UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

NEXTGEN INNOVATIONS, LLC	§	
	§	
v.	§	CIVIL NO. 4:20-CV-854-SDJ
	§	
II-VI, INC., ET AL.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendants' Motion to Transfer Venue to the Northern District of California Pursuant to 28 U.S.C. § 1404(a), (Dkt. #11). For the following reasons, the Court concludes that the motion should be **GRANTED**.

I. BACKGROUND

Plaintiff NextGen Innovations, LLC has brought this suit against Defendants II-VI, Inc. ("II-VI") and Finisar Corporation ("Finisar") for infringement of United States Patent Nos. 8,238,754 ("the '754 patent"), 8,958,697 ("the '697 patent"), 9,887,795 ("the '795 patent"), 10,263,723 ("the '723 patent"), 10,763,958 ("the '958 patent"), and 10,771,181 ("the '181 patent") (collectively, the "patents-in-suit").[1] The patents-in-suit encompass particular systems and methods for devising and operating optical communications products—*i.e.*, instruments like fiberoptic devices that use light to transmit information at high speeds across a network. NextGen specifically alleges that II-VI and Finisar acted in concert to infringe the patents-in-suit by, inter alia, producing and selling certain accused Optical Communications

[1] The Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq*.

Products (the "accused products") that unlawfully appropriate the technology covered by the patents-in-suit. The accused products include two Optical Time Domain Reflectometers ("OTDR"), developed by II-VI, and three transceiver modules, developed by Finisar and used to operate Passive Optical Networks ("PON")—namely, PON sticks, CFP8 modules, and CFP2-ACO transceivers. In addition to filing a motion to transfer venue under Section 1404(a), II-VI and Finisar have answered NextGen's Complaint and asserted various counterclaims, which NextGen, in turn, has answered.

NextGen is a Delaware limited liability company with its principal place of business in Delaware. Brothers Walter Soto and Alexander Soto, who are the inventors of the patents-in-suit and principals of NextGen, reside in Southern California. II-VI is a Pennsylvania-incorporated company with its principal place of business in Pennsylvania. Finisar is a Delaware corporation with its principal place of business in Sunnyvale, California. II-VI acquired Finisar on or about September 24, 2019, resulting in a "combined company" with integrated operations, facilities, strategies, technologies, and personnel. (Dkt. #1 ¶¶ 9–10). II-VI, though incorporated and with its principal place of business in Pennsylvania, owns and operates a 700,000-square-foot office in Sherman, Texas, its largest property in the United States. (Dkt. #23 at 2).

II. LEGAL STANDARD

Section 1404(a) permits the transfer of civil actions for the convenience of the parties and witnesses and in the interest of justice to other districts or divisions

where the plaintiffs could have properly brought the action. 28 U.S.C. § 1404(a). District courts have broad discretion in deciding whether to transfer a case under Section 1404(a), *In re Volkswagen of Am., Inc.* (*Volkswagen II*), 545 F.3d 304, 311 (5th Cir. 2008) (en banc), and Section 1404(a) motions are adjudicated on an "individualized, case-by-case consideration of convenience and fairness." *TravelPass Grp. v. Caesars Ent. Corp.*, No. 5:18-cv-153, 2019 WL 3806056, at *11 (E.D. Tex. May 9, 2019) (quoting *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 29, 108 S.Ct. 2239, 101 L.Ed.2d 22 (1988)), *report and recommendation adopted,* 2019 WL 4071784 (E.D. Tex. Aug. 29, 2019).

The party seeking a transfer under Section 1404(a) must show good cause. *Volkswagen II*, 545 F.3d at 315 (quoting *Humble Oil & Refin. Co. v. Bell Marine Serv., Inc.*, 321 F.2d 53, 56 (5th Cir. 1963)). In this context, showing good cause requires the moving party to "clearly demonstrate that a transfer is for the convenience of parties and witnesses [and] in the interest of justice." *Id.* (cleaned up) (quoting 28 U.S.C. § 1404(a)). When the movant fails to demonstrate that the proposed transferee venue is "clearly more convenient" than the plaintiff's chosen venue, "the plaintiff's choice should be respected." *Id.* Conversely, when the movant demonstrates that the proposed transferee venue is clearly more convenient, the movant has shown good cause and the court should transfer the case. *Id.* The "clearly more convenient" standard is not equal to a clear-and-convincing-evidence standard, but it is nevertheless "materially more than a mere preponderance of convenience." *Quest*

NetTech Corp. v. Apple, Inc., No. 2:19-CV-00118, 2019 WL 6344267, at *7 (E.D. Tex. Nov. 27, 2019).

To determine whether a Section 1404(a) movant has demonstrated that the proposed transferee venue is "clearly more convenient," the Fifth Circuit employs the four private-interest and four public-interest factors first enunciated in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947). *See Volkswagen II*, 545 F.3d at 315. 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." *Id.* (citation omitted). 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 of laws [or in] the application of foreign law." *Id.* (alteration in original) (citation omitted).

Although these factors "are appropriate for most transfer cases, they are not necessarily exhaustive or exclusive," and no single factor is dispositive. *Id.* (citation omitted). Moreover, courts are not to merely tally the factors on each side. *In re Radmax, Ltd.*, 720 F.3d 285, 290 n.8 (5th Cir. 2013). Instead, courts "must make factual determinations to ascertain the degree of actual convenience, if any, and whether such rises to the level of 'clearly more convenient.'" *Quest NetTech*, 2019 WL 6344267, at *7 (citing *In re Radmax*, 720 F.3d at 290 (holding that, where five factors

were neutral, two weighed in favor of transfer, and one weighed "solidly" in favor of transfer, the movant had met its burden)); *see also In re Radmax*, 720 F.3d at 290 (holding that courts abuse their discretion when they deny transfer solely because the plaintiff's choice of forum weighs in favor of denying transfer).

III. DISCUSSION

A party seeking transfer under 28 U.S.C. § 1404(a) must first meet the threshold requirement of establishing that the action could have been brought in the transferee district. A plaintiff may file a patent-infringement suit in the judicial district where the defendant resides or "where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400. Finisar maintains a "regular and established" business in Sunnyvale, California, where much of the allegedly infringing conduct with respect to the accused products has occurred. *See, e.g.*, (Dkt. #11 at 1–2, 4–5, 7). Similarly, the development of the PON sticks and II-VI's operations as to the accused OTDR products has primarily occurred in San Jose, California. (Dkt. #11 at 4). Hence, II-VI likewise maintains a regular and established place of business in Northern California. Finally, NextGen does not dispute that this case could have been brought in the Northern District of California. In view of the foregoing, the Court concludes that this case could have properly been filed in the Northern District of California.

Having ascertained that this threshold requirement is met, the Court will analyze each of the private- and public-interest factors to determine whether II-VI

and Finisar have demonstrated that the Northern District of California is a "clearly more convenient" forum for the instant action than the Eastern District of Texas.

A. Private-Interest Factor One: Ease of Access to Sources of Proof

When analyzing the first private-interest factor, courts interpret "sources of proof" to encompass "non-witness evidence, such as documents and other physical evidence." *In re Apple Inc.*, 979 F.3d 1332, 1339 (Fed. Cir. 2020); *accord Volkswagen II*, 545 F.3d at 316. Courts in this District have held that this factor weighs in favor of transfer "when a majority of the tangible and documentary evidence is located in the transferee court's district." *Arnold v. Remington Arms Co.*, No. 6:16-CV-0074-RWS-KNM, 2017 WL 9285419, at *2 (E.D. Tex. Feb. 17, 2017) (collecting cases). In patent-infringement cases, "the bulk of the relevant evidence usually comes from the accused infringer." *In re Apple Inc.*, 979 F.3d at 1340 (quoting *In re Genentech, Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009)). "Consequently, the place where the defendant's documents are kept weighs in favor of transfer to that location." *Id.*

