**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TEXAS**
**WACO DIVISION**

**PUBLIC VERSION**

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| **OPEN TEXT CORP.,** ***Plaintiff*** **-v-** **ALFRESCO SOFTWARE, LTD., ALFRESCO SOFTWARE, INC., ALFRESCO SOFTWARE AMERICA, INC., AND BLUE FISH DEVELOPMENT GROUP, LTD.,** ***Defendants*** | **6:20-CV-0920-ADA** |
| **OPEN TEXT CORP. AND OPEN TEXT S.A. ULC,** ***Plaintiffs*** **-v-** **ALFRESCO SOFTWARE, LTD., ALFRESCO SOFTWARE, INC., ALFRESCO SOFTWARE AMERICA, INC., AND BLUE FISH DEVELOPMENT GROUP, LTD.,** ***Defendants*** | **6:20-CV-00928-ADA** |
| **OPEN TEXT CORP. AND CARBONITE, INC.,** ***Plaintiffs*** **-v-** **ALFRESCO SOFTWARE, LTD., ALFRESCO SOFTWARE, INC., ALFRESCO SOFTWARE AMERICA, INC., AND BLUE FISH DEVELOPMENT GROUP, LTD.,** ***Defendants*** | **6:20-CV-00941-ADA** |

**ORDER DENYING DEFENDANT ALFRESCO SOFTWARE'S MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)**

Before the Court is Defendant Alfresco Software's Motion to Transfer Venue under 28 U.S.C. § 1404(a) to the Central District of California. Dkt. 97. Plaintiff OpenText Corp. ("OpenText") filed its Response (Dkt. 100), and Alfresco filed its Reply (Dkt. 104). After

considering the parties' briefs and the relevant law, the Court **DENIES** Alfresco Software's Motion to Transfer for the reasons set out below.

## I. FACTUAL BACKGROUND

Plaintiff OpenText filed these three lawsuits accusing defendants Alfresco Software, Ltd., Alfresco Software, Inc., Alfresco Software America, Inc., and Blue Fish Development Group, Ltd. of infringing U.S. Patent Nos. 7,627,726 ("the '726 patent"); 7,818,300 ("the '300 patent"); 8,712,980 ("the '980 patent"); 8,370,388 ("the '388 patent"); No. 7,062,515 ("the '515 patent"), No. 8,117,152 ("the '152 patent"), No. 7,590,665 ("the '665 patent"), No. 8,645,318 ("the '318 patent"), No. 10,496,609 ("the '609 patent") (collectively "the patents in suit"). While the parties conducted venue discovery in this case, OpenText dismissed two U.S. Alfresco subsidiaries—Alfresco Software, Inc. and Alfresco Software America, Inc. ("Alfresco US")—from the lawsuit in an amended complaint. Meanwhile, OpenText filed two related lawsuits against Alfresco entities' parent company Hyland Software, Inc. ("Hyland") in the Central District of California.[1] The California cases together involve six of the nine patents asserted in Waco and have already progressed to fact discovery, with a renewed patent ineligibility challenge soon on the horizon. A few months prior to filing this Motion, the Defendants previously filed a Motion to Transfer to Massachusetts, which it subsequently withdrew. Dkt. at 1.

Alfresco Ltd. ("Alfresco") is a United Kingdom-based company with headquarters in Maidenhead, UK. Dkt. 100 at 2–3. Its parent company Hyland has California offices in Irvine and Pleasanton. *Id.* Hyland acquired Alfresco US in October 2020 after these three suits were filed.

[1] *Open Text Corp. v. Hyland Software, Inc.*, No. 8:20-cv-2116 (C.D. Ca. filed Nov. 2, 2020); *Open Text Corp. v. Hyland Software, Inc.*, No. 8-20-cv-2123 (C.D. Ca. filed Nov. 3, 2020).

