and/or offering for sale (among other
things) . . . terminals and other products and/or services that deliver or are capable
of delivering targeted and/or personalized online advertising services based on
location, users’ profiles and/or usage history

1 This litigation is still in its very early stages. On January 18, 2011, all of the Defendants
2 filed their first response to Streetspace’s Complaint—a motion to dismiss or, in the alternative,
3 for more definite statement.¹ (D.E. 21.) The Court has not set an initial scheduling conference or
4 issued a scheduling order. Accordingly, transfer to the Northern District of California would
5 cause very little, if any, disruption or delay to the litigation.

6 And such transfer is appropriate because none of the named parties in this action have any
7 material connection to the Southern District of California.

8 **Streetspace**

9 Streetspace is headquartered in Malaysia. (Compl. ¶ 2.) Based on the allegations in its
10 Complaint, Streetspace does not now have, nor has it ever had, any ties to the Southern District of
11 California. Defendants are unaware of any Streetspace employees or potential witnesses who
12 reside in the Southern District of California.²

13 **Apple and Quattro**

14 Apple Inc. (“Apple”) is a California company headquartered in Cupertino, California,
15 which is in the Northern District of California. (Apple/Quattro Decl. ¶ 2.) In January 2010,
16 Apple acquired Defendant Quattro Wireless, Inc. (“Quattro”), a mobile advertising company. (*Id.*
17 ¶ 4.) Following the acquisition, all of Quattro’s operations, including its employees and records,
18 were moved to Apple’s headquarters in Cupertino. (*Id.*) In July 2010, Apple announced the
19 launch of its iAd Network, a mobile advertising platform developed by Apple and Quattro. (*Id.*
20 ¶ 5.) The following month, August 2010, Apple announced that it would be shutting down
21 Quattro’s advertising network as of September 2010 to focus exclusively on the iAd Network.
22 (*Id.* ¶ 4.)

23 Streetspace alleges that Apple and Quattro infringe the ‘969 Patent by using and providing
24 the iAd Network. (Compl. ¶¶ 58-59, 65-66.) All research, design and development for the iAd

25 ¹ As set forth in this motion, Defendants believe that the Court should transfer this case to the Northern District of
26 California. If, however, the Court declines to transfer the case, Defendants request that the Court dismiss
Streetspace’s complaint for the reasons set forth in the Defendants’ joint motion to dismiss.

27 ² Trevor Coddington, counsel for Streetspace, assisted in the prosecution of the ‘969 patent as a patent agent. To the
28 extent he may be called to testify at trial in his capacity as a prosecuting agent, he will not be inconvenienced as he
will already be present in his capacity as trial counsel.

1 Network takes place in Cupertino, and virtually all of the documents and records relating to the
2 research, design and development of the iAd Network are located in Cupertino. (Apple/Quattro
3 Decl. ¶ 7.) All marketing, sales, and pricing decisions relating to the iAd Network are made by
4 individuals located in Cupertino. (*Id.* ¶ 8.) And every foreseeable Apple/Quattro witness
5 regarding the iAd Network resides in or near Cupertino. (*Id.* ¶¶ 7-8.)

6 Apple's only business connection to the Southern District of California is that 5 of its 220
7 nationwide retail stores are located in this district. (*Id.* ¶ 10.) Other than these retail stores that
8 are not implicated by Streetspace's infringement allegations,³ Apple does not maintain any
9 facilities, employees, or documents in the Southern District of California. (*Id.* ¶ 11.) Quattro has
10 no facilities of any kind in the Southern District of California. (*Id.* ¶ 12.) Cupertino, California,
11 located in the Northern District of California, is the home to the vast majority of Apple/Quattro's
12 relevant research and development operations and employees. (*Id.* ¶ 6.)

13 **Google and AdMob**

14 Google Inc. ("Google") is headquartered in Mountain View, California, in the Northern
15 District of California. (Google/AdMob Decl. ¶ 2.) In April 2010, Google acquired AdMob, Inc.
16 ("AdMob"), a mobile advertising company, then based in San Mateo, California (in the Northern
17 District of California). (*Id.* ¶ 4.) Following the acquisition, all of AdMob's operations, including
18 its employees and records, were consolidated with Google's operations. (*Id.*) AdMob employees
19 and records from its San Mateo headquarters were relocated to Google's headquarters in
20 Mountain View. (*Id.*)

21 Streetspace alleges that the following Google/AdMob products infringe the '969 Patent:
22 AdWords, AdSense, Google Mobile Ads, and Android. (Compl. ¶ 44.) The majority of the
23 development work for all of these services took place in the Northern District of California (in
24 either San Mateo or Mountain View). (Google/AdMob Decl. ¶ 5.) Nearly all relevant party
25 witnesses, documents, and things are located in Mountain View, California. (*Id.*) Neither Google
26

27 ³ The accused Apple/Quattro product, the iAd Network, is an advertising service that delivers advertising over the
28 Internet to users' handheld devices. (Apple/Quattro Decl. ¶ 5.) Users can purchase their handheld devices at Apple's
retail stores, but the retail stores otherwise have nothing whatsoever to do with the iAd Network. (*Id.* Decl. ¶ 10.)

1 nor AdMob has any office or other corporate presence in the Southern District of California. (*Id.*
2 ¶¶ 6-7.) The information contained in Google’s and AdMob’s relevant documents is highly
3 proprietary and exposing them to a confidentiality breach by shipping them outside of the
4 Northern District of California would impose hardship on Google and AdMob. (*Id.* ¶ 8.)

5 **Millennial Media**

6 Millennial Media, Inc. (“Millennial”) is headquartered in Baltimore, Maryland, and has an
7 office in San Francisco, California. (Millennial Decl. ¶ 2.) Streetspace alleges that Millennial
8 infringes the ‘969 Patent by offering “a method and/or system for providing personalized and/or
9 targeted online advertising services based on location, users’ profiles and/or usage history.”
10 (Compl. ¶ 93.) Millennial’s mobile advertising services are all developed in Baltimore and San
11 Francisco, and nearly all of Millennial’s relevant party witnesses reside in or near Baltimore or
12 San Francisco. (Millennial Decl. ¶ 5.) Virtually all of the documents and records relating to the
13 research, design and development are located in Baltimore. (*Id.*) Millennial has no facilities of
14 any kind in the Southern District of California. (*Id.* ¶ 7.) Millennial affirms that litigation in the
15 Northern District of California would be more convenient for it than litigation in the Southern
16 District of California. (*Id.* ¶ 9.)

17 **Jumtap**

18 JumpTap, Inc. (“Jumtap”) is a Delaware corporation headquartered in Cambridge,
19 Massachusetts. (Jumtap Decl. ¶ 2.) Jumtap’s sales headquarters are in New York, New York,
20 and it has a development office in Tel Aviv, Israel. (Jumtap Decl. ¶ 2.) Streetspace’s Complaint
21 does not specify or identify any particular Jumtap product or service accused of infringement,
22 but merely accuses Jumtap of infringing the ‘969 Patent by providing “a method and/or system
23 for providing personalized and/or targeted online advertising services based on location, users’
24 profiles and/or usage history.” (Compl. ¶ 100.) The research, design and development for
25 Jumtap’s products and services takes place primarily in Cambridge, Massachusetts, and virtually
26 all of the documents and records relating to the research, design and development of those
27 products and services are located in Cambridge, Massachusetts. (Jumtap Decl. ¶ 5.) All of the
28 current Jumtap employees who have responsibilities for the design and development of

1 Jumptap’s products and services reside in or near Cambridge, Massachusetts or Tel Aviv, Israel.
2 (Jumptap Decl. ¶ 5.) In addition, virtually all Jumptap business records relating to sales, pricing
3 and revenue are located in Cambridge or New York, and most of the employees who have
4 responsibilities relating to Jumptap sales reside in or near Cambridge or New York. (Jumptap
5 Decl. ¶ 6.)

6 Jumptap does not maintain any facilities, employees, or documents in the Southern
7 District of California, and Jumptap is not aware of any witnesses with relevant information who
8 reside in the Southern District of California. (Jumptap Decl. ¶¶ 8-9.) Jumptap has two employees
9 working in the Northern District of California. (Jumptap Decl. ¶ 7.) One employee is a Director
10 of Business Development and the other is a Director of Ad Sales. (Jumptap Decl. ¶ 7.) Jumptap
11 affirms that litigation in the Southern District of California is not more convenient for Jumptap
12 than litigation in the Northern District of California. (Jumptap Decl. ¶ 10.)

13 **Nokia and Navteq**

14 Nokia Corporation and Nokia Inc., a wholly-owned subsidiary of Nokia Corporation,
15 (collectively “Nokia”) are headquartered in Espo, Finland and White Plains, New York,
16 respectively, and Navteq Corporation (“Navteq”), also a wholly-owned subsidiary of Nokia
17 Corporation, is headquartered in Chicago, Illinois. All three Nokia entities support this motion to
18 transfer this case under these facts to the Northern District of California.

19 **III. ARGUMENT**

20 **A. Legal Standard Under 28 U.S.C. § 1404(a)**

21 Under 28 U.S.C. § 1404, a district court “for the convenience of parties and witnesses, in
22 the interest of justice, . . . may transfer any civil action to any other district or division where it
23 might have been brought.” 28 U.S.C. § 1404(a). This statute “is intended to place discretion in
24 the district court to adjudicate motions for transfer according to an ‘individualized, case-by-case
25 consideration of convenience and fairness.’” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29
26 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)). Defendants, as the moving
27 parties, bear the burden of showing that transfer is warranted. *Commodity Futures Trading*
28 *Comm’n v. Savage*, 611 F.2d 270, 279 (9th Cir.1979). Under Ninth Circuit law, this Court should

1 transfer this case to the Northern District of California, a clearly more convenient forum.

2 **B. Streetspace Could Have Brought This Case in the Northern District of**
3 **California**

4 The threshold determination courts in the Ninth Circuit must make is whether the action
5 could have been brought in the proposed transferee court, *i.e.*, whether the proposed transferee
6 court possesses subject matter jurisdiction over the action, possesses personal jurisdiction over the
7 defendants, and constitutes a proper venue. *A.J. Indus. Inc. v. United States Dist. Ct. for the Cent.*
8 *Dist. of Cal.*, 503 F.2d 384, 386 (9th Cir. 1974); *Callaway Golf Co. v. Corporate Trade Inc.*,
9 No. 09-cv-384, 2010 WL 743829, at *5 (S.D. Cal. Mar. 1, 2010).

10 It is undisputable that under Ninth Circuit law, Streetspace could have filed this action in
11 the Northern District of California. First, the Northern District of California has subject matter
12 jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1338(a). Second, all Defendants
13 are subject to personal jurisdiction in the Northern District of California because they are
14 residents of California, they conduct business in California and/or their allegedly-infringing
15 activities took place in California. *See Silent Drive, Inc. v. Strong Indus., Inc.*, 326 F.3d 1194,
16 1200 (Fed.Cir.2003); Compl. ¶¶ 30-38; Apple/Quattro Decl. ¶¶ 2, 4; Google/AdMob Decl. ¶¶ 2,
17 4. Third, venue is proper in the Northern District of California. Pursuant to 28 U.S.C. § 1400(b),
18 patent infringement actions may be brought in any district “where the defendant resides,” and 28
19 U.S.C. § 1391(c) states that, for purposes of venue, a corporate defendant resides “in any judicial
20 district in which it is subject to personal jurisdiction at the time the action is commenced.”

21 **C. Each of the § 1404(a) Factors Weighs Strongly in Favor of Transferring This**
22 **Case to the Northern District of California**

23 Ninth Circuit courts then consider whether transfer will serve the convenience of the
24 parties and the interests of justice by weighing several factors including: (1) the plaintiff’s choice
25 of forum, (2) the respective parties’ contacts with the forum, (3) the contacts relating to the
26 plaintiff’s cause of action in the chosen forum, (4) the differences in the costs of litigation in the
27 two forums, (5) the availability of compulsory process to compel attendance of unwilling non-
28 party witnesses, and (6) the ease of access to sources of proof. *Jones v. GNC Franchising, Inc.*,

1 211 F.3d 495, 498-99 (9th Cir. 2000). An analysis of each of these factors supports the requested
2 transfer.

3 **1. Streetspace’s choice of forum is entitled to little or no weight.**

4 Although courts in the Ninth Circuit generally give some deference to a plaintiff’s choice
5 of forum, that deference is “*significantly diminished*” when plaintiff initiates an action in a state in
6 which he or she is not a resident.” *Panetta v. SAP America, Inc.*, No. C0501696RMW, 2005 WL
7 1774327, at *5 (N.D. Cal. July 26, 2005) (citing *Pac. Car & Foundry Co. v. Spence*, 403 F.2d
8 949, 954 (9th Cir. 1968)) (emphasis added). Similarly, courts give the plaintiff’s choice of forum
9 “*considerably less weight*” when “the transactions giving rise to the action lack a significant
10 connection to the plaintiff’s chosen forum.” *Callaway Golf Co.*, 2010 WL 743829 at *5 (citing
11 *Pac. Car*, 403 F.2d at 954; William W. Schwarzer, et al., California Practice Guide: Federal Civil
12 Procedure Before Trial § 4:731 at 4-86 (The Rutter Group 2009)) (emphasis added). Here,
13 Streetspace is not a resident of the Southern District of California, nor are any of the Defendants.
14 None of the foreseeable witnesses reside in this district, and none of the Defendants’ allegedly
15 infringing activities have any material connection with this district. Thus, this Court should give
16 no weight to Streetspace’s choice of forum.

17 **2. The respective parties’ contacts with the forum weigh in favor of**
18 **transfer.**

19 None of parties in this action have any material contacts with the Southern District of
20 California. Streetspace is not headquartered in the Southern District of California and does not
21 appear to have any facilities, witnesses or documents in this district. (Compl. ¶ 2.) None of the
22 Defendants have their headquarters or any relevant facilities, witnesses or documents in the
23 Southern District of California. (Apple/Quattro Decl. ¶¶ 11-12; Google/AdMob Decl. ¶¶ 2, 4-7;
24 Millennial Decl. ¶ 2; Jumptap Decl. ¶ 8.) In fact, it appears that the sole basis for bringing this
25 action in the Southern District of California is that Streetspace’s attorneys are located in San
26 Diego. It is well-established law, however, that “the location of plaintiff’s counsel is immaterial
27 to a determination of the convenience and justice of a particular forum.” *Panetta*, 2005 WL
28 177432, at *5 (citing *Soloman v. Cont. Amer.*, 472 F .2d 1043, 1047 (3d Cir. 1973) (“The

1 convenience of counsel is not a factor to be considered.”); *In re Horseshoe Ent.*, 305 F.3d 354,
2 358 (5th Cir. 2002) (The factor of “location of counsel” is irrelevant and improper for
3 consideration in determining the question of transfer of venue.”); *Peacock v. Willis*, No. CV F 06-
4 432 AWI LJO, 2006 WL 3060134, at *12 (E.D. Cal. Oct. 27, 2006) (citing *In re Volkswagen AG*,
5 371 F.3d 201, 206 (5th Cir. 2004)) (“In the context of a 28 U.S.C. § 1404 motion, the location of
6 a party’s attorney is generally not considered.”)

7 The parties’ respective contacts with the requested forum, the Northern District of
8 California, are significant. Of the nine named Defendants, four are headquartered in the Northern
9 District of California (Apple, Quattro, Google and AdMob), and one (Millennial) has an office in
10 the Northern District. (Apple/Quattro Decl. ¶¶ 2, 4; Google/AdMob Decl. ¶¶ 2, 4; Millennial
11 Decl. ¶ 2.) These parties, therefore, conduct significant business in and have substantial contacts
12 with the Northern District of California. (*Id.*) The remaining Defendants are all headquartered
13 outside of California, and their contacts with the Northern District of California are at least
14 equally as significant as their contacts with the Southern District. (Jumtap Decl. ¶ 2.) Litigating
15 this action in the Northern District of California, therefore, would be substantially more
16 convenient for Apple, Quattro, Google, AdMob, and Millennial, and would be equally as
17 convenient for the remaining Defendants. (Apple/Quattro Decl. ¶¶ 7-9; Google/AdMob Decl.
18 ¶¶ 2, 4; Millennial Decl. ¶ 9; Jumtap Decl. ¶ 10.)

19 Moreover, to the extent that Streetspace has had any commercial dealings in the United
20 States, Streetspace admitted that the majority of such dealings occurred in the Northern District of
21 California—“Streetspace deployed a network of terminals throughout Berkeley, California
22 Streetspace continued to grow its user base throughout California from San Francisco to San
23 Jose.” (Compl. ¶ 4.) Streetspace has made no such allegation with respect to the Southern
24 District of California. (*See* Compl.)

25 The parties’ substantial contacts with the Northern District of California and complete
26 lack of any relevant contacts with the Southern District of California weigh heavily in favor of
27 transfer.

28

1 **3. The contacts relating to the Plaintiff’s cause of action in the chosen**
2 **forum weigh in favor of transfer.**

3 Streetspace’s infringement claims similarly have no material contacts with the Southern
4 District of California. “The law asks us, here, to identify the principal location of the legally
5 operative facts—and in patent cases that location generally is *where the allegedly infringing*
6 *product was designed, developed and produced.*” *Arete Power, Inc. v. Beacon Power Corp.*,
7 No. C 07-5167 WDB, 2008 WL 508477, at *5 (N.D. Cal. Feb. 22, 2008) (citing *Neil Bros.*
8 *Limited v. World Wide Lines, Inc.*, 425 F.Supp.2d 325, 327-28 (E.D.N.Y. 2006)) (emphasis
9 added). “This makes sense because in determining whether infringement has been established,
10 the principal target of inquiry is the design and construction of the accused product.” *Arete*
11 *Power, Inc.*, 2008 WL 508477 at *5.

12 Streetspace alleges only that Defendants have provided their allegedly infringing products
13 and services to customers in this district (Compl. ¶ 39), but at least one court in the Southern
14 District of California has stated that “this showing is insufficient to establish that this forum ‘has
15 a particular interest in the parties or the subject matter’.” *Multimedia Patent Trust*, 2009 WL
16 3805302 at *5. In *Multimedia Patent Trust*, the court weighed the relationship between the forum
17 and the plaintiff’s claims, in particular considering evidence presented by plaintiff that
18 “[defendant] ha[d] provided its allegedly infringing technology to customers in California,
19 including the City of San Diego and San Diego State University.” *Id.* The Court found this
20 showing “insufficient” and deemed this factor “neutral at best.” *Id.*

21 The contacts between Streetspace’s claims and the Northern District of California, by
22 contrast, are significant. Apple, Quattro, Google and AdMob all design, develop, and produce
23 their allegedly infringing technology—iAd Network, AdWords, AdSense, Google Mobile Ads,
24 and Android—in the Northern District of California. (Apple/Quattro Decl. ¶ 7; Google/AdMob
25 Decl. ¶¶ 4-5.) And Millennial develops its allegedly infringing technology in part in the Northern
26 District. (Millennial Decl. ¶¶ 2, 5.) The Northern District of California is, thus, the most
27 appropriate forum in which to explore the “evolution, construction and operation [of these
28 technologies] with the requisite detail and reliability.” *Arete Power, Inc.*, 2008 WL 508477 at *5.

1 And the remaining Defendants are all based outside of both the Southern and Northern Districts
2 of California and have confirmed that the Northern District of California would be a more
3 convenient forum based on the facts of this case.

4 The third factor, therefore, weights heavily in favor of transfer.

5 **4. The convenience of the witnesses and availability of compulsory**
6 **process to compel attendance of unwilling non-party witnesses weigh**
7 **in favor of transfer.**

8 Because none of the foreseeable witnesses are located in the Southern District of
9 California and a significant number are located in the Northern District, the fourth factor also
10 supports transfer. “The convenience of the witnesses—especially third party witnesses—is very
11 important to any analysis of the Section 1404 convenience factors.” *Multimedia Patent Trust*,
12 2009 WL 3805302 at *4.

13 **a. The Northern District of California is more convenient for**
14 **party witnesses.**

15 Many of the relevant party witnesses are located in the Northern District of California:

- 16 • Apple has approximately 8,200 employees, including the employees from Quattro
17 who moved to Apple after the acquisition, who work in its headquarters in Cupertino.
18 (Apple/Quattro Decl. ¶ 6.) All of the Apple employees who have responsibilities for
19 the design and development of the accused Apple/Quattro product, the iAd Network,
20 are in Cupertino. (*Id.* ¶ 7.) These witnesses will provide testimony relevant to
21 Streetspace’s infringement allegations against Apple and Quattro. Similarly, all of the
22 Apple employees who have responsibilities relating to iAd Network marketing and
23 sales are also in Cupertino. (*Id.* ¶ 8.) These witnesses will provide testimony relevant
24 to Streetspace’s allegations of damages caused by Apple and Quattro.
- 25 • Google has nearly 10,000 employees, including the employees from AdMob who
26 moved to Google after the acquisition, who work in its headquarters in Mountain
27 View. (Google/AdMob Decl. ¶¶ 3-4.) All of the Google and AdMob employees who
28 have responsibilities for the design and development of the accused Google/AdMob
products, AdWords, AdSense, Google Mobile Ads, and Android, are in Mountain

1 View. (*Id.* ¶¶ 4-5.) These witnesses will provide testimony relevant to Streetspace’s
2 infringement allegations Google and AdMob.

3 Without the requested transfer, all of these witnesses would be inconvenienced by having to
4 travel approximately 470 miles to San Diego for trial.

5 Most, if not all, of the party witnesses for the remaining Defendants are expected to be
6 coming from Massachusetts, Maryland, Illinois, New York, Finland, and Israel. Because both the
7 Southern and Northern Districts of California are roughly the same distances from these
8 locations, none of these additional party witnesses will have to travel any further or experience
9 any additional inconvenience if the Court transfers this case.

10 Similarly, Streetspace’s party witnesses will apparently be travelling to California from
11 Malaysia, where Streetspace is located. The flying time from Kuala Lumpur International
12 Airport, in Malaysia, to San Francisco is approximately 15 hours and 16 minutes, whereas the
13 flying time to San Diego is approximately 16 hours and 3 minutes. (Huffsmith Decl., Ex. A.)
14 The Northern District of California is, therefore, apparently a more convenient forum for party
15 witnesses coming from Streetspace’s headquarters. Thus, the overall balance of convenience for
16 all party witnesses weighs heavily in favor of transfer to the Northern District of California.

17 **b. The Northern District of California is more convenient for non-**
18 **party witnesses.**

19 The Northern District of California also appears to be more convenient for potential non-
20 party witnesses. At this early stage in the litigation, Defendants have identified several potential
21 non-party witnesses who are located within the Northern District of California and no non-party
22 witnesses who are located in the Southern District of California.

23 In its Complaint, Streetspace alleges that it implemented its alleged invention in its “Street
24 Linc” terminals “throughout Berkeley, California in various bookstores, retail stores, cafes and
25 restaurants . . . [and] [t]hroughout California from San Francisco to San Jose.” (Compl. ¶ 4; *see*
26 *also* Huffsmith Declaration, Exs. B & C.) This early implementation of Streetspace’s alleged
27 invention is relevant to Defendants’ argument that the ’969 Patent is invalid based on prior public
28 use. *See* 35 U.S.C. § 102(b) (“A person shall be entitled to a patent unless . . . the invention was

1 . . . in public use . . . in this country, more than one year prior to the date of the application for
2 patent in the United States”); *MySpace, Inc. v. Graphon Corp.*, Nos. C-10-0604 EDL, C-10-1156
3 EDL, 2010 WL 4916429, at *20 (N.D.Cal. Nov. 23, 2010) (“[A] claim limitation can be
4 invalidated by a single public use.”) (citing *Coffin v. Ogden*, 85 U.S. 120, 124-25 (1873); *Eolas*
5 *Techs, Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1334 (Fed. Cir. 2005) (finding that a single prior
6 use invalidates both system and method claims)).

7 In support of this defense, Defendants will seek testimony from non-party witnesses with
8 information about Streetspace’s “Street Linc” implementation. Specifically, Defendants have
9 identified the following companies who were involved in this implementation and are, therefore,
10 likely to have information relevant to this case:

- 11 • Amoeba Music—located in Berkeley, California
- 12 • Bear’s Lair—located in Berkeley, California
- 13 • Royal Grounds Café—located in Berkeley, California
- 14 • Smart Alec’s Restaurant—located in Berkeley, California

15 (Huffsmith Declaration, Exs. B & C.)

16 All of these witnesses are outside the scope of this Court’s subpoena power but could be
17 compelled to testify in the Northern District of California.⁴ The Northern District of California
18 would also be a substantially more convenient destination for them if they were compelled to
19 testify at trial.

20 A consideration of the convenience of both party and non-party witnesses, thus, strongly
21 supports transfer to the Northern District of California.

22 **5. The ease of access to other sources of proof weighs in favor of transfer.**

23 None of the sources of proof relevant to this action are located in the Southern District of
24 California. Given that Streetspace is headquartered in Malaysia and has no facilities in the United
25 States, much less the Southern District of California, it appears that none of Streetspace’s sources
26

27
28 ⁴ The Court’s subpoena power extends to anywhere “within the district” and “within 100 miles of the place specified for the deposition, hearing, trial, production, or inspection.” Fed. R. Civ. P. 45(b)(2).

1 of proof are located in this district.⁵ And, as discussed above, none of the Defendants' sources of
2 proof are located in this district.

3 All of Apple's, Quattro's, Google's and Admob's relevant documents and things, on the
4 other hand, are located in the Northern District of California. The ease of access to these
5 resources will be greatly increased by transfer to the Northern District of California. And the
6 remaining Defendants' sources of proof are equally as accessible in the Northern District as in the
7 Southern District of California. This factor, thus, supports transfer.

8 **6. The differences in the costs of litigation in the two forums weigh in**
9 **favor of transfer.**

10 Transfer to the Northern District of California will substantially reduce the cost of
11 litigation for Apple, Quattro, Google, and Apple. These four Defendants will not have to bear the
12 financial burden of transporting party witnesses and relevant documents and things to San Diego
13 for hearings and the trial. And because the remaining Defendants are located an equal distance
14 from the Northern and Southern District of California, transfer will not increase their cost of
15 litigation. Additionally, Streetspace has no witnesses, documents or things in the Southern
16 District of California. To the extent its litigation costs are increased by transfer, it will be due to
17 attorney travel alone. And plaintiff's choice of attorney is irrelevant to the transfer inquiry. *See*
18 *Panetta*, 2005 WL 1774327 at *5; *In re Horseshoe Ent.*, 305 F.3d at 358; *Peacock*, 2006 WL
19 3060134 at *12. Thus, the final factor also strongly favors transfer.

20 **IV. CONCLUSION**

21 The case has significant connections to the Northern District of California and no
22 connections with the Southern District of California. Thus, for the convenience of the parties and
23 witnesses and in the interests of justice, this Court should transfer of this action to the Northern
24 District of California.

25
26
27 ⁵ Streetspace may argue that it has given all of its relevant documents to its lawyers, who are located in the Southern
28 District of California. Even if this is the case, as discussed above, the location of the attorneys is not relevant to the
determination of the most appropriate forum in which to litigate this case.

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By: /s/ Luann L. Simmons
George A. Riley (SB# 118304)
griley@omm.com
Luann L. Simmons (SB# 203526)
lsimmons@omm.com
Anne E. Huffsmith (SB# 236438)
ahuffsmith@omm.com
O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
San Francisco, California 94111
Telephone: (415) 984-8700
Facsimile: (415) 984-8701

Attorneys for Defendants APPLE INC. and
QUATTRO WIRELESS, INC.

9 /s/ John S. Kyle
John S. Kyle (CA 199196)
jkyle@cooley.com
4401 Eastgate Mall
San Diego, California 92121
Telephone: (858) 550-6000
Facsimile: (858) 550-6420

13 Frank V. Pietrantonio
fpietrantonio@cooley.com
14 Christopher C. Campbell
ccampbell@cooley.com
15 One Freedom Square
11951 Freedom Drive
16 Reston, VA 20190-5656
Telephone: (703) 456-8000
17 Facsimile: (703) 456-8100

18 Attorneys for Defendant
MILLENNIAL MEDIA, INC.

19 /s/ Shawn E. McDonald
20 Foley & Lardner LLP
MATTHEW B. LOWRIE (Pro Hac Vice)
mlowrie@foley.com
21 111 Huntington Avenue, Suite 2600
22 Boston, MA 02119-7610
Telephone: 617.342.4000
23 Facsimile: 617.342.4001

24 Foley & Lardner LLP
25 SHAWN E. MCDONALD (CSB NO. 237580)
semcdonald@foley.com
26 JUSTIN E. GRAY (Pro Hac Vice)
jegray@foley.com
3579 Valley Centre Drive, Suite 300
27 San Diego, CA 92130
Telephone: 858.847.6700
28 Facsimile: 858.792.6773

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/s/ Kurt M. Kjelland
Kurt M. Kjelland
KKjelland@goodwinprocter.com
GOODWIN PROCTER LLP
4365 Executive Drive
Third Floor
San Diego, CA 92121
(858) 202-2728
Fax: (858) 457-1255

Attorney for Defendant JUMPTAP, INC.

/s/ David Heskell Ben-Meir
David Heskell Ben-Meir
david.ben-meir@alston.com
ALSTON & BIRD LLP
333 South Hope Street, 16th Floor
Los Angeles, CA 90071
(213) 576-1133
Fax: (213) 576-1100

Attorney for Defendants NOKIA, INC.,
NOKIA CORPORATION, and NAVTEQ, INC.