

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

RAVGEN, INC.,

Plaintiff,

v.

QUEST DIAGNOSTICS
INCORPORATED,

Defendant.

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6:20-CV-00972-ADA

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Quest Diagnostics Incorporated’s (“Quest”) Motion to Transfer venue to the Central District of California (“CDCA”) pursuant to 28 U.S.C. § 1404(a) (“Motion to Transfer”). ECF No. 21. After careful consideration of the parties’ briefs and the applicable law, the Court **DENIES** Quest’s Motion to Transfer.

I. BACKGROUND

Plaintiff Ravgen, Inc. (“Ravgen”) filed this lawsuit on October 16, 2020, alleging that Quests has infringed U.S. Patent Nos. 7,727,720 and 7,332,277 (the “asserted patents”). ECF No. 1 at ¶ 1. Ravgen is a Delaware corporation with its principal place of business in Maryland. *Id.* at ¶ 2. Quest is a Delaware corporation with its principal place of business in New Jersey. *Id.* at ¶ 3.

Ravgen alleges that Quest’s QNatal Advanced test, a non-invasive prenatal test (“NIPT”), infringes the asserted patents. ECF No. 1 at Counts I and II. The QNatal Advanced test was designed and developed by Quest Nichols CA, a wholly owned subsidiary of Quest. ECF No. 21 at 3, 5. Quest Nichols CA is a California corporation, with its laboratory in San Juan Capistrano, California. *Id.* For some of the asserted claims, Ravgen also alleges that Quest infringes because

Quest uses “cell-free DNA Streck tubes,” which are developed and provided by Streck, Inc. (“Streck”), a third party based in Nebraska. ECF No. 21 at 5.

II. LEGAL STANDARD

Title 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 party moving for transfer carries the burden of showing good cause. *Volkswagen II*, 545 F.3d at 314 (“When viewed in the context of § 1404(a), to show good cause means that a moving party, in order to support its claim for a transfer, must . . . clearly demonstrate that a transfer is ‘[f]or the convenience of parties and witnesses, in the interest of justice.’”) (quoting 28 U.S.C. § 1404(a)).

Motions to transfer under § 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). “The preliminary question under § 1404(a) is whether a civil action ‘might have been brought’ in the destination venue.” *In re Volkswagen, Inc.*, 545 F.3d 304, 312 (5th Cir. 2008) (“*Volkswagen II*”). If so, in the Fifth Circuit, the “[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) (“*Volkswagen I*”) (citing to *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.*

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. While “clearly more convenient” is not explicitly 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. ANALYSIS

The threshold determination under the § 1404 analysis is whether this case could initially have been brought in the destination venue, here, the CDCA. Neither party contests that venue is proper in the CDCA and that this case could have been brought there. Thus, the Court proceeds with its analysis of the private and public interest factors under *Volkswagen II*.

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, Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009)).

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 Elec.s. 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.”).

Quest contends that documents regarding the “development, validation, testing, and performance” of the accused QNatal Advanced test are all located in the CDCA at the Quest Nichols CA laboratory and that scientists in the CDCA have access to those documents but its employees in Texas do not have access. ECF No. 21 at 5 and 12. Ravgen counters that the relevant Quest documents are actually spread across several districts: documents related to the

developments of the accused QNatal Advanced test are located in the CDCA, documents related to the sales and marketing of the accused QNatal Advanced test are located in New Jersey, and documents related to the sales and specimen collections to perform the QNatal Advanced test are located at patient service centers (“PSCs”) in Austin and San Antonio within the WDTX. ECF No. 33 at 13. Further, Ravgen’s documents related to the conception and reduction to practice of the asserted patents are located in Maryland, and documents related to the Streck tubes are located in Nebraska with third party Streck. *Id.* at 13.

While Quest contends that its Texas employees do not have access to documents related to the accused QNatal Advanced test, it does not assert that those documents are not in electronic form and does not show that those documents cannot be accessed by its Texas employees in this District. Nor does either party assert that any other documents mentioned above are not in electronic form and cannot be readily accessed in this District. For these reasons and the fact that the involved documents are dispersed across four districts, the Court finds that this factor is neutral.

ii. 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).

As party witnesses almost invariably attend trial willingly, “[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, 2020 WL 6439178, at *4 (W.D. Tex. Mar. 17, 2020) (citation omitted). The inconvenience of foreign witnesses, who will have to travel a substantial distance to be present in any U.S. court, is weighted less heavily than that of domestic witnesses. *See In re Genentech, Inc.*, 566 F.3d 1338, 1344 (Fed. Cir. 2009) (citation omitted) (traveling from the United Kingdom to New York was only marginally more convenient than traveling to Tennessee); *Bionx Implants, Inc. v. Biomet, Inc.*, No. 99 CIV. 740 (WHP), 1999 WL 342306, at *4 (S.D.N.Y. May 27, 1999) (traveling from Finland to Indiana was not more inconvenient than traveling to New York)).

