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

WI-LAN INC., Plaintiff, v. ALCATEL-LUCENT USA INC.; TELEFONAKTIEBOLAGET LM ERICSSON; ERICSSON INC.; SONY ERICSSON MOBILE COMMUNICATIONS AB; SONY ERICSSON MOBILE COMMUNICATIONS (USA) INC.; HTC CORPORATION; HTC AMERICA, INC.; EXEDEA INC.; LG ELECTRONICS, INC.; LG ELECTRONICS MOBILECOMM U.S.A., INC.; LG ELECTRONICS U.S.A., INC. Defendants.	§ § § § § § § § § § § § § § § § §	Civil Action No. 6:10-cv-521-LED JURY TRIAL DEMANDED

Wi-LAN'S OPPOSITION TO HTC'S MOTION TO TRANSFER VENUE TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA PURSUANT TO 28 U.S.C. §1404(a)

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I. INTRODUCTION

Plaintiff Wi-LAN Corporation ("Wi-LAN") opposes the Motion of Defendants HTC Corporation, HTC America, Inc. and Exedea, Inc. (collectively "HTC") to transfer venue for this action to the Southern District of California (Dkt. No. 73 ("MTT")).

HTC's motion to transfer asks this Court to set aside established precedent, focuses primarily on the interests of a non-party whose involvement in this lawsuit is not yet apparent, ignores the interests of all other co-defendants, and would transfer this action in its entirety to a venue in which not one defendant maintains a significant presence. HTC's faulty reasoning should be rejected, and its motion to transfer should be denied.

First, and most significantly, HTC fails as a matter of law to carry its burden in moving for transfer of this action. A moving party must show that transfer is for the convenience of all the parties to the lawsuit. HTC, however, offers no evidence as to the convenience or private interests of Wi-LAN or any of the other defendant groups. HTC does not precondition transfer on the severance of claims against HTC, and does not consider the convenience of any of the other four defendant groups in moving for transfer of this action. Indeed, HTC asks the Court multiple times to transfer "this action" without qualification, and never once indicates that the motion to transfer is contingent on the motion to sever. There is no indication HTC conferred with or asked the other defendants to join or otherwise not oppose its motion. In essence, HTC would have the Court transfer the entire action based solely on HTC's private interests. HTC's motion thus fails because it does not consider the convenience of all the parties to the action.

Second, regardless of whether HTC's motion to transfer is contingent on HTC's motion to sever, HTC's motion must be denied because it asks the Court to transfer this action to a venue with no localized interest in this lawsuit. HTC does not maintain a principal place of business within the Southern District of California. HTC apparently believes, however, that the

Southern District of California is the appropriate venue not because of the location of Wi-LAN or any defendant, but based solely on the residency of a non-party, Qualcomm, whose potential involvement in this dispute is as of yet unknown. Because HTC moves to transfer this action to a jurisdiction in which no party has a principal place of business, the Court should deny the motion.

Third, the private and public interests weigh against transfer for HTC alone and also for all parties to this action. Venue is proper as to Ericsson and Alcatel-Lucent, both of whom have principal places of business within the Eastern District of Texas. No party maintains a principal place of business in the Southern District of California. HTC has no greater contacts with the Southern District of California than it does with the Eastern District of Texas. Moreover, both Exedea and HTC America recently maintained principal locations in Houston, Texas, which is geographically closer to the Eastern District of Texas than to the Southern District of California. Former employees of these entities likely still reside in the State of Texas.

For these and other reasons discussed below, HTC's motion should be denied.