Dkt. 100 at 3. Alfresco UK never merged into Hyland and remains a separate legal entity. *Id.* at 6. Neither Alfresco nor Hyland have offices in the Western District of Texas, but Alfresco UK offers and sells products and services in this district. *See id.*

Defendant Blue Fish Development Group, Ltd. ("Blue Fish") was a sales partner of Alfresco UK, and it had a regular place of business in this district. Dkt 100 at 6. OpenText asserts that Alfresco used Blue Fish to target OpenText's Documentum product line in Texas. *Id.* Seilevel Partners, LP ("Seilevel") purchased all of Blue Fish's assets and took over its business operations. *Id.* Seilevel is a Texas corporation with offices and employees in Austin. *Id.*

OpenText maintains offices both in California and the Western District of Texas. *See id.*; *see also* Dkt. 1 at 3. OpenText has offices in Pasadena, and Co-Plaintiff Carbonite has offices in San Diego. Dkt. 97 at 6. OpenText also maintains three offices in Texas, with two in this district. Dkt. 100 at 5.

## 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. § 1404(a) provides that, "[f]or the convenience of parties and witnesses, . . . a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." *Id.* "Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'" *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)).

The preliminary question under Section 1404(a) is whether a civil action "might have been brought" in the transfer destination venue." *In re Volkswagen, Inc.*, 545 F.3d 304, 312 (5th Cir.

2008) (hereinafter "*Volkswagen II"*). If the destination venue would have been a proper venue, then "[t]he determination of 'convenience' turns on a number of public and private interest factors, none of which can be said to be of dispositive weight." *Action Indus., Inc. v. U.S. Fid. & Guar. Co.*, 358 F.3d 337, 340 (5th Cir. 2004). The private factors 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." *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) (hereinafter "*Volkswagen I*") (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1982)). The public 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 of the application of foreign law." *Id.* Courts evaluate these factors based on the situation which existed at the time of filing, rather than relying on hindsight knowledge of the defendant's forum preference. *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. *In re Vistaprint Ltd.,* 628 F.3d 1342, 1346 (Fed. Cir. 2010). The burden that a movant must carry is not that the alternative venue is more convenient, but that it is clearly more convenient. *Volkswagen II*, 545 F.3d at 314 n.10. Although the plaintiff's choice of forum is not a separate factor entitled to special weight, respect for the plaintiff's choice of forum is encompassed in the movant's elevated burden to "clearly demonstrate" that the proposed transferee forum is "clearly more convenient" than the forum in which the case was filed. *In re Vistaprint Ltd.,* 628 F.3d at 314–15. While "clearly more convenient" is not necessarily equivalent to "clear and convincing," the moving party "must show materially more than a mere

preponderance of convenience, lest the standard have no real or practical meaning." *Quest NetTech Corp. v. Apple, Inc.*, No. 2:19-cv-118, 2019 WL 6344267, at *7 (E.D. Tex. Nov. 27, 2019).

## III. DISCUSSION

The threshold determination in the § 1404(a) analysis is whether this case could initially have been brought in the destination venue—the Central District of California ("CDCA"). Neither party contests that venue is proper in the CDCA and that this case could have been brought there. This Court finds that venue would have been proper in the CDCA had it been originally filed there. Thus, the Court proceeds with its analysis of the private and public interest factors to determine if the CDCA is clearly more convenient than the Western District of Texas ("WDTX").

### A. The Private Interest Factors

#### *i. The Relative Ease of Access to Sources of Proof*

"In considering the relative ease of access to proof, a court looks to where documentary evidence, such as documents and physical evidence, is stored." *Fintiv Inc. v. Apple Inc.*, No. 6:18-cv-00372, 2019 WL 4743678, at *2 (W.D. Tex. Sept. 10, 2019). "[T]he question is *relative* ease of access, not *absolute* ease of access." *In re Radmax*, 720 F.3d 285, 288 (5th Cir. 2013) (emphases in original). "In patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer. Consequently, the place where the defendant's documents are kept weighs in favor of transfer to that location." *In re Apple Inc.*, 979 F.3d 1332, 1340 (Fed. Cir. 2020) (citing *In re Genentech*, 566 F.3d at 1345).