Here, Defendants have offered two declarations, collectively confirming, inter alia, that the majority of documents pertaining to the accused products are located in Northern California. (Dkt. #11-2 ¶¶ 16, 24, 31); (Dkt. #11-3 ¶¶ 5–8). Specifically, in the Declaration of Steffen Koehler, (Dkt. #11-2), Vice President of Product Management and Marketing at II-VI, Koehler states that "the documents relating to the development and business" of the accused products—the PON sticks, the CFP8 modules, and the CFP2-ACO transceivers—are housed in II-VI's Sunnyvale, California facilities. (Dkt. #11-2 ¶¶ 16, 24, 31).

Koehler acknowledges that "[t]here may be some additional documents regarding [the PON sticks] in Shanghai," (Dkt. #11-2 ¶ 16), and that the documents pertaining to the development and business of the CFP2-ACO transceivers are housed *also* in Horsham, Pennsylvania. However, it is apparent from Koehler's declaration that the majority of the documents pertaining to the PON sticks are located in Northern California, that all of the documents pertaining to the CFP8 modules are located in Northern California, and that at least some substantial quantity of the CFP2-ACO-related documents are located in Northern California. Taken together, this affidavit reflects that the majority of pertinent documents can be found in Northern California.

Further, in the Declaration of Richard Smart, (Dkt. #11-3), Senior Vice President at II-VI, Smart confirms that the accused OTDR products were "architected" in San Jose, California, "with additional development work occurring in New York; Shanghai, China; Fuzhou, China; and Melbourne, Australia." (Dkt. #11-3 ¶ 5). Moreover, the lead technical architect for both accused OTDR products, Aravanan Gurusami, previously worked out of San Jose and now works in Sunnyvale, both in Northern California. (Dkt. #11-3 ¶ 6). Similarly, Siegfried Fleischer, who assisted Gurusami in developing the OTDR products, also worked and continues to work in Northern California. (Dkt. #11-3 ¶ 7). Both individuals, given their roles, either prior or present,[2] are likely to have pertinent documents, and both reside in Northern California.

[2] Defendants do not make entirely clear that Gurusami and Fleischer currently work at II-VI/Finisar. This question is relevant because it impacts whether Gurusami's and

Smart further explains that "the majority of the technical and business documents regarding the accused OTDR products were created and/or are located in San Jose, California; Sunnyvale, California; Horseheads, New York; Shanghai, China; and Fuzhou, China." (Dkt. #11-3 ¶ 8). Smart fails to specify what approximate percentage of documents pertaining to the accused OTDR products are located in Northern California. However, given that the OTDR products were designed in Northern California and that the two lead architects for the products work and reside in Northern California, it is likely that at least some substantial percentage of OTDR-related documents are located in Northern California. This finding, coupled with the Court's finding that the majority of documents pertaining to the other accused products—the PON sticks, the CFP8 modules, and the CFP2-ACO transceivers—are located in Northern California, counsels in favor of transfer.[3]

In addition to alleging direct infringement, NextGen claims that II-VI and Finisar have indirectly infringed the patents-in-suit. When analyzing private-interest factor one in the context of indirect infringement, the location of a defendant's customers—and, by proxy, pertinent physical and documentary evidence in the

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Fleischer's relevant and material information counts towards private-interest factor one or two. However, the Court infers from both the language referring to Gurusami and Fleischer and Defendants' reference to Gurusami and Fleischer in the ease-of-access section that both currently work at II-VI/Finisar and are therefore party, rather than nonparty, witnesses.

[3] Although Defendants' declarations concede that some relevant documents are located abroad—specifically, in various facilities in China and Australia, declarants Koehler and Smart confirm that neither Finisar nor II-VI conducts any research, design, development, manufacture, or management functions with respect to the accused products in Texas. (Dkt. #11-2 ¶¶ 17, 25, 32); *see also* (Dkt. #11-3 ¶ 9). Thus, a substantial percentage—indeed, a majority—of pertinent documents are located in Northern California, and the remainder can be found in Pennsylvania, New York, or abroad. Few or none, according to the parties' affidavits, are in Texas.

customers' possession—is relevant. *See, e.g.*, *Jansen v. Rexall Sundown, Inc.*, 342 F.3d 1329, 1334 (Fed. Cir. 2003) (addressing a claim for indirect infringement by the defendant where the defendant's customers allegedly directly infringed). Here, Koehler and Smart both state that they are unaware of any customer for the accused products in Texas but that several such customers, including Defendants' main OTDR customer, can be found in Northern California. (Dkt. #11-2 ¶¶ 18, 26, 33); (Dkt. #11-3 ¶ 10).

NextGen makes the following contentions in rebuttal. First, NextGen argues that the above-referenced documents are not located solely in California, but rather in China, California, Pennsylvania, and New York, and thus that this factor does not clearly weigh in favor of transfer. Second, NextGen argues that Defendants have failed to show that the above-mentioned documents are inaccessible by computer. (Dkt. #23 at 7) ("[N]owhere does II-VI even suggest that these documents cannot be accessed from their offices in Dallas, Texas or Sherman, Texas."). In so arguing, NextGen appears to contend that documents must be accessible only in person to implicate the first private-interest factor. Finally, NextGen argues that Defendants have failed to establish that party and third-party witnesses "were either contacted to discuss this case or . . . refused to participate at a trial in this District." (Dkt. #23 at 8). For the following reasons, each of NextGen's contentions is unavailing.

To establish that the first private-interest factor favors transfer, "the movant need not show that all relevant documents are located in the transferee venue to support a conclusion that the location of relevant documents favors transfer." *In re*

Apple, 979 F.3d at 1340. Rather, "this factor weighs in favor of transfer when a *majority* of the tangible and documentary evidence is located in the transferee court's district." *Remington Arms Co.*, 2017 WL 9285419, at *2 (emphasis added). Thus, NextGen's first contention, which merely observes that some relevant documents may be located abroad, does not negate Defendants' showing that the majority of such documents are located in Northern California.

As to NextGen's second contention, "[c]onsistent with the Fifth Circuit's admonition that technological improvements to the ease of access to electronic documents has not rendered the ease-of-access factor superfluous," this Court has held that the physical location of sources of proof must still be considered. *Texas v. Google LLC*, No. 4:20-CV-957-SDJ, 2021 WL 2043184, at *4 (E.D. Tex. May 20, 2021) (citing *Seven Networks, LLC v. Google LLC*, NO. 2:17-CV-00442-JRG, 2018 WL 4026760, at *3 (E.D. Tex. Aug. 15, 2018)).

Finally, as to NextGen's third contention, concerning the willingness (or lack thereof) of witnesses to participate in trial in this district, this question is irrelevant to the first private-interest factor, which concerns only ease of access to physical or documentary evidence. The question of willingness to attend trial by a nonparty witness is, however, relevant to private-interest factor two and will therefore be discussed in subsection B, *infra*.

Because Defendants have established that the majority of relevant evidence in this case is located in Northern California, the first private-interest factor weighs in favor of transfer.

B. Private-Interest Factor Two: Availability of Compulsory Process to Secure Attendance of Unwilling Witnesses

Federal Rule of Civil Procedure 45 allows courts to subpoena a nonparty witness to ensure attendance at trial "within 100 miles of where the person resides, is employed, or regularly transacts business in person." FED. R. CIV. P. 45(c)(1). As for party witnesses, a court may issue subpoenas "within the state where the person resides, is employed or regularly transacts business in person." *Id.* When applying private-interest factor two, courts are instructed to consider the availability of this compulsory process to secure the attendance of witnesses—especially nonparty witnesses—in making convenience-transfer determinations. *Seven Networks*, 2018 WL 4026760, at *7 (citing *Volkswagen II*, 545 F.3d at 316).