II. FACTUAL BACKGROUND

A. This Action Involves Four Groups of Parties in Addition to HTC.

On October 5, 2010, Wi-LAN sued five defendant groups[1] for infringement of patents related to wireless transmission of data from handsets to base stations (and vice versa) using innovative multiplexing techniques that allow more devices to communicate at the same time using the same frequency allocations. The asserted patents are U.S. Patent Nos. 6,088,326 (the

[1] The eleven defendant entities named in Wi-LAN's Complaint are HTC Corporation, HTC America, Inc. and Exedea, Inc. (collectively "HTC"), Alcatel-Lucent USA Inc. ("Alcatel-Lucent"), Telefonaktiebolaget LM Ericsson and Ericsson Inc. (collectively "Ericsson"), Sony Ericsson Mobile Communications AB and Sony Ericsson Mobile Communications (USA) Inc. (collectively "Sony Ericsson"), and LG Electronics, Inc., LG Electronics Mobilecomm U.S.A., Inc., and LG Electronics U.S.A., Inc. (collectively "LG Electronics").

"'326 patent), 6,195,327 (the "'327 patent"), 6,222,819 (the "'819 patent"), and 6,381,211 (the "'211 patent").

In December 2010, the claims against LG were dismissed with prejudice, leaving only four defendant groups—HTC, Sony Ericsson, Ericsson, and Alcatel-Lucent. Two of these four defendant groups are related: Sony Ericsson is partially owned by Ericsson, and the Ericsson defendants are sharing counsel for this litigation. (Hornberger Decl. at ¶ 2).

Each of the Defendants has answered the Complaint.[2] The Court has not yet set a Case Management Conference, Infringement Contentions have not yet been filed, Initial Disclosures have not been submitted, and discovery has not begun.

B. No Parties Are Located in the Southern District of California.

Not a single party to this action maintains a principal place of business within the Southern District of California.[3] Two defendants, Ericsson and Alcatel-Lucent, reside within the Eastern District of Texas. Some party witnesses might reside in Taiwan and some in Sweden, while significant third parties reside in Florida and the United Kingdom.

1. Wi-LAN Is Located in Canada.

Currently headquartered in Ottawa, Canada, Wi-LAN was founded in 1992 to commercialize technology inventions that made low-cost, high-speed wireless networking a reality. Used in several generations of proprietary products manufactured by Wi-LAN and other products offered by industry, these inventions were, by 2005, commercialized in millions of wireless networking devices worth many billions of dollars. Realizing the value that its intellectual property brought to industry, Wi-LAN chose in 2006 to focus its business on

[2] The foreign parent corporations for Ericsson and Sony Ericsson filed their answers on January 24th, two days before this motion was filed by HTC. (Dkt Nos. 68, 69.)

[3] Because each defendant offers its infringing products into the stream of commerce, Wi-LAN does not dispute that, under 28 U.S.C. §§ 1391(c) and 1400(b), this action could have been brought in the Southern District of California.

developing, protecting, and monetizing patented inventions. Wi-LAN since has applied its experience and knowledge in wireless technology to acquire foundational patents relating to significant aspects of wireless transmission, including the patents asserted in this action. (Hornberger Decl. at ¶ 3). Wi-LAN's entire operations continue to be based in Ottawa, Canada. (Hornberger Decl. at ¶ 4).

2. The Defendant Groups Are Located in the Eastern District of Texas and Other Locations.

HTC – HTC Corporation is a foreign corporation with headquarters in Taiwan. HTC America, Inc. is a subsidiary of HTC Corporation with its offices in Bellevue, WA. Exedea Inc. is a subsidiary of HTC and is a corporation organized under the laws of the State of Texas. (Collectively, these related entities are hereinafter referred to as "HTC.") (*See* Dkt. no. 64, HTC's Answer at ¶ 5).

Ericsson – Defendant Ericsson Inc. is a corporation organized and existing under the laws of the State of Delaware having its principal place of business in Plano, TX. (*See* Dkt. no. 53, Ericsson Amended Counterclaim at ¶ 1). Defendant Telefonaktiebolaget LM Ericsson ("LME") is a Swedish corporation with a principal place of business in Stockholm, Sweden. (*See* Dkt. no. 68, LME Counterclaim at ¶ 1). Ericsson Inc. is a wholly-owned subsidiary of LME. (*See* Dkt no. 47, Ericsson Inc.'s Corporate Disclosure Statement). (Ericsson Inc. and LME are hereinafter referred to collectively as "Ericsson.") Ericsson maintains a principal place of business within the Eastern District of Texas, and has not joined this motion.