Alfresco states that there are no sources of proof in the WDTX. Dkt. 97 at 12. Yet Alfresco does not identify or affirmatively argue that there are any documents located in the

CDCA. It is true that the U.S. Alfresco entities merged into parent company Hyland, which has offices in California. But Alfresco has failed to provide any evidence that documents relevant to this case are located in those California offices. Moreover. Alfresco UK, a foreign corporation that did not merge with Hyland, has its principal place of business outside of California. Dkt. 1 at 4; Dkt. 100 at 6–7.

[redacted]. Dkt. 100 at 8. [redacted]. *Id.* Further, OpenText notes that Defendant Blue Fish and its successor Seilevel are Texas entities with offices in Austin. *Id.* at 9. Although the "bulk of relevant evidence usually comes from the accused infringer," at least some documents from OpenText will be in the WDTX. *In re Genentech*, 566 F.3d at 1345.

Although the physical location of electronic documents does affect the outcome of this factor under current Fifth Circuit precedent (*see Volkswagen II*, 545 F.3d at 316), this Court has stressed that the focus on physical location of electronic documents is out of touch with modern patent litigation. *Fintiv*, 2019 WL 4743678, at *8; *Uniloc 2017 LLC v. Apple Inc.,* 6-19-CV-00532-ADA, 2020 WL 3415880, at *9 (W.D. Tex. June 22, 2020) ("[A]ll (or nearly all) produced documents exist as electronic documents on a party's server. Then, with a click of a mouse or a few keystrokes, the party [can] produce[] these documents" and make them available at almost any location). Other courts in the Fifth Circuit similarly found that access to documents that are available electronically provides little benefit in determining whether a particular venue is more convenient than another. *See Uniloc USA Inc. v. Samsung Elecs. Am.*, No. 2:16-cv-642-JRG, 2017 U.S. Dist. LEXIS 229560, at *17 (E.D. Tex. Apr. 19, 2017) ("Despite the absence of newer cases acknowledging that in today's digital world computer stored documents are readily

moveable to almost anywhere at the click of a mouse, the Court finds it odd to ignore this reality in favor of a fictional analysis that has more to do with early Xerox machines than modern server forms.").

While OpenText has shown that some potentially relevant documents are in the WDTX, Alfresco failed to identify any relevant documents that are in the CDCA. This Court is therefore not persuaded that the CDCA will have easier access to sources of proof, making this factor neutral. And when considering the availability of electronic discovery, this factor is of lesser importance.

***ii. The Availability of Compulsory Process to Secure the Attendance of Witnesses***

For this factor, the Court considers particularly non-party witnesses whose attendance may need to be secured by a court order. *Fintiv*, 2019 WL 4743678, at *5 (citing *Volkswagen II*, 545 F.3d at 316); *Uniloc,* 2020 WL 3415880, at *10. This factor "weigh[s] heavily in favor of transfer when more third-party witnesses reside within the transferee venue than reside in the transferor venue." *In re Apple, Inc.*, 581 F. App'x. 886, 889 (Fed. Cir. 2014). Under the Federal Rules, a court may subpoena a witness to attend trial only (a) "within 100 miles of where the person resides, is employed, or regularly transacts business in person"; or (b) "within the state where the person resides, is employed, or regularly transacts business in person, if the person . . . is commanded to attend a trial and would not incur substantial expense." Fed. R. Civ. P. 45(c)(1)(A), (B)(ii); *Gemalto S.A. v. CPI Card Grp. Inc.*, No. 15-CA-0910, 2015 WL 10818740, at *4 (W.D. Tex. Dec. 16, 2015).

Alfresco argues that because OpenText's offices are in Pasadena, several witnesses and former employees "likely reside in greater Los Angles" and are thus under the CDCA's subpoena power. Dkt. 97 at 13. It also identifies two prior art witnesses, Lauren Mayes and Boen

T. Thio, who live within the CDCA's subpoena power. *Id.* at 12. OpenText rebuts by arguing that Alfresco has failed to meet its burden. It states that merely identifying witnesses outside the Court's subpoena power is insufficient to show this factor weighs against transfer. Dkt. 100 at 11.