Only witnesses who are likely to have "relevant and material information" as to the instant litigation count towards this factor. *See In re Genentech*, 566 F.3d at 1343. And, significantly, only witnesses who are likely unwilling to attend trial are considered under this factor. *CloudofChange, LLC v. NCR Corp.*, No. 6:19-CV-00513, 2020 WL 6439178, at *4 (W.D. Tex. Mar. 17, 2020) (citing *Duha v. Agrium, Inc.*, 448 F.3d 867, 877 (6th Cir. 2006)). While identifying a *pool* of likely unwilling witnesses has some probative value in determining convenience, greater specificity as to the identity of unwilling witnesses yields greater probative value. *Seven Networks*, 2018 WL 4026760, at *7, 8. Finally, transfer is favored when "more third-

party witnesses reside within the transferee venue" than within the chosen forum. *Optimum Power Sols. LLC v. Apple, Inc.*, 794 F.Supp.2d 696, 701 (E.D. Tex. 2011) (citing *Volkswagen II*, 545 F.3d at 316).

Here, II-VI and Finisar have identified certain nonparty witnesses, particularly former Finisar employees named in the Complaint who, due to their past or present roles at Finisar, are likely to have relevant and material information. (Dkt. #11 at 2–3). Specifically, Defendants identify Todd Swanson, Rafik Ward, Ley Mee Hii, Bernd Huebner, and Kurt Adzema as some third-party witnesses likely to have relevant information. (Dkt. #11 at 2–3, 9); (Dkt. #11-2 ¶ 11). However, II-VI and Finisar have failed to show that any such individuals are likely unwilling to attend trial in this district. *See generally* (Dkt. #11 at 2–3, 9–10). Defendants merely state, in vague and conclusory terms, that "no witness likely to testify in this case resides in this district or even within the state of Texas." (Dkt. #11 at 2).

Similarly, NextGen has specifically identified at least three potential third-party witnesses in the Dallas area—namely, II-VI's customers and distributors Wenjuan Fan, James Guenter, and Jim Tatum—but has failed to show that any of these potential third-party witnesses are likely unwilling to attend trial.

Here, it is apparent that more third-party witnesses reside within the transferee venue than this district, albeit by a modest margin—five to three. However, neither party has demonstrated beyond mere speculation the unwillingness

of these potential witnesses to attend trial. Accordingly, this factor weighs only slightly in favor of transfer.

C. Private-Interest Factor Three: Cost of Attendance for Willing Witnesses

Private-interest factor three—concerning the convenience of witnesses—"is probably the single most important factor in transfer analysis." *In re Genentech*, 566 F.3d at 1343 (quoting *Neil Bros. v. World Wide Lines, Inc.*, 425 F.Supp.2d 325, 329 (E.D.N.Y. 2006)); *accord In re Apple*, 979 F.3d at 1341. As the Fifth Circuit has held, it is obviously more convenient for witnesses to testify closer to home, and additional distance means additional travel, meal, and lodging costs, as well as additional time away from the witnesses' regular employment. *Volkswagen II*, 545 F.3d at 317. "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." *Id.* (citation omitted); *accord Techradium Inc. v. Athoc, Inc.*, No. 2:09-cv-275-TJW, 2010 WL 1752535, at *2 (E.D. Tex. Apr. 29, 2010) (citing *In re Volkswagen AG* (*Volkswagen I*), 371 F.3d 201, 204–05 (5th Cir. 2004)). Significantly, this factor relates primarily to the inconvenience placed on willing nonparty witnesses, not party witnesses. *See, e.g.*, *Seven Networks*, 2018 WL 4026760, at *9 (collecting cases); *Frederick v. Advanced Fin. Sols., Inc.*, 558 F.Supp.2d 699, 704 (E.D. Tex. 2007) ("[T]he availability and convenience of party-witnesses is generally insignificant because a transfer based on this factor would only shift the inconvenience from movant to nonmovant.").

II-VI and Finisar argue that, for "[a]ll of the relevant II-VI and Finisar employee witnesses liv[ing] outside of the Eastern District of Texas, with many residing in Northern California . . . traveling to Sherman, Texas would impose real and unnecessary burdens and disruptions to their jobs." (Dkt. #11 at 11). However, as established above, "[t]he availability and convenience of *party*-witnesses is generally insignificant" in analyzing private-interest factor three; courts are instead instructed to focus on the availability of and convenience to *nonparty* witnesses. *Frederick*, 558 F.Supp.2d at 704 (emphasis added) (quoting *Quicksilver, Inc. v. Academy Corp.*, No. 3:98–CV–1772R, 1998 WL 874929, at *2 (N.D. Tex. Dec. 3, 1998)).

As to nonparty witnesses, II-VI and Finisar contend, without identifying specific witnesses, that "travel to Sherman, Texas would impose a burden on the third-party witnesses living in Northern California and outside of the Eastern District of Texas." (Dkt. #11 at 11). The Court nevertheless infers that the third-party witnesses to whom NextGen is referring are the five former employees of II-VI and Finisar previously identified as Todd Swanson, Rafik Ward, Ley Mee Hii, Bernd Huebner, and Kurt Adzema. As to these third-party witnesses, who each reside in Northern California, the Court concludes that the approximately 1700 miles separating the third-party witnesses and this district represents a substantial distance and weighs in favor of transfer to the Northern District of California. II-VI and Finisar also observe that NextGen itself and its two founders are located in Southern California, which is approximately 350 miles away from Northern California. II-VI and Finisar have thus identified five nonparty witnesses and two

party witnesses for whom travel to the Northern District of California would be substantially more convenient than to this district.

On the other hand, NextGen has specifically identified three party witnesses in Texas—Gary Landry, Deepa Gazula, and Timo Gray—who were allegedly involved in the research and development of PAM4 modulation, "a technology related to and used in" the accused products. (Dkt. #23 at 3, 11). And as for nonparty witnesses, NextGen identifies three of II-VI's alleged customers and distributors—Wenjuan Fan, James Guenter, and Jim Tatum—who reside in the Dallas metro area, as well as two former Finisar personnel—Jan Meise and Anders Olsson—who, NextGen alleges, are more probative potential witnesses than Ward, Hii, and Huebner. *See* (Dkt. #23 at 4). Meise and Olsson currently live in Munich, Germany, and Bellvue, Colorado, respectively, both of which are somewhat closer to this district and division than to the Northern District of California. NextGen has thus specifically identified three party witnesses and five third-party witnesses for whom trial in this district would be more convenient (or substantially more convenient) than the Northern District of California.

Both parties have failed to specify whether the potential witnesses, whether party or nonparty, are willing or unwilling to attend trial. Furthermore, both parties have presented the same number of third-party witnesses—five—for whom travel to the opponent's preferred district would be substantially inconvenient. Accordingly, this factor is neutral.

D. Private-Interest Factor Four: All Other Practical Problems

The fourth private-interest factor includes "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). This "all other practical problems" factor is a "'Catch-All' Factor," *ExpressJet Airlines, Inc. v. RBC Cap. Mkts. Corp.*, No. H-09-992, 2009 WL 2244468, at *9 (S.D. Tex. July 27, 2009), comprising all practical considerations "rationally based on judicial economy," *i.e.*, the efficient application of judicial resources, *Seven Networks*, 2018 WL 4026760, at *12 (quoting *Eolas Techs., Inc. v. Adobe Sys.*, No. 6:09–CV–446, 2010 WL 3835762, at *6 (E.D. Tex. Sept. 28, 2010)). For example, "the existence of duplicative suits involving the same or similar issues may create practical difficulties that will weigh heavily in favor or against transfer." *Seven Networks*, 2018 WL 4026760, at *12 (citation omitted).