Sony Ericsson – Sony Ericsson is a corporation organized and existing under the laws of the State of Delaware and apparently having its principal place of business in Atlanta, Georgia. (*See* Dkt. no. 51, Sony Ericsson's Counterclaim at ¶ 1). More than 10% of Sony Ericsson is owned by LME. (*See* Dkt. no. 52, Sony Ericsson's Corporate Disclosure Statement). Indeed,

Sony Ericsson is 50% owned by LME. (Hornberger Decl. at ¶ 2). Though based in Georgia, Sony Ericsson has not joined this motion.

Alcatel-Lucent – Defendant Alcatel-Lucent USA Inc. ("Alcatel-Lucent") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in, Murray Hill, NJ. (*See* Dkt. no. 61, Alcatel-Lucent Counterclaim at ¶ 1). Alcatel-Lucent also maintains a principal place of business in Plano, TX. (Hornberger Decl. at ¶ 5). Alcatel-Lucent maintains a principal place of business within the Eastern District of Texas, and has not joined this motion.

3. Relevant Third-Parties Are Not Located in Southern California.

Airspan Networks, Inc., having its worldwide headquarters in Boca Raton, FL, develops and markets innovative wireless products designed to communicate information efficiently and at high speeds. (Hornberger Decl. at ¶ 6). Airspan applied for and successfully prosecuted the asserted patents, and ultimately assigned them to Wi-LAN. Airspan continues to maintain offices around the world.

Martin Lysejko, a named inventor on all four asserted patents, participated in the development of the claimed inventions while designing innovative wireless solutions for Airspan. He apparently continues to work for Airspan and is based in their UK offices. (*See* MTT, Larish Decl. at ¶ 4). The patents list him as residing in Bagshot, GB.

Paul Struhsaker is a named inventor on all four of the asserted patents and participated in the development of the claimed inventions while designing innovative wireless solutions for Airspan. The patents list him as residing in Plano, Texas.

Joemanne Chi Cheung Yeung is a named inventor on the '327 patent and participated in the development of some of the claimed inventions while designing innovative wireless solutions for Airspan. The patent lists him as residing in Wootton, GB.

III. APPLICABLE LAW

Section 1404(a) provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). The party seeking transfer of venue must show good cause for the transfer. *In re Volkswagen of America, Inc.*, 545 F.3d 304, 315 (5th Cir. 2008). To show good cause, the movant must demonstrate the proposed transferee venue is clearly more convenient. *Id.* If the movant cannot show that the transferee venue is clearly more convenient, the plaintiff's choice of venue should be respected. *Id.*

This District considers a variety of factors for determining § 1404(a) venue transfer questions. *See id.* at 315. When deciding whether to transfer venue, a district court balances two categories of interests: the private interests, *i.e.*, the convenience of the litigants, and the public interests in the fair and efficient administration of justice. *Id.* The private interest factors weighed by the court include (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. *Id.* 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 or in the application of foreign law. *Id.* To prevail, HTC must show that the public and private factors "clearly" favor transferring the case. HTC fails to make that showing here.

IV. ARGUMENT

As shown below, HTC has not carried its burden to establish the Southern District of California is clearly more convenient. Moreover, the private and public interest factors weigh in favor of denying HTC's motion.

A. HTC Has Not Carried Its Burden and Has Failed to Show that the Southern District of California Is Clearly More Convenient for All the Parties.