The Court notes that neither party affirmatively asserts that any of its identified witnesses are unwilling to testify. The lack of an affirmative showing that a witness is unwilling to testify does not push this factor in favor of keeping the case in the transferor court. *See In re Juniper Networks, Inc.*, No. 2021-160, slip op. at 12 (Fed. Cir. Sept. 27, 2021) ("That no party expressly identified any witness as unwilling to testify, however, does not cut in favor of conducting this litigation in the Western District of Texas"). But "[w]hen no party has alleged or shown any witness's unwillingness, a court should not attach much weight to the compulsory process factor." *CloudofChange, LLC v. NCR Corp*., No. 6-19-cv-00513 (W.D. Tex. Mar. 17, 2020) (citation omitted); *Auto-Dril, Inc. v. Pason Sys. USA Corp.*, No. 6:15-cv-00093, 2015 WL 12780779, at *3 (W.D. Tex. June 29, 2015) ("[C]ourts, including courts within this district, have found this factor to be neutral "where the parties have not alleged that non-party witnesses are unwilling to testify."). Alfresco's assertion that several of OpenText's Pasadena employees likely reside in the CDCA, without showing that they are unwilling to testify in the WDTX, is insufficient to push this factor in favor of transfer. OpenText similarly fails to identify any witnesses who reside in the WDTX or who reside outside the district and are unwilling to testify. With no witnesses identified as unwilling to testify, the Court finds this factor to be of lesser weight.

As explained above, this Court considers particularly non-party witnesses who will need to be subpoenaed to testify. Alfresco identifies two prior art witnesses living in the CDCA. In

other parts of its Response, OpenText identifies one inventor who lives in the WDTX. Dkt. 100 at 10. The combination of neither party identifying a witness as unwilling to testify and the fact that Alfresco identifies only one more non-party witness in the CDCA than OpenText identifies in the WDTX means this factor is neutral.

***iii. 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 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 or inconvenience to witnesses increases in direct relationship to the additional distance to be travelled." *Volkswagen II*, 545 F.3d at 317 (quoting *Volkswagen I*, 371 F.3d at 203). "[T]he inquiry should focus on the cost and inconvenience imposed on the witnesses by requiring them to travel to a distant forum and to be away from their homes and work for an extended period of time." *In re Google, LLC*, No. 2021-170, slip op. at 9 (Sept. 27, 2021). The Federal Circuit has indicated that time is a more important metric than distance. *Id.* When considering this factor, the Court should consider all potential material and relevant witnesses. *Alacritech Inc. v. CenturyLink, Inc.*, No. 2:16-CV-00693, 2017 U.S. Dist. LEXIS 152438, 2017 WL 4155236, at *5 (E.D. Tex. Sept. 19, 2017).

Alfresco argues that party witnesses from Alfresco, Carbonite, and OpenText are based in California. Specifically, it states that Carbonite witnesses are based in its San Diego office and OpenText witnesses are based in its San Mateo headquarters, Pleasanton office, and Pasadena office. Dkt. 97 at 10. [redacted] *Id.* Alfresco further contends that California is more convenient for British witnesses because Alfresco's parent company Hyland has offices in Irvine. *Id.* For non-party witnesses,

Alfresco identifies five named inventors and 37 prior art witnesses who live in California or Washington. *Id.*

OpenText argues that the cost of attendance for party witnesses should be given little weight. Dkt. 100 at 12. The Federal Circuit has since rejected this argument. *See In re Hulu, LLC*, No. 2021-142, 2021 WL 3278194, at *5 (Fed. Cir. Aug. 2, 2021); *In re Juniper Networks, Inc.*, No. 2021-160, slip op. at 12 (Fed. Cir. Sept. 27, 2021). As for non-party witnesses, OpenText states that most of the inventors; former employees of Alfresco UK, OpenText, and Blue Fish; the Seilevel witnesses; and the developers of the accused products do not reside or work in California. Dkt. 100 at 12. OpenText also identifies witnesses who live in the WDTX. At least one inventor, nine Alfresco US current or former employees, and some unspecified number of Blue Fish and Seilevel employees all live in this district and have material knowledge of the accused products. *Id.* at 10. The 30(b)(6) witnesses for OpenText, Blue Fish, and Seilevel all reside in Texas. *Id.*