Defendants' argument that this factor weighs in favor of transfer turns solely on the fact that this case is in the early stages of litigation—discovery has not yet begun and no depositions have been noticed. Thus, according to Defendants, the "practical problems" catch-all factor supports transfer because this Court has "yet to address any substantive issues regarding these patents," (Dkt. #11 at 12) (quoting *In re HP Inc.*, No. 2018-149, 2018 WL 4692486, at *1 (Fed. Cir. Sept. 25, 2018), and has "not yet construed any claims or made any other substantive rulings" to "gain[] any familiarity with the technology at issue," (Dkt. #11 at 12) (quoting *Harvey v. Apple Inc.*, No. 2:07-cv-327, 2009 WL 7233530, at *1 (E.D. Tex. Oct. 8, 2009)). However, the fact that this Court has yet to reach the merits of NextGen's patent claims does not

affirmatively favor transfer; instead, this fact merely doesn't weigh *against* transfer. After all, if the Court were to transfer this case to the Northern District of California, the transferee court would similarly commence proceedings without having construed any claims or made any other substantive rulings to gain any familiarity with the technology at issue.

For its part, NextGen contends that the catch-all factor weighs against transfer because the Northern District of California indefinitely suspended jury trials during the COVID-19 pandemic, potentially resulting in an indefinite trial date for this case. *See* (Dkt. #23 at 12). This argument is unavailing for two reasons. First, as of July 1, 2021, jury trials have resumed in the Northern District of California. N.D. Cal. General order No. 78 (June 23, 2021). And second, to the extent NextGen argues that a jury-trial backlog now exists in the Northern District of California, which could delay the resolution of this case, if transferred, such considerations fall within public-interest factor one, court congestion, not private-interest factor four. And, as described below, *see infra* subsection E, the court-congestion factor already weighs against transfer.

In sum, the parties have not raised, and the Court has not identified, any reason why judicial economy would be served—or, alternatively, frustrated—by transferring this matter to the Northern District of California. Private-interest factor four is therefore neutral.

E. Public-Interest Factor One: Court Congestion

The first public-interest factor is the "speed with which a case can come to trial and be resolved." *Deep Green Wireless LLC v. Ooma, Inc.*, 2:16-CV-0604, 2017 WL 679643, at *6 (E.D. Tex. Feb. 21, 2017) (quoting *In re Genentech*, 566 F.3d at 1347). "Generally, this factor favors a district that can bring a case to trial faster." *Ho Keung Tse v. Blockbuster, LLC*, No. 4:12-CV-328, 2013 WL 949844, at *5 (E.D. Tex. Jan. 17, 2013), *report and recommendation adopted*, No. 4:12-cv-328, 2013 WL 942496 (E.D. Tex. Mar. 8, 2013). However, this factor is "the most speculative," and "case-disposition statistics may not always tell the whole story" because "[c]omplex cases . . . need more time for discovery and take longer to get to trial," no matter where they proceed. *Va. Innovation Sci., Inc. v. Amazon.com, Inc.*, No. 4:18-cv-474–477, 2019 WL 3082314, at *32 (E.D. Tex. July 15, 2019).

Here, II-VI's and Finisar's treatment of this factor is exceedingly cursory. Defendants merely allege: "court congestion is a neutral factor . . . [b]oth Courts are busy, but are more than capable of handling this case." (Dkt. #11 at 13). Defendants' argument, although true, fails to engage with certain key facts. Specifically, according to the December 2020 Federal Court Management Statistics report, the median time from filing of a civil case to its disposition in the Eastern District of Texas is 8.9 months, and the median time from filing to trial is 17.5 months.[4] In the Northern District of California, those median times are 11.3 months and 37.6 months,

[4] UNITED STATES COURTS, *U.S. District Courts—Federal Court Management Statistics—Profiles—During the 12-Month Periods Ending December 30, 2015 Through 2020*, available at https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile1231.2020.pdf (last accessed May 20, 2021).

respectively.[5] For this reason, the first public-interest factor—court congestion—weighs against transfer.

