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

GAMETEK LLC,

Plaintiff,

vs.

CROWDSTAR INTERNATIONAL  
LIMITED; CROWDSTAR INC.;  
AND CROWDSTAR NETWORK,  
LLC,

Defendants.

CASE NO. 12-CV-2931 BEN (RBB)

**ORDER GRANTING MOTION  
TO TRANSFER VENUE TO THE  
NORTHERN DISTRICT OF  
CALIFORNIA**

[Docket No. 24]

Presently before the Court is a Motion to Transfer Venue to the United States District Court for the Northern District of California filed by Defendants Crowdstar International Limited, Crowdstar Inc., and Crowdstar Network, LLC (collectively, "Crowdstar"). (Docket No. 24.) For the reasons stated below, the Motion is **GRANTED**.

**BACKGROUND**

Crowdstar International Limited is an Irish corporation with its principal place of business in Dublin, Ireland. (Bourne Decl. ¶ 4.) Crowdstar Inc. is a Delaware corporation with its headquarters and principal place of business in Burlingame, California. (*Id.* ¶ 5.) Crowdstar Network, LLC is a Delaware limited liability corporation with its principal place of business in Burlingame, California. (*Id.* ¶ 6.)

1 Plaintiff GameTek, LLC is a California limited liability company with its principal  
2 place of business in Newport Beach, California. (Haynes Decl. ¶ 2.) GameTek filed  
3 a Complaint against Crowdstar on December 10, 2012, alleging infringement of U.S.  
4 Patent No. 7,076,445 (the '445 Patent). (Docket No. 1.)

## 5 DISCUSSION

6 “For the convenience of parties and witnesses, in the interest of justice, a district  
7 court may transfer any civil action to any other district or division where it might have  
8 been brought or to any district or division to which all parties have consented.” 28  
9 U.S.C. § 1404(a). In deciding whether to transfer an action under § 1404(a), a court  
10 must determine: (1) whether the transferee district is a district in which the action  
11 “might have been brought,” and (2) whether the action should be transferred for  
12 purposes of convenience, judicial economy, or in the interest of justice. *Van Dusen v.*  
13 *Barrack*, 376 U.S. 612, 616 (1964).

### 14 I. WHERE THE ACTION “MIGHT HAVE BEEN BROUGHT”

15 The parties agree that the present suit might have been brought in the Northern  
16 District of California. (Mot. at 8; Opp. at 6-7.)

### 17 II. CONVENIENCE, JUDICIAL ECONOMY, AND THE INTEREST OF JUSTICE

18 Next, the Court must determine whether the “convenience of the parties and  
19 witnesses” and the “interest of justice” compel transferring venue. Factors relevant to  
20 that determination include:

21 (1) the plaintiff’s choice of forum, (2) convenience to the parties, (3)  
22 convenience to the witnesses, (4) ease of access to the evidence, (5)  
23 familiarity of each forum with the applicable law, (6) the feasibility of  
24 consolidation with and relationship to other claims, (7) any local interest  
in the controversy, and (8) the relative court congestion and time of trial  
in each forum.

25 *Albertson v. Monumental Life Ins. Co.*, No. C-08-05441, 2009 WL 3870301, at \*1  
26 (N.D. Cal. Nov. 16, 2009) (citing *Jones v. GNC Franchising, Inc.*, 211 F.3d 495,  
27 498-99 (9th Cir. 2000)).  
28

1                   **A. Plaintiff's Choice of Forum**

2           GameTek's choice of the Southern District as the forum is entitled to deference.  
3   However, courts have held that when a plaintiff brings suit in a jurisdiction that is not  
4   its location of residence and lacks significant connection to the alleged infringement,  
5   the deference is substantially reduced. *See Inherent v. Martindale-Hubbell*, 420 F.  
6   Supp. 2d 1093, 1100 (N.D. Cal. 2006). GameTek is not located in the Southern  
7   District, and this forum lacks significant connection to the alleged infringement  
8   involving Crowdstar. Therefore, while some deference is accorded to GameTek's  
9   choice of forum, this factor only slightly favors retaining this action in the Southern  
10   District.

11                   **B. Convenience to the Parties**

12           Crowdstar has no significant contacts with the Southern District. All of  
13   Crowdstar's offices are located in either Burlingame, in the Northern District, or  
14   Dublin, Ireland. (Bourne Decl. ¶ 8.) None of the accused products was developed or  
15   run out of the Southern District; rather, most of the accused products were designed  
16   and developed in Burlingame. (*Id.* ¶¶ 9, 14.) As discussed below, the majority of  
17   Crowdstar witnesses will be from the Northern District.

18           Similarly, GameTek lacks any significant contact with the Southern District.  
19   GameTek's only place of business is located in the Central District. (Haynes Decl. ¶ 2.)  
20   As discussed below, the only two employees that GameTek lists in its Initial  
21   Disclosures who may have relevant information are located in the Central District.  
22   (Gaedt Decl., Exh. C.) In addition, the prosecuting attorneys of the '445 Patent and the  
23   alleged inventor are located outside of the Southern District, and their attendance  
24   would be equally inconvenient whether the case was tried in the Southern or Northern  
25   District. (*Id.*) Because the costs and inconvenience to GameTek would not be  
26   significantly increased given a transfer, but the costs and inconvenience to Crowdstar  
27   would be significantly reduced, this factor weighs in favor of transfer.

1                   **C. Convenience to the Witnesses**

2           The convenience to the witnesses favors transfer to the Northern District. “To  
3 show inconvenience to witnesses, the moving party should state the witnesses’  
4 identities, locations, and content and relevance of their testimony.” *Meyer Mfg. Co.*  
5 *Ltd. v. Telebrands Corp.*, No. CIV. S–11–3153, 2012 WL 1189765, at \*6 (E.D. Cal.  
6 Apr. 9, 2012). “The relative convenience to the witnesses is often recognized as the  
7 most important factor to be considered in ruling on a motion under § 1404(a).” *Saleh*  
8 *v. Titan Corp.*, 361 F. Supp. 2d 1152, 1160 (S.D. Cal. 2005) (internal quotation marks  
9 omitted).

10           Based on the parties’ Initial Disclosures, most of the witnesses in this action will  
11 be from the Northern District. Crowdstar identifies two employees as potential  
12 technical witnesses who may testify “regarding the development, functionality,  
13 operation, finance, and marketing of the accused products.” (Bourne Decl. ¶ 11.) Both  
14 are located in the Northern District. (*Id.*) In addition, several relevant Facebook  
15 employees who have knowledge of Facebook’s interactions with Crowdstar are likely  
16 located at the headquarters of Facebook—Menlo Park, California. (*Id.* ¶ 17.) On the  
17 other hand, GameTek lists only two employees in its Initial Disclosures who may have  
18 relevant information, and they are both located outside of the Southern District, in the  
19 Central District. (Gaedt Decl., Exh. C.)

20           Both parties agree that other relevant witnesses—including the inventor of the  
21 ’445 Patent and the attorneys who prosecuted the ’445 Patent—are all located outside  
22 of California, and their attendance would be equally inconvenient whether the case was  
23 tried in the Southern or Northern District. (*Id.* ¶ 14, Exh. C.) Accordingly, this factor  
24 weighs in favor of transfer.

25                   **D. Ease of Access to the Evidence**

26           Ease of access to the evidence favors transfer to the Northern District. “In patent  
27 infringement cases, the bulk of the relevant evidence usually comes from the accused  
28 infringer. Consequently, the place where the defendant’s documents are kept weighs

1 in favor of transfer to that location.” *In re Genentech, Inc.*, 566 F.3d 1338, 1345 (Fed.  
2 Cir. 2009) (internal quotation marks omitted).

3 Because Crowdstar’s headquarters and offices most related to the accused  
4 products are located in the Northern District or out of the country, most of Crowdstar’s  
5 computers, servers, source code, and other documentation are either located in, or can  
6 be most easily accessed from, within the Northern District. (Bourne Decl. ¶¶ 4-6, 8,  
7 14.) Crowdstar does not maintain any records, servers, offices, employees, or  
8 operations relevant to the accused products in the Southern District. (*Id.* ¶¶ 8, 9, 14.)  
9 Moreover, any allegedly infringing actions related to the accused products likely  
10 occurred outside of the Southern District because none of the games at issue are  
11 operated in the Southern District. (*Id.* ¶ 9.) In addition, many non-product specific  
12 activities, such as activities related to payments, are primarily performed in the  
13 Northern District. (*Id.* ¶ 18.)

14 First, GameTek argues that because all of its documents are in Newport Beach,  
15 the Southern District is more convenient in terms of ease of access to evidence.  
16 Newport Beach is not located in the Southern District, but rather in the Central District.  
17 In addition, as a non-practicing entity, GameTek is unlikely to have a large number of  
18 documents to produce.

19 Second, GameTek argues that the majority of documents in this action will be  
20 exchanged electronically, and since electronic files are easily transportable, no  
21 additional burden would be incurred upon Crowdstar if the venue remains in the  
22 Southern District. This does not weigh against transfer. “Although it is true that given  
23 technological advances in document storage and retrieval, transporting documents  
24 between districts does not generally create a burden, it is no less true that litigation  
25 should proceed where the case finds its center of gravity.” *Tessengerlo Kerley, Inc. v.*  
26 *D&M Chem., Inc.*, No. C 11-03955, 2011 WL 5362080, at \*3 (N.D. Cal. Nov. 7, 2011)  
27 (internal quotation marks, alteration, and citation omitted); *see also In re TS Tech USA*  
28 *Corp.*, 551 F.3d 1315, 1321 (Fed. Cir. 2008). The center of gravity of this dispute is

1 likely where Crowdstar is located, which is the Northern District. Accordingly, ease  
2 of access to the evidence weighs in favor of transfer.

### 3 **E. Feasibility of Consolidation**

4 Feasibility of consolidation is neutral. There are related cases pending in both  
5 the Southern and Northern Districts. GameTek has brought suit against other  
6 defendants in this Court, asserting the same patent. On the other hand, five other cases  
7 involving the same patent—*GameTek LLC v. Gameview Studios, LLC*, Case No. 12-  
8 CV-499, *GameTek LLC v. Electronic Arts Inc.*, Case No. 12-CV-2927, *GameTek LLC*  
9 *v. Funzio, Inc.*, Case No. 12-CV-2928, *GameTek LLC v. Zynga Inc.*, Case No. 12-CV-  
10 02933, and *GameTek LLC v. RockYou, Inc.*, Case No. 12-CV-2936—have been  
11 transferred to the Northern District. In addition, a motion to transfer venue to the  
12 Northern District has been filed in one other related case—*GameTek LLC v. Cie*  
13 *Games, Inc.*, Case No. 12-CV-2930. At least five related actions, therefore, will be  
14 litigated in the Northern District, meaning that a judge in the Northern District will be  
15 familiar with the claims, prior art, and patent at issue here.

16 GameTek argues that Crowdstar improperly delayed filing the present Motion  
17 to Transfer for five months. At the time the Motion to Transfer was filed, Crowdstar  
18 had yet to serve its invalidity contentions and the parties had yet to begin the claim  
19 construction process. In addition, GameTek is a non-practicing entity, meaning that  
20 it will not lose sales proceeds during the pendency of this action and any damages to  
21 which it is entitled may be adequately compensated at a future date. Thus, GameTek  
22 will not be unduly prejudiced. Accordingly, this factor is neutral.

### 23 **F. Local Interest in the Controversy**

24 The local interest in the controversy favors transfer to the Northern District. As  
25 stated above, Crowdstar's headquarters and other offices are located in the Northern  
26 District and internationally. (Bourne Decl. ¶¶ 4-6.) Crowdstar has no offices in the  
27 Southern District. (*Id.* at ¶ 8.) In addition, none of the accused products were  
28 developed or run in the Southern District. (*Id.* at ¶ 9.) Consequently, the majority of

1 employees familiar with the accused products and those most likely to be affected by  
2 this litigation, are located in the Northern District. The Northern District has a strong  
3 local interest in deciding this action.

4 On the other hand, the Southern District has no relation to the parties or the  
5 alleged harm in this case. Therefore, the Southern District has no local interest in  
6 deciding this matter. Indeed, GameTek concedes that the Northern District has a  
7 greater local interest in this matter than the Southern District. (Opp. at 16.)  
8 Accordingly, this factor favors transfer.

9 **G. Remaining Factors**

10 The remaining factors—familiarity of each forum with the law and court  
11 congestion and time to trial—are either neutral or slightly favor transfer. First, because  
12 the governing law is federal patent law, the Southern and Northern Districts are equally  
13 situated to decide the applicable legal issues. *See TS Tech*, 551 F.3d at 1320. Second,  
14 the relative congestion of the dockets and speed of disposition weigh slightly in favor  
15 of transfer. (*See Gaedt Decl.*, Exh. O (showing that the median time from filing to  
16 disposition of civil cases through trial was 30.3 months in the Southern District  
17 compared to 25.3 months in the Northern District in 2011).)


18 In light of the above, the Court finds that the convenience to the witnesses,  
19 convenience to the parties, ease of access to evidence, and local interest in the  
20 controversy outweigh the plaintiff's choice of forum and compel transferring venue to  
21 the Northern District.

22 **CONCLUSION**

23 Accordingly, Crowdstar's Motion to Transfer Venue is **GRANTED**. This action  
24 is **TRANSFERRED** to the United States District Court for the Northern District of  
25 California.

26 **IT IS SO ORDERED.**

27 DATED: 7/24/13

  
HON. ROGER T. BENITEZ  
United States District Judge