UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

STREETSPACE, INC., etc., Plaintiff, vs. GOOGLE INC., etc., et al., Defendants.	CASE NO. 10cv1757-LAB **ORDER TRANSFERRING CASE TO NORTHERN DISTRICT OF CALIFORNIA**

There are three motions pending in this case, all of them fully briefed and ready for a ruling. The first, filed by Defendants, is a motion to transfer this case to the Northern District of California. (Dkt. No. 23.) The second, filed by Streetspace, is a motion to disqualify Cooley Godward, counsel for Defendant Millennial Media. (Dkt. No. 29.) The third, filed by Defendants, is a motion to dismiss Streetspace's complaint for failure to state a claim. (Dkt. No. 49.) The Court **GRANTS** the motion to transfer and, therefore, does not rule on the other two motions. *See Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 432 (2007) (venue questions are threshold matters).

I. Factual Background

This is a patent infringement action. Streetspace, a Delaware company with its principal place of business in Malaysia, owns a patent — the '969 patent — that enables personalized and targeted advertisements to be delivered to a consumer's "Internet-enabled

terminal," which presumably refers to a computer or smartphone. (Compl. ¶ 1.) The patent does this by utilizing the consumer's personal information, location data, and Internet usage history. (*Id.*) The patent is entitled "Method and System for Providing Personalized Online Services and Advertisements in Public Spaces." (Compl. ¶ 3.)

Streetspace accuses each of the Defendants of infringing the '969 patent in the following ways:

- Google provides targeted and personalized advertising through AdSense, AdWords, and Mobile Ads by collecting personal information and location data of computer users. (Compl. ¶ 12.)
- Admob collects consumer information such as browser identifiers, browser cookies, and IP addresses to display advertisements that may be of interest to those consumers on websites they visit. (Compl. ¶ 14.)
- Apple products — particularly the iPhone, iPad, and iPod Touch — are capable of supporting targeted and personalized advertising. (Compl. ¶ 16.)
- Quattro Wireless collects consumers' personal information and Internet browsing behavior to "facilitate optimal ad matching." (Compl. ¶ 18.)
- Nokia develops and sells smartphones capable of supporting targeted personalized advertising, and Nokia "collects personal information . . . to display customized content and advertising." (Compl. ¶ 21.)
- Navteq "collects personal information, certain technical information, and location data to display advertising customized to a recipient's interests and preferences." (Compl. ¶ 23.)
- Millennial Media collects consumer data to deliver personalized and targeted advertising to those consumers. (Compl. ¶ 25.)
- Jumptap operates a mobile advertising network that matches advertisements to consumers' Internet browsing behaviors and other personal information. (Compl. ¶ 27)

What is probably more relevant, though, is where the Defendants are located and where they do business.

- Google is a Delaware corporation with its principal place of business in Mountain View, California, which is in the Northern District of California. (Compl. ¶ 11.) It has no office or corporate presence in the Southern District of California. (Google and Admob Decl. ¶ 6.)
- Admob has been acquired by Google and is also a Delaware corporation with its principal place of business in Mountain View. (Compl. ¶ 13.) At the time of its acquisition by Google, Admob was located in San Mateo, California, also in the Northern District of California; its employees and records have since been moved to Google's Mountain View headquarters. (Google and Admob Decl. ¶ 4.) Admob has no office or corporate presence in the Southern District of California. (Google and Admob Decl. ¶ 6.)
- Apple is a California corporation with its principal place of business in Cupertino, California, which is in the Northern District of California. (Compl. ¶ 15.) Apple has five retail stores in the Southern District of California, but does not otherwise maintain any facilities, employees, or records in the District. (Apple and Quattro Decl. ¶¶ 10–11.)
- Quattro Wireless is a Delaware corporation with its principal place of business in Waltham, Massachusetts. (Compl. ¶ 17.) Quattro was acquired by Apple, however, and its employees and records were moved to Apple's headquarters in Cupertino. (Apple and Quattro Decl. ¶ 4.)
- Nokia is a Finnish limited liability company with its principal place of business in Espoo, Finland. (Compl. ¶ 19.)
- Navteq, a wholly-owned subsidiary of Nokia, is a Delaware corporation with its principal place of business in Chicago, Illinois. (Compl. ¶ 22.)

- Millennial Media is a Delaware corporation with its principal place of business in Baltimore, Maryland. (Compl. ¶ 24.) Millennial Media has an office in San Francisco, in the Northern District of California, and no facilities of any kind in the Southern District of California. (Millennial Media Decl. ¶¶ 2, 8.)
- Jumptap is a Delaware corporation with its principal place of business in Cambridge, Massachusetts. (Compl. ¶ 26.) Jumptap has two employees who work in the Northern District of California, but it does not maintain any facilities, employees, or documents in the Southern District of California. (Jumptap Decl. ¶¶ 7–8.)

II. Legal Standard

"For 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." 28 U.S.C. § 1404(a). The Ninth Circuit has identified multiple factors a district court should take into consideration: (1) the plaintiff's choice of forum; (2) the respective parties' contacts with the forum; (3) the contacts relating to the plaintiff's cause of action in the chosen forum; (4) the difference between the costs of litigating in the two forums; (5) the availability of compulsory process to compel attendance of unwilling non-party witnesses; and (6) the ease of access to sources of proof. *Jones v. GNC Financing, Inc.*, 211 F.3d 495, 498–99 (9th Cir. 2000). The weighing of these factors "involves subtle considerations and is best left to the discretion of the trial judge." *Commodity Futures Trading Comm'n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979).[1]

While plaintiffs generally bear the burden of demonstrating proper venue, *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800, 802 (9th Cir. 2004), the party moving for a transfer pursuant to § 1404(a) — here, the Defendants — bears the burden of

[1] Typically, before going through the *Jones* factors, a district court would have to consider whether a case could have been filed in the district to which the defendant seeks to have it transferred. Here, there is no dispute that this case could have been filed in the Northern District of California.

demonstrating that another forum is more convenient and serves the interest of justice. *Jones*, 211 F.3d at 499.

III. Streetspace's Choice of Forum

Streetspace argues that its choice of forum is entitled to substantial weight. That is true — sometimes. *See Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947) ("[U]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed."); *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986) ("The defendant must make a strong showing of inconvenience to warrant upsetting the plaintiff's choice of forum."); *Florens Container v. Cho Yang Shipping*, 245 F. Supp. 2d 1086, 1092 (N.D. Cal. 2002) ("Additionally, under Ninth Circuit law, a plaintiff's choice of forum is accorded substantial weight . . . and courts generally will not transfer an action unless the 'convenience' and 'justice' factors strongly favor venue elsewhere.").

The Ninth Circuit has recognized, however, that a foreign plaintiff's forum choice is entitled to less deference than that of a domestic plaintiff. *Ravelo Monegro v. Rosa*, 211 F.3d 509, 514 (9th Cir. 2000); *dpix, LLC v. Am. Guarantee and Liability Ins. Co.*, 2011 WL 1211541 at *2 (N.D. Cal. Mar. 30, 2011) ("Courts in the Ninth Circuit give less deference than normally is accorded to a plaintiff's choice of forum only when the plaintiff is not a resident of its chosen forum or when it has no contacts with its chosen forum."). Streetspace is incorporated in Delaware and conducts most of its business in Malaysia; it follows from *Ravelo Monegro* and *dpix* that the Court needn't defer greatly to Streetspace's decision to initiate this action in the Southern District of California.[2]

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[2] Defendants cite *Panetta v. SAP America, Inc.*, 2005 WL 1774327 at *5 (N.D. Cal. July 26, 2005), for the proposition that "[d]eference to plaintiff's choice of forum is, however, significantly diminished when plaintiff initiates an action in state in which he or she is not a resident." Streetspace attempts to distinguish *Panetta* by noting that the § 1404(a) analysis in that case was partially informed by a forum-selection clause in an agreement between the parties. It is true that the court in *Panetta* did find that the clause favored transfer. But, importantly, it treated the clause as a separate and additional factor weighing in favor of transfer; the clause had nothing to do with the question of how much deference to give a plaintiff's choice of forum. *Id.* at 5–6.

