



## Gesture Technology Partners, LLC v. Apple, Inc.

2022 | Cited 0 times | W.D. Texas | August 22, 2022

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

WACO DIVISION

GESTURE TECHNOLOGY PARTNERS, LLC, Plaintiff -vs- APPLE INC., Defendant

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6:21-CV-00121-ADA

MEMORANDUM OPINION AND ORDER

Venue under 28 U.S.C. § 1404(a) to the Northern District of California. ECF No. 21. Plaintiff Gesture Apple law, the Court GRANTS

I. BACKGROUND Plaintiff Gesture, an Ohio Corporation headquartered in Toledo, Ohio, filed suit on February 4, 2021. See ECF No. 1. Gesture accuses a variety of Apple iPhones and iPads (the 924 P 431 P 949 P 079 P

(collectively, the . See generally, *id.* The Asserted Patents relate to using cameras and gestures detected by the cameras or other sensors to control functions in the device for different applications. *Id.* The complaint accused several Apple applications in the Accused Products, including Face ID, QR Scanner, Smart HDR, tracking autofocus, picture face

recognition, selfie focus, autofocus area, optical image stabilization, portrait mode, switch control, and Animojis. *Id.* Apple has moved to transfer venues from the Western District of Texas to the Northern District of California . See generally ECF No. 21.

II. LEGAL STANDARD In patent cases, motions to transfer under 28 U.S.C. § 1404(a) are governed by the law of the regional circuit. In *re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008). 28 U.S.C. § . . . a district court may transfer any civil action to any other district or division where it might have been brought or to *Id* place discretion in the district court to adjudicate motions for transfer according to an

-by- *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S.



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612, 622 (1964)).

The pr In re Volkswagen, Inc., 545 F.3d 304, 312 (5th

. If the destination venue would have been a proper Action Indus., Inc. v. U.S.

Fid. & Guar. Co., 358 F.3d 337, 340 (5th Cir. 2004). 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 tha In re Volkswagen

AG Volkswagen I Piper Aircraft Co. v. Reyno rative 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 l Id. Courts evaluate these factors based on the situation which existed at the time of filing, rather Hoffman v. Blaski, 363 U.S. 335, 343 (1960).

The burden to prove that a case should be transferred for convenience falls squarely on the moving party. Volkswagen II, 545 F.3d at 314. The burden that a movant must carry is not that the alternative venue is more convenient, but that it is clearly more convenient. Id. at 314

demonstrate that the proposed transfer which the case was filed. Id. preponderance of convenie Quest

NetTech Corp. v. Apple, Inc., No. 2:19-cv-118, 2019 WL 6344267, at \*7 (E.D. Tex. Nov. 27, 2019).

III. DISCUSSION A. Gesture could have brought this case in the Northern District of California.

The threshold determination in the § 1404(a) analysis is whether this case could initially have been brought in the destination venue the NDCA. Apple asserts that this case could have been brought in the NDCA because Apple maintains its headquarters in Cupertino, California. ECF No. 21 at 6. Gesture does not dispute this assertion. See generally, ECF No. 34. This Court finds that venue would have been proper in the NDCA had Gesture originally filed this case there. Thus, the Court proceeds with its analysis of the public and private interest factors to determine if the NDCA is clearly more convenient than the WDTX.

### B. The Private Interest Factors

#### 1. The Relative Ease of Access of Sources of Proof

Fintiv Inc. v. Apple Inc., No. 6:18-cv-00372, 2019 WL 4743678, at \*2 (W.D. Tex. Sept. relative ease of access, not absolute In re Radmax, 720 F.3d 285, 288 (5th Cir. 2013) comes from the accused infIn re Apple Inc., 979 F.3d 1332, 1340 (Fed. Cir.



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2020) (citing *In re Genentech*, 566 F.3d 1338, 1345 (Fed. Cir. 2009)). Apple maintains relevant documents located in the WDTX, however, it argues that none of those documents are relevant

to this suit. *Id.* To give credence to this conclusion, Apple points to potentially relevant Apple *Id.* Furthermore, Apple contends that the majority of the research, design, development, source

code, and generation of documents related to the accused products took place in the NDCA. *Id.* Apple also maintains that all the relevant financial and marketing documents are in or around the NDCA. *Id.* Gesture argues that Apple has not met its burden and that cod *Id.*

Gesture also asserts that Apple employees with the appropriate credentials can access Apple documents from anywhere, including Texas. *Id.* Furthermore, Gesture argues th campus is instrumental in the development of the accused products as was demonstrated by

development group outside of its Cupertino, Calif. Headquart *Id.* at 5. Additionally, Gesture integral role they are designing chips that go into all the devices [Apple] sell[s]. *Id.* at 5 6. In a

last-d

*Id.* at 6.

This factor favors transfer as Apple has identified a specific group of relevant documents and source code that are mostly located in NDCA. ECF No. 21 at 8. The relevant inquiry,

contrary to Gestures point, is whether the bulk of the evidence/documents are stored in the transferee district. The Court will give no weight to Gesture s argument that the relevant documents are easily accessible by employees with the appropriate credentials outside the space

places other than either the transferor or the transferee forum does not weigh against transfer.

*Juniper Networks*, 14 F.4th 1313, 1321. The Court is not convinced by Gesture s argument that

demonstrate that potentially relevant employee witnesses, or physical documents for that matter, are located in the WDTX. At best these statements yield speculation as to whether relevant documents are located here. Furthermore, job listings by Apple could equally point to the opposite conclusion, that Apple is in need of these types of employees because the Austin office currently lacks them. Thus, the Court finds that this factor favors transfer.

2. The Availability of Compulsory Process to Secure the Attendance of Witnesses Under the Federal Rules, a court may subpoena person, if the pe FED. R. CIV. P. 45(c)(1)(A), (B)(ii); *Gemalto S.A. v. CPI*



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Card Grp. Inc., No. 15-CA-0910, 2015

WL 10818740, at \*4 (W.D. Tex. Dec. 16, 2015). Under this factor, the Court focuses on non- Fintiv Inc., No.

6:18-cv-00372, 2019 WL 4743678, at \*14 (citing Volkswagen II, 545 F.3d at 316); see also In re Juniper compulsory process to secure the attendance of non-party witnesses whose attendance may need to be compelled by court order . . .

in that Apple is unaware of any potential third-party witnesses that would be within the subpoena

power of the WDTX. ECF No. 21 at 9. Gesture, however, contends that Apple failed to identify any third-party witnesses, and that this factor is neutral for that reason. ECF No. 34 at 6. Because no witnesses have been identified by either party in both the WDTX and the NDCA, this factor is neutral.

3. The Cost of Attendance and Convenience for Willing Witnesses The most important factor in the transfer analysis is the convenience of the witnesses. In re Genentech, Inc., 566 F.3d at 1342. When analyzing this factor, the Court should consider all potential material and relevant witnesses. Alacritech Inc. v. CenturyLink, Inc., No. 2:16-CV- existing venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles,

the factor or inconvenience to witnesses increases in direct relationship to the additional distance Volkswagen II, 545 F.3d at 317 (quoting Volkswagen I, 371 F.3d at 203). The Federal Circuit has stated witnesses would be required to travel a significant distance no matter where they testify. In re

Apple, 979 F.3d at 1342 (discussing witnesses traveling from New York) (citing Volkswagen II, witnesses by requiring them to travel to a distant forum and to be away from their homes and

In re Google, LLC, No. 2021-170, 2021 WL 4427899, at \*4 (Fed. Cir. Sept. 27, 2021). In essence, the Federal Circuit has found that time away from an Id. Apple maintains that this factor strongly favors transfer. Apple has note says that because the products were developed in NDCA, that it would make the most sense for

the witnesses to also have been located there as the researchers and developers are in Cupertino. Id. The comparison in travel to each district is also significant from Cupertino and either WDTX or NDCA. Id. Apple provides that its Id. Apple states it is unaware of any likely Apple witnesses in the WDTX as the employees who work there are not the engineers that created the product. Id. at 11. Apple also highlights the fact that Gesture has one employee, Timothy Pryor, and that he is not located in either district as he is in Ohio. Id. at 10. Gesture, however, argues that this factor does not fav based on allegations relies heavily on the declaration of Mr. Mark Rollins and that he listed



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himself as a witness when

he likely does not have relevant knowledge and likely will not testify at trial. Id. at 8. Gesture Id. at 7. Gesture also points out

it [s] to deny Id. at 9 10.

esses and contends that it is likely those witnesses will not actually testify at trial, and therefore, should not be given too much weight in deciding this factor. Id. at 7 8. ns. Taking As has been explained repeatedly, it is improper for movants to seek transfer but fail to provide

sufficient discovery or conduct thorough investigations as to sources of proof and witnesses within the transferor forum. The Court finds that, given these credibility considerations, the WDTX and NDCA each likely have relevant witnesses, though the NDCA likely has more. cluding the sole inventor and its representative, along with the prosecution attorney for the Asserted Patents, do not tip the scales for this factor either. For these reasons, this factor, at most, only slightly favors transfer.

#### 4. All Other Practical Problems That Make Trial of a Case Easy, Expeditious and

Inexpensive Volkswagen II, 545 F.3d

PersonalWeb

Techs., LLC v. NEC Corp. of Am., Inc., No. 6:11-cv-655, 2013 WL 9600333, at \*5 (E.D. Tex. -pending litigation . . . involving the same patent-in-suit, Circuit cannot say t In re Vistaprint Ltd., 628 F.3d at 1346 n.3.

Apple maintains that this factor is either neutral or slightly favors transfer. Here, Apple raises that Gesture has filed two other lawsuits pertaining to the same patents within the WDTX. ECF No. 21 at 12. Additionally, Apple provides that Gesture has another two lawsuits in the EDTX, which Apple argues as proof that Gesture has no issue litigating in multiple districts simultaneously. Id. Gesture, however, contends that Apple ignored the other pending case before the Court. ECF No. 37 at 5. Gesture argues that weight should not be given to the pending WDTX case because it is not certain that the case will remain in the WDTX. Id.

The Court gives no weight to the other pending litigation, as that case was the subject of venue concerns. See In re Google Inc., No. 2017-107, 2017 WL 977038, at \*2 (Fed. Cir. Feb. 23, 2017). In fact, the defendants in the co-pending litigation filed their motion to dismiss before Apple filed this Motion, putting the Court on notice of the potential venue issues. Ultimately, the Court granted the defendants motion to dismiss for improper venue, mootng any benefit from the parallel litigation. See Gesture Tech. Partners, LLC v. Lenovo Grp. Ltd., No. W-21-CV- 00122-ADA, 2021 WL 6205789,



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at \*4 (W.D. Tex. Dec. 29, 2021). This factor is therefore neutral.

### C. The Public Interest Factors

1. The Administrative Difficulties Flowing from Court Congestion In re Genentech, Inc., 566 F.3d at 1347. Additionally, court congestion is and others are neutral, then the speed of the transferee district court should not alone outweigh all those Id.

Apple originally argued that this factor favors transfer because the WDTX, compared to the transferee forum, has considerably more patent cases on its docket and is slower to dismiss. See generally ECF No. 21 at 4. This argument, though creative, is not directly aimed at the with which a case can come to trial and be , 566 F.3d at 1347.

Gesture argues that the time-to- time-to-trial in the NDCA. ECF. No. 34 at 13. Furthermore, Gesture shows that the median time to dismissal is shorter than WDTX by a mere 17 days since 2000. Gesture argues

that such a broad date range cannot be instructive on the current court congestion differences between the two venues. Id Instead, it relies on the Federal Northern District of California show no significant differences in caseload or time-to-trial

Juniper Networks, 14 F.4th at 1322.

and lack thereof from Apple, the Court finds that this case would likely reach trial faster in this forum compared to the transferee forum. In re Genentech, 566 F.3d at 1347. Thus, this factor weighs slightly against transfer.

2. The Local Interest in Having Localized Interests Decided at Home Courts must evaluate whether there is a local interest in deciding local issues at home. Volkswagen II In re Samsung Elecs. Co., Nos. 2021-139, 2021-140, 2021 U.S. App. LEXIS 19522, at \*20 (Fed. Cir. June 30, Word to Info, Inc. v. Facebook, Inc., No. 3:14-cv-04387-K, 2015 WL 13870507, at of an accused product offered nationwide does not give In re Hoffmann-La Roche Inc., 587 F.3d 1333,

connection venue and the events that gave rise to a suit In re Apple, 979 F.3d at 1344 (quoting In re Acer

Am. Corp., 626 F.3d 1252, 1256 (Fed. Cir. 2010)) (emphasis in origin Def.

Distributed v. Bruck, 30 F.4th 414, 435 (5th Cir. 2022).

Apple maintains that this factor strongly favors transfer for three reasons: work on the research,



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design, development, and operation of the accused features primarily takes

are based there. ECF No. 21 at 14 (citing *Wet Sounds, Inc. v. Audio Formz, LLC*, No. A-17-CV-

141-LY, 2017 WL 4547916, at \*4 (W.D. Tex. Oct. 11, 2017), report and recommendation adopted, No. 1:17-CV-141-LY, 2018 WL 1219248 (W.D. Tex. Jan. 22, 2018). Apple posits that although Apple has a presence in Austin, the likely relevant witnesses are in the NDCA as that is where the accused products were developed and where Apple is headquartered. *Id.* Apple also *Id.*

Gesture, however, suggests that the WDTX is the better forum for litigation, and Apple - campus located there, and therefore the WDTX has an interest in deciding the case locally. *Id.*

it has sufficient connections with the forum.

outweigh its headquarters in the NDCA. Moreover, this factor focuses on the events giving rise to the suit, instead of where a party maintains a footprint. Thus, this factor favors transfer.

3. The Familiarity of the Forum with the Law that will Govern the Case The parties, and Court, agree that this factor is neutral.

4. Avoidance of Unnecessary Problems of Conflict of Laws or in the Application

of Foreign Law The parties, and Court, agree that this factor is neutral.

IV. CONCLUSION Having reviewed all the public and private interest factors, the Court finds that Apple has

Transfer Venue under 28 U.S.C. § 1404(a) to the Northern District of California (ECF No. 21) is hereby GRANTED. The Clerk of the Court shall transfer this case to the United States District Court for the Northern District of California for all further proceedings. After transfer, the clerk shall close the case. SIGNED this 22nd day of August, 2022.

ALAN D ALBRIGHT UNITED STATES DISTRICT JUDGE