F. Public-Interest Factor Two: Deciding Local Interests at Home

"There is little doubt" that a district "has a local interest in the disposition of any case involving a resident corporate party." *Seven Networks*, 2018 WL 4026760, at *14. Here, Finisar, a Delaware corporation, has its principal place of business in Sunnyvale, California. Further, because II-VI acquired Finisar in 2019, and because both II-VI and Finisar maintain major properties in Northern California, including Finisar's principal place of business, both II-VI and Finisar can be said to be "resident corporate part[ies]" of Northern California. Moreover, II-VI and Finisar are neither incorporated in nor have their principal place of business in Texas. NextGen, a limited liability company with its principal place of business in Delaware, also appears to have no connection to Texas or this District. Indeed, Walter Soto and Alexander Soto, the inventors of the patents-in-suit and principals of NextGen, reside in Southern California, not Texas.

On the other hand, II-VI, though incorporated and with its principal place of business in Pennsylvania, owns and operates an office in Dallas, Texas, and a 700,000-square-foot office in Sherman, Texas, its largest property in the United States. II-VI's substantial physical presence in Sherman, Texas, indicates that the Eastern District of Texas does have some local interest in this action.

[5] *Id.*

In sum, II-VI and Finisar—now merged companies—both maintain major properties in Northern California, including Finisar's principal place of business. Further, neither Defendant is incorporated in or maintains its principal place of business in Texas, although II-VI maintains a sizable office in Sherman, Texas. Plaintiff NextGen, a limited liability company based in Delaware, also has no apparent connection to Texas, and its principals reside in California. Finally, this suit sounds in patent infringement, and the alleged infringers—*i.e.*, those who researched, designed, and developed the accused products—predominantly work and reside in Northern California. In view of the foregoing, the Northern District of California has a stronger local interest in deciding this case. Public-interest factor two thus weighs in favor of transfer.

G. Public-Interest Factor Three: Familiarity of the Forum with the Governing Law of the Case

The sole cause of action in this suit is patent infringement. No state-law claims have been raised. Both the Eastern District of Texas and the Northern District of California are competent to resolve patent-infringement disputes. *See, e.g.*, *Odom v. Microsoft Corp.*, 596 F.Supp.2d 995, 1003–04 (E.D. Tex. 2009) ("[B]oth this Court and the District of Oregon are equally capable of applying patent law."); *see also Zoltar Satellite Sys., Inc. v. LG Elecs. Mobile Commc'ns Co.*, 402 F.Supp.2d 731, 737–38 (E.D. Tex. 2005). Accordingly, the Court concludes, and the parties agree, that this factor is neutral.

H. Public-Interest Factor Four: Avoidance of Unnecessary Problems of Conflict of Laws or in the Application of Foreign Law

The parties do not dispute that this factor is neutral. The Court agrees.

IV. CONCLUSION

Three of the eight private- and public-interest factors weigh in favor of transfer, albeit with one factor only slightly favoring transfer, four are neutral, and one—the most speculative factor, court congestion—weighs against transfer. A motion to transfer venue should be granted if the moving party shows that one venue is "clearly more convenient" than the other. *Genentech*, 566 F.3d at 1342. The Court, having considered the facts and law, concludes that the Northern District of California is the clearly more convenient venue to resolve this action than the Eastern District of Texas. Defendants' Motion to Transfer Venue to the Northern District of California Pursuant to 28 U.S.C. § 1404(a), (Dkt. #11), is therefore **GRANTED**. The Clerk is directed to transfer this case to the Northern District of California.

So ORDERED and SIGNED this 2nd day of July, 2021.

SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE