

Exhibit A

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

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|---------------------------------------|---------------------------------------------|
| ROCKSTAR CONSORTIUM US LP and | § |
| MOBILESTAR TECHNOLOGIES LLC, | § |
| | § |
| PLAINTIFFS, | § |
| v. | § |
| | § Civil Action No. 2:13-cv-00900-JRG |
| SAMSUNG ELECTRONICS CO., LTD., | § |
| SAMSUNG ELECTRONICS AMERICA, | § |
| INC., SAMSUNG | § JURY TRIAL REQUESTED |
| TELECOMMUNICATIONS AMERICA, | § |
| LLC and GOOGLE INC., | § |
| | § |
| DEFENDANTS. | § |

**PLAINTIFFS ROCKSTAR CONSORTIUM US LP AND MOBILESTAR
TECHNOLOGIES LLC'S RESPONSE IN OPPOSITION TO DEFENDANTS'
MOTION TO STAY OR, IN THE ALTERNATIVE, TO TRANSFER TO
THE NORTHERN DISTRICT OF CALIFORNIA (DKT. NO. 52)**

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I. INTRODUCTION

Defendants Samsung Electronics Co. Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC (collectively “Samsung”) and Google, Inc. bear the burden of proof to show that this case should be transferred to the Northern District of California (“NDCA”), and they cannot make such a showing. Not only does Defendants’ motion to stay or transfer to the NDCA (the “Motion”) ignore Plaintiffs Rockstar Consortium US LP (“Rockstar”) and MobileStar Technologies LLC’s deep ties to the Eastern District of Texas (“EDTX”), it also omits any discussion of Samsung’s longstanding ties to the EDTX. Moreover, this is not a manufacturer/customer suit. The EDTX is the most convenient venue for this suit.¹

II. LEGAL STANDARD

This Court is well acquainted with the legal standards governing the transfer analysis. *See Virtualagility, Inc. v. Salesforce.com, Inc.*, 2014 U.S. Dist. LEXIS 12015, at *4-6 (E.D. Tex. Jan. 31, 2014) (Gilstrap, J.).

III. STATEMENT OF FACTS

A. Nortel, Rockstar, and Mobilestar’s Longstanding Ties to the EDTX

Nortel, Rockstar, and the Patents-in-Suit. Plaintiffs are the assignees of intellectual property that resulted from research and development performed by Nortel. For twenty years, Nortel’s U.S. headquarters was in Richardson, Texas and Nortel’s licensing activities were conducted out of Richardson. Powers Decl. ¶ 8. When Nortel confronted bankruptcy in 2011, it held an auction for its patents. Google made an initial \$900 million bid. Hearn Decl. ¶ 7. Google ultimately lost the auction to Rockstar Bidco LP, which paid \$4.5 billion. *Id.* ¶ 7.

Rockstar² owns two of the patents-in-suit and previously owned the other five, before assigning them to MobileStar. Powers Decl. ¶ 5. Rockstar is MobileStar’s parent entity and

¹ Should the Court be inclined to grant Samsung’s and Google’s Motions, Plaintiffs request that they be permitted discovery on the actual locations of Samsung’s and Google’s relevant employee witnesses and other venue facts.

² The equity owners of Rockstar include: Apple, BlackBerry, Ericsson, Microsoft, and Sony. Powers Decl. ¶ 10. Ericsson’s U.S. headquarters are located within the EDTX; BlackBerry is in the Dallas-area, within just miles of the EDTX; Microsoft is in Seattle; Apple is in the NDCA; and Sony is in New Jersey. *See Exs. 26-27.*

maintains its principal place of business in Plano, Texas. Powers Decl. ¶¶ 7, 20. MobileStar owns five of the patents-in-suit and is the exclusive licensee (from Rockstar) of the other two patents. *Id.* ¶ 5. MobileStar maintains its place of business at the same Plano address. Ex. 1.

Rockstar and MobileStar's Roots in the EDTX. When Rockstar Bidco LP acquired the patents-in-suit from Nortel in 2011, the Rockstar entities also acquired many former Nortel employees responsible for licensing and prosecuting the Nortel patents. Powers Decl. at ¶ 19. Rockstar leased Nortel's Richardson office space where many of Nortel's patent files were already located, including files relevant to the patents-in-suit. *Id.* ¶¶ 20, 29. In August 2012, after Nortel sold its Richardson campus during its bankruptcy proceedings, Rockstar signed a seven-year lease for its current offices in nearby Plano, within the EDTX. *Id.* ¶ 20. Rockstar's Plano office is the company's only U.S. office, although some employees also work out of their homes. *Id.* ¶ 23. The office contains 8,125 square feet, with 10 assigned offices, 2 guest offices, 4 conference rooms, 7 work areas, and storage space. *Id.* ¶ 21. Rockstar has 15 full-time employees in the U.S., including five full-time employees in Plano and others who spend significant time there. *Id.* ¶ 22. No employees live or work in California. *Id.* ¶ 25. Eight of the U.S.-based employees likely have relevant information about the patents-in-suit; three of them work full-time out of the Plano office, one lives in Pennsylvania, one lives in Colorado, one lives in Massachusetts, one lives in North Carolina, and one lives in Florida.³ *Id.* ¶ 26-28.

