

# EXHIBIT F



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## I. INTRODUCTION

In light of Google Inc.’s (“Google”) Northern District of California (“NDCAL”) action for a declaratory judgment, that its Android Operating System (“Android OS”) does not infringe the seven patents asserted here (the “Google Action”), Defendants LG Electronics, Inc. (“LKEKR”), LG Electronics U.S.A., Inc. (“LGEUS”), and LG Electronics MobileComm USA Inc. (“LGEMU”) (collectively, “LG”) hereby request that the Court stay this action (the “LG Action”) pursuant to the Court’s inherent authority and the “customer-suit” exception. The very *same* Google Android OS and seven patents at issue in the Google Action forms the basis under which Rockstar Consortium US LP, Inc. and Mobilestar Technologies, LLC (collectively, “Rockstar”) allege infringement by LG’s mobile devices in the present action. A stay here will provide Google the opportunity to eliminate the threat Rockstar’s claims pose and to vindicate its interest in defending its technology—an interest that Google is by far best suited to defend. The Google Action will provide for the efficient resolution of Rockstar’s claims against Google (and Google’s customers) in a single forum, thereby likely mooted this action and promoting judicial and party economy.<sup>1</sup> In contrast, Rockstar’s multi-defendant and multi-action litigation strategy maximizes the burden on the defendants and the courts, risks the unnecessary duplication of effort and inconsistent results, and is further inconsistent with the “just, speedy, and inexpensive” resolution of Rockstar’s claims.<sup>2</sup> Alternatively, the Court should transfer this action to the NDCAL because the private and public interest factors weigh heavily in favor of transfer.

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<sup>1</sup> Rockstar has brought *six* other separate actions in this District against *nineteen* defendants for infringement of the *same* seven patents asserted against LG based on defendants’ sale of only mobile devices that use Google Android OS. *See Rockstar Consortium US LP v. ASUSTeK Computer, Inc.*, No. 13-cv-894, Dkt. No. 22 ¶ 14; *HTC Corp.*, No. 13-cv-895, Dkt. No. 23 ¶ 15; *Huawei Investment & Holding Co., Ltd.*, No. 13-cv-896, Dkt. No. 1 ¶ 22; *Pantech Co., Ltd.*, No. 13-cv-899, Dkt. No. 9 ¶ 15; *Samsung Electronics Co., Ltd.*, No. 13-cv-900, Dkt. No. 46 ¶¶ 25, 27; and *ZTE Corp.*, No. 13-cv-901, Dkt. No. 29 ¶ 15.

<sup>2</sup> *See* Fed. R. Civ. P. 1.



## II. STATEMENT OF FACTS

### A. The LG Action

On October 31, 2013, Rockstar sued LG for infringement of seven patents: U.S. Patent Nos. 5,838,551; 6,037,937; 6,128,298; 6,333,973; 6,463,131; 6,765,591; and 6,937,572 (the “patents-in-suit.”). (See Dkt. No. 1 ¶¶ 9-15.) Rockstar alleges that LG infringes the patents-in-suit by “making, using, selling and offering to sell . . . certain mobile communication devices having a version (or an adaptation thereof) of *Android operating system* [sic] (‘LG Mobile Communication Devices.’).” (*Id.* ¶ 16 (emphasis added).) By Rockstar’s express definition, the only accused LG Mobile Communication Devices are devices using the Android OS. (*Id.* ¶ 16.) LGEKR is an Original Equipment Manufacturer (“OEM”) of mobile devices incorporating the Android OS. (Son Decl., **Ex. 1** ¶¶ 3-5.)<sup>3</sup> LGEMU does sell other mobile devices that do not incorporate the Android OS (*id.* ¶ 2.), but those devices are not accused in this case.

### B. The Google Action And Rockstar’s Subsequent Claims Against Google

On December 23, 2013, Google filed an action against Rockstar in the NDCAL seeking a declaratory judgment that its Android OS does not infringe the *same* seven patents that Rockstar had previously asserted in this case against LG and other OEM defendants. (See *Google Inc. v. Rockstar Consortium US LP*, No. 13-cv-5933 (N.D. Cal.), Dkt. No. 1 ¶ 1; at Prayer for Relief (“Declaring that Google’s Android platform . . . does not infringe”).) Only *after* Google brought its action in the NDCAL, did Rockstar amend its complaint in the EDTX Samsung action (originally filed on October 31, 2013)<sup>4</sup> to include allegations of infringement against Google on the exact same seven patents-in-suit. (See *Samsung Action*, Dkt. Nos. 19 ¶ 27; 46 ¶ 27.)

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<sup>3</sup> All exhibits to the Harris Decl. will be identified herein as **Ex. \_\_\_\_**.

<sup>4</sup> See *Rockstar Consortium US LP v. Samsung Electronics Co., Ltd.*, No. 13-cv-900 (E.D.Tex.) (the “Samsung Action”), Dkt. No. 1 ¶¶ 9-17).

### **III. LEGAL STANDARDS**

#### **A. A Court's Inherent Authority To Stay A Case**

A court has broad discretion to stay proceedings to avoid unnecessary effort and expense and to promote the interests of justice. *Clinton v. Jones*, 520 U.S. 681, 706 (1997). In deciding whether to stay a litigation, a court should consider: “(1) whether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party, (2) whether a stay will simplify the issues in question and trial of the case, and (3) whether discovery is complete and whether a trial date has been set.” *Rmail Ltd. v. Amazon.com, Inc.*, No. 10-cv-258, 2014 U.S. Dist. Lexis 25597, \*25-\*26 (E.D. Tex. Jan. 30, 2014) (quoting *Soverain Software LLC v. Amazon.com, Inc.*, 356 F. Supp. 2d 660, 662 (E.D. Tex. 2005)).

#### **B. The Customer-Suit Exception**

The customer-suit exception allows a court to stay an action against customers when the manufacturer brings a declaratory judgment action. *Spread Spectrum Screening LLC v. Eastman Kodak Co.*, 657 F. 3d 1349, 1357 (Fed. Cir. 2011). In the interests of judicial efficiency and to guard against abuse, “litigation against or brought by the manufacturer of infringing goods takes precedence over a suit by the patent owner against customers of the manufacturer.” *Id.* (quoting *Katz v. Lear Siegler, Inc.*, 909 F.2d 1459, 1464 (Fed. Cir. 2011)). The manufacturer’s case need not resolve every issue in the customer suits; it “need only have the potential to resolve the ‘major issues’ concerning the claims against the customer—not every issue—in order to justify a stay of the customer suits.” *Id.* at 1358 (citing *Katz*, 909 F.2d at 1464).

#### **C. Transfer Pursuant To 28 U.S.C. § 1404(a)**

Section 1404(a) provides that “[f]or the convenience of the 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). Courts are authorized to transfer venue to prevent a waste of time, energy, and money, and to protect litigants and witnesses against inconvenience and expense. *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964).

A threshold determination is whether the suit could have been brought in the proposed transferee district. *In re Volkswagen AG (Volkswagen I)*, 371 F.3d 201, 203 (5th Cir. 2004). The court then weighs the relative conveniences of the current district against the transferee district by considering several “private” and “public” interest factors, none of which are given dispositive weight. *Id.* The “private” interest factors are: “(1) the cost of attendance for willing witnesses; (2) the relative ease of access to sources of proof; (3) the availability of compulsory process to secure the attendance of witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive.” *In re Volkswagen of Am., Inc. (Volkswagen II)*, 545 F.3d 304, 315 (5th Cir. 2008) (en banc); *In re Nintendo Co.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009). The public interest factors include: “(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws [in] the application of foreign law.” *Id.*

#### **IV. ARGUMENT**

##### **A. The Court Should Stay This Action Pending The Resolution Of Google’s Declaratory Judgment Action In The Northern District Of California**

##### **1. The Court Should Stay This Action Because It Will Simplify The Issues And Preserve The Parties’ And The Court’s Resources, Without Causing Any Prejudice To Rockstar**

Considering the totality of factors that weigh on the ultimate goal of promoting efficiency, limiting costs, and preventing prejudice, the Court should stay this action pending the resolution of the Google Action. *See Rmail Ltd.*, 2014 U.S. Dist. Lexis 25597, at \*25-\*26. A stay will not

unduly prejudice or present a clear tactical disadvantage to Rockstar, and Rockstar cannot credibly argue otherwise. The Google Action was filed after Rockstar filed *seven separate lawsuits* in this District against *22 separate defendants*, including LG, based on the defendants' use of the accused Google Android OS in their mobile communication devices—but before Rockstar asserted independent infringement claims against Google. Directing Rockstar to first litigate its claims against Google, the developer of the Android OS, will present no undue prejudice to Rockstar. Further, because Rockstar is an entity (*see* Samsung Action, Madigan Decl., Dkt. No. 52-1 Ex. 10), that “does not manufacture or sell any products, or otherwise practice the patent, there is no risk of customer losses or of injury to market share during a stay.” *Microlic, LLC v. Intel Corp.*, No. 2:07-CV-488-TJW, 2010 WL 3766655, \*2 (E.D. Tex. Sept. 20, 2010) (staying patentee's infringement claims pending reexamination proceedings). A stay would also not significantly delay Rockstar from litigating its patent rights, as Google filed its declaratory judgment action less than two months after Rockstar filed this action.

The second factor also weighs in favor of a stay. A resolution in the Google Action, which involves all of the patents-in-suit and the same accused Android OS developed and provided by Google, will simplify and streamline the issues for trial in, or likely obviate, the LG Action. There is simply no need for co-pending and duplicative litigations that will only unnecessarily exhaust judicial and party resources. *See Wolf Designs, Inc. v. Donald McEvoy, Ltd.*, 341 F.Supp. 2d 639, 645 (N.D. Tex. 2004) (holding that a stay was warranted “to prevent an extravagantly wasteful and useless duplication of the time and effort of the federal courts by the simultaneous trial of two complex and elaborate cases involving substantially the same factual issues.”). In addition, a stay would reduce the burden on the parties and the Court, particularly because LG and the other defendants sued by Rockstar in this District are customers

of Google and only employ Google's Android OS in their accused mobile devices. Rather than defending its accused Android OS in piecemeal fashion and having to exhaust resources seeking to intervene in six different infringement actions (one case has settled), Google can present a streamlined defense of the Android OS that will bear fruit in all of the customer actions.

The third factor also favors a stay because neither Rockstar nor LG has answered the complaint in the Google and LG Actions, discovery has not commenced, both cases are in their infancy, and trial dates have not been set. There has been no scheduling conference or discovery whatsoever in either the Google Action or this action, so there are no pending deadlines that would be disrupted. Further, none of the parties nor the Court has yet to invest significant resources in the litigation of either action. Even in a case more advanced than this one, this Court found in favor of a stay. *Southwire Co. v. Cerro Wire, Inc.*, 750 F. Supp. 2d 775, 780 (E.D. Tex. 2010) (“the *Markman* hearing has not occurred, expert reports have not been exchanged, discovery is not completed, summary judgment motions have not been filed, and the Court has not begun its claim construction.”)

## **2. The Court Should Also Stay This Action Pursuant To The Customer-Suit Exception**

Separately, because Google is the true party in interest and the Google Action will determine “major issues” regarding Rockstar's claims, the Court should also stay this action pursuant the customer-suit exception. *Spread Spectrum*, 657 F.3d at 1358.<sup>5</sup> Google developed the specific technology that Rockstar has accused in this action, *i.e.*, the Android OS. LG

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<sup>5</sup> An exact overlap of issues is not required. To the extent certain issues might be left unresolved, a stay is still the correct course of action by this Court because the Google Action “need only have the potential to resolve the ‘major issues’ concerning the claims against the customer—not every issue—in order to justify a stay of the customer-suits.” *Spread Spectrum*, 657 F. 3d at 1358. Even where “there may be additional issues involving defendants,” the substantial benefits of granting a stay prevail. *Katz*, 909 F. 2d at 1464 (Fed. Cir. 1990).

incorporates the accused Google Android OS on LG's mobile communication devices, which Android OS was provided by Google. Consequently, each of the Android OS features accused by Rockstar exclusively originates with Google. Google is the true party in interest in this dispute because, as the primary developer of the Android OS, it "control[s] the design and production" of Android and is thus "in the best position to defend its own products." *Delphi Corp. v. Auto. Tech. 's Int'l, Inc.*, No. 08-CV-11048, 2008 WL 2941116, \*5 (E.D. Mich. July 25, 2008) (finding the customer-suit exception weighed against transferring manufacturer's declaratory judgment action to venue of first-filed suit against customers); *Microsoft Corp. v. Geotag Inc.*, 847 F. Supp. 2d 675, 681 (D. Del. 2012) (finding "the real dispute" was between the patentee and defendants Microsoft and Google, rather than customers who featured Microsoft and Google mapping services on their websites). Thus, Google is the party in the best position to defend the Android OS against Rockstar's claims. Indeed, Google admits it is the true party in interest and has filed a similar motion to stay and transfer. (*See* Samsung Action, Dkt. No. 52.) Further, because Rockstar has accused only LG's mobile devices employing the Google Android OS (*see* Complaint, Dkt. No. 1 ¶ 16), a judgment in the Google Action "will efficiently dispose of the infringement issues" presented here. *Ricoh Co., Ltd. v. Aeroflex Inc.*, , 279 F. Supp. 2d 554, 558 (D. Del. 2003).<sup>6</sup>

Resolving Rockstar's claims in a single action—the Google Action—is the most efficient course and will greatly simplify this action, if not obviate it. *Spread Spectrum*, 657 F. 3d at 1358 (Fed. Cir. 2011); *DataTern, Inc., v. Staples, Inc.*, No. 2:10-CV-133, Slip Op., Dkt. No. 185 at 9

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<sup>6</sup> Courts in this Circuit have recognized the benefits of staying infringement suits against a manufacturer's customers in favor of an action between the manufacturer and the patent holder. *See Wolf Designs*, 341 F.Supp. 2d at 645; *see also Ciena Corp. v. Nortel Networks Inc.*, No. 2:05 CV 14, 2005 WL 1189881 (E.D. Tex. May 19, 2005) (finding "the reasons to enjoin the action against [the customer] under the customer suit basis far outweigh [plaintiff's] arguments against doing so.").

(E.D. Tex. Feb. 12, 2012) (staying customer suits in favor of declaratory judgment action brought by software developers in New York because “in all likelihood [the New York cases] will settle many [issues] and simplify them all.”) (quoting *Landis v. North American Co.*, 299 U.S. 248, 256 (1936); citing *Katz*, 909 F.2d at 1464) (alterations in original).

Importantly, Rockstar has also sued other customers of Google in five separately pending actions in this District for their use of the Android OS in their mobile devices. In addition to obviating or simplifying this case against LG, the Google Action will have a similar impact on all the other customers Rockstar has sued. The judicial efficiency of allowing one suit between Rockstar and the manufacturer to first run its course, rather than litigating a half dozen lawsuits against Google’s customers cannot be overstated. The Court should stay this case (and the other pending cases) to promote judicial economy by encouraging a “global” resolution, rather than “piecemeal litigation.” *Delphi Corp.*, 2008 WL 2941116 at \*5; *Ricoh*, 279 F. Supp. 2d at 557 (“[I]t is more efficient for the dispute to be settled directly between the parties in interest.”).

**B. Alternatively, This Action Should Be Transferred Pursuant To 28 U.S.C. § 1404(a) To The Northern District Of California**

**1. Rockstar Could Have Brought This Action In The Northern District Of California**

Rockstar brought its patent infringement action against LG pursuant to 35 U.S.C. § 1 *et seq.*, and alleged that venue was proper pursuant to 28 U.S.C. §§ 1391 and 1400(b). (*See* Complaint, Dkt. No. 1 ¶¶ 7-8.) In patent infringement cases, venue is proper in the judicial district “where the defendant resides” (*see* 28 U.S.C. § 1400), and, a corporation “resides” in any district in which it was subject to personal jurisdiction at the time the action was filed (*see* 28 U.S.C. § 1391 (c); *see also* 28 U.S.C. § 1391 (d) (for foreign corporations)). The relevant inquiry is whether “such defendant is subject to the [transferee] court’s personal jurisdiction with

respect to the civil action in question.” *See* 28 U.S.C. § 1391(c)(2). Based on Rockstar’s alleged assertions supporting personal jurisdiction and venue in this District (*see* Complaint, Dkt. No. 1 ¶ 8 (premised on placing mobile devices into stream of commerce in this District)), to the extent this action could have been brought in this District, it could also have been brought in the NDCAL for the same reasons. (*See* Son Decl., Ex. 1 ¶ 6 (mobile device sales in the NDCAL)).

## **2. The Private Interest Factors Strongly Favor Transfer**

### *i. Cost Of Attendance For Willing Witnesses*

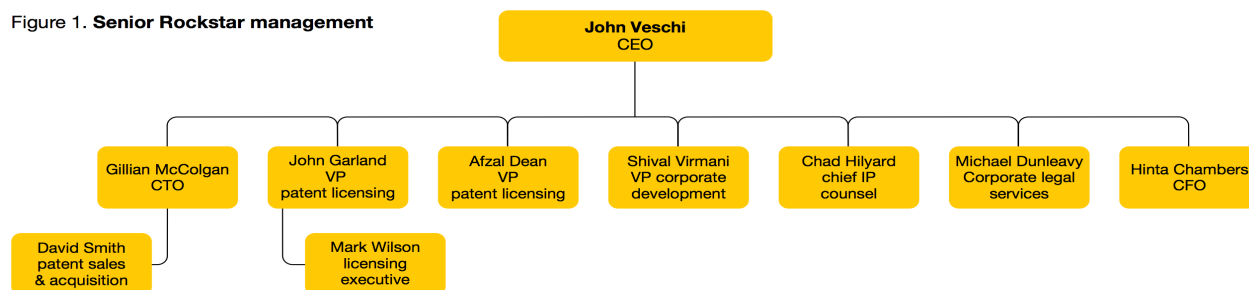
Courts recognize that the costs of attendance for witnesses or the convenience of the parties and party witnesses factor, is “probably the single most important factor in transfer analysis.” *See In re Genentech, Inc.*, 566 F.3d 1338, 1343 (Fed. Cir. 2009). This factor overwhelmingly supports a transfer to the NDCAL. Google, the developer of the accused Android OS, is headquartered in Mountain View, in the NDCAL. (*See* Samsung Action, Dubey Decl., Dkt. No. 52-29 ¶¶ 4-6.) Google witnesses are concentrated in Mountain View, including engineers responsible for the research, design, and development of the accused Android OS (*Id.* ¶ 7.) There are approximately 850 people in the Google group that develops the Android OS and of the approximately 630 U.S.-based employees in that group, more than 85% work in the San Francisco Bay area. (*Id.* ¶ 8.) This group is led by Hiroshi Lockheimer, Vice President of Engineering, who works in Mountain View, CA. (*Id.*) Jon Gold, a Finance Manager with knowledge of financial information related to Google’s Android OS, also works there. (*Id.*) There are no relevant Google documents or employees in this District. (*Id.* ¶¶ 11-12.) LG Electronics MobileComm USA Inc. (“LGEMU”) is based in San Diego, California. (Son Decl., Ex. 1 ¶¶ 1, 11-12.) LGEMU is responsible for the marketing, selling and quality management of LG mobile communication devices. (*Id.* ¶ 6.) LGEMU’s subsidiary, LG Electronics Mobile



Research U.S.A., LLC, also has a location in San Jose, California that is used for Google Android OS certification of LG mobile communication devices. (*Id.* ¶¶ 1, 7-10.) There are no LG documents or employees relating to Android OS certification located in this District. (*Id.* ¶¶ 13, 14; Alessi Decl. Ex. 2 ¶¶ 6, 7.)<sup>7</sup>

Rockstar has no meaningful connection to this District. Though Rockstar claims a principal place of business in Plano, Texas (Complaint, Dkt. No. 1 ¶¶ 1-2), the majority of its employees are based in Canada. Rockstar purchased the patents-in-suit when they were auctioned during the bankruptcy of Nortel Networks (“Nortel”). (Samsung Action, Madigan Decl., Dkt. No. 52-1 Exs. 1-3.)<sup>8</sup> Rockstar CEO John Veschi and his team remain based in Nortel’s old headquarters town of Ottawa, Canada, and still form the core of Rockstar’s executive ranks. (*Id.* Ex. 10.) A figure from an article in the July/Aug. 2013 issue of *Intellectual Asset Management*, produced with Rockstar’s cooperation, shows Rockstar’s senior management:

Figure 1. Senior Rockstar management



(*Id.* Ex. 16.) Of these ten members of Rockstar’s senior management, five work in Canada; one each in California, Colorado, Massachusetts, New York, and Pennsylvania; and none in Texas.

(*Id.* Exs. 15-19.) Further, Rockstar lists on its website six “Corporate Leaders,” none of whom

<sup>7</sup> LGEUS is based in New Jersey and is only in the business of marketing non-mobile consumer products that are not at issue here. (Alessi Decl. Ex. 2 ¶¶ 1, 4-5.) LGEKR manufactures mobile devices (*see* Son Decl. Ex. 1 ¶ 4), and to the extent it has any relevant witnesses in Korea, their travel costs and expenses will be significant no matter where they testify. Accordingly, their location does not affect the transfer analysis. *See In re Genentech*, 566 F.3d at 1344.

<sup>8</sup> Five companies make up Rockstar and together they purchased the Nortel patents. (*Id.* Exs. 1-3.) Apple, Inc. contributed 58% of the total price. (*Id.* Ex. 4.)

are from Texas. (*Id.* Ex. 20.) Rockstar’s website lists addresses in Canada and Texas but the Canada address comes first and has the only phone number. (*Id.* Ex. 10.) The same website links to Rockstar’s LinkedIn page, which lists Rockstar’s Canadian address as its “headquarters.” (*Id.* Exs. 13-14.) Rockstar’s own licensing letters confirm this because they originate from Rockstar’s headquarters in Canada and Rockstar’s licensing executives in California. (*Id.* Ex. 21; *see also* **Ex. 3**, 3/12/12 and 5/23/12 Ltrs. From A. Dean to J. Park.)<sup>9</sup> MobileStar is a shell entity created for the sole purpose of litigation and there is no indication it has set foot in the State. Mobilestar did not register with the Texas Secretary of State until *after* the filing of its complaint, in violation of Texas Business and Organizations Code Section 9.051. (*See* Dkt. No. 24.) Mobilestar’s presence, if any, in this District is “recent, ephemeral, and an artifact of litigation.” *In re Zimmer Holdings, Inc.*, 609 F.3d 1378, 1381 (Fed. Cir. 2010). The Federal Circuit does not consider such attempts at venue manipulation. *See In re Microsoft Corp.*, 630 F. 3d 1361, 1365 (Fed. Cir. 2011).

Because the NDCAL area is greater than 100 miles from this District, the “factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled.” *In re Volkswagen I*, 371 F. 3d at 204-05. Here, the NDCAL is a shorter average distance from the vast majority of potential witnesses than this District. But the Court should also consider actual travel time. *See id.* at 205 n.3. Taking that into account, the NDCAL also prevails. Witnesses traveling to the NDCAL can fly into any of the Oakland International, San Francisco International or San Jose International Airports; 10 miles, 25 miles and 40 miles,

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<sup>9</sup> On October 30, 2013, Rockstar formed its wholly owned subsidiary MobileStar. (Samsung Action, Madigan Decl., Dkt. No. 52-1 Ex. 8.) The next day, MobileStar was assigned rights to the five of the asserted patents. (*Id.* Ex. 12.) That transaction was executed in Canada by two members of Rockstar’s senior management located in Canada. (*Id.*) On that same day, Rockstar filed this action. (*See* Dkt. No. 1.)

respectively, from the District Court hearing the Google Action. By contrast, out-of-town witnesses traveling to this District must usually drive 170 miles from the Dallas International Airport. Further, if all of Google's and LG's witnesses who are located in the NDCAL were required to travel here, Google and LG would incur significant expense for airfare, meals, lodging and productivity loss. (*See Samsung Action*, Dubey Decl., Dkt. No. 52-29 ¶¶ 4-9; *Son Decl. Ex. 1* ¶¶ 3-10.) Those burdens would be avoided if this case was transferred to the NDCAL.

*ii. Relative Ease Of Access To Sources Of Proof*

This factor turns on “which party, usually the accused infringer, will most probably have the greater volume of documents relevant to the litigation and their presumed location in relation to the transferee and transferor venues.” *Volkswagen II*, 545 F. 3d at 314-15.<sup>10</sup> As all of the relevant documents are located outside of this District, particularly in the NDCAL, the access to sources of proof factor weighs significantly in favor of transfer to the NDCAL. Rockstar's allegations establish that the NDCAL is clearly more convenient, as the identified basis for infringement is the manufacture and sale of mobile devices using Google's Android OS (Complaint, Dkt. No. 1 ¶ 16.) All or nearly all of the relevant Google documents and records are located in or near its Mountain View offices. (*See Samsung Action*, Dubey Decl., Dkt. No. 52-29 ¶ 12.) In *Genentech*, the court found that transfer was warranted because the transporting of documents located in the NDCAL would “impose a significant and unnecessary burden on the petitioners.” *Genentech*, 566 F.3d at 1346. This burden is especially significant where, as here, no physical evidence is located in this District. *Phil-Insul Corp. v. Reward Wall Sys., Inc.*, No. 6:11-CV-53, Dkt. 106 at 4 (E.D. Tex. Feb. 10, 2012).

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<sup>10</sup> *See also Genentech*, 566 F.3d at 1345 (“In patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer. Consequently, the place where the defendant's documents are kept weighs in favor of transfer to that location.”)

Rockstar admits that any purportedly relevant documents not located in Canada come from Nortel's former office, which was not in this District. *See Rockstar Consortium US LP v. Google Inc.*, No. 13cv893, E.D. Tex., Dkt. No. 33-1 ¶¶ 6, 24. Rockstar may have moved these documents into this District (*id.* ¶¶ 18, 24), "but documents relocated in anticipation of litigation are not considered." *Adaptix, Inc. v. HTC Corp.*, 937 F.Supp.2d 867, 872 (E.D. Tex. 2013) (citing *In re Hoffman-La Roche Inc.*, 587 F.3d 1333, 1336-7 (Fed. Cir. 2009)). Simply put the presence of any Rockstar documents in this District should not be considered because it is "recent, ephemeral, and an artifact of litigation." *Zimmer*, 609 F.3d at 1381.

*iii. Availability Of Compulsory Process*

The "availability of compulsory process to secure the attendance of witnesses" factor also strongly favors the NDCAL. Both this Court and the NDCAL may issue deposition subpoenas, but each court has different powers to require attendance at trial. This Court can compel only non-party witnesses residing within Texas, and the NDCAL only from within California. Fed. R. Civ. P. 45(c)(1)(B)(ii). In at least three highly relevant subject areas, the relevant witnesses are in the NDCAL. First, witnesses with knowledge of the Android OS, including former employees of Google and Android, Inc., remain heavily concentrated in the NDCAL. Second, at least one named inventor resides in the NDCAL (Samsung Action, Madigan Decl., Dkt. No. 52-1 Ex. 22), and dozens of relevant prior artists of record live in the NDCAL (Samsung Action, Jachlewski Decl., Dkt. No. 52-31 ¶ 3). Finally, the NDCAL is home to very likely and unwilling trial witnesses, employees of non-party Apple, Inc., the company that Rockstar alleges outbid Google for the Nortel portfolio. (*See* Samsung Action, Dkt. No. 19 ¶¶ 7-12.) Rockstar has put the valuation of the Nortel portfolio at issue and evidently intends to introduce that evidence at trial, unless precluded from doing so, evidence which Google can only counter by calling Apple

witnesses. However, only the NDCAL and not this Court can compel those witnesses to attend trial. Such asymmetry of presentation on a major issue would be highly prejudicial to Google. Google and LG should not be deprived of their ability to call non-party witnesses live, especially where no relevant non-party witness appears to reside in this District. For example, none of the prosecuting attorneys reside here. (*See Samsung Action, Madigan Decl., Dkt. No. 52-1 Ex. 23.*) Not a single inventor named was located in Texas. (*See generally, patents-in-suit.*) Any former Nortel licensing executives reside in Canada and Massachusetts. (*Id.* Exs. 24-25.)

*iv. There Are No Practical Problems Preventing Transfer*

There are no practical problems with transferring this case because this case is just beginning: discovery has not started, the parties have not exchanged initial disclosures/contentions, and any such disclosures/contentions exchanged in the future can be used in the NDCAL. The Patent Rules of this District were patterned on the NDCAL's Rules, so any work the parties have done in this District will not be wasted. *Affinity Labs of Texas v. Samsung Elecs. Co., Ltd.*, No. 12-CV-557, 2013 WL 5508122 (E.D. Tex. Sept. 18, 2013).

**3. The Public Interest Factors Favor Transfer To The Northern District Of California Or Are Neutral**

The NDCAL has a greater interest in this case than this Court. *See Affinity*, 2013 WL 5508122 (“The Northern District of California has an interest in protecting intellectual property rights that stem from research and development in Silicon Valley.”). The Android OS developed by Google is at the core of Rockstar's claims. The NDCAL's local interest in this case is thus strong, because it “calls into question the work and reputation of several individuals residing in or near that district and who presumably conduct business in that community.” *Hoffman La-Roche*, 587 F. 3d at 1336. This District has a weaker interest, if any, in resolving this case. Rockstar only alleges it has a place of business here, but that is actually Canada. (*See Sec. IV (B)*

(2) (i), *supra.*) The allegedly infringing devices are “sold throughout the United States, and thus the citizens of the Eastern District of Texas have no more or less of a meaningful connection to this case than any other venue.” *In re TS Tech*, 551 F.3d 1315, 1321 (Fed. Cir. 2008); *See also* Son Decl., Ex. 1 ¶ 6. This factor likewise weighs in favor of transfer.<sup>11</sup>

#### 4. This Court Has Recently Transferred Cases On Similar Facts

This Court has recent granted transfer to the NDCAL on strikingly similar facts :

- ***Touchscreen Gestures v. HTC***, No. 12-cv-0261 (E.D. Tex. Mar. 27, 2013), Dkt. No. 17: A Texas LLC was formed shortly before filing a patent suit against an Android OS OEM. The court held that Google’s documents were more easily accessed in the NDCAL and the NDCAL would be more convenient for Google witnesses. *Id.* at 7 and 10. The same holds true here. (*See Samsung Action, Dubey Decl.*, Dkt. No. 52-29 ¶ 3.);
- ***Ingeniador, LLC v. Adobe Systems Inc.***, No. 12-cv-805, 2014 WL 105106 (E.D. Tex. Jan. 10, 2014): The defendant was based in the NDCAL and while some relevant documentary evidence was located in Texas, most of the evidence and witnesses were located in the NDCAL. *Id.* at \*1-\*3. The Court concluded that the inconvenience to the few witnesses residing in Texas was outweighed by the “substantially increased convenience of witnesses in California,” and in particular “given that most witnesses will likely come from California.” *Id.* Here the grounds to transfer are even more compelling because all or nearly all of Google’s relevant witnesses and documents are located in the NDCAL. (*See Samsung Action, Dubey Decl.*, Dkt. No. 52-29 ¶¶ 4-6, 8, 11 and 12.); and
- ***Blue Spike, LLC v. Texas Instruments, Inc.***, No. 12-cv-558 (E.D. Tex. Mar. 13, 2014), Dkt. No. 16: The court granted Google’s motion to transfer to the NDCAL because “the location of Defendant’s sources of proof far outweighs the presence of Plaintiff’s documents and servers in Texas.” *Id.* at 5. The court also found that compulsory process and the costs of attendance of attendance of witnesses favored transfer and that the NDCAL was “a clearly more convenient forum.” *Id.* at 10. The same applies here.<sup>12</sup>

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<sup>11</sup> The remaining public interest factors are neutral or weigh slightly in favor of transfer. The NDCAL tends to resolve cases in nearly identical time. (*Samsung Action, Madigan Decl.*, Dkt. No. 52-1 Ex. 26.) Both districts are familiar with and can apply the federal patent laws to this patent infringement case, and no conflict of laws problems are expected to arise in either district.

<sup>12</sup> Consistent with Federal and Fifth Circuit guidance, LG respectfully requests that the Court issue a **temporary stay** of this action pending the Court’s decision on LG’s Motion. *See, e.g., In re Fusion-IO, Inc.*, Misc. Dkt. No. 139, 2012 U.S. App. Lexis 26311, \*2-\*3 (Fed. Cir. 2012) (“We fully expect, however, for Fusion-IO to promptly request transfer in the lead case along with a motion to stay proceedings pending disposition of the transfer motion, and for the district court to act on those motions before proceeding to any motion on the merits of the action.”); *In re Horseshoe Entm’t*, 337 F.3d 429, 433 (5th Cir. 2003) (“As indicated earlier, Horseshoe filed its motion to transfer timely and before it filed its answer and in our view disposition of that motion should have taken a top priority in the handling of this case [.]”).

**V. CONCLUSION**

For the foregoing reasons, LG respectfully requests that this Court stay this case pending resolution of the Google Action or, in the alternative, transfer this case to the Northern District of California pursuant to 28 U.S.C. § 1404(a). Furthermore, pending the Court's decision on this Motion, LG respectfully requests that the Court issue an interim order temporarily staying the case.

Dated: March 25, 2014

Respectfully submitted,

/s/ Richard D. Harris

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 25, 2014, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, Marshall Division, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

*/s/ Richard D. Harris*

Richard D. Harris

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that counsel for Defendants have complied with the meet and confer requirement in Local Rule CV-7(h). This motion is opposed. The personal conference required by Local Rule CV-7(h) was conducted on March 24, 2014, via telephone conference with the following participants: Theodore Stevenson, III on behalf of Rockstar and Jeffrey Mote on behalf of Defendants. No agreement could be reached because Rockstar would not agree to a stay or to the transfer this case. Discussions have conclusively ended in an impasse, leaving an open issue for the court to resolve.

*/s/Richard D. Harris*

Richard D. Harris