PUBLIC VERSION

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

FUTURE LINK SYSTEMS, LLC, **Plaintiff,** ***v.*** **ADVANCED MICRO DEVICES, INC.,** **Defendant.**	**6:20-cv-01176-ADA**

ORDER GRANTING AMD'S OPPOSED MOTION FOR INTRA-DISTRICT TRANSFER TO THE AUSTIN DIVISION OF THE WESTERN DISTRICT OF TEXAS [ECF No. 29]

Came on for consideration this date is Advanced Micro Devices, Inc.'s Opposed Motion for Intra-district Transfer to the Austin Division of the Western District of Texas (the "Motion"). ECF No. 29. Future Link Systems, LLC ("FLS" or "Plaintiff") filed an opposition on September 17, 2021, ECF No. 41, to which Advanced Micro Devices, Inc. ("AMD" or "Defendant") filed a reply on September 24, 2021, ECF No. 46. After careful consideration of the Motion, the Parties' briefs, and the applicable law, the Court **GRANTS** AMD's Opposed Motion for Intra-district Transfer to the Austin Division of the Western District of Texas.

I. BACKGROUND

FLS filed a Complaint against AMD on December 21, 2020, alleging infringement of U.S. Patent Nos. 7,983,888 (the "'888 Patent"), 6,622,108 (the "'108 Patent"), and 6,363,466 (the "'466 Patent") (collectively, the "Asserted Patents"). ECF No. 1 ¶ 1. FLS and AMD are both based in California and incorporated in Delaware. *Id.* ¶ 2; ECF No. 21 ¶ 3. AMD operates a 58-acre campus in Austin that employs 2,400 people. ECF No. 29 at 3.

FLS had alleged infringement by AMD products including (1) "AMD Family 16h Models 30h-3Fh Processors and all other AMD devices containing a Root Complex Integrated Endpoint with AMD Internal Bus Architecture," (2) "AMD video cards that implement read and write

training of GDDR5 or GDDR6 SGRAM, including but not limited to the AMD Radeon RX 6000 Series graphics cards, AMD Radeon RX 5000 Series graphics cards, AMD Radeon RX 500X Series graphics cards, AMD Radeon RX 500 Series graphics cards, AMD Radeon 500 Series graphics cards, Radeon RX 400 Series graphics, and AMD Radeon HD 5000 Series graphics cards," and (3) "AMD APUs, including but not limited to those with Type 15h, 16h, and 17h CPUs" (collectively, the "Accused Products"). *See* ECF No. 29 at 2.

AMD filed this Motion to transfer on June 3, 2021, less than five months after AMD was served. *See* ECF No. 29. This Motion became ripe for judgment on September 27, 2021, less than a month before the *Markman* hearing set for October 14, 2021. *See* ECF No. 48.

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). Title 28 U.S.C. § 1404(a) provides that, "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." "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 § 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) ("*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) ("*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 that 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 weight the Court gives to each of these assorted convenience factors will necessarily vary from case to case. *See Burbank Int'l, Ltd. v. Gulf Consol. Int'l, Inc.*, 441 F. Supp. 819, 821 (N.D. Tex. 1977). And "[t]he § 1404(a) factors apply as much to transfers between divisions of the same district as to transfers from one district to another." *In re Radmax, Ltd.*, 720 F.3d 285, 288 (5th Cir. 2013). A court should not deny transfer where "only the plaintiff's choice weighs in favor of denying transfer and where the case has no connection to the transferor forum and virtually all of the events and witnesses regarding the case . . . are in the transferee forum." *Id.* at 290.

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). Yet, the Federal Circuit has clarified that, for a court to hold that a factor favors transfer, the movant need not show that that factor *clearly* favors transfer. *In re Apple Inc.*, 979 F.3d 1332, 1340 (Fed. Cir. 2020).

III. ANALYSIS

A. Venue and Jurisdiction in the Transferor Forum

Neither party contests that venue is proper in Austin and that this case could have been brought there. ECF No. 29 at 4–5; ECF No. 41 at 6. Thus, the Court proceeds with its analysis of the private and public factors.

B. Private Interest Factors

1. Cost of Attendance of Willing Witnesses

"The convenience of witnesses is the single most important factor in the transfer analysis." *Fintiv, Inc. v. Apple Inc.*, No. 6:18-cv-00372-ADA, 2019 U.S. Dist. LEXIS 171102, at *17 (W.D. Tex. Sep. 10, 2019). The Fifth Circuit has established the "100-mile rule," providing that "[w]hen 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." *Volkswagen I*, 371 F.3d at 204–05. That does not, however, mean that this factor is neutral when the transferor and transferee divisions are within less than 100 miles of one another. *Id.*

The Federal Circuit has rendered the 100-mile rule nugatory by holding that courts should not be apply the rule "rigidly." In some cases, the Federal Circuit has nullified the 100-mile rule by holding that, where witnesses would be required to travel a significant distance no matter where they testify, those witnesses will only be slightly more inconvenienced by having to travel to, for

example, California, compared to Texas. *In re Apple*, 979 F.3d at 1342 (discussing witnesses traveling from New York) (citing *Volkswagen II*, 545 F.3d at 317). In other cases, it has neutered the 100-mile rule by holding that "[t]he comparison between the transferor and transferee forum is not altered by the presence of other witnesses and documents in places outside both forums." *In re Toyota Motor Corp.*, 747 F.3d 1338, 1340 (Fed. Cir. 2014). In yet other cases, the Federal Circuit has altogether disregarded the Fifth Circuit's 100-mile rule and its eponymous emphasis on distance, opting to rely only on hypothetical travel-time statistics. *See In re Google LLC*, No. 2021-170, 2021 U.S. App. LEXIS 29137, at *12 (Fed. Cir. Sep. 27, 2021).

Party Witnesses. The Federal Circuit has chastised this Court for according little weight to the convenience of party witnesses. The Federal Circuit has recognized that "an employer's cooperation in allowing an employee to testify may diminish certain aspects of inconvenience to the employee witness (for instance, the employee is not acting contrary to their employer's wishes)." *In re Hulu, LLC,* No. 2021-142, 2021 U.S. App. LEXIS 22723, at *13 (Fed. Cir. Aug. 2, 2021). Yet, in a spate of recent opinions, the Federal Circuit backtracked, holding that convenience-to-the-witnesses factor is *not* attenuated at all when the witnesses are employees of the party calling them. *See, e.g.*, *In re Juniper Networks, Inc.*, No. 2021-160, 2021 U.S. App. LEXIS 29036, at *10 (Fed. Cir. Sep. 24, 2021). That decision is out of step with decades of jurisprudence springing from courts in the Fifth Circuit and elsewhere. *See, e.g.*, *Frederick v. Advanced Fin. Sols., Inc.*, 558 F. Supp. 2d 699, 704 (E.D. Tex. 2007) (according little weight to the convenience of party employee witnesses); *Cont'l Airlines, Inc. v. Am. Airlines, Inc.*, 805 F. Supp. 1392, 1397 (S.D. Tex. 1992) (same); 15 Wright & Miller, Fed. Prac. & Proc. Juris. § 3851 (4th ed.) ("[T]he convenience of witnesses who are employees of a party is entitled to less weight because that party can obtain their presence at trial.").

AMD asserts that the Accused Products "were designed, developed, and tested in part by employees located in Austin." ECF No. 29 at 6. Specifically, (1) Michael Tresidder "is knowledgeable regarding the design of the PCI Express functionality that is accused of infringing the '888 Patent"; (2) Eric Morton "is knowledgeable regarding the operation of the functionality that is accused of infringing the '466 Patent"; (3) Rob Hallock and (4) John Morris are responsible for marketing and sales of the Accused Products; and (5) Scott Kehm and (6) Denis Gourlay "are knowledgeable about the financial data associated with the Accused Products." *Id.*

FLS responds that, during discovery, AMD identified nine AMD employees with knowledge of the accused functionalities, only three of whom are located in Austin. ECF No. 41 at 8 (naming Mr. Tresidder for the '888 Patent and Mr. Morton and John King for the '466 Patent). And, for one of the Asserted Patents, the top three witnesses are not located in Texas. *Id.*

AMD also states that it has engineering facilities in California, Colorado, Florida, Massachusetts, and Markham, Canada. ECF No. 29 at 6 n.3. AMD asserts that Austin would be more convenient for engineers working at those facilities because there are direct flights from those states into Austin. *Id.*

AMD asserts that FLS's parent entity IPValue has employees in Austin, such as Joseph Villela, the Chief Licensing Officer of FLS's sister entity. ECF No. 29 at 6. FLS responds that its general manager, Richard Misiag, resides near Tulsa, Oklahoma, which is nearer to Waco than to Austin and, according to Mr. Misiag, Waco is a more convenient destination. ECF No. 41 at 9. Other relevant FLS employees are based in New Jersey, which is closer to Waco than to Austin. *Id.* AMD provided evidence that Mr. Misiag's self-serving statement about the convenience of traveling to Waco was belied by the brevity and cost of a Tulsa-to-Austin flight. ECF No. 45 at 2.

The Court finds that, because AMD identified six Austin-based, AMD employees with relevant knowledge and FLS fails to identify any party witnesses for whom Waco is more convenient, the convenience of party witnesses weighs slightly in favor of transfer under this factor.

The Court accords little to no weight to the convenience of FLS employees and potential party witnesses outside Texas. As to FLS-affiliated personnel, the Court presumes that they waive any inconvenience in traveling to Waco compared to Austin given that FLS chose to sue in Waco. And though the parties allude to potential witnesses outside the state, the Court accords little to no weight to their convenience, given the short distance separating Austin and Waco (and also given that some potential witnesses are not identified by name). *Cf. In re Toyota Motor Corp.*, 747 F.3d 1338, 1340 (Fed. Cir. 2014); *see also VLSI Tech. LLC v. Intel Corp.*, No. 6:19-CV-00254-ADA, 2019 U.S. Dist. LEXIS 227809, at *14 (W.D. Tex. Oct. 7, 2019) ("[O]verall, the Court finds that the Austin and Waco Divisions are equally convenient for out-of-state witnesses.").

Third-Party Witnesses. The Federal Circuit has recently held that courts cannot wield the practical fact that only a few non-party witnesses will testify at trial to categorically ignore prior-art witnesses or give less weight to laundry lists of third-party witnesses. *In re Juniper*, 2021 U.S. App. LEXIS 29036, at *11.

According to AMD, the prior owner of the Asserted Patents, NXP, has its U.S. headquarters in Austin. ECF No. 29 at 7. AMD argues that NXP's employees would have relevant knowledge of the value of the Asserted Patent, comparable licenses, and compliance with 35 U.S.C. § 287(a). *Id.* AMD identifies Austin-based Steven Snidow, an NXP IP Licensing and Procurement professional, and Changhae Park, an NXP Senior VP and Chief IP Office, as relevant witnesses.

Id. FLS responds that AMD fails to note that the named inventors of one of the patents-in-suit are in Arizona, overseas, or in California. ECF No. 41 at 10.

AMD alleges that Desi Rhoden, an Austin resident, is knowledgeable about the Reasonable and Non-Discriminatory ("RAND") licensing commitment the '108 Patent "is likely subject to." ECF No. 21 at 8. Mr. Rhoden chairs the JEDEC committee that drafted the standard the '108 Patent is allegedly "focused on." *Id.* "AMD expects Mr. Rhoden to testify that NXP was present during meetings of" that JEDEC committee. *Id.* FLS responds that it was a subcommittee of the JEDEC committee AMD identified that actually drafted the relevant standard, and the chairs of that subcommittee are located in South Korea. ECF No. 41 at 10.

AMD argues that Intel Corporation employees would have relevant knowledge as to damages because FLS and Intel settled a dispute involving the '888 and '108 Patents, "likely resulting" in a relevant licensing agreement. ECF No. 29 at 8. AMD specifically identifies Rahul Engineer, an Intel Assistant Director of Patents located in Austin, as likely having relevant knowledge. *Id.* FLS responds that AMD's evidence bears no suggestion that Mr. Engineer has any involvement in negotiating patent licenses with NXP or FLS. ECF No. 41 at 11.

AMD argues that SK Hynix America, Inc. will have relevant testimony because FLS's infringement theories for the '108 Patent are premised on the operation of Hynix memory. ECF No. 29 at 9. AMD specifically identifies JoonHa Park, an Austin-based Hynix engineer with "14 years of experience in memory engineering" as a potential witness that may have relevant knowledge. *Id.* FLS responds that AMD has not explained that Mr. Park has any relevant information for this case. ECF No. 41 at 11.

AMD further argues that prior art inventors are located in Austin and may "provide relevant testimony regarding the invalidity of the Asserted Patents." AMD specifically identified four

inventors of four patents that AMD considers prior art to the '466 Patent asserted here. ECF No. 29 at 10. FLS responds that AMD's invalidity contentions fail to cite the prior art AMD has identified as relevant to this factor. ECF No. 41 at 11. And, indeed, "[f]or the five patents that AMD charted as prior art for the '466 Patent, seven of ten inventors are located in either California, Oregon, or Wisconsin." *Id.* In its reply, AMD also asserted that its invalidity contentions identify Intel products as prior art and Intel has offices in Austin. ECF No. 45 at 3. Moreover, it identified U.S. Patent No. 6,351,784 as prior art in its contentions, whose inventors are listed as living in Austin on the face of the patent. *Id.*

The Court finds that the convenience of non-party witnesses is neutral because AMD bases its selection of non-party witnesses on speculation. The Court agrees with AMD that there are likely witnesses affiliated with NXP, Intel, Hynix, and the JEDEC committee with knowledge relevant to the merits of this case. But the Court does not have enough information to know where those relevant witnesses reside. It appears that AMD identified witnesses by simply searching LinkedIn for Austin-based personnel with relevant-sounding titles. AMD has not shown any other basis for believing these non-party witnesses have relevant knowledge or that they would be required for trial. *In re Asus Comput. Int'l*, 573 F. App'x 928, 929 (Fed. Cir. 2014) ("ASUS offered nothing more than speculation that the three witnesses it identified that reside in the Northern District of California will be required at trial."). It is not even clear that AMD performed any diligence to ensure that the relevant LinkedIn profiles are current, placing the reliability of the proffered evidence into question.

AMD's dependence on weasel words like "may" and "likely" confirms that AMD's identification of non-party witnesses is based largely on conjecture. *See Vecron Exim Ltd. v. Stokes*, No. 2:17-cv-02944-CAS(RAOx), 2017 U.S. Dist. LEXIS 129946, at *7 (C.D. Cal. Aug.

15, 2017) ("A conclusory assertion that PPB *may* be an important non-party witness to this suit does not suffice."); *Innovative Display Techs. LLC v. BMW of N. Am., LLC*, No. 2:14-CV-00106-JRG, 2015 U.S. Dist. LEXIS 40910, at *11 (E.D. Tex. Mar. 30, 2015) ("[G]eneralized speculation is unhelpful."). For example, AMD states that: Mr. Snidow and Mr. Park "can *likely* offer relevant testimony," ECF No. 29 at 8 (emphasis added); Mr. Rhoden "*may* additionally testify about facts relating to" a breach of JEDEC patent policy, *id.* (emphasis added); "Intel employees in Austin, such as Rahul Engineer, are *likely* to have relevant knowledge," *id.* at 9 (emphasis added); and "Hynix employees located in Austin *may* offer relevant testimony," *id.* (emphasis added). The Court, therefore, accords the convenience of these witnesses no weight.

