Wireless Recognition Technologies LLC v. A9.com, Inc. et al Doc. 68

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

WIRELESS RECOGNITION TECHNOLOGIES LLC,	)	
Plaintiff,	)	
v.	)	**C.A. No. 2:10-cv-00364-TJW-CE**
A9.COM, INC., AMAZON.COM, INC., GOOGLE, INC., NOKIA, INC. and RICOH INNOVATIONS, INC.	)	**JURY TRIAL DEMANDED**
Defendants.	)	

PLAINTIFF WIRELESS RECOGNITION TECHNOLOGIES LLC'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA UNDER 28 U.S.C. § 1404(A)

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I. INTRODUCTION

Pending before the Court in the above-captioned proceeding is a motion to transfer venue ("Motion" or "Mot.") jointly filed by all Defendants[1] (collectively, "Movants"). By the Motion, the Movants seek an Order transferring this case to the United States District Court for the Northern District of California. Plaintiff Wireless Recognition Technologies LLC ("WRT") respectfully opposes the Motion, and submits for the Court's consideration the following response in opposition ("Opposition" or "Opp.").

II. STATEMENT OF RELEVANT FACTS

This action arises out of Movants' accused infringement of U.S. Pat. No. 7,392,287 (the "'287 Patent"), claiming systems and methods for sending information to a data processing apparatus for identifying a document to share with a recipient.[2] WRT is the owner by assignment of all right, title, and interest in the '287 Patent.[3]

WRT is a limited liability company, organized and existing under the laws of Texas.[4] WRT maintains its principal place of business within this District and has done so since June 24, 2010.[5] "WRT is not registered to do business in California, has no designated registered agent for service of process in California, and does not maintain or own any offices, places of business, post office boxes, telephone listings, real estate, bank accounts, or other interest in any property in California."[6]

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[1] A9.com, Inc. (hereinafter "A9"), Amazon.com (hereinafter "Amazon"), Google Inc. (hereinafter "Google"), Nokia Inc. (hereinafter "Nokia") and Ricoh Innovations, Inc. (hereinafter "RII").
[2] Dkt. No. 1 at ¶ 13.
[3] *Id.* at ¶ 12.
[4] Ex. A to Opp. at ¶ 2.
[5] *Id.* at ¶ 3.
[6] *Id.* at ¶ 4.

Movants consist of (i) Amazon, a Delaware corporation headquartered in Seattle, Washington;[7] (ii) A9, a wholly owned subsidiary of Amazon, having offices in Palo Alto, California, and presumably headquartered in Seattle, Washington by virtue of its 2009 acquisition by Amazon;[8] (iii) Google, a Delaware corporation headquartered in Mountain View, California,[9] (iv) Nokia, a Delaware corporation headquartered White Plains, New York, and indirect subsidiary of Nokia Corp., a publicly held Finnish company with a principal place of business in Espoo, Finland;[10] and (v) RII, a California corporation with principal business in Menlo Park, California, and subsidiary of the foreign entity Ricoh Company, Ltd., [11]

III. POINTS AND AUTHORITIES

"For 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) ("§ 1404(a)"). As the Federal Circuit looks to regional circuit law with respect to venue transfer motions in patent cases, the present Motion is governed by the law of the Fifth Circuit. *In re Volkswagen of Am., Inc.* ("*Volkswagen II*"), 545 F.3d 304 (5th Cir. 2008) (en banc) (emphasis added); *see also In re Volkswagen of Am., Inc.* ("*Volkswagen III*"), 566 F.3d 1349 (Fed. Cir. 2009) (applying the *Volkswagen II* holding to transfer motions from the Fifth Circuit).

The present burden is not on WRT, but rather on the Defendants seeking transfer, to show *good cause* for the transfer. *Volkswagen II*, 545 F.3d at 315; *In re TS Tech USA Corp.*, 551 F.3d 1315, 1320 (Fed. Cir. 2008) (emphasis added). Under the good cause standard, "when the

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[7] Dkt. No. 47 at ¶ 4.
[8] Mot. at 2, 3; Ex. D to Mot. at ¶¶ 4-6.
[9] Mot. at 2.
[10] Mot. at 3; Ex. F. to Mot. at ¶ 2.
[11] Mot. at 3; Ex. E to Mot. at ¶¶ 3, 14.

transferee venue is not clearly more convenient, the plaintiff's choice [of venue] should be respected." *Volkswagen II*, 545, F.3d at 315; *see also In re TS Tech*, 551 F.3d at 1320.

This action arises directly and proximately from Defendants' purposeful activities infringing WRT's patents in this District. The Court should not transfer venue to the Northern District of California under § 1404(a) because Movants have failed to meet their substantial burden in establishing that the convenience of the witnesses and parties and the interests of justice are substantially furthered by such a transfer. *See Paltalk Holdings, Inc. v. Sony Computer Entertainment Am., Inc.*, Case No. 2:09-CV-274-DF-CE 2010 U.S. Dist. LEXIS 92229 (E.D. Tex. 2010) *9-10. If, as here, the transfer merely shifts the inconvenience from one party to another, transfer should be denied. *See Gardipee v. Petroleum Helicopters, Inc.*, 49 F. Supp. 2d 925, 928 (E.D. Tex. 1999) (quoting 15 C. Wright, A. Miller & E. Cooper, FEDERAL PRACTICE AND PROCEDURE § 3848, at 398 (2d. ed. 1986)).

The initial threshold question is whether the suit could have been brought in the transferee district. *In re Volkswagen AG* (*"Volkswagen I"*), 371 F.3d 201, 203 (5th Cir. 2004). Once the threshold is met, the court weighs several private interest factors – relating to the convenience of the litigants – and public interest factors – relating to the efficient administration of justice – with no single factor awarded dispositive weight. *Volkswagen I*, 371 F.3d at 203; *In re TS Tech.*, 551 F.3d at 1319.

A. The Private Interest Factors Do Not Render The Northern District of California Clearly More Convenient[12]

[12] "The private interest factors are: '(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious, and inexpensive.'" *Volkswagen II*, 545 F.3d at 315 *(quoting Volkswagen I*, 371 F.3d at 203).

Contrary to Movants' assertions, the private interest factors fail to support the Motion.

1. Relative Ease of Access to Sources of Proof

Given that the headquarters of some of the Defendants are in Silicon Valley, WRT freely admits that a number witnesses may be located at the proposed transferee jurisdiction. However, technological advances have certainly *lightened* any inconvenience for Movants in transporting documents across the country, notwithstanding that ease of access to sources of proof is still a factor in the transfer analysis. *Optimum Power Solutions LLC v. Apple, Inc.*, Memorandum Opinion and Order, Case No. 6:10-cv-61 (E.D. Tex. Feb. 22, 2011) [13] (emphasis added) (citing *Volkswagen II*, 545 F.3d at 316).

Movants' reference to *Genentech* notwithstanding, [14] they have not established that any of their evidence cannot be produced electronically,[15] or that otherwise transporting the physical evidence to Marshall, Texas would pose an additional inconvenience as opposed to transporting the same to Northern California. *See Red River Fiber Optic Corp. v. Verizon Servs. Corp.*, 2010 WL 1076119 (E.D. Tex., Mar. 23, 2010) (citing *In re TS Tech*, 551 F.3d at 1321.).

Furthermore, WRT has had no opportunity to perform any discovery to determine which party or non-party witnesses' testimony it would need to prove its infringement and damages contentions. Movants attempt to map the present facts to *Optimum Power Solutions*, *supra*,[16] where the Court held for motion transfer to the Northern District of California.[17] However, in *Optimum Power Solutions*, defendants had served their respective initial disclosures, such that the Court could make a meaningful evaluation of which persons bear knowledge of relevant facts

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[13] *See* Ex. N. to Mot. at 3.
[14] *See* Mot. at 8, quoting *In re Genentech, Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009).
[15] On this point, one Movant's computing facilities are arguably unparalleled in the world. *See, e.g.*, Ex. C to Opp. at ¶ 5, 1, and ¶ 1, 3.
[16] Ex. N to Mot.
[17] See Mot. at 10, ¶ 2.

and the scope of their knowledge – not the case here.[18] In fact, WRT is left having to rely upon Movants' affidavits – clearly calculated to win its Motion – to offer where documents and witnesses relating to allegedly infringing products may be located.

In *Volkswagen II* and *In re TS Tech*, "access to the physical evidence was clearly more convenient in the proposed transferee venue." *Calypso Wireless, Inc. v. T-Mobile USA, Inc.*, Order, Case No. 2:08-cv-441 (E.D. Tex. Mar. 31, 2010).[19] In both of those cases, the sources of proof were indeed "clustered near the proposed transferee district." *Id.*[20] On the contrary, here there is no clustering of sources of proof near the propounded transferee venue, but rather widespread distribution, and hence the Northern District of California is no more convenient than the Eastern District of Texas, and certainly not clearly so.

Taking Movant Google as example, it is undisputed that that Google's headquarters are in the Northern District of California. However, realizing headquarters location is neither dispositive nor necessarily determinative of where the sources of proof reside, Movants offer affidavits of informed personnel regarding the accused infringing products – namely the affidavit of Mr. David Petrou for *Google Goggles*, and that of Mr. Richard Hung for *Google Shopper*.[21]

Beginning with *Google Goggles*, Mr. Petrou admits the records, source code and other materials for its allegedly infringing product *Google Goggles* are not limited to Mountain View, California, but also reside in Santa Monica (in the Central District of California) and New York,

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[18] *See* Ex. R to Opp. (showing extracted first pages of defendants' initial disclosures).
[19] Ex. S to Opp. at ¶ 2, 5.
[20] (further stating "In *Volkswagen II*, all of the physical evidence was located within the proposed transferee venue . . . Similarly in *TS Tech*, all of the sources of proof were located within 300 miles of the proposed transferee district, the Southern District of Ohio, and the original venue, the Eastern District of Texas, was about 900 additional miles away.")
[21] *See* Exs. B, C to Mot.

New York.[22] Regarding witnesses, despite that two individuals in Mountain View are mentioned, another individual resides in Santa Monica. Mr. Petrou, himself the technical lead offering the affidavit, and therefore a more likely potential witness for WRT, states that he works and resides in New York, New York.[23]

With regard to *Google Shopper*, Movants' position is even more tenuous. According to affiant, of the individuals responsible for development, the majority – seven – work in and reside near New York, New York, and the remaining four are employed and reside near Waterloo, Canada.[24] The records, source code and other materials concerning Google Shopper are also not confined to Mountain View either, being also located in New York, New York and Waterloo, Canada.[25] Accordingly, ease of access to Defendant Google's documents and witnesses is no less a burden in the Eastern District of Texas than in the Northern District of California, and certainly not "clearly more convenient" in the proposed transferee district.

In fact, a closer look at the sources of proof leaves more gaping holes in Movants' position. Movant Amazon, headquartered in Seattle Washington, states that its employees familiar with its mobile applications are located in Seattle, Washington, not California.[26] It also neglects to mention its development center in India, where witnesses may be located.[27]

A9 sets forth that "some" of its employees knowledgeable about SnapTell[28] work in Palo Alto, and that it is unaware of employees within the Eastern District of Texas.[29] It neglects to

[22] Ex. B to Mot. at ¶ ¶ 5, 7.
[23] Ex. B to Mot. at ¶ ¶ 4, 5.
[24] Ex. C to Mot. at ¶ 5.
[25] Ex. C to Mot. at ¶ 7.
[26] Ex. D to Mot. at ¶ 8.
[27] Ex. D to Opp.
[28] *I.e.,* the company that developed the accused infringing technology, and was acquired by Amazon.
[29] Ex. D to Mot. at ¶¶ 6, 9.

mention that *some other* employees may be working in Bangalore, India, where the Amazon subsidiary researches and builds innovative technologies.[30] Amazon's accused infringing *Amazon Remembers* and *Price Check* similarly use the underlying visual search engine of SnapTell, the company acquired by A9.[31] Accordingly, it is neither unreasonable to assume there may be valuable witnesses for Movants Amazon and A9 in India, nor that key source code and other documentation would be easily electronically accessible between different locations in the world, whether the accessing computer were located in Palo Alto, California, or in Marshall, Texas.

RII mentions that the majority of its developers for its accused products *French Rev* and *DriveTube* are located in the California, though the names and scope of knowledge of its developers in Costa Rica and Peru are not presented.[32]

Nokia, headquartered in White Plains, New York, not California, sets forth that the majority of individuals involved with the accused infringing *Point & Find* product are located in Silicon Valley, California, with the remainder located near London, United Kingdom and Oulu, Finland.[33] As there has been no discovery, WRT cannot determine which individuals, the ones in Silicon Valley or the ones abroad, have valuable insight regarding the accused product. Furthermore, as the affiant is a litigation paralegal and not a *Point & Find* developer, the scope of affiant's personal knowledge is questionable,[34] and no testimony has been provided regarding the due diligence employed, if any. For example, the lead software engineer for *Point & Find* – a likely candidate for inquiry by WRT – is currently employed by Unicorn Media, Inc., a company

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[30] Ex. E to Opp. at ¶ 1, 1.
[31] Ex. D to Mot. at ¶ 8.
[32] Ex. E to Mot. at ¶ 6.
[33] Ex. F to Mot. at ¶ 5.
[34] Ex. F to Mot. at ¶ 1.

headquartered in Temple, Arizona, a fact Nokia was not motivated to investigate for its present purpose.[35]

Accordingly, rather than clustered sources of proof near Defendant Movants' preferred venue of the Northern District of California, the sources of proof for the present civil action are widespread across the United States, and indeed internationally. *See, e.g.*, *Calypso Wireless, supra*.[36]

Turning to plaintiff WRT's choice of forum, though WRT's decision to use the present forum is not determinative, it is still a factor to be considered, *In re Horseshoe Entm't*, 337 F.3d 429, 434 (5th Cir. 2003), and not to be disturbed unless clearly outweighed by other factors. *Shoemake v. Union Pac. R.R. Co.*, 233 F. Supp. 2d 828, 830 (E.D. Tex. 2002). WRT's specific ties to the Eastern District of Texas, and general ties to Texas as opposed to California cannot be easily dismissed, contrary to the Movants' opinion.

Movants prefer to dismiss WRT as a recently formed, ephemeral entity, not properly subject to Eastern District venue. Their arguments notwithstanding, WRT made affirmative choices to incorporate in the State of Texas, and located its offices in Frisco, Texas, in the Eastern District of Texas.[37] In addition, the suit was filed nearly three months from formation, and this Court has found that Texas incorporation four months prior to filing suit is not a "recent" formation under Federal Circuit precedence. *NovelPoint Learning LLC v. LeapFrog Enterprises, Inc., et al.*, Memorandum Opinion and Opinion, Case No. 6:10-cv-229 (E.D. Tex. Dec. 6, 2010).[38]

Movants have apparently checked the prosecution history enough to determine that the

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[35] Ex. F to Opp. at ¶ 1, 1; Exs. G, H to Opp.
[36] Ex. S to Opp., at ¶ 2, 5.
[37] Ex. A to Opp. at ¶¶ 2, 3; *See also,* Ex. G to Mot.
[38] Ex. Q to Opp. at ¶ 2, 8.

original patent prosecutor, Mr. John F. Griffith, is located in Northern California.[39] In fact, Movants' proof is actually garnered from the inventor's declaration, the same declaration that shows Mr. Raymond F. Ratcliff, III – the sole inventor – to reside in Plano, Texas,[40] as also demonstrated by the front page of the '287 Patent.[41] The declaration was signed by Mr. Ratcliff on July 24, 2001, *over nine years* before the present suit was filed, and Movants' have noted that he currently resides in Austin.[42] Accordingly, it is hardly unreasonable that WRT would desire to pursue justice under the present forum.

Furthermore, the current prosecuting patent attorney for the '287 Patent is a founding partner of an intellectual property law firm located in nearby Austin, Texas as well.[43] Notably, as revealed by the prosecution history, Mr. Yudell has represented the applicant since February 19, 2009, about seventeen months before WRT filed suit.[44]

Notwithstanding Movant's point that the original patent prosecutor, Mr. John F. Griffith, is located in Northern California, attorneys of Pillsbury Winthrop, LLP, located in Washington, DC and McLean, Virginia, took over patent prosecution on August 1, 2002,[45] and maintained prosecution until Mr. Yudell took it over in February, 2009.[46]

Finally, Movants argue the Northern District of California is more convenient for the witnesses as Acacia Research Corporation (WRT's ultimate parent) is located in California.[47] However, the point is a red herring since Acacia is located in southern California.

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[39] Ex. K to Mot. at 2; *See also* Ex. I to Opp. at 2 (which may be easier to view).
[40] *Id.*
[41] Ex. J to Opp. at line '(75)'.
[42] *See* Mot. at 5.
[43] Ex. B to Opp. at ¶ 3.
[44] Ex. K to Opp.
[45] Ex. L to Opp.; Ex. M to Opp.
[46] See Ex. N to Opp. at 1, 15 (last filed response); see also Ex. K to Opp.
[47] Mot. at ¶ 4, 10, ¶ 1, 11.

Accordingly, as Movants have not met their substantial burden, transfer under § 1404(a) is not appropriate.

2. Availability of Compulsory Process

"This factor will weigh more heavily for transfer when more third-party witnesses reside within the non-transferee venue." *Optimum Power Solutions, supra.*[48]

Movants identify the original patent prosecutor, Mr. John F. Griffith, as a non-party witness, and two contractors named by RII.[49]

WRT notes that sole inventor, Mr. Raymond Ratcliff, is a non-party who has resided in Plano, Texas,[50] and from Movants' investigation, currently resides in Austin. [51] The current prosecuting patent attorney, Mr. Craig Yudell, is a non-party who lives in Austin, Texas and works in Austin, Texas. Before Mr. Yudell's handling of the prosecution on February 19, 2009, non-party attorneys of Pillsbury Winthrop, LLP, having offices in Washington, DC and McLean, Virginia handled the patent prosecution, [52] from August 1, 2002 to February 19, 2009. [53] In particular, Messrs. Steven B. Keller and Dale Lazar appear in the file history with Washington, DC and Virginia addresses.[54]

As the foregoing non-party witnesses are indeed closer to the Eastern District of Texas than the Northern District of California, the factor either disfavors transfer under § 1404(a) or is neutral.

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[48] Ex. N to Mot. at ¶ 2, 4, citing *Volkswagen II*, 545 F.3d at 316.
[49] Mot. at ¶ 2, 11.
[50] *See* Mot. at ¶ 4, 5.
[51] Ex. B to Opp. at ¶ 4.
[52] Ex. L to Opp.; Ex. M to Opp.
[53] *See* Ex. N to Opp. at 1, 15 (last filed response); see also Ex. K to Opp.
[54] *See, e.g.*, Ex. M to Opp. at 1, and Ex. N to Opp. at 15.

3. Cost of Attendance for Willing Witnesses

The Fifth Circuit has set a '100-mile' rule to evaluate witness convenience. *Volkswagen I*, 371 F.3d at 204, 205.[55] The Fifth Circuit recognizes the inconvenience to witnesses factor broadly, giving "consideration [to] the parties and witnesses in all claims and controversies properly joined in a proceeding." *Id.,* at 204. *See also*, *Optimum, supra* at 4.[56]

Without repeating the foregoing discussion, and in view of the Fifth Circuit's broad perspective, the following summary may be made.[57] Google witnesses for the accused infringing products *Google Goggles* and *Google Shopper* are likely located in New York and California. A9 and Amazon witnesses for accused infringing products *SnapTell, Amazon Remembers* and *Price Check* are likely located in Seattle, Washington, Palo Alto, California and Bangalore, India. RII witnesses for accused products *French Rev* and *DriveTube* are likely located in Northern California, Costa Rica and Peru. Nokia witnesses for accused product *Point & Find* are likely located in Tempe, Arizona, Silicon Valley, California, London, United Kingdom, Oulu, Finland and New York, New York.

With respect to fact witnesses bearing direct knowledge of the invention, patent and prosecution history, the locations include Austin, Texas for the inventor Mr. Ratcliff, Austin, Texas for the current patent prosecutor Mr. Yudell, and Washington, DC and Northern Virginia for patent prosecutors of Pillsbury Winthrop, LLP, and California for the first prosecutor John F. Griffith.

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[55] ("When the distance between an existing venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled.")
[56] ("All potential material and relevant witnesses must be taken into account for the transfer analysis, irrespective of their centrality to the issues raised in a case or their likelihood of being called to testify at trial.")
[57] See § III.A.1 of this Opp.

As there is great geographic diversity between likely Movants' witnesses and closer proximity to Texas among WRT's witnesses, the factor either disfavors transfer or is neutral under § 1404(a).

4. Other Practical Problems

Judicial economy favors WRT's position of non-transfer. The Complaint case was filed on September 14, 2010, over six months ago.[58] Since that time, Movant Defendants have been properly served,[59] have appeared[60], answered,[61] and filed corporate disclosures,[62] and WRT has answered counterclaims.[63] Parties also attended a February 16 status conference where *Markman* and jury selection dates were set.[64] After some three weeks of negotiations between parties, on March 23, they stipulated to, and WRT filed, a Joint Motion for Entry of Discovery Order and Docket Control Order,[65] which Orders were respectively entered by the Court the following day.[66] Per the Order, initial disclosures and WRT's infringement contentions are due on May 5.

Furthermore, three related cases have been filed before the Court, including: 2:10-cv-00365-TJW-CE, filed contemporaneously and asserting the '287 Patent against the parent entities of Nokia and RII; 2:10-cv-00577-TJW, filed on December 21 and asserting related U.S. Patent No. 7,856,474 ('474 Patent) against the present Movants; and 2:10-cv-00578-DF, filed on December 21 and asserting the '474 Patent against the parent entities of Nokia and RII. Accordingly, a transfer would lead to tremendous wasting of court resources. *Volkswagen III*,

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[58] Dkt. No. 1.
[59] Dkt. No. 8-10, 12, 13, 16.
[60] Dkt. Nos. 22, 27, 32, 33, 36, 39-41, 48 49, 51, 52.
[61] Dkt. Nos. 25, 28, 30, 34, 37.
[62] Dkt. No. 24, 26, 31, 35, 38.
[63] Dkt. Nos. 42-47.
[64] Minute Entry, Feb. 16, 2011.
[65] Dkt. No. 61.
[66] Dkt. Nos. 63, 64.

566 F.3d at 1349 ("[T]he existence of multiple lawsuits involving the same issues is a paramount consideration when determining whether a transfer is in the interest of justice.")

B. The Public Interest Factors Do Not Render the Northern District of California Clearly More Convenient[67]

1. Court Congestion

Court congestion is considered the most speculative of the factors, and may not, by itself, outweigh others. *NovelPoint Learning, supra*[68]*,* citing *Genentech*, 566 F.3d at 1347. "However, the speed with which a case may get to trial is relevant to the § 1404(a) analysis." *Id.*

Here, Movants compare the actual trial time for the case, namely 33 months from the present, to 2009 Federal Court Management Statistics for the Northern District of California, which indicate an average of 24.5 months from filing to trial for civil cases.[69]

This curiously apples-to-oranges approach is obviously devised to show great disparity between getting to trial in the Eastern District of Texas versus the proposed transferee district. However, an apples-to-apples approach, namely comparing Federal Court Management Statistics between both forums for 2009, has the Eastern District of Texas at an average of 25.0 months to trial versus the above noted 24.5 for the Northern District of California.[70] For 2010, the numbers are even closer, with the Eastern District of Texas having an average of 21.7 months to trial versus 21.5 months for the Northern District of California.[71] Accordingly, the factor is neutral

[67] "The public interest factors are: '(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 laws or in the application of foreign law.'" *Volkswagen II*, 545 F.3d at 315 *(quoting Volkswagen I*, 371 F.3d at 203).
[68] Ex. Q to Opp. at 13.
[69] Ex. O to Mot.
[70] Exs. O, P to Opp.
[71] *Id.*

under § 1404(a).

2. Local Interest

To the best of WRT's knowledge, any of the Movants headquartered in California sell their products nationwide. Nationwide sales of a product are disregarded in favor of particularized local interests. *In re Hoffman-La Roche Inc.*, 587 F.3d 1333, 1338 (Fed. Cir. 2009). Thus, this Court has observed that, in a patent case where defendants sell products throughout the United States, no specific venue has a dominant interest in resolving the issue of patent infringement. *Aloft Media, Inc. v. Yahoo!, Inc.*, 2009 U.S. Dist. LEXIS 48716, (E.D. Tex. 2009) *22, *23.

Movants posit that "the 'local interest' factor is of particular relevance to this action, and weighs heavily in favor of transfer to the Northern District of California."[72] The reason provided is that the Defendants being alleged to infringe the '287 Patent are "concentrated in," California, and the action "calls into question the work and reputation of these companies and their employees, a majority of whom are residents of California []."[73]

Movants apparently rely upon *In re Hoffmann-La Roche*, 587 F.3d at 1338, and its progeny, the former holding "if there are significant connections between a particular venue and the events that gave rise to a suit, this factor should be weighed in that venue's favor." *Id.* However, Movants' statements are neither clear nor accurate.

First, the Northern District of California has no greater interest in the action than do the districts in which the non-California defendants are located. Accordingly, even if the Eastern Texas has no interest in the matter, there would be insufficient basis for holding this factor to favor a transfer to the Northern California.

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[72] Mot. at ¶ 1, 14.
[73] *Id.* at ¶ 2, 14.

Secondly, if California has an interest in this matter because a number of its citizens are named as defendants, then Texas also has an interest, by virtue of its citizens, WRT, as well as Mr. Ratcliff, the inventor, and Mr. Yudell, the prosecuting attorney, being apparent residents of Texas. Movants cannot propound their local interests and deny WRT's. Accordingly, the factor is neutral under § 1404(a).

3. Familiarity with the Governing Law

Movants make no assertions that courts in the Northern District of California are more familiar with patent law than in the Eastern District of Texas. In fact, they assert both districts are well served by judiciaries adept at handling patent litigation.[74] WRT agrees. This factor is either inapplicable in this case, or neutral to the Court's determination under § 1404(a).

4. Avoidance of Conflicts of Laws

Movants assert that there are no perceived conflict of law issues.[75] WRT agrees. The factor is therefore inapplicable in this case, and neutral to the Court's determination under § 1404(a).

IV. CONCLUSION

Movants have not met their burden of showing that transfer to the Northern District of California is warranted under § 1404(a).[76] Thus, the Motion should be denied. To the extent that it would assist the Court, oral argument is requested under Local Rule CV-7(g).

[74] Mot. at 15.
[75] *Id.*
[76] Specifically, they have failed to demonstrate that the balance of private and public interest factors reveals that the Northern District of California is "clearly more convenient" as the venue for this case than the Eastern District of Texas.

Dated: April 25, 2011

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). 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). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 25th day of April, 2011.

/s/ William E. Davis, III
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