B. Google's Connections to the Eastern District of Texas

Although Google notes that it closed its office previously located in the EDTX, *see* Dkt. 52-29, Dubey Decl. ¶ 10, Google maintains at least two Texas offices, in Dallas (which Google fails to mention, approximately 20 miles from the EDTX) and Austin.⁴ Exs. 2, 3. Google's

³ Additionally, two Rockstar board members live and work in EDTX or nearby. Kasim Alfalahi, a Rockstar Board member and Chief IP officer at Ericsson, works in the EDTX, across the street from Rockstar's Plano office. Powers Decl. ¶ 27. Randy Mishler, another Rockstar Board member and Senior Director of IP Licensing at BlackBerry, works in nearby Irving, Texas. *Id.* ¶ 28. Mr. Mishler is also a former Nortel patent attorney. *Id.*

⁴ In 2012, Google opened an office in Frisco, Texas (in the EDTX). Dkt. 52-29, Dubey Decl. ¶ 10. Just a year later, Google appears to have relocated that office to Dallas (in the NDTX). Ex. 2. Google offers no explanation for the move. *See MobileMedia Ideas LLC v. HTC Corp.*, 2012 U.S. Dist. LEXIS 62153, at *7-12 (E.D. Tex. May 3, 2012) (denying motion to transfer when alleged infringer closed facilities in EDTX and reincorporated in Washington state after receiving notice of infringement).

Austin office focuses on developer relations and technical solutions, among other issues. Ex. 4. Google's Dallas office contains departments for design and engineering, as well as sales. Ex. 5.

C. The EDTX is Samsung's Home Forum

Samsung is Located in Richardson and Dallas. Defendants' Motion focuses almost entirely on Google, with only one cursory reference to Samsung's U.S. operations. Dkt. 52 at 14. But Samsung Telecommunications America, LLC has its headquarters in Richardson—within the EDTX. Ex. 6. From the EDTX, Samsung “researches, develops and markets a variety of personal and business products throughout North America including handheld wireless phones, wireless communications infrastructure systems and enterprise communications systems.” Ex. 7. Samsung also has an office in Dallas. The Dallas office appears to be heavily involved with the accused products: according to Samsung's website, the “Dallas Technology Labs (DTL) leads Samsung's standardization initiatives in the IEEE, ITU, 3GPP, WiMAX and other major forums.” Ex. 8. Samsung's Dallas labs employ over 150 engineers, including Android software engineers. *Id.* Indeed, Samsung's Dallas Technology Labs is “highly regarded” by Samsung “as the thought leader and innovation engine for its wireless business units.” *Id.*

Samsung Regularly Avails Itself of the EDTX Forum. Because the EDTX is Samsung's home forum, Samsung is no stranger to litigating here. Indeed, as a plaintiff Samsung frequently selects the EDTX as its preferred venue.⁵ Samsung has even opposed motions to transfer from the EDTX to the NDCA.⁶ Because Samsung has extensively availed itself of litigating in the EDTX, it cannot now claim that venue here is inconvenient. And, EDTX and NDCA courts have each recognized that the EDTX is a convenient forum for litigation against Samsung.⁷

⁵ See, e.g., Ex. 9, *Samsung Elecs. Co., Ltd. v. Matsushita Elec. Indus. Co., Ltd., et al*, 2:05-CV-00440, Dkt. 4 at 2 (E.D. Tex. Nov. 11, 2005) (“[v]enue is proper in [the EDTX] under 28 U.S.C. §§ 1391 and 1400. . . .”); Ex. 10, *Samsung Elecs. v. Sandisk Corp.*, 9:02-CV-00058, Dkt. 20 at 2 (E.D. Tex. Apr. 3, 2002), (“venue over Samsung's claims is proper in [the EDTX] pursuant to 28 U.S.C. §§ 1391(b)-(c)”). Not only has Samsung filed suit in the EDTX on multiple occasions, it has not challenged venue in the EDTX in other litigation. See, e.g., Ex. 11, *Ericsson Inc. v. Samsung Elecs. Co., LTD.*, Case 6:12-cv-00894-LED, Dkt. 72 ¶ 7 (E.D. Tex. Mar. 18, 2013).

⁶ See, e.g., Ex. 12, *Samsung Elecs. v. Sandisk Corp.*, 9:02-CV-00058, Dkt. 36 (E.D. Tex. Apr. 24, 2002) (Samsung motion to seal its opposition to Sandisk's motion to transfer venue to the NDCA).

⁷ See, e.g., Ex. 13, *SimpleAir, Inc. v. Microsoft Corp.*, 2:11-cv-416-JRG, Dkt. 416 at 15-16 (E.D. Tex. Aug. 9, 2013) (Gilstrap, J.) (denying motion to transfer defendants, including Samsung and Google, to the NDCA); *Interwoven*,

D. Rockstar Files this Action, Google Forum Shops to the NDCA

On October 31, 2013, Plaintiffs filed patent infringement lawsuits in the EDTX against ASUS, HTC, Huawei, LG, Pantech, Samsung, and ZTE. Ex. 14. Rather than intervene in this case, Google filed its action for declaratory judgment in the NDCA. Ex. 15. On December 31, 2013, Plaintiffs added Google as a defendant to this case. Case No. 2:13-cv-00900, Dkt. 19.

IV. DEFENDANTS' REQUEST FOR A STAY SHOULD BE DENIED.

A. This Action is Not a Manufacturer-Customer Suit

Defendants misleadingly assert that this case is about Android.⁸ *See* Dkt. 52 at 1, 5. While the accused devices each run different versions of the Android operating system, this case is *not* about Android. Of the seven patents at-issue in this case, *none* is alleged by Plaintiffs to read solely on functions or features found in Android software. *See, e.g.*, Ex. 18. In fact, the '551 patent covers only the hardware implementation within Samsung's and Google's accused products—it has no tie to Android. *See, id.*; Ex. 19. As to the other six patents at-issue, each covers the combination of hardware (designed solely by the original equipment manufacturers, like Samsung) with software. These patents require “sending,”⁹ “receiving,”¹⁰ “displaying,”¹¹ and “storing”¹²—functionality that occurs within hardware.¹³

Even if Plaintiffs' infringement allegations were focused on Android, as Defendants assert, their invocation of the “customer suit exception” to the first-to-file rule is still misplaced. While, as a general matter, litigation against the manufacturer of infringing goods takes

Inc. v. Vertical Computer Sys., 2011 U.S. Dist. LEXIS 49428, at *15-16 (N.D. Cal. May 2, 2011) (finding that “[a]s to Samsung . . . there is ample reason to believe litigation in Texas would actually be *more* convenient than it would be in [California]. Samsung, after all, has substantial ties to the Eastern District of Texas. . .”).

⁸ Android is an open-source software project managed by Google, but contributed to by many other entities and individuals, including Samsung, the defendants in the other cases, and members of the public. *See* Exs. 16, 17.

⁹ Claims 14, 15, 19, 23, 24, 27, 28, and 31 of the '298; claims 1, and 5 of the '131.

¹⁰ Claims 1, 2, 13 and 14 of the '937; claims 11, 12, 14, 15, 16, 19, 23, 24, 25, 27, 28, 29, 31, and 32 of the '298; claims 1, 4, 8, 21, and 33 of the '973; claims 1 and 5 of the '131; claim 17 of the '572; claim 1 of the '591.

¹¹ Claims 1- 3, 8-11, 13-15, 19, and 20-23 of the '937; claims 1-6, 8-12, 21, and 24-26 of the '973; claim 1 of the '591; claim 17 of the '572.

¹² Claims 17, 19, 23, and 30 of the '298; claim 20 of the '572.

¹³ *See Microsoft Corp. v. Commonwealth Sci. & Indus. Res. Org.*, 2007 U.S. Dist. LEXIS 91550, at *10 (E.D. Tex. Dec. 13, 2007).

precedence over a suit against that manufacturer’s customers, *see Spread Spectrum Screening LLC v. Eastman Kodak*, 657 F.3d 1349, 1357 (Fed. Cir. 2011), a stay is inappropriate when co-defendants are more than ordinary end users or resellers of the accused products.¹⁴ As in *Virtualagility*, here Samsung is “far more than just an ‘ordinary user’ of the accused products.” *Id.* While Defendants argue that “Android originates with Google” (Dkt. 52 at 5), the reality is that Android is an open-source software project with many non-Google contributors and each of the defendants, including Samsung, develops and contributes to the source code to create its own, unique version of the Android platform. *See* Exs. 17-16, 20, 44; Dkt. 52-30, Kang Decl. ¶¶ 9. Rockstar’s infringement contentions (without having received discovery on the issue) reflect that each defendant makes proprietary, extensive modifications to the Android code for implementation in its own mobile devices—and those changes are material to the claims of infringement in this case.¹⁵ Additionally, Samsung’s employment of many Android engineers suggests the scope and importance of its work on its own Android platform. *See* Ex. 22. Indeed, Samsung’s extensive modifications to the Android code has been an ongoing source of contention between Google and Samsung. Ex. 23.

B. The NDCA Action Would Not Resolve the “Major Issues” in This Case

Defendants do not attempt to show how the NDCA Action (to which Samsung is not a party) would resolve the “major issues” in this case. *Spread Spectrum*, 657 F.3d at 1358; *see* Dkt. 52 at 4-5. Nor can they—Samsung has not agreed to be bound by the resolution of the NDCA Action (*i.e.* infringement and invalidity).¹⁶ In any event, the NDCA Action cannot resolve the

¹⁴ In *Virtualagility*, 2014 U.S. Dist. LEXIS 12015, at *6-8, this Court rejected the argument “that because [Defendant] is the sole maker of the accused . . . applications, [Defendant’s] ‘development, manufacturing and marketing’ of these products are ‘key evidence’ in this litigation and should be the sole focus of this Court’s venue analysis.” Instead, this Court found that the co-defendant was “far more than just an ‘ordinary user’ of the accused products” based on the extent of the collaboration between the alleged customer and manufacturer. *See also Lodsyst v. Brother Int’l Corp.*, 2013 U.S. Dist. LEXIS 51336, 43 (E.D. Tex. Jan. 14, 2013); *Pragmatus Telecom, LLC v. Neiman Marcus Group, Inc.*, 2012 U.S. Dist. LEXIS 189149, at *7 (E.D. Tex. Nov. 20, 2012).

¹⁵ Rockstar’s infringement contentions reflect considerable differences between each defendants’ implementation of the Android platform, suggesting that each defendant significantly customizes the Android platform for use in its own products. *See, e.g.*, Ex. 21.

¹⁶ *See, e.g., Kahn v. Gen. Motors Corp.*, 889 F.2d 1078, 1082 (Fed. Cir. 1989) (noting that GM had “not agreed to be bound by the Illinois decision or any injunction against Motorola”); *Pragmatus*, 2012 U.S. Dist. LEXIS 189149, at *8 (observing that “it appears there is still some indecision regarding agreements to be bound by the Defendants”).

major, hardware-specific issues raised by Rockstar's infringement claims against Samsung.¹⁷

C. The Customer-Suit Exception Does Not Apply Because Google—the Purported “Manufacturer”—Is A Party to the First Filed Action

Google relies heavily on one unreported case from Michigan. *See* Dkt. 52 at 5 (citing *Delphi Corp. v. Auto. Techs. Int'l, Inc.*, 2008 U.S. Dist. LEXIS 56463, at *5 (E.D. Mich. July 25, 2008)). But the same Michigan court has clarified that the customer-suit exception is inapplicable when, as is the case here, “the manufacturer not only can be, but is a party to the first-filed litigation[.]” *Drew Techs., Inc. v. Robert Bosch, LLC*, 2012 U.S. Dist. LEXIS 11489, at *12-16 (E.D. Mich. Jan. 31, 2012). Here a stay is inappropriate because Google is a party to the first-filed action and may “fully protect its interests” by defending in the EDTX. *Id.* at *12-16.

D. The NDCA Lacks Personal Jurisdiction Over Rockstar and MobileStar

Finally, the Court should deny a stay because the NDCA lacks personal jurisdiction over Plaintiffs. Exs. 42, 43.

V. DEFENDANTS' MOTION FOR TRANSFER SHOULD BE DENIED

Because Plaintiffs could have filed suit in the NDCA, the transfer analysis depends on the private and public interest factors with which this Court is familiar.¹⁸

A. Rockstar's Meaningful, Longstanding Connections to the EDTX

Plaintiffs' principal place of business is in Plano. Contrary to Defendants' unsupported allegations, *see* Dkt. 52 at 7, the Plano office is not recent, ephemeral, or an artifact of litigation. It is a fully operational office with full-time employees doing substantial patent prosecution, licensing, and litigation support work. Powers Decl. at ¶ 23. For over a decade, Nortel prosecuted patents and ran programs to monetize patents (including the patents-in-suit) out of Richardson, less than a mile from the EDTX.¹⁹ Today, Rockstar employs five full-time employees in the

¹⁷ Even if resolution of the claims against Google would resolve the issues of infringement and invalidity against Samsung and the other hardware manufacturers (which it would not), it would not resolve the individualized questions of damages with respect to Samsung, ASUS, HTC, LG, ZTE, and Pantech. *See Secure Access, LLC v. Nintendo of Am., Inc.*, 2014 U.S. Dist. LEXIS30115, at *19-20 (E.D. Tex. Mar. 7, 2014) (Gilstrap, J.).

¹⁸ *See, e.g., Thomas Swan & Co. v. Finisar Corp.*, 2014 U.S. Dist. LEXIS 773, at *4-6 (E.D. Tex. Jan. 6, 2014).

¹⁹ Google attempts to make too much of the fact that Nortel's former office was not located in the EDTX—when it was located less than one mile from the EDTX. *See* Dkt. 52 at 8; Powers Decl. ¶ 8. But as the Court explained in

Plano office, including three patent attorneys and an office administrator. *Id.* ¶ 22. Rockstar’s licensing and litigation activities conducted in the Plano office are within Rockstar’s normal course of business. *Id.* Additionally, Rockstar’s board meetings are held at the Plano office, as are its annual strategy sessions.²⁰ *Id.* ¶ 23.

Rockstar’s meaningful ties to the EDTX are a far cry from the type of presence that courts consider ephemeral or an artifact of litigation.²¹ Unlike the venue manipulation facts of *In re Zimmer* and *In re Microsoft*, here Rockstar has employees in the EDTX and it conducts its ordinary business in the EDTX.²² *Id.* ¶ 22, 23; *see In re Microsoft Corp.*, 630 F.3d 1361, 1364-65 (Fed. Cir. 2011); *In re Zimmer*, 609 F.3d at 1381. Rather, Rockstar’s situation resembles cases where this Court has found that the plaintiff’s ties to the EDTX to be part of a legitimate pursuit of business within the EDTX.²³ In *RPost Holdings*, the Court found that the Texas office of a Delaware company was not an artifact of litigation where a Vice President worked in the office, and the office had relevant documents related to sales. *RPost Holdings, Inc. v. StrongMail Sys.*, 2013 U.S. Dist. LEXIS 116894, at *8-9 (E.D. Tex. Aug. 19, 2013). Similarly, in *Eolas Technologies* the Court refused to consider a plaintiff’s presence “recent and insubstantial” where its Chief Legal Officer lived and worked in the EDTX, most of the company’s files were located in the EDTX, and the company conducted research in the EDTX. *Eolas Techs., Inc. v. Adobe Sys., Inc.*, 2010 U.S. Dist. LEXIS 104125, at *20-21 (E.D. Tex. Sept. 28, 2010).

Invensense, Inc. v. STMicroelectronics, Inc., it may consider “evidence extremely close by” the EDTX in the venue analysis. 2014 U.S. Dist. LEXIS 3311, at *6, 23 (E.D. Tex. Jan 1, 2010); *see also Thomas Swan*, 2014 U.S. Dist. LEXIS 773, at *9 (considering companies “within or immediately adjacent to EDTX”).

²⁰ Defendants highlight the Canadian office, employees, and licensing letters for Rockstar Consortium Inc. *See* Dkt. 52 at 3-4. But Rockstar Consortium Inc.—which is not a party to this litigation—is a different (although affiliated) entity from Rockstar Consortium US LP, a plaintiff in this case. Powers Decl. ¶ 6.

²¹ *See In re Zimmer Holdings, Inc.*, 609 F.3d 1378, 1381 (Fed. Cir. 2010) (suggesting that the record will reveal attempts at venue manipulation where a plaintiff’s alleged place of business for purposes of the litigation “is nothing more than a mail drop box, a bare office with a computer, or the location of an annual executive retreat . . .”).

²² This case also differs from the recent *In re Toyota* decision, where the plaintiff brought suit in the EDTX just five months after opening an office in the EDTX for venue purposes; here Rockstar moved to the EDTX from nearby Richardson after Nortel sold its office buildings as part of its bankruptcy proceedings. Powers Decl. ¶ 20; *see In re Toyota Motor Corp.*, No. 2014-113, slip op. at 2-3 (Fed. Cir. April 3, 2014).

²³ *See InMotion Imagery Techs., LLC v. Imation Corp.*, 2013 U.S. Dist. LEXIS 41830, at *5-14 (E.D. Tex. Mar. 26, 2013) (Gilstrap, J.); Ex. 24, *Bright Response LLC v. SAS Institute, Inc.*, No. 2:12-cv-280-JRG, Dkt. 28 at 5-8 (E.D. Tex. March 26, 2013).

B. Each Of The Private-Interest Factors Weigh Heavily Against Transfer

1. Google Cannot Show That Access to Sources of Proof Favors Transfer

Google Fails to Describe its Sources of Proof with Specificity. Google fails to meet its burden to “identify its sources of proof with some specificity such that the Court may determine whether transfer will increase the convenience of the parties.” *U.S. Ethernet Innovations, LLC v. Samsung Elecs. Co.*, 2013 U.S. Dist. LEXIS 47384, at *7 (E.D. Tex. Apr. 2, 2013). Google argues that its documents are “*managed and maintained*” and are “*accessible*” from California. Dkt. 52 at 8; Dkt. 52-29 at ¶ 3 (emphasis added). The Dubey Declaration is likewise circumspect, stating that documents “are *available in Mountain View . . . or are stored on Google’s various secure servers, which are accessible and ultimately managed from Mountain View.*” Dubey Decl. ¶ 12 (emphasis added). Google never describes what those documents are, where it stores the documents, or whether other Google offices (including the ones in Texas) can “access” these documents. A casual reading of these statements “suggests more than is actually true.”²⁴ Google uses “artful wording to avoid disclosing the actual location of relevant documents” and therefore fails to carry its burden with respect to the sources of proof.²⁵ As in *U.S. Ethernet Innovations*, “[p]roblematically, the Court is asked to presume the bulk of relevant evidence would come from the accused infringer, yet it has not been given the full picture as to the location of relevant sources of proof.” 2013 U.S. Dist. LEXIS 47384, at *9.

Rockstar, Samsung, and Third-Parties’ Sources of Proof Weigh Against Transfer.

Even wrongly assuming that almost all of Google’s documents are in the NDCA, this factor still weighs against transfer. First, Defendants’ Motion makes no mention of Samsung’s sources of proof—which will be just as relevant as Google’s documents. Samsung’s sources of proof will likely be found at its Richardson headquarters in the EDTX.²⁶ Second, “significant sources of

²⁴ Ex. 25, *Personal Audio LLC v. CBS Corp.*, No. 2:13-CV-270-JRG-RSP, Dkt. 41 at 13 (E.D. Tex. Mar. 20, 2014).

²⁵ *My Health, Inc. v. Click4Care, Inc.*, 2014 U.S. Dist. LEXIS 36850, at *6 (E.D. Tex. Mar. 20, 2014) (“This Court routinely observes movants utilizing carefully worded statements to avoid disclosing key facts that disfavor their positions, especially in the context of a Motion to Transfer.”).

²⁶ See *Fractus, SA. v. Samsung Elecs. Co.*, 2010 U.S. Dist. LEXIS 70443, at *24 (E.D. Tex. June 10, 2010).

proof exist within EDTX at least as relates to the Plaintiff,” because the documents related to the patents-in-suit are stored at Plaintiffs’ Plano headquarters.²⁷ *InMotion Imagery Techs.*, 2013 U.S. Dist. LEXIS 41830, at *9. Third, courts also routinely look to third parties’ documents. Here those may include documents from Rockstar equity owners BlackBerry and Ericsson, who reside in the Dallas area; the patents-in-suits’ prosecuting attorneys who reside in Richardson and Irving; Samsung’s customers, including Verizon and AT&T, with facilities in Dallas; and third parties related to the Nortel auction in New York. *See Exs. 26, 27.*

2. The Availability of Compulsory Process Favors Plaintiffs

This factor examines the availability of compulsory process to secure the attendance of third-party witnesses. *Virtualagility*, 2014 U.S. Dist. LEXIS 12015, at *13. The third-party witnesses identified by Defendants should be accorded little weight because either they are likely within Defendants’ control or not identified with adequate specificity, their testimony has little or no relevance to issues in the case, or their testimony will be available via deposition.²⁸ On the other hand, the most important third-party witnesses will likely be located in the EDTX, on the East Coast, or in Canada. On balance, the analysis cuts decisively in Plaintiffs’ favor.

Google Fails to Identify its Witnesses with Specificity. Google’s vague reference to unidentified “witnesses with knowledge” allegedly “concentrated” in California warrants no weight because it lacks the required level of specificity.²⁹ Dkt. 52 at 11. Defendants ask “the Court to attribute more weight based on this assertion of a potential likelihood that an un-named

²⁷ Relevant documents in Plano include historical Nortel files relating to patent licenses, patent licensing efforts, and payment of royalties. Powers Decl. ¶ 29. These documents concerning licensing and monetization of the patents-in-suit have resided in or near the EDTX since their time of creation in the Nortel era. Hearn Decl. ¶ 6.

²⁸ Defendants argue that it would be “highly prejudicial to Google” if it at trial it can present evidence regarding Apples’ valuation of the Nortel patent portfolio only through video deposition. But this Court recently rejected a similar assertion. *Virtualagility*, 2014 U.S. Dist. LEXIS 12015, at *18-19. Moreover, to the extent Apple’s testimony is relevant, it is just as relevant as the testimony of Dallas-area resident BlackBerry and EDTX resident Ericsson, who also bid on the Nortel portfolio as part of the Rockstar Bidco. *See Exs. 26, 27.*

²⁹ *See Internet Machs. LLC v. Alienware Corp.*, 2011 U.S. Dist. LEXIS 66207, at *22 (E.D. Tex. Jun. 7, 2011) (finding that a party must identify witnesses who would require compulsory process); *Core Wireless Licensing v. Apple, Inc.*, 2013 U.S. Dist. LEXIS, at *9-10 (E.D. Tex. Feb. 22, 2013) (finding assertion that “the alleged infringing products were ... developed in Cupertino, CA and the employees responsible for that development are based in the Cupertino area” to be vague such that “weighing [them] ... would be merely speculative”).

and otherwise unidentified third-party witness may or may not be used for trial sometime in the future.”³⁰ Regardless, Google likely has control over former employee witnesses.³¹ Dkt. 52 at 11.

Prior Artists. At the outset, Google has again failed to meet its burden of proof: it offers no evidence that prior art witnesses would be unwilling to testify in the EDTX.³² Additionally, Google implies that prior art authors are concentrated in the NDCA. *See* Dkt. 52 at 11 n.3. But of the *hundreds* of inventors on the prior art patents, only 39 reside in the NDCA. *See* Dkt. 52 at 11 n.3. The remainder are scattered throughout the world, including at least 12 in Texas, 91 on the East Coast, and 24 outside the U.S. Budwin Decl. ¶ 4. Of the prior art inventors residing in Texas, three appear to reside in the Dallas area—within the “absolute subpoena power” of the Court. *Id.* And importantly, “inventors of prior art rarely, if ever, actually testify at trial,” and therefore it is more important to examine other categories of witnesses.³³

Rockstar Equity Owners and Nortel Bidders Will Be Irrelevant. Defendants’ focus on Apple is inapposite: the parties do not dispute the bids placed for the Nortel patent portfolio. Additionally, Rockstar’s equity owners do not direct or control Rockstar’s licensing efforts. Powers Decl. ¶ 15. However, to the extent that testimony from Apple is relevant, testimony from the other Nortel bidders and Rockstar equity investors would be equally relevant, including Blackberry, Ericsson, Sony, and Google.³⁴ Ericsson maintains its headquarters in the EDTX and Blackberry is headquartered in the Dallas area, just a few miles from the EDTX. Exs. 26-27.

Inventors Across the Country. The majority of the inventors of the patents-in-suit reside in Canada or the East Coast (New York, Massachusetts, New Hampshire, North Carolina). Budwin Decl. ¶ 4. Five named inventors on the patents-in-suit (two from Canada and subject to

³⁰ *Wi-Lan Inc. v. HTC Corp.*, 2013 U.S. Dist. LEXIS 99635, at *30 (E.D. Tex. July 17, 2013) (Gilstrap, J.); *see also In re Toyota*, No. 2014-113, slip op. at 4 n.1.

³¹ *See Invensense*, 2014 U.S. Dist. LEXIS 3311, at *20 (“The Court does not significantly weight the availability of compulsory process for witnesses in the parties’ control . . .”).

³² *See Tex. Data Co., LLC v. Target Brands, Inc.*, 771 F. Supp. 2d 630, 643 (E.D. Tex. 2011).

³³ *PersonalWeb Techs., LLC v. NEC Corp.*, No. 6:11-cv-655, Dkt. 74 at 16 n.13 (E.D. Tex. Mar. 21, 2013); *see also RPost Holdings*, 2013 U.S. Dist. LEXIS 116894, at *10-11.

³⁴ The former head of patent strategy for Google, who likely has relevant knowledge regarding Google’s bidding for the patents-in-suit, now lives on the East Coast. Exs. 28, 29.

the Hague Convention) have agreed to travel to EDTX to provide testimony.³⁵ See Wooten Decl., Colvin Decl., Poisson Decl., St. George Decl., and Egan Decl.

Prosecuting Attorneys. The attorneys who prosecuted the patents-in-suit are likely to have material information related to this case.³⁶ Two of the attorneys responsible for prosecuting the patents-in-suit live and work in Texas (one in Richardson, within the EDTX); three live in North Carolina; one lives in New Jersey, and none live in California. Budwin Decl. at 6.

Former Nortel Employees. Several former Nortel employees who possess material information and are not employed by Plaintiffs reside in or near the EDTX. Art Fisher, Nortel's VP for IP Law 1998–2004, resides in the Dallas area. Powers Decl. ¶ 31. Rich Weiss served as Nortel's Deputy IP Counsel from 1997–2008 and works in McKinney, in the EDTX. *Id.* ¶ 31. Mr. Fisher and Mr. Weiss possess knowledge related to Nortel's licensing practices and policies during the years of their employment. *Id.*

Former Samsung Employee. Samsung Mobile's former Chief Product & Technology Officer, Omar Kahn—known as the “Android evangelist”—left Samsung, but still resides in the Dallas area, within the subpoena power of the Court. Exs. 31, 32.

Samsung's Customers in EDTX. Samsung customers represent a key link in the supply chain for the infringing hardware, and will provide important evidence regarding damages. Budwin Decl. ¶ 2. Several of those providers have significant facilities in North Texas. For instance, AT&T Service, Inc. and AT&T Mobility are headquartered in Dallas, and Verizon has a Richardson facility with 2,250 employees.³⁷

Samsung's Acts of Importation Occur in EDTX. Each of Samsung's acts of importing the accused devices to the U.S. occurs within Samsung's EDTX facility.³⁸

³⁵ See Ex. 30, Tr. of Mot. to Transfer Hr'g, *Solid State Solutions, Inc. v. Stec, Inc.*, 2:11-cv-391-JRG-RSP, at 115:3-6 (E.D. Tex. Jan. 18, 2013).

³⁶ See *In re Acer Am. Corp.*, 626 F.3d 1252, 1255 (Fed. Cir. 2010) (prosecuting attorneys are likely witnesses).

³⁷ See *Geotag, Inc. v. Aromatique, Inc.*, 2013 U.S. Dist. LEXIS 173481, at *20-21 (E.D. Tex. Jan. 14, 2013); *Thomas Swan & Co.*, 2014 U.S. Dist. LEXIS 773, at *9. Although evidence from these customers would likely be sought via Rule 30(b)(6) requests, individuals with this knowledge include: Brad Bridges, Kevin Jeffries, John Stephens, Joe Tesson, Mark Madere, Kelly Haltom, and David Pluss. See Exs. 33-39.

³⁸ *Interwoven, Inc. v. Vertical Computer Sys.*, 2011 U.S. Dist. LEXIS 49428, at *15-16.

3. The Cost of Attendance for Willing Witnesses Favors Plaintiffs

Google Again Fails to Meet its Burden of Proof. With respect to party witnesses, Google specifically identifies only two potential employee witnesses within the NDCA. Mostly Google uses vague assertions, such as stating that operations for the products are “predominantly based” at its headquarters, and “most employees” familiar with the business aspects of the products and “key engineers” on the products work from its headquarters. Dkt. 52-29 at ¶ 6. Although Google maintains that 85% of its U.S. employees in the Android group work in the NDCA area, it fails to address whether the other 15% work in its Texas offices. Contrary to Google’s vague assertions, publicly available information suggests that Google’s Texas employees work on the development of the Android platforms. Specifically, Jeff Hamilton, a software engineer on Google’s Android team who specializes in “[o]perating systems development for mobile devices,” lives in Austin, Texas. Ex. 40.

Samsung Witnesses. The majority of relevant Samsung witnesses will likely be in Richardson, where Samsung maintains its U.S. headquarters. *See, e.g.*, Ex. 41. For example, Jingjing Ye lives in the Dallas area and is “Samsung in-house patent counsel managing the entire patent portfolio of Samsung Telecommunications America and counseling on all intellectual property related legal issues.” Ms. Ye’s testimony will prove important for damages, willfulness, and indirect infringement issues. Samsung’s job listings for its Texas facilities also suggest that it conducts much (if not all) of its Android development efforts in the EDTX. *See* Ex. 22.

Rockstar Witnesses. Rockstar has no ties to the NDCA. Rockstar employees with relevant knowledge live and work in the EDTX, and the EDTX is also more convenient for those employees who are home-based (primarily on the East Coast) and regularly commute to Plano. Rockstar employees with relevant knowledge include Donald Powers, who works full-time in the Plano headquarters and has material information related to this suit, including knowledge of Nortel and Rockstar’s corporate organization and structure, documents investigated for purposes of this suit, and employees and other parties with knowledge about the patents-in-suit. Powers Decl. ¶¶ 1–2. Bernard Tiegerman, Rockstar’s Senior Patent Counsel, possesses material

information related to Plaintiffs' licensing efforts and was involved in the prosecution of U.S. Patent No. 6,463,131. *Id.* ¶ 26; Tiegerman Decl. ¶¶ 3-4. Mr. Tiegerman works full-time out of Rockstar's Plano headquarters and he lives in Dallas. *Id.* Eric Fako, Rockstar's Lead Patent Counsel, was involved in the prosecution of U.S. Patent No. 6,128,298. Fako Decl. ¶¶ 3-4. Like Mr. Tiegerman, Mr. Fako routinely works out of Rockstar's Plano, Texas headquarters. *Id.* Mark Hearn is Senior Licensing Counsel for Rockstar, and previously worked for Nortel for over 13 years (in its Richardson office) as Senior Counsel. Hearn Decl. ¶ 1. He currently works full-time out of Rockstar's Plano office and lives in Dallas. *Id.*; *see also* McColgan Decl. and Veschi Decl. "Where a transfer will only shift the inconvenience from one district to another, the movant has not met its burden of persuasion." *See Thomas Swan & Co.*, 2014 U.S. Dist. LEXIS 773, at *13.

4. The Judicial Economy Factor Favors Plaintiffs

The "Federal Circuit has emphatically instructed" that the "existence of duplicative suits involving the same or similar issues creates practical difficulties that will weigh heavily in favor or against transfer (in order to try duplicative suits in the same venue)."³⁹ Indeed, the Supreme Court has made clear that transferring an overlapping suit to another district "leads to the wastefulness of time, energy, and money that § 1404(a) was designed to prevent."⁴⁰

Defendants take the position that "there are no practical problems with transferring this case[.]" Dkt. 52 at 13. Yet this case is one of six filed by Rockstar in the EDTX involving the same patents and technologies, which this Court has already consolidated. Dkt. 51. At a minimum, the cases will call for common information regarding claim construction, the Nortel auction, as well as Nortel's and Rockstar's history and corporate structure. Powers Decl. ¶ 29. And the defendants will almost certainly file counterclaims with similar or identical invalidity counterclaims. If transfer were granted in this case, five other defendants would continue to

³⁹ *Ctr. One v. Vonage Holdings Corp.*, 2009 U.S. Dist. LEXIS 69683, at *22 (E.D. Tex. Aug. 10, 2009); *see In re Volkswagen of Am., Inc.*, 566 F.3d 1349, 1351 (Fed. Cir. 2009) (describing this issue as "a paramount consideration" in the transfer analysis); *Regents of Univ. of Cal. v. Eli Lilly & Co.*, 119 F.3d 1559, 1565 (Fed. Cir. 1997) (noting that considerations such as these "may be determinative to a particular transfer motion").

⁴⁰ *Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26 (1960); *see also Adrain v. Genetec Inc.*, 2009 U.S. Dist. LEXIS 86855, at *9 (E.D. Tex. Sept. 22, 2009).

litigate duplicative claims in this Court.⁴¹ The existence of overlapping suits “involving the same or similar issues creates practical difficulties that will weigh heavily ... against” transferring one of those suits to another venue. *Virtualagility*, 2014 U.S. Dist. LEXIS 12015, at *22.⁴²

Moreover, instead of intervening in this previously-pending case to protect the interests of its alleged customers—as Google asserts it is trying to do—Google instead chose to select its preferred forum by filing suit in the NDCA. Encouraging such gamesmanship by Google would set a disturbing precedent—conduct that has been “knowingly undertaken to manipulate venue in this case . . . should not be rewarded.” *MobileMedia Ideas*, 2012 U.S. Dist. LEXIS 62153, at * 8.

C. The Public Interest Factors Favor Venue in the EDTX

Defendants argue that the EDTX has “no more or less of a meaningful connection to this case than any other venue” despite the location of both Samsung’s and Nortel’s headquarters in the EDTX.⁴³ See Dkt. 52 at 15. They are simply wrong. “Local interest arises when a district is home to a party because the suit may call into question the reputation of individuals that work in the community.” *In re Hoffman-La Roche*, 587 F.3d 1333, 1336 (Fed. Cir. 2009). Here that standard is met: from the EDTX, Samsung “researches, develops and markets” infringing devices. Ex. 7. It also imports the infringing devices to the EDTX. See *Interwoven*, 2011 U.S. Dist. LEXIS 49428, at *15-16. Plaintiffs run their business from the EDTX. Powers Decl. ¶ 20. In addition, the patents-in-suit are the result of Nortel’s research, which maintained its U.S. location in Richardson. *Id.* Thus, this factor either favors Plaintiffs or is neutral.⁴⁴

Plaintiffs agree that the remaining public interest factors—court congestion, familiarity of

⁴¹ More of the Defendants are closer to the EDTX. See Budwin Decl. ¶ 2. Here, as in *In re Apple*, “[a]s compared to those cases in which this court granted mandamus, here there are fewer defendants in the [NDCA] and potential evidence identified in the [EDTX], along with defendants and witnesses that will find it easier and more convenient to try this case in the Eastern District of Texas.” *In re Apple Inc.*, 456 F. App’x 907, 909 (Fed. Cir. 2012).

⁴² See also *Ho Keung TSE v. Google, Inc.*, 2012 U.S. Dist. LEXIS 176509, at *10 (E.D. Tex. Dec. 13, 2012) (transferring case from EDTX to district where claims involving the same patent were already pending).

⁴³ Defendants’ argument essentially “amounts to ‘California has a localized interest in resolving this dispute because its jurors will be biased toward the defendant.’” *Ingeniador*, 2014 U.S. Dist. LEXIS 3308, at *10-11. But “[a] predisposition toward one party, independent of the merits of the case, cannot be the kind of ‘local interest’ cognized by the federal rules, and this Court gives this consideration no weight in its analysis.” *Id.*

⁴⁴ See *Thomas Swan*, 2014 U.S. Dist. LEXIS 773, at *16; *Virtualagility*, 2014 U.S. Dist. LEXIS 12015, at *23.

the forum with the governing law, and the avoidance of conflicts of laws—are neutral.

D. The “Similar” Cases Relied on by Defendants Differ from this Case

Defendants attempt to twist this Court’s precedent to suggest that transfer is appropriate. *See* Dkt. 52 at 13-14. First, in *Touchscreen Gestures v. HTC*, neither party had headquarters, documents, or witnesses located in the EDTX. No. 12-0261, Dkt. 17 at 1, 6, 9 (E.D. Tex. Mar. 27, 2013). In contrast, here Rockstar and Samsung’s headquarters, documents, and witnesses are located in the EDTX. Second, in *Ingeniador, LLC v. Adobe Sys.*, “[n]o party contend[ed] that relevant evidence exists in the Eastern District.” 2014 U.S. Dist. LEXIS 3308, at *4-5. But here, Rockstar, Samsung, and Google *all* have relevant evidence that exists within the EDTX. Moreover, in *Ingeniador*, “none of Plaintiff’s witnesses reside or work in the Eastern District of Texas.” 2014 U.S. Dist. LEXIS 3308, at *8. In contrast, Rockstar is headquartered here and many of its witnesses reside and work in the EDTX. Powers Decl. ¶ 22, 23. Finally, in *Blue Spike, LLC v. Texas Instruments, Inc.*, the plaintiff could point to “no third-party witnesses that this Court would have absolute subpoena power over.” No. 12-558, Dkt. 16 at 5 (E.D. Tex. Mar. 13, 2014). Rockstar, however, has identified third-party witnesses within this Court’s subpoena power. In *Blue Spike*, Defendants’ “relevant documents are in its offices in the Northern District of California.” Here, not only are *Plaintiffs’* relevant documents in the EDTX, so too are Samsung’s documents.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on April 14, 2014. As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/ Theodore Stevenson, III
Theodore Stevenson, III