HTC cannot carry its burden[4] in its motion to transfer for at least two reasons. First, HTC, in moving for transfer of this entire action, does not address the interests of any other defendant. HTC's motion specifically asks for transfer of this entire case.[5] HTC could have made its motion to transfer contingent on its motion to sever, or it could have moved the Court to sever and transfer within the same pleading. HTC, however, instead chose simply to file its motion to transfer "concurrently" with its motion to sever. *See, e.g.*, MTT at 1 ("In the Motion to Sever, filed concurrently herewith, HTC requests that this Court, inter alia, sever the claims against HTC from this action."). Because HTC asks this Court to transfer the entire action, and because HTC did not make its motion to transfer contingent on the motion to sever, the Court must consider the interests of all the parties—not just HTC. *See, e.g., On Semiconductor Corp. v. Hynix Semiconductor, Inc.*, No. 6:09-CV-390, 2010 WL 3855520, at *1 n.1 (E.D. Tex. Sept. 30, 2010) ("In ruling on a motion to transfer, a court considers the convenience of all parties and witnesses relevant to all claims and controversies in a case."); *Coll v. Abaco Operating LLC*, slip op., 2009 WL 3063333 at*5 (E.D. Tex. Sept. 21, 2009) (denying motion to transfer because

[4] *See Volkswagen*, 545 F.3d at 315 (burden is on moving party to show that transfer is clearly more convenient).

[5] *See, e.g.*, MTT at 1 (HTC "respectfully move[s] this Court to transfer this civil action from the United States District Court for the Eastern District of Texas to the Southern District of California under 28 U.S.C. §1404(a)."") (emphasis added); MTT at 15 (concluding, without ever defining "Defendants" except in the case stylus as to all defendants, that "[t]ransfer of this case to the Southern District of California thus will serve the interests of justice as transfer has heightened importance to Defendants' ability to produce witnesses to support their defenses at trial.") (emphasis added).

"[n]one of the nine transfer motions discuss, let alone demonstrate, that the venue being sought is more convenient for all parties, including their non-joining co-defendants. Each of these motions to transfer venue ask the Court to consider convenience in a vacuum, as if the other defendants were not parties to this case."). Consequently, HTC's motion must be denied.

Second, regardless of whether the motion to transfer is confined to only those claims against HTC, HTC does not meet its burden because it asks the Court to transfer to a jurisdiction in which no party, not even HTC, maintains a principal place of business (*see* MTT, Maron Decl. at ¶¶ 7, 8). *See, e.g.*, *Personal Audio, LLC v. Apple, Inc.*, No. 9:09-CV-111, 2010 WL 582540 at *1 (E.D. Tex. Feb. 11, 2010) (denying transfer where "[a]t most, Defendants can show that there may be some non-party witnesses in the District of Massachusetts. Defendants have not met their burden of showing that the District of Massachusetts is 'clearly more convenient' than the Eastern District of Texas."); *In re Vistaprint Ltd.*, 642 F.3d 1342, 1346-47 (Fed. Cir. 2010) (refusing to overturn denial of motion to transfer based, in part, on the fact that "no defendant party is actually located in the transferee venue and the presence of the witnesses in that location is not overwhelming.").

B. Private and Public Interest Factors Weigh in Favor of Denying HTC's Motion to Transfer

In addition to HTC's failure to carry its burden, the private and public interest factors with respect to all defendants—and even with respect to HTC alone—weigh in favor of denial.

1. The Private Interest Factors Weigh Against Transfer

a. **Access to Sources of Proof Weighs Against Transfer.**

HTC relies on three arguments to support transfer: HTC's and Qualcomm's domestic locations, HTC's foreign locations, and the location of the named inventors. Notably absent in

HTC's analysis are the sources of proof for the other defendants in this action. When taken as a whole, this factor weighs against transfer.

"In patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer." *In re Genentech*, 566 F.3d 1338, 1345 (Fed. Cir. 2009) (quotation omitted). Two of the defendant groups, Ericsson and Alcatel-Lucent, maintain principal places of business within this district. Ericsson's North American headquarters, in Plano, Texas, is within the Eastern District of Texas. (*See* Dkt. no. 53, Ericsson Amended Counterclaim at ¶ 1). Alcatel-Lucent, although headquartered in New Jersey, has a significant presence in Plano, Texas. (*See* Dkt. no. 61, Alcatel-Lucent Counterclaim at ¶ 1). Access to Sony Ericsson's evidence from Georgia also is more convenient from Texas. These facts weigh against transfer.

HTC, having no presence in the Southern District of California and its principal place of business in Washington (MTT, Maron Decl. at ¶ 4), will need to transport evidence to both contemplated forums—either to the Eastern District of Texas or to the Southern District of California.[6] In any event, because any other relevant HTC documents will need to be transported to either the Eastern District of Texas or the Southern District of California, the cost or inconvenience should not be given much weight.[7] *See Genentech*, 566 F.3d at 1346. These facts are neutral in the transfer analysis.

HTC understates its involvement with respect to the accused technology and products and points the Court to Qualcomm as the party with ultimate technical knowledge. (MTT at 6-7).

[6] Curiously, in moving for transfer to the Southern District of California, HTC often argues for transfer to the Northern District of California. (*See, e.g.*, MTT at 5 ("The fact that Wi-LAN chose to file in this District is not a sufficient basis to prevent transfer to the Northern District of California"); MTT at 9 ("Cost of attendance for willing witnesses, including all inventors, is less in the Northern District of California"); MTT at 10 ("[T]here is a stark contrast in relevance, convenience, and fairness between the Northern District of California and the Eastern District of Texas.")). These arguments at best illustrate the weakness of HTC's motion to transfer to the Southern District of California.

[7] Indeed, HTC previously provided documents to Wi-LAN in another infringement lawsuit pending in the Eastern District of Texas, despite not even being a named party to that lawsuit. (*See* Middleton Decl. at ¶ 2).

Given that Infringement Contentions have not yet been served, this position is premature at best and a gross mischaracterization at worst.

First, Wi-LAN's complaint indicates compliance with 3GPP is a central fact to HTC's infringement, and HTC should be more than capable to testify, without Qualcomm's assistance, whether its products indeed comply with 3GPP as advertised. Whether more detailed facts relating to any Qualcomm components are needed will be more fully understood by the parties after the service of Infringement Contentions. Indeed, compliance with a technical standard alone can be enough to prove infringement, so Qualcomm's assistance could be unnecessary. *See Fujitsu Ltd. v. Netgear Inc.*, 620 F.3d 1321, 1327 (Fed. Cir. 2010).

Second, Qualcomm's equivocating statements regarding the location of evidence do not weigh in favor of transfer. Qualcomm's declaration is rife with qualifiers, stating "most" of Qualcomm's employees are located "primarily" in San Diego. (MTT, Clifford Decl. at ¶6). Qualcomm maintains operations overseas, and it is entirely possible that those locations—not San Diego—house equally relevant information. (Hornberger Decl. at ¶ 7 (press release regarding Qualcomm's acquisition of a design center in India focusing on 3G development); ¶ 8 (press release discussing Qualcomm's partnership with Global Foundaries).

Third, Qualcomm, despite HTC's remarks otherwise, might be convinced to provide sources of evidence, if necessary. Qualcomm states it "will likely not agree" to provide evidence through the course of this lawsuit. (MTT, Clifford Decl. at ¶6). But whether Qualcomm is willing to assist in HTC's defense of this lawsuit should be given little weight where as here Infringement Contentions are not yet served. In addition, Qualcomm's past behavior regarding Wi-LAN shows a willingness to produce evidence in the Eastern District of Texas provided that it can negotiate a satisfactory protective order. (*See*, *e.g.*, MTT, Larish Decl. at ¶ 2). Finally,

HTC makes no showing that access to sources of evidence like source code will be different if the case is in the Southern District of California rather than the current venue. There is no evidence that Qualcomm's restrictions on access to source code will be any less cumbersome depending on the venue. These facts should be given neutral weight.

The Southern District of California is not clearly more convenient for access to international sources of proof. Evidence residing in Canada or overseas, in Taiwan, Sweden, or the United Kingdom, will require transportation to either the Southern District of California or to the Eastern District of Texas. Further, because discovery has not yet commenced, it is currently not certain what volume of evidence might reside in the UK. Counsel for HTC represents in the motion to transfer that she commenced discussions with Mr. Martin Lysejko, one of the three named inventors, regarding whether any evidence is located in the UK. (MTT, Larish Decl. at ¶ 4). Counsel for HTC did not indicate whether she asked Mr. Lysejko if he or his employer was represented by counsel or otherwise aligned with Wi-LAN, continued to contact Mr. Lysejko on several occasions, and further attempted to coerce Mr. Lysejko to sign a declaration without involving any representation on his behalf. (*Id.*). This "evidence" does not establish whether there is relevant evidence in the UK. Still, the transportation of such evidence will incur costs whether the destination is the Eastern District of Texas or the Southern District of California. *See Genentech*, 566 F.3d at 1346. These facts should be given neutral weight.

b. **Availability of Compulsory Process Weighs Against Transfer.**

HTC's argument with respect to this factor centers on the availability of Qualcomm witnesses, relies on an infringement theory that has not been articulated, and completely neglects any witnesses on behalf of the other defendants. As such, this factor weighs against transfer.

HTC's motion does not preclude the conclusion that it controls the necessary evidence without relying on service of process on Qualcomm. HTC provides the Court with no evidence

regarding its contractual relationship with Qualcomm, which presumably includes an obligation on behalf of Qualcomm to assist in HTC's defense of claims against products using Qualcomm components. HTC also does not indicate whether it maintains custody of the source code used with Qualcomm's chips or alters such code before selling the infringing products. HTC also does not advise the Court whether it obtains stock product from Qualcomm or alters, customizes, or participates in the development of any Qualcomm component. Thus it is entirely possible—indeed, likely—that HTC controls the necessary evidence. Morover, infringement Contentions have not yet been served. Wi-LAN's complaint, however, indicates that compliance with the 3GPP standard is central to the infringement allegations. Until Infringement Contentions are served, though, it is speculative to determine what role if any Qualcomm will play in this lawsuit. As such, transferring this action in blind anticipation of Qualcomm's supposed involvement would be improper. Moreover, HTC refers the Court to evidence that (1) Qualcomm was the subject of a motion to compel in a previous Wi-LAN lawsuit, and (2) Qualcomm ultimately negotiated and agreed to a protective order. If anything, this shows Qualcomm has agreed to produce evidence pursuant to appropriate protections.

Finally, HTC completely neglects any witnesses who might appear on behalf of the other co-defendants in this litigation. Rule 45 enables this Court to compel the attendance of witnesses found within the state, not just within 100 miles, to attend trial. The Court, therefore, can compel current and former employees of Alcatel-Lucent or Ericsson living in Texas to testify. Moreover, any former employees of Exedea or any other HTC entity still living in Texas can thus be compelled to testify. Other than Qualcomm employees of uncertain significance and location, HTC cannot identify any other witnesses unwilling to attend trial.

c. **Cost of Attendance for Willing Witnesses Is Neutral.**

Transferring this action to the Southern District of California will increase the costs to the parties as a whole by forcing more witnesses and defendants to travel than would otherwise be the case. *See, e.g., Volkswagen*, 545 F.3d at 317 (noting that inconvenience increases as distance increases). This factor thus weighs against transfer. Although HTC might incur lower costs should transfer be granted, Wi-LAN witnesses will suffer greater costs in traveling greater distances. Sony Ericsson, with its principal place of business on the East Coast, also will incur greater costs. Ericsson and Alcatel-Lucent both have significant operations in Plano and so will suffer greater costs if transfer is granted. Ultimately, the Eastern District of Texas is more convenient for witnesses from Wi-LAN, Ericsson, Alcatel-Lucent and Sony Ericsson.

International witnesses, if any, coming from Sweden, Taiwan, or the UK "will be required to travel a significant distance no matter where they testify," so such travel costs do not weigh in favor of transfer. *See Genentech*, 566 F.3d at 1344. While the Southern District of California could be more convenient for witnesses traveling from Asia, the Eastern District of Texas is more convenient for witnesses traveling from Europe. *See Volkswagen*, 545 F.3d at 316 (finding proposed venue more convenient because it was closer to sources of proof).

d. **Other Practical Problems Weigh Against Transfer.**

Even if the Court were to grant HTC's motion to sever, the practical problems in creating duplicative suits in different forums weigh against transfer. Transferring this action solely with respect to HTC would allow two courts to simultaneously consider the same issues of validity and infringement. The existence of duplicative suits involving the same issues creates practical difficulties weighing against transfers, especially where as here the parties are properly joined. *See, e.g., Centre One v. Vonage Holdings Corp.*, slip op. 2010 WL 3257642 at *5 (E.D. Tex. Aug. 17, 2010) ("Particularly, the existence of duplicative suits involving the same or similar

issues may create practical difficulties that will weigh heavily in favor or against transfer.") (citation omitted).

2. The Public Interest Factors Weigh Against Transfer

a. **More Rapid Case Disposition in the Eastern District of Texas Weighs Against Transfer.**

Recent statistics evidence a faster time to trial in East Texas as opposed to Southern California. Recent reports show median time from filing to disposition by trial of civil cases in the Eastern District of Texas as being 25.8 months, while the Southern District of California takes some 37.2 months. (Hornberger Decl. at ¶ 9). Because "the speed with which a case can come to trial and be resolved may be a factor" of public interest, this fact weighs against transfer. *See Genentech*, 566 F.3d at 1347.

b. **The Greater Localized Interest of the Eastern District of Texas Weighs Against Transfer.**

This factor weighs against transfer. HTC's preferred venue, the Southern District of California, bears little localized interest in this case as not one of the named parties maintains any significant place of business in that district. *See Personal Audio*, 2010 WL 582540 at *1 (denying transfer where "[a]t most, Defendants can show that there may be some non-party witnesses in the District of Massachusetts. Defendants have not met their burden of showing that the District of Massachusetts is 'clearly more convenient' than the Eastern District of Texas."); *In re Vistaprint*, 628 F.3d at 1346-47 (refusing to overturn denial of motion to transfer based, in part, on the fact that "no defendant party is actually located in the transferee venue and the presence of the witnesses in that location is not overwhelming"). Indeed, HTC admits it houses its main operations in Washington and maintains a small presence in San Francisco. Neither location is in the Southern District of California. The Eastern District of Texas, however, is home to at least Ericsson and Alcatel-Lucent, both of whom maintain offices in Plano. The

venue serving as the location for defendants in the litigation has a clear interest in the litigation. *Centre One*, 2010 WL 3257642 at *6 (noting the forum being the location "of some Defendants has a clear interest in this case"). As such, the Eastern District of Texas has a greater localized interest in this litigation.

c. **The Familiarity Of The Forum With The Law That Governs The Case Weigh Is Neutral.**

This action was brought under federal patent laws. Such laws are statutory and substantive decisions under these laws are reviewed by the Federal Circuit in all districts, eliminating any possibility of conflict of law. HTC has advanced no issue of local law. Both the Southern District of California and the Eastern District of Texas have experience adjudicating patent infringement disputes. This factor thus is neutral and does not weigh in favor of transfer.

V. CONCLUSION

HTC's motion to transfer fails on multiple grounds. In asking to transfer the entire action, HTC did not address the interests of all the parties—a fatal flaw. Similarly, no party to this action even maintains a principal place of business in the proposed transferee forum—making transfer inappropriate. HTC cannot hang its hat on evidence allegedly coming from one potentially relevant third party (Qualcomm). The convenience of one non-party cannot trump the reality that relevant party and non-party witnesses and documentation will be coming from other national and international locations that are not conveniently located in Southern California. In view of the totality of the situation, the Court should deny HTC's motion to transfer for HTC's failure to establish that the Southern District of California is clearly a more convenient forum for this dispute.

Dated: February 14, 2011

Respectfully submitted,

By:/s/ David B. Weaver w/permission Wesley Hill

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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 and/or fax, on this the 14th day of February, 2011.

/s/ Wesley Hill
Wesley Hill