Quest identifies a potential third-party witness, Dr. Charles (‘Buck’) Strom (the former Senior Medical Director, Genetics and Vice President, Genetics and Genomics at Quest Nichols CA), who is located in the CDCA. EDF No. 21 at 13. However, Quest does not assert that Dr. Strom is unwilling to testify. Indeed, Quest’s own analysis under the “willing witnesses” factor includes Dr. Strom. *Id.* at 10. Quest also states that Dr. Hamilton Smith, a board member of Ravgen, also resides in the CDCA. Again, Quest does not assert that Dr. Smith is unwilling to testify, nor does Quest assert that Dr. Smith has any knowledge relevant to this case that would make this testimony at trial necessary. Therefore, the Court finds that this factor is also neutral.

iii. Cost of Attendance for Willing Witnesses

“The convenience of witnesses is the single most important factor in the transfer analysis.” *Fintiv*, 2019 WL 4743678, at *6. However, the convenience of non-party witnesses is given

significantly more weight than the convenience of party witnesses. *ADS Sec. L.P. v. Advanced Detection Sec. Servs., Inc.*, No. A-09-CA-773-LY, 2010 WL 1170976, at *4 (W.D. Tex. Mar. 23, 2010) (citing *Gardipee v. Petroleum Helicopters, Inc.*, 49 F. Supp. 2d 925, 929 (E.D. Tex. 1999)).

As a preliminary matter, given typical time limits at trial, the Court does not assume that all the party and non-party witnesses listed in Section 1404(a) briefing will testify at trial. *Fintiv*, 2019 WL 4743678, at *6. Rather, in addition to the party's experts, the Court assumes that no more than a few party witnesses—and even fewer non-party witnesses, if any—will testify live at trial. *Id.* Therefore, excessively long lists of potential party and non-party witnesses do not affect the Court's analysis for this factor. *Id.*

Quest asserts that Ms. Katie Bishar, the operations head of Quest's esoteric laboratories (which include the Quest Nichols CA laboratory), is located the CDCA, and the three scientists who developed and oversee the performance of the QNatal Advanced tests are also based in the CDCA. ECF No. 21 at 10. Quest also states that Dr. Strom, a former Quest employee who oversaw the development of the accused QNatal Advanced test, is also based in the CDCA. *Id.* On the other hand, Ravgen points out that (1) Quest's witness most relevant to damages (Linda Mahoney, who oversees marketing and sales for the QNatal Advanced test) is located in New Jersey, and (2) Ravgen's party witnesses, including the inventor of the asserted patents (Dr. Ravinder Dhallan), are located in Maryland, and that the WDTX is more convenient than CDCA for these witnesses. ECF No. 33 at 11-12.

Ravgen further contends that the WDTX is also more convenient for certain non-party witnesses, including: (1) witnesses from Streck (which provides the Streck tubes to Quest for the QNatal Advanced test) who are located in Nebraska, and (2) witnesses from major health insurance companies such as Aetna, BlueCross BlueShield, and UnitedHealthcare, whose headquarters are

located about 1,000 miles closer to the WDTX than to the CDCA. *Id.* at 10. Regarding the Streck witnesses, Quest produces statement from Streck’s general counsel, Ryan Wilkins, asserting that the CDCA would actually be more convenient for Streck employees. ECF No. 34 at 3; Ex. 1 at 1–2. However, given the collaborative relationship between Quest and Streck, the statement from Streck should be heavily discounted. Further, the Court is not persuaded by Ravgen’s assertion that any witness from the listed health insurance companies would be necessary for trial. Ravgen asserts that these insurance companies control the reimbursement process for the QNatal Advanced test. However, Ravgen does not demonstrate why any live testimony from any insurance company witnesses would be material or necessary at trial. Therefore, the Court does not assign any weight to these potential non-party witnesses.

The Court thus only needs to balance the convenience of Quest’s party witnesses, most of whom are in the CDCA with the one exception who is in New Jersey, and Ravgen’s party witnesses, all of whom are in Maryland. Because the WDTX is more convenient to witnesses in New Jersey and Maryland, and the CDCA is more convenient to witnesses in CDCA, the Court finds that this factor is also 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). Having a single district court resolve cases involving the same patents avoids wasting

judicial resources and the risk of inconsistent rulings on the same patents. *In re Volkswagen of Am., Inc.*, 566 F.3d 1349, 1351 (Fed Cir. 2009).

As Ravgen points out, this case is one of four related cases currently pending before this Court,¹ where all four cases involve the same two asserted patents and substantially similar accused products. ECF No. 33 at 1-2 and 6-7. The four co-pending cases involve overlapping issues, such as claim construction, invalidity, and conception and reduction to practice. Therefore, judicial economy favors having the infringement of the same patents considered by one judge in this District. *See SynKloud Techs., LLC v. Dropbox, Inc.*, No. 6:19-cv-00525-ADA, 2020 WL 2494574, at *5 (W.D. Tex. May 14, 2020). In fact, for the first two of the four related cases (*Natera* and *PerkinElmer*), this Court already conducted a consolidated *Markman* hearing on February 9, 2021, where the Court heard oral arguments and provided its final constructions of the disputed claim terms. Therefore, this Court is very familiar with the asserted patents in this case and intends to hold a consolidated *Markman* hearing for this case and the *Lab Corp* case, which was filed on the same day as this case. Further, having this Court determine issues related to the same patents assert in all four cases would reduce the risk of inconsistent rulings involving the same patents.