In addition to Streetspace's foreign status undercutting the deference due to its forum choice, the Ninth Circuit has also held that a plaintiff's choice of forum is "entitled only to minimal consideration" where "the operative facts have not occurred within the forum of original selection and that forum has no particular interest in the parties or the subject matter." *Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968); *see also Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152, 1157–58 (collecting cases in which "courts have given less deference to the plaintiff's choice of forum where the action has little connection with the chosen forum"). This obviously begs for an analysis of some other § 1404(a) factors — namely, the respective parties' contacts with the forum *and* the contacts relating to the cause of action in the chosen forum — but the Court is confident that the "operative facts" in this case are not so tied to the Southern District of California that the Court should presumptively honor Streetspace's decision to file its lawsuit here. Streetspace argues that "Defendants' accused products and services are widely available throughout the country, including in San Diego, and . . . hundreds of thousands if not more smartphone and other terminal users who receive targeted advertisements delivered by Defendants live here." (Opp'n Br. at 8.) That doesn't distinguish the Southern District of California from any other sizeable district in the country, and it certainly doesn't tie Streetspace's case to this district.

Streetspace also argues its forum choice is entitled to deference because it is easy to travel to San Diego from Malaysia and because its lawyers are based in San Diego. There are two problems with this argument. First, traveling to the Northern District of California from Malaysia is no more difficult than traveling to the Southern District. Second, the location of counsel is not relevant.[3] *See In re Horseshoe Ent.*, 305 F.3d 354, 358 (5th

[3] To be precise, the location of counsel is not relevant, at least, to the amount of deference a plaintiff's choice of forum is due. The case law is not clear on whether the location of counsel should not matter *at all* in the § 1404(a) analysis, or whether it should matter only with respect to certain of the enumerated factors a court must take into consideration. *Compare Windward v. Pfizer,* Inc., 2007 U.S. Dist. LEXIS 82885 at *11 (N.D. Cal. 2007) ("The location of counsel and the need to retain counsel in the transferee district is of little, if any weight in considering a motion to transfer pursuant to section 1404(a)") with *Sierra Club v. U.S. Defense Energy Support Ctr.*, 2011 WL 89644 at *2 n. 1 (N.D. Cal. Jan. 11, 2011) (finding that location of counsel "bears no weight in the analysis of convenience of the witnesses and the parties" but *is relevant* to the costs of litigating in a particular forum). *See also Clark v. Sprint Spectrum L.P.*, 2010 WL 5173872 at *3 (N.D. Cal. Dec. 15, 2010)

Cir. 2002) ("The factor of 'location of counsel' is irrelevant and improper for consideration in determining the question of transfer of venue."); *Panetta* at *5 (noting that "the location of plaintiff's counsel is immaterial to a determination of the convenience and justice of a particular forum").

For the above reasons, the Court attaches little significance to Streetspace's decision to bring its case in the Southern District of California. Its choice of forum does not weigh against the Defendants' interest in transferring this case under § 1404(a).

IV. Parties' Contacts with the Forum

The next *Jones* factor to consider is the parties' respective contacts with the Southern District of California, as opposed to the Northern District.[4]

Streetspace is a Delaware corporation whose principal place of business is Malaysia. It has no connection with the Southern District of California other than the location of its counsel's office. In fact, Streetspace alleges it first implemented its patent in the *Northern* District of California — specifically, in public computer terminals throughout Berkeley. (Compl. ¶ 7.) It subsequently grew its user base "throughout California from San Francisco to San Jose." (*Id.*) Both of these cities, obviously, are in the Northern District, and Streetspace alleges no meaningful contacts with the Southern District.

Likewise, none of the Defendants have a meaningful presence in the Southern District of California. Google and AdMob are based in Mountain View, California, in the Northern

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(rejecting relevance of location of counsel to deference due to plaintiff's choice of forum, but with broad language suggesting the location of counsel is *entirely* irrelevant to a motion to transfer venue).

[4] Streetspace acknowledges the Jones factors should guide the Court's analysis, although in its discussion it refers to this factor as "the convenience of the parties and witnesses." (Opp'n Br. at 11.) This is slightly different, and broader, than the parties' contacts with the forum. But this is understandable. The Ninth Circuit in *Decker Coal* put the factors differently than it did in *Jones. See Sierra Club* at *2 (citing *Decker Coal* as listing the following factors: "a plaintiff's choice of forum; convenience of the parties and witnesses; ease of access to sources of proof; local interest in the controversy; familiarity of each forum with the applicable law; and relative congestion in each forum").

District.[5] (Google and AdMob Decl. ¶¶ 2,4.) Equally as important, the bulk of the work on the technology at issue in this case was done at Google's headquarters in Mountain View. (Google and AdMob Decl. ¶ 5, 7.) Here, the question is simply whether Google has contacts with the Southern District of California — and it does not have any worth counting.

Apple and Quattro are based in Cupertino, California, also in the Northern District. (Apple and Quattro Decl. ¶¶ 2,4.) Aside from 5 retail stores that Apple operates in the Southern District of California, neither of these Defendants has any offices here. (Apple and Quattro Decl. ¶¶ 11–12.) The Apple and Quattro technologies at issue were developed and marketed exclusively in Cupertino. (Apple and Quattro Decl. ¶¶ 6–8.)

Millennial Media also has no presence in the Southern District of California, although it does have a minor presence in the Northern District. The company is incorporated in Delaware and does most of its business in Baltimore, Maryland. (Millennial Media Decl. ¶ 2.) It has an office in San Francisco where some of the design and development work for its advertising services took place. (Millennial Media Decl. ¶ 5.)

Like Millennial Media, Jumptap has no official presence in the Southern District of California. The company is incorporated in Delaware and headquartered in Cambridge, Massachusetts. (Jumptap Decl. ¶ 2.) It does not have an office in the Northern District of California, but it does have two employees there. It has no office or employees in the Southern District of California. (Jumptap Decl. ¶ 7.)

Google, AdMob, Apple, and Quattro have substantially greater contacts with the Northern District of California (and they are no doubt the biggest defendants in this case).

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[5] Streetspace cites *Personalized User Model LLP v. Google, Inc.*, 2009 WL 3460767 (D. Del. Oct. 27, 2009), in which Google failed to transfer a case from the District of Delaware to the Northern District of California. True, the court in this case found that "[b]ecause of the national scope of the technology in question . . . Plaintiff's claim arose in Delaware to the same extent as in any other district." *Id.* at *2. It also found that Google "has not convincingly demonstrated that maintaining confidentiality of records and technology will be more difficult in Delaware than in California." *Id.* What Streetspace overlooks, however, is that Google is *incorporated* in Delaware, and this was integral to the court's decision: "In sum, after considering the private and public factors the Court finds that this case could have been filed in the District of Northern California. However, Plaintiff chose to file the case in Delaware because Google is incorporated in and a resident of Delaware. For this reason, Google cannot complain that it is unfair or unreasonable to be sued in its home state."

Millennial Media and Jumptap have marginally greater contacts with the Northern District of California. On the other hand, the remaining Defendants Nokia and Navteq (which is a wholly-owned subsidiary of Nokia) have contacts with both the Southern and Northern District of California. Nokia's largest California facility is a research center in San Diego, but it also has facilities in San Francisco, Mountain View, Palo Alto, Redwood City, and Berkeley, all of which are in the Northern District of California. (Fazio Decl. Ex. B. ¶ 5.) The Court does not have enough information to aggregate the significance of these contacts in the Northern District of California and weigh them against the Southern District contacts. But either way, in the balance the parties' more extensive contacts with the Northern District of California weigh in favor of transferring this case there.

V. Contacts with the Forum Relating to the Cause of Action

In assessing this factor, the critical question is the relative significance of the development of the accused technologies vis-a-vis their point of sale and availability. Streetspace argues that its infringement claims have a substantial relationship to the Southern District of California because the technologies in question are sold and distributed here. Defendants disagree; they argue that the site of the design and production of the technologies — *not* the Southern District of California — matters much more. There is case support for both arguments, to be fair, but the Court takes the Defendants' side. "The locus of operative facts in patent infringement cases usually lies where the allegedly infringing product was designed, developed, and produced." *Neil Bros. Ltd. v. World Wide Lines, Inc.*, 425 F. Supp. 2d 325, 331 (E.D.N.Y. 2006); *see also Invivo Research v. Magnetic Resonance Equip.*, 119 F. Supp. 2d 433, 439 (S.D.N.Y. 2000) ("Where a party's products are sold in many states, sales alone are insufficient to establish a material connection to the forum and to override other factors favoring transfer.").

Many of the cases on which Streetspace relies are distinguishable. In *Nokia Corp. v. Buca, Inc.*, for example, the court began its analysis with a presumption — absent in this case — that the plaintiff's choice of forum is entitled to substantial deference. 2002 WL 1461913 at *2 (July 2, 2002). The venue choice in that case was also not so explicitly driven

by the location of the plaintiff's counsel, as it is here. Finally, discovery had already commenced, and the court noted that it was conducted near the defendant's preferred forum. These points undercut the significance of the court's finding that the location of the accused products' sale is a proper venue for an infringement action. In *Vice v. Woodline*, the court denied a motion to transfer an infringement action from California to Tennessee, where the accused products were developed, in part because the products were shipped and sold to California, but this point was made in the context of assessing California's interest in the controversy, not the relationship between chosen venue and the plaintiff's causes of action. 2011 WL 207936 at *6 (N.D. Cal. Jan. 21, 2011); *see also Multimedia Patent Trust v. Tandberg, Inc.*, 2009 WL 3805302 at *5 (S.D. Cal. Nov. 12, 2009) (fact that defendant provided allegedly infringing technology to customers in California insufficient to establish California's interest in the case). Like *Nokia Corp. v. Buca,* the court in *Russell Corp. v. Miken Sports, LLC*, another case on which Streetspace relies, incorporated into its analysis the presumption that the plaintiff's choice of forum is accorded significant weight. 2009 WL 249707 at *2 (N.D. Ohio Feb. 2, 2009). The court in *Russell* also found that no Sixth Circuit case law supported the adoption of a "center of gravity" test — which is similar to the Defendants' argument here — but in fact at least one court in the Ninth Circuit has recognized that "the principal location of the legally operative facts" in a patent infringement action "is where the allegedly infringing product was designed, developed, and produced." *Arete Power, Inc. v. Beacon Power Corp.*, 2008 WL 508477 at *5 (N.D. Cal. Feb. 22, 2008).[6] So, the argument that the operative facts in an infringement action occur where the accused product is developed apparently has at least some traction in the Ninth Circuit. And to be accurate, the argument rejected in *Russell Corp.* was that a patent infringement case

[6] Streetspace tries to distinguish *Arete Power* in its opposition brief on the ground that the defendant in that case never sold an accused product, whereas "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." Be that as it may, *Arete Power* relied on *Neil Bros.* for the above-quoted proposition, and in *Neil Bros.* the accused products were sold in the original forum from which the case was transferred pursuant to § 1404. *Neil Bros.*, 425 F. Supp. 2d at 331.

necessarily belongs wherever the center of gravity of the allegedly infringing conduct is. Defendants' claim here is simply that, in assessing the chosen forum's contacts with the causes of action (one of the many Jones factors) the site of an accused product's development is more important than the site of its sale.

The Court has also read and considered *Pureterra Naturals, Inc. v. Cut-Heal Animal Care Products*, on which Streetspace relies. 674 F. Supp. 2d 1294 (M.D. Fla. 2009). It is not a good case for Streetspace. The plaintiff in *Pureterra Naturals* was a Florida corporation with its principal place of business in Florida that filed an infringement action in Florida — and the action targeted the defendant's sale of allegedly infringing products to Florida distributors. *Id.* at 1298, 1300 ("In the instant case, the focus of the claim is the sale of infringing products to distributors in the Middle District of Florida.") That case simply isn't comparable to this one. Finally, *Accentra v. Staples* is distinguishable. 2008 WL 7400627 (C.D. Cal. Feb. 27, 2008). That case was filed in the Central District of California by two plaintiffs, one of whom was a California corporation and a resident of the Central District. *Id.* at *4. California was also the defendant's largest market in the United States, and indeed, the plaintiffs asserted claims under California's Business and Professions Code. *Id*.

The Court recognizes that, in all of the above cases, courts took into account, for the purposes of a motion to transfer venue, where allegedly infringing products entered the market — not just where they were developed and manufactured. But, as explained, all of the above cases are distinguishable from this one. In none of them did a court simply conclude that because an accused product is available in a particular judicial district, the manufacturer of that product can be sued for patent infringement there. Rather, in each case weightier reasons cut against transfer to the defendant's home district. The fact that this is a patent infringement case, and that many of the technologies at issue were developed in the Northern District of California, weighs slightly in favor of transfer.

VI. Costs of Litigating in the Two Forums

The differences in the costs of litigation also weighs slightly in favor of transfer. Apart from the location of its counsel, which is not entitled to much, if any, weight, there is no

appreciable difference between the cost of litigating in the Southern and Northern District of California as far as Streetspace is concerned.[7] It is a Malaysian company and has no witnesses or relevant materials in the Southern District. From the perspective of the Defendants, though, there *is* an appreciable difference in cost. Four are based in the Northern District — Google, AdMob, Apple, and Quattro — and one, Millennial Media, has an office there; the Northern District is plainly the more cost-effective venue for them. The remaining Defendants — Nokia, Navteq, and Jumptap — likely face equal costs in litigating in the Southern and Northern Districts.[8]

VII. Availability of Witnesses

The next *Jones* factor is the convenience of non-party witnesses, or else the availability of compulsory process to compel the attendance of those who are unwilling. This is often the most important factor in deciding whether to transfer a case. *Getz v. Boeing Co.*, 547 F. Supp. 2d 1080, 1083 (N.D. Cal. 2008). Non-party witnesses are entitled to more consideration than party witnesses because the presence of the latter at trial may be compelled. *See Multimedia Patent Trust* at *4 (noting that "courts frequently state that the convenience of third party witnesses is more important than that of party witnesses"); *Kina v. United Air Lines, Inc.*, 2008 WL 5071045 at *6 (N.D. Cal. Dec. 1, 2008) (convenience of non-party witnesses, rather than that of employee witnesses, is the more important factor); *Accentra* at *5 ("The court accords less weight to the inconvenience of party witnesses, as they can be compelled to testify regardless of the forum in which the lawsuit is ultimately litigated.") To be clear, none of these cases suggest that the convenience of party witnesses is completely irrelevant; rather, they allow for consideration that is discounted. *See Getz*,

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[7] Streetspace suggests that "[i]f this case were transferred to the Northern District, Streetspace;s counsel would have to establish a temporary office for trial there at exorbitant cost." (Opp'n Br. at 12.) But the Court has already found that the location of counsel is not entitled to much consideration. *See* n. 3, *supra.*

[8] Jumptap does have two employees in the Northern District of California, but there is no indication that they are relevant actors in this case and that their testimony will be required. Indeed, Jumptap doesn't suggest that the Northern District of California will be more convenient, but that the Southern District "is not more convenient" than the Northern District. (Jumptap Decl. ¶ 10.) This leaves open the possibility that the two Districts are equally convenient and costly for Jumptap.

547 F. Supp. 2d at 1084 ("The Court, however, discounts any inconvenience to the parties' employees, whom the parties can compel to testify."). Finally, a party's argument that litigating in a particular venue will prove inconvenient for its witnesses cannot be speculative; that party "is obligated to clearly specify the key witnesses to be called and make at least a generalized statement of what their testimony would have included." *Fireman's Fund Ins. Co. v. Nat'l Bank for Cooperatives*, 1993 WL 341274 at *4 (N.D. Cal. Aug. 27, 1993). *See also Kina* at *6 ("In establishing inconvenience to witnesses, the moving party must name the witnesses, state their location, and explain their testimony and its relevance.").

Google and Admob submit, credibly, that all of their party witnesses are in Mountain View, California, in the Northern District. (Google and Admob Decl. ¶¶ 4–7.) Apple and Quattro submit the same; all of their party witnesses are in the Northern District. (Apple and Quattro Decl. ¶¶ 7–9.) It is relatively unproblematic that Google, Admob, Apple, and Quattro do not name names and proffer the subject of their testimony, the general requirement that they do so notwithstanding, because their representation is that *all* of their potential witnesses are in the Northern District. In other words, to the extent these Defendants will call *anyone* to testify about the design, development, and marketing of their accused products, and they certainly will, these individuals will almost certainly reside in the Northern District.[9] As for the other Defendants — Nokia, Navteq, Millennial Media, and Jumptap — they apparently have no likely party witnesses in the Northern or Southern Districts of California, and so, from the perspective of employees' availability to testify, have no

[9] Streetspace goes to some trouble to argue that Apple is being disingenuous here because it has filed patent infringement cases in Delaware and supported the transfer of a patent case from the Eastern District of Virginia to the Southern District of California. That is not relevant. 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) (emphasis added). And on closer examination, the cases Streetspace cites are distinguishable. For example, in *Apple v. High Tech Computer Corp.*, 2011 WL 143909 (D. Del. 2011), Apple filed an infringement action in Delaware — and the court there refused to transfer it to California — because four related cases involving common issues of law and fact were pending in Delaware. No such circumstance is present in this case. *Id.* at *3 ("Although the court denied Apple's motion to consolidate due to the magnitude of the cases and the limited commonalities among them, the court notes that some common issues of law and fact exist among this case and the four other smart phone infringement actions pending before this court.").

preference between the two Districts.[10] This is equally true of Streetspace; it identifies no party witnesses in the Southern District of California. Thus, from the perspective of party witnesses — and the Court is mindful that they are less integral to the analysis than non-party witnesses — the Northern District of California is the more convenient venue.

There is also a very slight convenience gain to *non-party* witnesses that weighs in favor of transfer. Streetspace identifies no such witnesses in the Southern District of California, but Defendants do identify a record store, a pub, and two restaurants in the Northern District from whom they may seek testimony relevant to a "prior public use" defense. These parties may be within the Court's subpoena power, Fed. R. Civ. P. 45(c)(3)(A)(ii), but subpoenaing them to testify in the Southern District may pose problems if they will "incur substantial expense." Fed. R. Civ. P. 45(c)(3)(B)(iii). Streetspace is right that videotaped depositions may stand in for the live testimony of witnesses who are beyond the Court's subpoena power, and this undercuts slightly the potential inconvenience to Defendants' non-party witnesses, especially considering that these witnesses do not appear to be essential to the Defendants' case. Still, however, on balance the convenience of witnesses, both party and non-party, weighs in favor of transfer.

VIII. Access to Sources of Proof

Defendants argue that none of the sources of proof relevant to this action are located in the Southern District of California, while all relevant Google, Admob, Apple, and Quattro documents are in the Northern District. That is likely true, and Streetspace does not dispute that fact. But today, this factor is less relevant to the § 1404(a) analysis considering the manner in which modern technology allows for the electronic transmission of documents. *See Multimedia Patent Trust* at *5. The location of the sources of proof may weigh in favor of transfer, but only negligibly in a case like this.

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[10] Again, while Nokia does have a large research facility in San Diego, Streetspace has not alleged any facts to tie this facility to the accused technologies or legal issues in this case. At best, it alleges that Nokia makes U.S.-specific products in San Diego, but it doesn't allege that those products are the same ones being accused of infringement. (Opp'n Br. at 14.) In fact, Defendants suggest that Nokia's accused product — Nokia Maps — is not developed in San Diego. (Reply Br. at 9.)

IX. Other Considerations

The factors discussed above are so-called private factors relevant to the § 1404(a) inquiry; they concern only the parties. A court weighing transfer should also consider the following public factors: "administrative difficulties from court congestion; the 'local interest in having localized controversies decided at home'; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty." *Piper Aircraft Co.*, 454 U.S. 235, 241 (1981) (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 509 (1947)).

Most of these factors are neutral here. For example, there are no conflicts of law to be avoided, and there is no local interest in this lawsuit in either the Southern or Northern District of California that supports its trial in one district over the other. Streetspace observes that the civil docket of the Southern District is far less congested than that of the Northern District, but that ignores the fact that the Southern District is a border district and has one of the busiest criminal dockets in the country. Also, the Lemley article presented by Defendants figures that the average time it takes a patent case to reach trial in the two districts is very similar — 2.92 years in the Northern District and 2.48 years in the Southern District.

The only factor the Court finds may cut in favor of either party is the interest in trying a case in a forum "at home with the law" — and that cuts in favor of the Defendants. The Court will not go so far as to suggest that all technology patent disputes belong in the Northern District of California, but that is where Silicon Valley is, and Silicon Valley is where the chief Defendants are and where much of the smart phone and mobile technologies in this country are developed. It is the national if not global headquarters of the industry in which the parties in this case are players. Thus, the Court finds that the public interest slightly favors transfer to the Northern District of California.

X. Conclusion

Streetspace is a foreign corporation and, aside from the largely irrelevant location of its counsel, has no weighty reason for filing this lawsuit in the Southern District of California

rather than the Northern District (or any other federal district). Both districts are equally convenient for the company. On the other hand, more than half of the Defendants are located in or have offices in the Northern District of California, many of the accused products at issue in this lawsuit were developed there, and many of the potential witnesses in this case reside there. For the foregoing reasons, the Court **GRANTS** the Defendants' motion to transfer this case to the Northern District of California.

IT IS SO ORDERED.

DATED: September 12, 2011

HONORABLE LARRY ALAN BURNS
United States District Judge