Although Alfresco has identified witnesses who live in the CDCA, OpenText has identified witnesses who live in the WDTX. Among those residing in the CDCA, this Court counts two prior art witnesses and an unspecified number of OpenText and Carbonite witnesses in its Pasadena and San Diego offices, respectively. Among those residing in the WDTX, this Court counts nine Alfresco employees, two 30(b)(6) witnesses, and an unspecified number of OpenText employees [redacted] Of course, both parties have also identified many witnesses who live near each of the districts.

The parties have also identified witnesses residing in the United Kingdom, Canada, Massachusetts, and Washington. Flights from the UK to either Dallas or Austin are roughly 90

minutes shorter than to southern California, but the driving time from Dallas or Austin to Waco (90 minutes) negates that. Flights from Waterloo, Canada to either Dallas or Austin are roughly one hour and 45 minutes shorter than to southern California, but the driving time from Dallas or Austin to Waco negates that. Thus, convenience for international witnesses is likely equal. For witnesses in Washington, the CDCA would be more convenient; for witnesses in Massachusetts, the WDTX would be more convenient. For all witnesses both international and domestic, lodging and food in Waco would likely be cheaper than in the CDCA.

For some witnesses, the cost of attendance is lower the WDTX, and for other witnesses the cost of attendance is lower in the CDCA. It is not clear that one district would be more convenient than the other. Therefore, the Court finds this factor is neutral.

***iv. All Other Practical Problems That Make Trial of a Case Easy, Expeditious and Inexpensive***

When considering the private interest factors, courts must consider "all other practical problems that make trial of a case easy, expeditious and inexpensive." *Volkswagen II*, 545 F.3d at 314. "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." *PersonalWeb Techs., LLC v. NEC Corp. of Am., Inc.*, No. 6:11-cv-655, 2013 WL 9600333, at *5 (E.D. Tex. Mar. 21, 2013). "[W]here there is a co-pending litigation . . . involving the same patent-in-suit, . . . pertaining to the same underlying technology and accusing similar services, . . . the Federal Circuit cannot say the trial court clearly abuses its discretion in denying transfer." *In re Vistaprint Ltd.*, 628 F.3d at 1346 n.3.

Alfresco argues that judicial economy favors transfer to the CDCA because OpenText asserted six of the same patents against Hyland and Alfresco in the CDCA based on the same technology and against similar accused products. Dkt. 97 at 9. And because Hyland acquired the

Alfresco US entities, discovery in one court would be most efficient. *Id.* Hyland, however, is a Ohio corporation and cannot be sued here. *Id.* Alfresco argues transferring is the only way to avoid multiple lawsuits on the same issue. *Id.*

OpenText rebuts with three arguments. First, there are three additional patents involved in these cases that are unrelated to the claims and patents in the California cases. Dkt. 100 at 13. Second, there are different asserted claims against different products. *Id.* Third, there are different defendants, both of whom are Texas-only defendants. *Id.* Those together, OpenText argues, weigh against transfer. *Id.*

There is a degree of overlap between these WDTX cases and the CDCA cases, as six of the same patents are at issue in both districts. This case, however, is sufficiently distinct to not be entirely duplicative. As OpenText articulates, this case involves different patents, different claims, different products, and different parties. The Court finds that the existence of the six same patents in co-pending litigation does weigh against transfer, but the three important differences highlighted by OpenText make it slight at best.

**B. The Public Interest Factors**

***i. Administrative Difficulties Flowing from Court Congestion***

This factor concerns "whether there is an appreciable difference in docket congestion between the two forums." *Parsons v. Chesapeake & Ohio Ry. Co.*, 375 U.S. 71, 73, 84 S. Ct. 185, 11 L. Ed. 2d 137 (1963); *Parkervision, Inc. v. Intel Corp.*, No. 6:20-CV-00108, 2021 WL 401989, at *6 (W.D. Tex. Jan. 26, 2021). This factor considers the "[t]he speed with which a case can come to trial and be resolved[.]" *In re Genentech, Inc.*, 566 F.3d at 1347. Additionally, court congestion is considered "the most speculative" factor, and when "relevant factors weigh in

favor of transfer and others are neutral, then the speed of the transferee district court should not alone outweigh all those other factors." *Id.*

Alfresco argues that the CDCA docket is twenty percent less crowded than the WDTX when looking at per-judge caseloads. Dkt. 97 at 15. The trial date in the California cases is set for September 22, 2022, three months before the trial date in this case. *Id.* Alfresco argues that the transfer and consolidation of this case with the other California cases would promote maximum efficiency. *Id.* OpenText responds by noting this Court's efficiency in taking patent cases to trial. Dkt. 100 at 14. It argues that the cases in this district are slightly ahead of the cases in California despite the earlier trial date there. *Id.* OpenText claims these weigh slightly against transfer.

Although Alfresco is correct that this district has more cases, it ignores this Court's ability to get those cases to trial quickly. This Court's Order Governing Proceedings – Patent Case ("OGP") sets patent cases for trial at 52 weeks after *Markman* hearings. Despite the large number of cases pending before this Court, the Court has been able to bring patent cases to trial approximately in accordance with its guidance in the OGP. *See, e.g., CloudofChange, LLC v. NCR Corporation*, No. 6-19-cv-00513 (W.D. Tex., filed Aug. 30, 2019) (20.3 months from case filing to trial); *VLSI Technology LLC v. Intel Corporation*, No. 6-21-cv-00057 (W.D. Tex., filed Apr. 11, 2019) (22.4 months from case filing to trial); *Freshub, Inc. et al v. Amazon.Com Inc. et al*, No. 6-21-cv-00511 (W.D. Tex., filed Jun. 24, 2019) (23.7 months from case filing to trial); *ESW Holdings, Inc. v. Roku, Inc*. No. 6-19-cv-00044 (W.D. Tex., filed Feb. 8, 2019) (25.9 months from case filing to trial). Thus, the assertion that the caseload is higher here does not support Alfresco's argument that time to trial would be quicker in the CDCA.

Alfresco does note, however, that the trial date in the CDCA cases is set for three months earlier than the date for the WDTX cases. But this Court is slightly outpacing those cases in pretrial matters like claim construction. Dkt. 100 at 14. As explained above, the speed in getting to trial specifically is determinative under this factor. Notably, however, the trial backlog in CDCA caused by courthouse closures due to the COVID-19 pandemic beginning in March 2020 could make the time to trial in the CDCA longer than anticipated. By contrast, this Court conducted its first patent jury trial during the COVID-19 pandemic in October 2020, and has since conducted at least seven jury trials, six of which are patent jury trials. In the first half of 2021 alone, this Court has already conducted five patent jury trials in the Waco courthouse.

Considering the foregoing arguments, the court finds this factor to weigh slightly in favor of transfer because the time to trial is earlier in the California cases, but finds it to be of lesser weight because of this Court's ability to get cases to trial quickly and the backlog caused by CDCA closures due to the Covid-19 pandemic.

***ii. Local Interest in Having Localized Interests Decided at Home***

Under this factor, the Court must evaluate whether there is a local interest in deciding local issues at home. *Volkswagen II*, 545 F.3d at 317. "A local interest is demonstrated by a relevant factual connection between the events and the venue." *Word to Info, Inc. v. Facebook, Inc.*, No. 3:14-cv-04387-K, 2015 WL 13870507, at *4 (N.D. Tex. Jul. 23, 2015). As the Federal Circuit has instructed, the focus is on where the events forming the basis for infringement occurred, and not the parties' generalized connections to the forum. *In re Juniper Networks, Inc.*, No. 2021-160, slip op. at 9–10 (Fed. Cir. Sept. 27, 2021).

Alfresco argues that California has a stronger localized interest. It points to the fact that OpenText maintains offices in California, the main product in the case was developed in

California, and Alfresco's corporate parent Hyland has an office in the CDCA. Dkt. 97 at 14. Alfresco states that any local interest in Austin is not as significant as that of the CDCA. *Id.*

OpenText responds by arguing that California has no interest because the Alfresco products at issue were designed and developed and are sold and serviced in the United Kingdom. Dkt. 100 at 15. The other defendants, Blue Fish and Seilevel, sell their infringing products in the WDTX and target OpenText in this district. *Id.* OpenText also rejects any inclusion of Hyland in this factor because it acquired Alfresco after the filing of this case, and Alfresco UK (which is the only remaining entity) was never merged into Hyland. *Id.* at 15. OpenText also employs people in Texas and competes against the defendants in thee WDTX. *Id.* Finally, some of the asserted patents in one of the three cases before this court were invented in the WDTX, and the products were developed in the WDTX. *Id.*

To determine which district has the stronger local interest, the Court looks to where the events forming the basis for infringement occurred. *See In re Juniper Networks, Inc.*, No. 2021-160, slip op. at 9–10 (Fed. Cir. Sept. 27, 2021). The most relevant considerations are therefore where the design, development, and sale of the accused products occurred. Alfresco asserts that Documentum, the product embodying the asserted patents, was developed in California. But the plaintiff's product embodying the patent is irrelevant here. Rather, the design, development, and sale of the *accused* product are controlling. As OpenText asserts, the accused product was designed in the UK, not California. These are sold and serviced from the UK, and then sold globally. Alfresco has failed to show how any events forming the basis for infringement occurred in the CDCA. Defendants Blue Fish and Seilevel, however, sell their accused products in this district. Sale of products qualifies as an event forming the basis for infringement in this district.

None of the events giving rise to the infringement claim occurred in the CDCA, and the Defendants' generalized presence in that district is insufficient. Because the accused products from at least one Defendant were sold in the WDTX, the Court finds this factor weighs against transfer.

***iii. Familiarity of the Forum with the Law That will Govern the Case***

Both parties agree that this factor is neutral.

***iv. Avoidance of Unnecessary Problems of Conflict of Laws or in the Application of Foreign Law***

Both parties agree that this factor is neutral.

## IV. CONCLUSION

Having considered the private and public interest factors, Court's conclusions for each factor is summarized in the following table:

| Factor | The Court's Finding |
|---|---|
| Relative ease of access to sources of proof | Neutral |
| Availability of compulsory process to secure the attendance of witnesses | Neutral |
| Cost of attendance for willing witnesses | Neutral |
| All other practical problems that make trial of a case easy, expeditious and inexpensive | Weighs slightly in favor of transfer |
| Administrative difficulties flowing from court congestion | Weighs slightly in favor of transfer |
| Local interest | Weighs against transfer |
| Familiarity of the forum with law that will govern case | Neutral |

| | |
|---|---|
| Problems associated with conflict of law | Neutral |

Five of the eight factors are neutral. One factor, local interest, disfavors transfer. Although two factors favor transfer to the CDCA, this Court has indicated those are slight at best. A simple two factors in favor versus one factor against is insufficient to justify a transfer under § 1404. Rather, as the Fifth Circuit has instructed, the moving party must show that transfer is *clearly* more convenient than the venue chosen by the plaintiff. With only two factors favoring transfer, which are slight at best, Alfresco has failed to prove that the Central District of California is a clearly more convenient venue than the Western District of Texas. Defendants' Motion is therefore **DENIED**.

SIGNED this 30th day of September, 2021.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on October 21, 2021 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

Counsel for Defendant Seilevel Partners LP has been served by electronic mail at these email addresses: kburgess@burgesslawpc.com; eboucheron@burgesslawpc.com; kgalaviz@burgesslawpc.com.

*/s/ Jonathan M. Watkins*
Jonathan M. Watkins