Quest argues that Ravgen has also filed nine cases in the District of Delaware asserting the same two patents and therefore these cases will be proceeding in multiple jurisdictions anyway. ECF No. 21 at 15. However, this does not justify transferring this case to the CDCA and thus adding yet a third court to resolve substantially similar issues involving the same patents. *See Solas OLED Ltd. v. Apple Inc.*, No. 6:19-cv-00537-ADA, 2020 WL 3440956, at *7 (W.D. Tex. June 23, 2020) (“With two districts already hearing claims regarding these patents and this district hearing

¹ *See Ravgen, Inc. v. PerkinElmer, Inc.*, No. 1:20-cv-00822 (“*PerkinElmer* case”) and *Ravgen, Inc. v. Natera, Inc.*, No. 1:20-cv-00692 (“*Natera* case”), both filed on June 1, 2020; *Ravgen, Inc. v. Lab. Corp. of Am. Holdings*, No. 6:20-cv-00969 (“*LabCorp* case”), filed on the same day as this case on October 16, 2020.

four claims regarding these patents . . . , an additional venue would increase the expense and difficulty for parties involved and result in the increased expenditure of judicial resources.”).

Quest further contends that a plaintiff cannot inoculate itself against transfer under § 1404(a) simply by filing multiple suits against multiple defendants in a district court. ECF No. 34 at 1, citing *In re Google Inc.*, No. 2017-107, 2017 WL 977038, at *3 (Fed. Cir. Feb. 23, 2017). This Court agrees that a plaintiff cannot create convenience by serially filing cases within a single district. However, although “it is improper for a district court to weigh the judicial economy factor in a plaintiff’s favor solely based on the existence of multiple co-pending suits” (*In re Google.*, 2017 WL 977038, at *2-3), the extent of overlap in the issues and the judicial resources a court has already spent on co-pending cases can play a significant role in the judicial economy analysis. In view of the three co-pending cases involving the same patents and the substantial judicial resources this Court has spent on the asserted patents, including claim construction for the asserted patents, the Court finds that this factor weighs strongly against transfer.

B. The Public Interest Factors

i. Administrative Difficulties Flowing from Court Congestion

The relevant inquiry under this factor is actually “[t]he speed with which a case can come to trial and be resolved.” *Genentech*, 566 F.3d at 1347. A faster average time to trial means more efficient and economical resolutions of the claims at issue.

Quest states that in 2019, the median time to trial for civil cases in the CDCA was 609 days compared to 687 days in the WDTX. ECD No. 21 at 13. Ravgen counters that median time to trial for patent cases in WDTX from 2015-2020 is 893 days compared to 1027 days (33.6 months) in the CDCA. ECF No. 33 at 8. This Court’s Order Governing Proceedings – Patent Case (“OGP”) sets patent cases for trial at 52 weeks after Markman hearings, which are scheduled around 23

weeks after case management conferences. Despite the large number of cases pending before this Court, it has been able to bring patent cases to trial approximately in accordance with its guidance in the OGP. *See, e.g., CloudfChange, 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). Therefore, the median time to trial for patents cases in this Court (the Waco Division) is over 10 months shorter than the 33.6-month median time to trial for patent cases in the CDCA.

Further, the trial backlog in the CDCA caused by courthouse closures due to the COVID-19 pandemic beginning in March 2020 would make the time to trial for patent cases, and all cases in general, even longer. 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 trials. In the first half of 2021 alone, this Court has already conducted five patent jury trials in the Waco courthouse. Considering the relative court congestion in CDCA, the Court finds that this factor weighs strongly against transfer.

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. *See 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).

Here, the accused QNatal Advanced test was designed, developed, and performed in the Quest Nichols CA laboratory within the CDCA. The only connection to the WDTX that Ravgen identifies is Quest's patient service centers in Austin and San Antonio, which hire phlebotomists who are responsible for specimen collections and data entries. However, the main presences of both Ravgen and Quest are elsewhere: Ravgen is a Delaware corporation headquartered in Maryland and Quest is a Delaware corporation headquartered in New Jersey. Therefore, the Court finds that this factor slightly favors transfer.


iii. Familiarity of the Law; Avoidance of Conflict of Laws in the Application of Foreign Law

This case arises from federal patent law and does not involve the application of foreign law. Both the WDTX and CDCA are familiar with patent law. Thus, the Court finds that these two factors are neutral.

IV. CONCLUSION

Having considered the private and public factors under the Section 1404(a) analysis, the Court finds that Quest has not met its significant burden to demonstrate that the CDCA is "clearly more convenient" than this District. Therefore, the Court **DENIES** Quest's Motion to Transfer.

SIGNED this 20th day of August, 2021.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE