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 13 STREETSPACE, INC.

14 UNITED STATES DISTRICT COURT
 15 SOUTHERN DISTRICT OF CALIFORNIA

16 STREETSPACE, INC., a Delaware
 17 corporation,

18 Plaintiff,

19 vs.

20 GOOGLE INC., a Delaware corporation;
 21 ADMOB, INC., a Delaware corporation;
 22 APPLE INC., a California corporation;
 23 QUATTRO WIRELESS, INC., a Delaware
 24 corporation; NOKIA CORPORATION, a
 25 foreign corporation; NOKIA INC., a
 26 Delaware corporation; NAVTEQ
 27 CORPORATION, a Delaware corporation;
 28 MILLENNIAL MEDIA, INC., a Delaware
 corporation; JUMPTAP, INC., a Delaware
 corporation; and DOES 1 through 20,
 inclusive,

Defendants.

CASE NO. 10-CV-1757-LAB-AJB

**MEMORANDUM IN OPPOSITION TO
 DEFENDANTS' MOTION TO
 TRANSFER VENUE**

Date: March 14, 2011
 Time: 11:15 a.m.
 Judge: Hon. Larry A. Burns
 Ctrm: 9

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1 Plaintiff Streetspace, Inc. (“Streetspace”) respectfully submits the following memorandum
2 of points and authorities in opposition to the motion by Defendants Google, Inc., Admob, Inc.,
3 Apple, Inc., Quattro Wireless, Inc., Nokia Corporation, Nokia, Inc., Navteq Corporation,
4 Millennial Media, Inc. and Jumtap, Inc. (collectively, “Defendants”) to transfer this case to the
5 Northern District of California under 28 U.S.C. § 1404.

6 **I. INTRODUCTION**

7 Defendants argue that because Streetspace is a foreign plaintiff, its choice of forum is
8 entitled to no weight, and that this Court should transfer this action to the Northern District of
9 California because that is where all of Google and Apple’s witnesses and documents are located.
10 In an age when documents are produced electronically in an instant, Defendants’ time-worn
11 argument is misguided. While Streetspace does not dispute that certain witnesses with relevant
12 testimony live in the Northern District of California, Streetspace filed suit here not only because
13 its preferred counsel is located here, but also because Defendants’ accused products and services
14 are widely available throughout the country, including in this District, and because Streetspace’s
15 claims arise at least in part out of Defendants’ connections with this District.

16 Specifically, Streetspace alleges that Defendants infringe directly and indirectly by
17 (among other things) making and selling methods and systems for providing personalized and/or
18 targeted advertising services to consumers (such as smartphone owners and computer users)
19 based on their user profiles, location, and/or usage history. Targeted advertising is a method of
20 advertising whereby an advertisement is selected for display on a smartphone or other terminal
21 based on a consumer’s user profile, location, and/or terminal usage history. As the 8th largest city
22 in the country, San Diego is home to millions of consumers who receive infringing targeted
23 advertisements supplied or delivered by the Defendants. This District, therefore, has at least as
24 much of an interest in this lawsuit as any other.

25 Indeed, Google’s accused devices such as Google’s G1 and Nexus 1 smartphones are
26 widely available throughout San Diego from AT&T, Sprint, T-Mobile, and Verizon Wireless,
27 which operate dozens of stores in San Diego. By Apple’s own admission, Apple operates 5 retail
28 stores in San Diego. Defs’ Mem. at 3. In fact, Apple recently *joined* in a motion to transfer a

1 patent infringement case from the Eastern District of Virginia *to the Southern District of*
2 *California*. Declaration of James V. Fazio (“Fazio Decl.”), Ex. A [Defendants’ Joint Motion to
3 Transfer Venue Pursuant to 28 U.S.C. §1404(a) to the U.S. District Court for the Southern
4 District of California at 1]. Clearly, then, this District is not too inconvenient for Google and
5 Apple.

6 As for the Nokia Defendants, Nokia Inc. recently stated in a declaration filed under oath in
7 another case that it “*Nokia’s largest California facility is in San Diego, where it employs over*
8 *600 people.*” *Id.*, Ex. B [Declaration of Jari Niemela in support of Motion to Transfer Venue
9 Pursuant to 28 U.S.C. 1404(a) by Defendant Nokia Inc., ¶ 5 (emphasis added)]. Further, Nokia’s
10 former CEO Olli-Pekka Kallasvuo stated during a May, 2009 interview that “I’ve been working
11 on this for a long time. And it’s kind of interesting, the idea that we’re in San Diego now; *we*
12 *have about 2 or 2.5 years ago started to make U.S.-market specific products right here in San*
13 *Diego.*” *Id.*, Ex. C (emphasis added). Litigating in San Diego where Nokia has its largest
14 California facility and where it makes products unique to the entire U.S. market cannot be too
15 inconvenient for Nokia.

16 Jumtapp calls itself the U.S. “leader in targeted mobile advertising”, and Millennial Media
17 proclaims itself the “largest and fastest-growing mobile advertising company” in the country that
18 reaches nearly 43 million Americans, at least some of whom presumably reside in San Diego.
19 Because this case is related in part to Defendants’ contacts with this forum, Streetspace’s choice
20 of forum is entitled to great deference—not none.

21 Further, the relative convenience of the parties does not strongly support transfer.
22 Whereas Streetspace is a small, private company with limited means (which is a recognized
23 factor), Defendants consist primarily of large, public companies with vast financial resources.
24 Transfer to the Northern District would greatly inconvenience Streetspace, whose counsel has
25 only one office (San Diego). By contrast, the Defendants are already involved in hundreds of
26 cases all over the country without objection as to venue. For example, Google is currently a party
27 to approximately 169 federal cases pending in such far-ranging districts as the Western District of
28 Louisiana, Northern District of Illinois, Western District of Arkansas, Eastern District of Texas,

1 District of Delaware, District of Maryland, Eastern District of Virginia, and Southern District of
2 New York (to name just a few). Fazio Decl., Ex. D. Likewise, Apple is a party to approximately
3 82 federal cases in districts around the country, including the Eastern District of Texas, Southern
4 District of Illinois, Southern District of Florida, Northern District of Georgia, Southern District of
5 New York, Eastern District of Virginia, Western District of Wisconsin, **and 3 cases in the**
6 **Southern District of California** (Case Nos. 09-cv-2535, 10-cv-404, and 10-cv-2403), one of
7 which is still pending. *Id.*, Ex. F. Nokia Corporation and Nokia Inc. are currently parties to
8 approximately 85 federal cases across the country. *Id.*, Exs. V, W. Having litigated and
9 continuing to litigate in dozens of districts far from home, neither Google nor Apple (nor their
10 wholly-owned subsidiary Defendants Admob, Inc. and Quattro Wireless, Inc.) can credibly argue
11 they are woefully inconvenienced by having to litigate in this District, which is, after all, in their
12 home state. Finally, witnesses from Millennial Media and Jumtap must fly across the country
13 for trial anyway regardless of whether this case is transferred, so they cannot strongly show that
14 transfer would serve their convenience and interests.

15 In short, Streetspace chose this forum not only because its preferred counsel is located
16 here, but also because Defendants' accused products and services are widely sold here, and
17 because hundreds of thousands if not more San Diegans receive infringing targeted
18 advertisements delivered by the Defendants. In light of their comparatively vast financial
19 resources, Defendants cannot make such a strong showing of inconvenience that Streetspace's
20 legitimate choice of forum should be disregarded. For these reasons, Defendants' motion to
21 transfer should be denied.

22 **II. STATEMENT OF FACTS**

23 **A. Apple/Quattro Wireless**

24 By its own admission, Apple operates 5 retail stores in San Diego. Defs' Mem. at 3.
25 Defendants' suggestion that the retail stores themselves are not implicated by Streetspace's
26 infringement allegations is misleading. To the contrary, Apple is alleged to infringe by (among
27 other things) "making, using, selling, importing, exporting, and/or offering for sale a system
28 and/or method that employs a terminal, a database, and a program as recited in one or more

1 claims of the ‘969 patent,” including without limitation “the iPhone, iPad, iPod Touch, and
2 Macintosh computers.” D.E. No. 30 [First Amended Cmplt. at ¶¶ 98-99]. Apple’s accused
3 products are widely sold in stores across the country, including the 5 Apple retail stores located
4 throughout San Diego. Fazio Decl. Ex. H. In fact, Apple recently *joined* in a motion to transfer
5 a patent infringement case from the Eastern District of Virginia *to the Southern District of*
6 *California*. *Id.*, Ex. A [Defendants’ Joint Motion to Transfer Venue Pursuant to 28 U.S.C.
7 1404(a) to the U.S. District Court for the Southern District of California at 1]. Clearly, then, this
8 District is not too inconvenient for Apple and its wholly-owned subsidiary Quattro Wireless, Inc.

9 **B. Google/Admob**

10 Google ignores the fact that its smartphones—which are a component of the infringing
11 system—including without limitation Google’s G1 and Nexus 1 cellular telephones, are widely
12 available throughout San Diego. According to Google’s website, cellular telephones pre-installed
13 with Google products and services are available from AT&T, Sprint, T-Mobile, and Verizon
14 Wireless (among others). Fazio Decl., Ex. I. According to their respective websites, AT&T
15 operates at least 10 stores in San Diego; Sprint operates at least 6 stores in San Diego; T-Mobile
16 operates at least 7 stores in San Diego; and Verizon Wireless operates at least 9 stores in San
17 Diego. *Id.*, Ex. J. Moreover, Google has two Southern California offices in Irvine and Santa
18 Monica, California. *Id.*, Ex. K.

19 Streetspace does not dispute Google and Admob’s representation that confidential
20 information related to this case can be found in the Northern District of California, but in an age
21 when documents are created and stored in electronic format, the assertion that these are Northern
22 District of California documents “is a fiction which appears to . . . have been created to
23 manipulate the propriety of venue.” *In re Hoffman-La Roche, Inc.*, 587 F.3d 1333, 1337 (Fed.
24 Cir. 2009). Indeed, confidential materials are going to leave the Northern District of California
25 when they are produced in discovery whether this case is transferred or not. Thus, Google and
26 Admob’s suggestion that shipping confidential materials outside of the Northern District would
27 impose an unreasonable hardship on them is absurd.

28 **C. The Nokia Defendants**

1 Tellingly, Nokia Corporation, Nokia Inc. and wholly-owned subsidiary Navteq
2 Corporation do not advance any argument or facts strongly showing that this forum is
3 inconvenient for them. In fact, available evidence points directly to the contrary. In a publicly-
4 available declaration filed under oath on January 14, 2010 in another federal district court case,
5 Nokia Inc. stated that it “operates numerous facilities in California and employs over 1,000
6 people in the state. *Nokia’s largest California facility is in San Diego, where it employs over*
7 *600 people.*” Fazio Decl., Ex. B [Declaration of Jari Niemela in support of Motion to Transfer
8 Venue Pursuant to 28 U.S.C. §1404(a) by Defendant Nokia Inc., ¶ 5 (emphasis added)].¹

9 Indeed, in Nokia’s Form 20-F filing with the Securities & Exchange Commission, Nokia
10 identified San Diego as its only “strong . . . R&D presence” in the United States. *Id.*, Ex. L
11 [3/12/10 Form 20-F at 40]. Further, Nokia’s former CEO Olli-Pekka Kallasvuo stated in a 2009
12 interview that “I’ve been working on this for a long time. And it’s kind of interesting, the idea
13 that we’re in San Diego now; *we have about 2 or 2.5 years ago started to make U.S.-market*
14 *specific products right here in San Diego.*” *Id.*, Ex. C [5/28/09 xconomy article (emphasis
15 added)]. Litigating in San Diego where Nokia has its largest California facility and where it
16 makes products specific for the entire U.S. market is not inconvenient for Nokia.

17 **D. Millennial Media**

18 According to its website, Millennial Media has seven offices in the United States located
19 in Baltimore, New York, Chicago, Detroit, Atlanta, San Francisco, and Los Angeles. Fazio Decl.,
20 Ex. M. Assuming any relevant witnesses reside in Los Angeles, their travel to San Diego is more
21 convenient than travel to the Northern District of California, and any witnesses traveling from the
22 other offices must fly across the country for trial anyway, so litigation in the Northern District of
23 California is not significantly more convenient for Millennial Media than litigation in this
24 District.

25 Moreover, Millennial Media considers itself “the largest and fastest-growing mobile
26 advertising networks company in the U.S” and, according to its own press releases, Millennial

27 ¹ As an admission by a party-opponent, this declaration by Nokia, Inc. is not hearsay, and this
28 Court may take judicial notice of public records on file in other district court cases. *Mullis v. U.S.*
Bankruptcy Court for the Dist. of Nevada, 828 F.2d 1385, 1388 n.9 (9th Cir. 1987).

1 Media “reaches approximately 43M or 73% of U.S. Mobile Internet users” in the United States, at
2 least some of whom presumably reside in San Diego (the 8th largest city in the country). Fazio
3 Decl., Ex. N. Indeed, 10 of the top 20 DMAs (Demographic Market Areas) by advertising
4 requests are in California, Texas and Florida. *Id.* Having actively cultivated a nationwide
5 customer base and enjoying the benefits of nationwide sales efforts, Millennial Media cannot
6 reasonably complain about the supposed inconvenience of litigating here.

7 **E. Jumtap**

8 Likewise, Jumtap witnesses must fly across the country for trial regardless of whether
9 this case is transferred, so the Northern District of California is not significantly more convenient
10 for Jumtap. In fact, one of Jumtap’s mobile operators is Boost Mobile located in Irvine,
11 California, which is closer to this District than the Northern District of California. Fazio Decl.,
12 Ex. O.

13 Further, Jumtap proclaims itself the U.S. “leader in targeted mobile advertising” and
14 claimed at the end of 2008 to be reaching over 170 million mobile subscribers across the United
15 States. *Id.*, Ex. O. Moreover, Jumtap executives regularly appear and speak in districts far from
16 their home in Massachusetts, including Los Angeles, Atlanta, New York, and San Francisco. *Id.*,
17 Ex. P. Thus, Jumtap cannot show that litigation in the Northern District of California is
18 significantly more convenient than litigation here.

19 **III. ARGUMENT**

20 **A. Legal Standard**

21 Pursuant to 28 U.S.C. § 1404, district courts have discretion to transfer an action when
22 another venue would serve the convenience of the parties and witnesses and the interests of
23 justice. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). The statute requires
24 that the proposed transferee court be one where the action “might have been brought” and that
25 transfer be for the “convenience of parties and witnesses” and “in the interest of justice.” 28
26 U.S.C. § 1404(a). Streetspace does not dispute that this action might have been brought in the
27 Northern District of California. The relevant questions, therefore, are whether Defendants have
28 strongly shown that transfer would serve the convenience of parties and witnesses and serve the

1 interests of justice.

2 In answering these questions, courts consider (1) the plaintiff's choice of forum; (2) the
3 contacts in the chosen forum relating to the plaintiff's cause of action; (3) the parties' contacts
4 with the chosen forum; (4) the differences in the costs of litigation between the two fora; (5) the
5 availability of compulsory process; and (6) the ease of access to sources of proof. *Jones*, 221
6 F.3d at 498-99. Importantly, in assessing the convenience of the parties, courts also consider the
7 relative means of the parties. *Accentra, Inc. v. Staples, Inc.*, 2008 U.S. Dist. LEXIS 112183, at
8 *15 (C.D. Cal. Feb. 27, 2008).

9 **B. The Private Interest Factors Do Not Strongly Favor Transfer**

10 **1. Streetspace's Choice of Forum Weighs Against Transfer**

11 The plaintiff's choice of forum is accorded "substantial weight" in proceedings under 28
12 U.S.C. § 1404(a). *Safarian v. Maserati North America, Inc.*, 559 F. Supp. 2d 1068, 1071 (C.D.
13 Cal. 2008). *See also, Florens Container v. Cho Yang Shipping*, 245 F. Supp. 2d 1086, 1092
14 (N.D. Cal. 2002) ("[U]nder Ninth Circuit law, a plaintiff's choice of forum is accorded substantial
15 weight . . .") (citing *Securities Investor Protection Corp. v. Vigman*, 764 F.2d 1309, 1317 (9th Cir.
16 1985)); *E. & J. Gallo Winery v. F. & P.S.p.A.*, 899 F. Supp. 465, 466 (E.D. Cal. 1994) (the
17 "plaintiff's choice of forum should rarely be disturbed"). Accordingly, the movant must "make a
18 **strong showing of inconvenience** to warrant upsetting the plaintiff's choice of forum." *Accentra*,
19 2008 U.S. Dist. LEXIS 112183, at *14 (citing *Decker Coal Co. v. Commonwealth Edison Co.*,
20 805 F.2d 834, 842 (9th Cir. 1986)) (emphasis added). Indeed, transfer should be denied if the
21 factors are evenly balanced or weigh only slightly in favor of transfer. *Continental Cas. Co. v.*
22 *American Home Assurance Co.*, 61 F. Supp. 2d 128, 131 (D. Del. 1999).

23 Defendants argue that because Streetspace is a foreign plaintiff, its choice of forum is
24 entitled to no weight. Not true at all. While in some cases a foreign plaintiff's chosen forum in
25 the United States may not be any more discernibly convenient than alternative fora, there are
26 legitimate reasons why Streetspace selected the Southern District of California in this case,
27 including the ease and expense of travel from Malaysia and "the location of its preferred
28

1 counsel.” *Medien Patent Verwaltung AG v. Warner Bros. Entertainment, Inc.*, 2010 WL
2 4118087, at *1 (S.D.N.Y. Oct. 20, 2010) (acknowledging that “legitimate reasons” weighing
3 against transfer were “the ease and expense of travel from Europe and the location of its preferred
4 counsel”); *cf. Dealttime.com Ltd. v. McNulty*, 123 F. Supp. 2d 750, 758 (S.D.N.Y. 2000) (denying
5 motion to transfer despite “the lower standard that may be applicable to foreign plaintiffs”).
6 Indeed, transfer to the Northern District would greatly inconvenience Streetspace’s chosen
7 counsel, whose only office is in San Diego, whereas counsel for many of the Defendants has
8 offices in multiple locations, including San Diego.²

9 Moreover, Defendants have proffered no evidence that Streetspace had an “improper
10 motive” in choosing this forum, nor any evidence that Streetspace is forum-shopping. *Id.* To the
11 contrary, Streetspace filed suit in this District not only because its preferred counsel is located
12 here, but also because Defendants’ accused products and services are widely available throughout
13 the country, including in San Diego, and because hundreds of thousands if not more smartphone
14 and other terminal users who receive targeted advertisements delivered by Defendants live here.
15 Thus, Streetspace’s choice of forum should be given “substantial deference” and weighs strongly
16 against transfer. *Safarian*, 559 F. Supp. 2d at 1071 (denying motion to transfer because plaintiff
17 was not forum-shopping and instead brought suit in the chosen forum in part because its
18 “counsel’s offices are here”); *Alcon Mfg., Ltd. v. Apotex Inc.*, 2007 WL 854026, at *2 (S.D. Ind.
19 Mar. 14, 2007) (denying transfer even though plaintiff was not a resident of the chosen forum, in
20 part because the “*parties are spread throughout the United States*”) (emphasis added).³

21 **2. The Defendants’ Contacts With This District Related to Streetspace’s** 22 **Causes of Action Also Weigh Against Transfer**

23 Defendants argue that the mere fact they are alleged to be selling their accused products

24 ² Defendants’ reliance on *Panetta v. SAP America, Inc.*, 2005 WL 1774327 (N.D. Cal. Jul. 26,
25 2005), is misplaced. There, the court considered the parties’ forum-selection clauses in their
26 agreements, which required any dispute to be adjudicated in the transferee forum, to be
“significant factors” in deciding to transfer the case. *Id.*, at *6. No similar forum-selection
clauses favoring transfer exist in this case.

27 ³ Likewise here, the parties are spread throughout the United States. Google, Admob, Apple, and
Quattro Wireless are located in the Bay Area. Nokia Inc. is located in White Plains, New York;
28 Navteq Corporation is located in Chicago, Illinois; Millennial Media is located in Baltimore,
Maryland, and Jumtap is located in Cambridge, Massachusetts. Defs.’ Mem. at 4-5.

1 and services in this District is insufficient to show that this District has an interest in this case.
2 Not true. In patent cases, venue is perfectly appropriate where the accused products are sold or
3 distributed – not just where they are designed and developed. *See, e.g., See, Nokia Corp. v. Buca*,
4 2002 WL 1461913, at *2 (N.D. Tex. Jul. 2, 2002) (denying motion to transfer a patent case
5 involving mobile phones to the District of New Jersey because “although defendant distributes
6 and sells products from its headquarters in New Jersey, **those products are sold and offered for**
7 **sale to Texas [chosen forum] residents**”) (emphasis added); *Accentra*, at *16 (denying motion to
8 transfer in part because “many allegedly infringing [products]” were sold in the forum);
9 *Everpure, LLC v. Selecto, Inc.*, 2010 WL 480970, at *2 (C.D. Cal. Feb. 3, 2010) (denying motion
10 to transfer in part because the defendant “markets and distributes the accused devices throughout
11 the United States, including the [chosen forum]”); *Vice v. Woodline USA, Inc.*, 2011 U.S. Dist.
12 LEXIS 8014, at *8, 15 (N.D. Cal. Jan. 21, 2011) (denying motion for transfer to Tennessee in part
13 because defendant “sold and shipped the allegedly infringing” product to California residents,
14 notwithstanding that defendant’s products were designed in Tennessee). *Cf. Pureterra Naturals,*
15 *Inc. v. Cut-Heal Animal Care Products, Inc.*, 674 F. Supp. 2d 1294, 1300 (M.D. Fla. 2009)
16 (denying motion to transfer because the plaintiff’s claim arose in part out of the defendant’s “sale
17 of infringing products to distributors in the [chosen forum]”); *Russell Corp. v. Miken Sports, LLC*,
18 2009 WL 249707, at *2 (N.D. Ohio Feb. 2, 2009) (denying transfer because while the chosen
19 forum was not plaintiff’s home, “operative facts giving rise to the Plaintiff’s complaint” occurred
20 in the chosen forum, including sales of the accused devices).

21 Here, Streetspace’s claims are related to Defendants’ contacts with this District.
22 Streetspace alleges that Defendants infringe directly and indirectly by (among other things)
23 making, using and selling a method and/or system for providing personalized information and/or
24 targeted online advertising services based on location, consumers’ profiles and/or usage history,
25 and/or by making, using and selling products and/or services that deliver or are capable of
26 delivering personalized information and/or targeted online advertising services to consumers
27 based on their location, profiles and/or usage history. D.E. No. 30 [First Amended Cmplt., ¶¶ 57,
28 79, 97, 116, 130, 145, 159, 174 & 188].

1 These allegations implicate Defendants’ nationwide conduct, including Defendants’
2 contacts with this forum. Google’s accused products, including without limitation Google’s G1
3 and Nexus 1 smartphones, are widely sold throughout San Diego. According to Google’s
4 website, smartphones pre-installed with Google products and services are available from AT&T,
5 Sprint, T-Mobile, and Verizon Wireless (among others). Fazio Decl., Ex. I. AT&T operates at
6 least 10 stores in San Diego; Sprint operates at least 6 stores in San Diego; T-Mobile operates at
7 least 7 stores in San Diego; and Verizon Wireless operates at least 9 stores in San Diego. *Id.*, Ex.
8 J.

9 Likewise, Apple’s accused products are widely sold in stores throughout the country,
10 including the 5 Apple retail stores located throughout San Diego. *Id.*, Ex. H.⁴

11 As for the Nokia Defendants, Nokia Inc. stated in a publicly-available declaration filed
12 under oath in another case on January 24, 2010 that it “operates numerous facilities in California
13 and employs over 1,000 people in the state. ***Nokia’s largest California facility is in San Diego,***
14 ***where it employs over 600 people.***” *Id.*, Ex. B [Declaration of Jari Niemela in support of Motion
15 to Transfer Venue Pursuant to 28 U.S.C. 1404(a) by Defendant Nokia Inc., ¶ 5 (emphasis
16 added)].

17 Millennial Media considers itself “the largest and fastest-growing mobile advertising
18 networks company in the U.S” and, according to its June, 2009 press release, Millennial Media
19 “reaches approximately 43M or 73% of U.S. Mobile Internet users” in the United States, many of
20 whom presumably reside in California (as the most populous state in the nation) and some of
21 whom presumably reside in San Diego (as the 8th largest city in the country). *Id.*, Ex. N. Indeed,
22 according to Millennial Media, 10 of the top 20 DMAs (Demographic Market Areas) by

23 ⁴Defendants’ reliance on *Arete Power, Inc. v. Beacon Power Corp.*, 2008 WL 508477 (N.D. Cal.
24 Feb. 22, 2008), for the proposition that the proper venue in a patent case is solely the district
25 where the accused products are designed and developed is unavailing. True, the court there found
26 that the locus of the case was in Massachusetts where the accused products were designed and
27 developed. But that was only because the central issues in the case were not how extensively the
28 accused products operated in the field or “how much economic harm they caused plaintiff to
suffer.” Indeed, the defendant had “***never sold*** an accused product.” *Id.* at 5 (emphasis added).
In sharp contrast, the central issues in this case have very much to do with how extensively
Defendants’ targeted advertising products and services have penetrated the market, how many
products and services they have sold, and how much in damages they owe for infringing
Streetspace’s patent.

1 advertising requests are in California, Texas and Florida. *Id.* Similarly, Jumtap proclaims itself
2 the U.S. “leader in targeted mobile advertising,” and Jumtap executives regularly appear and
3 market themselves far from their home in Massachusetts, including Los Angeles, New York,
4 Atlanta, and San Francisco. *Id.*, Exs. O, P.

5 In short, because Streetspace’s claims are related to Defendants’ contacts with this
6 District, this factor weighs in favor of keeping the case in this District; regardless, it certainly
7 does not weigh strongly in favor of transfer to the Northern District of California.

8 **3. The Convenience of the Parties and Witnesses Does Not Strongly**
9 **Support Transfer**

10 Defendants argue that transfer would serve the convenience of their numerous witnesses.
11 In evaluating this factor, however, courts look beyond the quantity of witnesses and assess the
12 nature and quality of their testimony. *Everpure*, 2010 WL 480970, at *3 (citing *Steelcase, Inc. v.*
13 *Haworth*, 41 U.S.P.Q.2d 1468, 1470 (C.D. Cal. 1996)). Moreover, defendants must specify “the
14 identity and location of the witnesses, the content of their testimony, and why such testimony is
15 relevant to the action.” *Id.*; see also, *Bohara v. Backus Hosp. Medical Benefit Plan*, 390 F. Supp.
16 2d 957, 963 (C.D. Cal. 2005) (“[I]f the transfer is for the convenience of witnesses, defendant
17 must name the witnesses it wishes to call, the anticipated areas of their testimony and its
18 relevance, and the reasons why the present forum would present a hardship to them.”).
19 Defendants have not, however, specified the identity or location of any witnesses, or the content
20 of any anticipated testimony.

21 Even if Defendants’ vague representation that virtually all potential witnesses reside in the
22 Northern District were sufficient, Defendants cannot show that these employee witnesses would
23 be seriously inconvenienced by having to attend trial in this Court because party-employees are
24 available in any venue by virtue of their employment relationship. The alleged inconvenience of
25 unspecified employee witnesses, therefore, does not strongly support transfer of this case to the
26 Northern District. *Medien Patent Verwaltung AG*, 2010 WL 4118087, at *2. See also, *Container*
27 *Navigation Corp. v. New Holland Tire*, 2010 U.S. Dist. LEXIS 123021, at *6-7 (N.D. Cal. Nov.
28 3, 2010) (dismissing as “purely speculative” a defendant’s claim of inconvenience before an

1 answer has been filed).

2 Streetspace, on the other hand, would be seriously inconvenienced if this case were
3 transferred to the Northern District of California because Streetspace’s counsel has only one
4 office (San Diego). While some courts have declined to consider the location of counsel as a
5 factor, others have recognized the reality that counsel’s inconvenience often leads to increased
6 costs to the client. *See, Blumenthal v. Mgmt. Assistance, Inc.*, 480 F. Supp. 470, 474 (N.D. Ill.
7 1979). If this case were transferred to the Northern District, Streetspace’s counsel would have to
8 establish a temporary office for trial there at exorbitant cost, whereas many Defendants are
9 represented by national law firms with local offices in San Diego.

10 **Google/Admob**. In fact, the same reasons Google advances here for why this case should
11 be transferred to the Northern District of California were recently rejected by the District of
12 Delaware in *Personalized User Model LLP v. Google, Inc.*, 2009 WL 3460767 (D. Del. Oct. 27,
13 2009). In denying Google’s transfer motion, the Court there observed: (1) the plaintiff filed its
14 case in the chosen forum for legitimate reasons; (2) “***because of the national scope of the***
15 ***technology in question, the Court finds that Plaintiff’s claim arose in Delaware to the same***
16 ***extent as in any other district*”; (3) Google did “*not convincingly establish* that witnesses would
17 refuse or be physically unable to attend trial in Delaware; and (4) Google had not “demonstrated
18 that maintaining confidentiality of records and technology will be more difficult in Delaware than
19 in California.” *Id.*, at *2 (emphasis added). Likewise here, Streetspace filed suit in this District
20 for legitimate reasons; Google and Admob’s alleged infringement occurs nationwide over the
21 Internet and by other means, and Streetspace’s claims arise in this District to the same extent as
22 anywhere else. Google should therefore fare no better in this case than in *Personalized User*
23 *Model*.**

24 **Apple/Quattro Wireless**. Similarly, Apple’s argument that transfer to the Northern
25 District of California is significantly more convenient is belied by its past conduct. In *Apple, Inc.*
26 *v. High Tech Computer Corp.*, 2011 WL 143909 (D. Del. Jan. 18, 2011), Apple filed suit for
27 patent infringement in the District of Delaware and ***opposed*** transfer to its headquarters in the
28 Northern District of California, arguing (successfully) that “HTC’s ***infringing activity took place***

1 **across the entire country**, including in Delaware, and therefore does not weigh in favor of
2 transfer.” *Id.*, at 2 (emphasis added). That is precisely what Streetspace is arguing here. When,
3 as here, Defendants’ infringement is alleged to be occurring nationwide, and when Defendants’
4 accused products and services are widely available in this District, Streetspace’s choice of forum
5 in the Southern District of California is entitled to great deference and should not be upset. *See*,
6 *Nokia Corp. v. Buca*, 2002 WL 1461913, at *2 (N.D. Tex. Jul. 2, 2002) (denying motion to
7 transfer a patent case involving mobile phones to the District of New Jersey because “although
8 defendant distributes and sells products from its headquarters in New Jersey, **those products are**
9 **sold and offered for sale to [chosen forum] residents**”) (emphasis added).

10 In fact, in *Apple Computer, Inc. v. Unova*, 2003 WL 22928034 (D. Del. Nov. 25, 2003),
11 Apple filed suit for patent infringement in the District of Delaware, where none of the defendants
12 were located. Instead, the defendants resided in California, Washington, Ohio and Michigan. *Id.*,
13 at *1. Despite the fact that none of the defendants resided in the chosen forum, and despite the
14 fact that neither the parties nor the case had “strong ties” to Delaware, the court still denied the
15 motion for transfer because “all of the parties are sophisticated and substantial enough to litigate
16 in Delaware” and because as the plaintiff, “Apple is entitled to deference on its choice of forum.”
17 *Id.*, at *5. The same should hold true here. Despite the fact that no Defendant may reside in this
18 District, all Defendants are “sophisticated and substantial enough” to shoulder the supposed
19 inconvenience of litigating here. In view of its substantial means, Apple should not be permitted
20 in one patent case to file suit in a chosen forum that is far from where any defendant is located
21 and far from its own home, and yet prevail on a motion to transfer in another case for precisely
22 the same reasons.

23 Indeed, Apple recently **joined in a motion to transfer** a patent infringement case from the
24 Eastern District of Virginia **to the Southern District of California**. Fazio Decl., Ex. A
25 [Defendants’ Joint Motion to Transfer Venue Pursuant to 28 U.S.C. §1404(a) to the U.S. District
26 Court for the Southern District of California at 1]. Clearly, then, this District is not too
27 inconvenient for Apple and Quattro Wireless.

28 **The Nokia Defendants**. Nokia has a significant presence in San Diego. Indeed, Nokia

1 Inc. stated in a publicly-available declaration filed in another case on January 24, 2010 that it
2 “operates numerous facilities in California and employs over 1,000 people in the state. *Nokia’s*
3 *largest California facility is in San Diego, where it employs over 600 people.*” Fazio Decl., Ex.
4 B [Declaration of Jari Niemela in support of Motion to Transfer Venue Pursuant to 28 U.S.C.
5 1404(a) by Defendant Nokia Inc., ¶ 5 (emphasis added)]. Further, Nokia’s former CEO Olli-
6 Pekka Kallasvuo stated during a May, 2009 interview that “I’ve been working on this for a long
7 time. And it’s kind of interesting, the idea that we’re in San Diego now; *we have about 2 or 2.5*
8 *years ago started to make U.S.-market specific products right here in San Diego.*” *Id.*, Ex. C
9 (emphasis added). Litigating in San Diego where Nokia has its largest California facility and
10 where Nokia makes handsets unique to the entire U.S. market is clearly not inconvenient for
11 Nokia.

12 **Millennial Media/Jumtap.** Millennial Media and Jumtap both argue that the Northern
13 District of California would be a more convenient forum than this District, but neither is
14 headquartered in the Northern District. Instead, Millennial Media is headquartered in Baltimore,
15 Maryland and Jumtap is headquartered in Cambridge, Massachusetts. As such, the Northern
16 District is no more or less convenient for Millennial Media and Jumtap than this District.
17 Transfer to a forum that is “equally convenient or inconvenient” is not appropriate under 28
18 U.S.C. § 1404. *Kabushiki Kaisha Stone Corp. v. Affliction, Inc.*, 2009 WL 3429560, at *2 (N.D.
19 Cal. Oct. 22, 2009) (citing *Van Dusen v. Barrack*, 376 U.S. 612, 646 (1964)); *see also, In re*
20 *National Presto Inds., Inc.*, 347 F.3d 662, 665 (7th Cir. 2003) (“when the inconvenience of
21 alternative venues is comparable there is no basis for a change of venue; the tie is awarded to the
22 plaintiff . . .”).

23 In short, the Defendants have not overcome the “strong presumption” in favor of
24 Streetspace’s choice of forum. This factor, therefore, weighs against transfer.

25 **4. The Differences in the Costs of Litigation**

26 Whereas Streetspace is a relatively small, private company with limited means, the
27 Defendants consist primarily of large, public companies with vast financial resources. According
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1 to its 2009 Annual Report, Google earned over \$23 billion in 2009. Fazio Decl., Ex. Q. Apple
2 reportedly earned nearly \$43 billion in net sales in 2009. *Id.*, Ex. R. According to its Form 20-F
3 filed with the SEC, Nokia Corporation had over \$80 billion in net sales in 2009 at current
4 exchange rates. *Id.*, Ex. L. Millennial Media reported that it tripled revenues in 2010 and raised
5 an additional \$27.5 million from equity investors. *Id.*, Ex. S. In September, 2010, Jumtap’s
6 CEO George Bell stated that Jumtap’s expected 2010 revenue (initially estimated to be “around
7 \$25 million”) was low and was “off in a pretty significant fashion.” *Id.*, Ex. T. As such, the
8 Defendants are much “better positioned to bear any financial inconvenience that might be
9 incurred” and cannot credibly argue that litigating in this District would cause “undue financial
10 hardship.” *Dealtime.com Ltd.*, 123 F. Supp. 2d at 756, 775. *See also, Accentra*, 2008 U.S. Dist.
11 LEXIS 112183, at *17 (denying transfer in part because given defendant’s “much more
12 substantial means,” defendant is “in a much better position to absorb the burden of this allegedly
13 inconvenient forum”); *Aloft Media, LLC v. Adobe Systems Inc.*, 2008 WL 819956, at *6 (E.D.
14 Tex. Mar. 25, 2008) (denying transfer on the ground that “the additional burden placed on
15 [defendant’s] employee witnesses is not heavy enough to be given substantial weight”).

16 Further, witnesses from Millennial Media and Jumtap have to travel across the country
17 for trial regardless of whether it proceeds in this District or the Northern District of California, so
18 their litigation costs as between the Northern and Southern Districts are not appreciably different.
19 Accordingly, this factor weighs against transfer.

20 **5. The Availability of Compulsory Process and Access to Sources of** 21 **Proof**

22 Defendants argue that most relevant documents are located in the Northern District of
23 California, but as Defendants’ own cases acknowledge, “with the availability of modern
24 photocopying and electronic transmittal technology, this factor is less relevant. As the parties are
25 large technology companies, they should have no difficulty conducting discovery regardless of
26 document location.” *Multimedia Patent Trust*, 2009 WL 3805302, at *5 (S.D. Cal. Nov. 12,
27 2009), at *5. *See also Aloft Media*, 2008 WL 819956, at *4 (“it is presumed that the parties will
28 exchange discovery electronically,” so any “inconvenience or burden associated with

1 electronically bears little, if any, relation to the physical location of the underlying document.”).
2 Indeed, the location of the parties’ ultimate sources of proof are far from clear at this early stage
3 of the litigation.

4 Moreover, this Court’s subpoena power extends to any witness residing anywhere “within
5 the state where the trial is held.” Fed. R. Civ. P. 45(c)(3)(A)(ii). Thus, the unspecified third party
6 witnesses from the assorted bookstores and cafes in Berkeley, California whom Defendants
7 apparently may want to testify can be compelled to attend trial in San Diego. Even if this Court
8 cannot compel a witness’s attendance at trial, no party is precluded from using the videotaped
9 deposition testimony of any witness who is beyond subpoena power. *Personal Audio, LLC v.*
10 *Apple, Inc.*, 2010 WL 582540, at *5 (E.D. Tex. Feb. 11, 2010) (noting that few modern patent
11 cases involve witnesses from only one state or region). These factors, therefore, weigh against
12 transfer.

13 **C. The Public Interest Factors Do Not Strongly Support Transfer**

14 Defendants completely ignore the final consideration in the analysis -- whether transfer
15 will serve the interests of justice. A § 1404(a) transfer serves to “prevent the waste of time,
16 energy, and money” and “to protect litigants, witnesses, and the public against unnecessary
17 inconvenience and expense.” *Accentra*, 2008 U.S. Dist. LEXIS 112183, at *19 (citing *Van*
18 *Dusen*, 376 U.S. at 616)). In considering whether a requested transfer would serve the interests of
19 justice, courts consider such factors as the relative degrees of court congestion, the local interest
20 in deciding local controversies, the burden on citizens of an unrelated forum with jury duty, and
21 potential conflicts of laws issues. *Van Slyke v. Capital One Bank*, 503 F. Supp. 2d 1353, 1365
22 (N.D. Cal. 2007). Not surprisingly, Defendants advance no argument on any of these points
23 because none favors transfer.

24 First, this District is significantly less congested than the Northern District of California.
25 According to the Administrative Office of U.S. Courts, there were 2,450 total civil cases pending
26 in the Southern District of California as of March 31, 2010, compared with 6,587 in the Northern
27 District. Fazio Decl., Ex. U. Moreover, transfer is not necessary to avoid duplicative litigation,
28

1 and there are no related cases between the parties. *See, August Technology Corp. v. Camtek Ltd.*,
2 2005 WL 3274667, at *4 (D. Minn. Dec. 2, 2005) (denying transfer in part for these reasons).
3 Judicial economy therefore does not strongly support transfer.

4 Next, because Defendants' accused products and services are available nationwide,
5 including in this District, this Court has as much of an interest in deciding this case as any other,
6 so citizens of this forum would not be unduly burdened by jury duty. *See, Personalized User*
7 *Model*, 2009 WL 3460767, at *2. Thus, the second and third public interest factors do not
8 strongly support transfer. Further, there can be no conflict of laws between courts in the same
9 district.

10 Finally, according to PACER, Defendant Google is currently a party to approximately 169
11 federal cases pending all over the country in such far-ranging districts as the Western District of
12 Louisiana, Northern District of Illinois, Western District of Arkansas, Eastern District of Texas,
13 District of Delaware, District of Maryland, Eastern District of Virginia, and Southern District of
14 New York (to name just a few). Fazio Decl., Ex. D. Even if restricted to patent infringement
15 cases (Nature of Case No. 830), which presumably implicate Google technology developed in the
16 Northern District of California just as here, Google is currently a party to approximately 83 cases
17 pending in equally far-flung districts. *Id.*, Ex. E.

18 Likewise, Apple, Inc. is a party to approximately 82 federal cases in districts around the
19 country, including the Eastern District of Texas, Southern District of Illinois, Southern District of
20 Florida, Northern District of Georgia, Southern District of New York, Eastern District of
21 Virginia, Western District of Wisconsin, **and 3 cases in the Southern District of California**
22 (Case Nos. 09-cv-2535, 10-cv-404, and 10-cv-2403), one of which is still pending. *Id.*, Ex. F.
23 Even if restricted to patent infringement cases (Nature of Case No. 830), Apple, Inc. is currently a
24 party to approximately 52 cases across the nation. *Id.*, Ex. G. Nokia Corporation and Nokia Inc.
25 are parties to 50 and 35 federal cases, respectively, across the country. *Id.*, Exs. V, W. Having
26 litigated and continuing to litigate in dozens of districts far from home, Defendants Google and
27 Apple (and their wholly-owned subsidiary Defendants Admob, Inc. and Quattro Wireless, Inc.)
28 cannot credibly argue they are woefully inconvenienced or unduly burdened by having to litigate

1 in this District, which is, after all, in their home state.

2 **IV. CONCLUSION**

3 For all the foregoing reasons, Defendants' motion to transfer this action to the Northern
4 District of California should be denied.

5 Dated: February 28, 2011

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By: /s/James V. Fazio, III

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