As to the prior art witnesses AMD identifies, the Court accords their convenience zero weight because AMD has not shown that they have relevant knowledge. AMD identified four prior art patents as being invented by Austin-based inventors. ECF No. 29 at 9–10. The Court agrees with FLS that AMD confirmed that these prior artists are unlikely to have relevant knowledge by excluding their prior art patents from AMD's invalidity contentions. *See* ECF No. 41 at 11. In its reply, AMD lists other prior artists purportedly located in Austin, ECF No. 45 at 3, but the Court exercises its discretion to disregard the existence of these prior artists only identified in reply, *see In re Apple, Inc.*, 581 F. App'x 886, 891 (Fed. Cir. 2014) (Bryson, J., dissenting) (collecting cases showing that it is "well settled . . . that a district court has discretion to disregard evidence offered for the first time in a reply brief"). Even were this Court to consider these prior artists, it would not accord any weight to their convenience because (1) AMD did not identify any Austin-based witnesses by name who were involved in the development of Intel's prior art system (let alone cite any evidence suggesting that Intel's system qualified as prior art) and (2) AMD did not show that

the inventors of prior art U.S. Patent No. 6,351,784 still reside in Austin, as reflected on the face of the almost twenty-year-old patent.

As this Court has recognized, "[i]f a substantial number of witnesses reside in one venue and no witnesses reside in another, th[is] factor will weigh in favor of the venue where witnesses reside." *SITO Mobile R&D IP v. Hulu, LLC*, 2021 U.S. Dist. LEXIS 58394, 2021 WL 1166772, at *5 (W.D. Tex. 2021). AMD has shown that at least six relevant witnesses from AMD reside in or around Austin and neither party identified witnesses located in or around Waco. This factor, therefore, weighs in favor of transfer. Yet, because the inconvenience these witnesses would suffer from testifying at trial in Waco is slight given the proximity of Waco to Austin, the factor only weighs slightly in favor of transfer.

2. Availability of Compulsory Process

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). Under this factor, the Court focuses on non-party witnesses whose attendance may need to be secured by a court order. *Fintiv*, 2019 U.S. Dist. LEXIS 171102, at *14 (citing *Volkswagen II*, 545 F.3d at 316). 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*, 581 F. App'x at 889. "[W]here . . . the movant has identified multiple third-party witnesses and shown that they are overwhelmingly located within the subpoena power of only the transferee venue, this factor favors transfer even without a showing of unwillingness for each witness." *In re Hulu*, 2021 U.S. App. LEXIS 22723, at *10. *But see In re*

Apple, 581 F. App'x 886, 891 (Fed. Cir. 2014) (Bryson, J., dissenting) (collecting cases where courts required the movant to show witnesses would be unwilling to travel to the transferor district).

AMD argues that this transfer factor is neutral because this Court has recognized it has subpoena power over individuals in Texas outside of the Waco division. ECF No. 29 at 14. FLS does not dispute that position. The Court agrees and finds that this factor is neutral.

3. Relative Ease of Access to Source 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*, 2019 U.S. Dist. LEXIS 171102, at *5. This factor relates to the relative—not absolute—ease of access to non-witness evidence. *See In re Radmax*, 720 F.3d at 288; *In re Apple*, 979 F.3d at 1339. And "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. In *Radmax*, the Fifth Circuit held that, though the distance between two divisions was slight, because all the documents and physical evidence were in the transferor division, this factor favored transfer. 720 F.3d at 288.

The Fifth Circuit has held that, even in the context of electronic documents that can be accessed anywhere on earth, this factor is not superfluous. *See Volkswagen II*, 545 F.3d at 316. Though having persistently characterized that holding as antiquated in the setting of a modern patent dispute, this Court will continue to analyze this factor with a focus on the location of: physical documents and other evidence; and the hardware storing the relevant electronic documents. *See, e.g.*, *Bluebonnet Internet Media Servs., LLC v. Pandora Media, LLC*, No. 6-20-CV-00731-ADA, 2021 U.S. Dist. LEXIS 137400, at *7 & n.1 (W.D. Tex. July 22, 2021).

AMD asserts that the Accused Products were designed, developed, and tested in Austin, where AMD has "extensive facilities with documents and thousands of employees in Austin," rendering it easier to access relevant documents from Austin relative to Waco. ECF No. 29 at 11. AMD is not aware of any relevant documents in Waco. *Id.* FLS responds that both AMD and FLS maintain all their relevant documents electronically, meaning "there is no relative convenience for Austin regarding any party documents." ECF No. 41 at 14.

AMD also argues that the Austin-based employees identified above will have documents relevant to this case in Austin. ECF No. 29 at 11. Relatedly, NXP, the former owner of the Asserted Patents, has its U.S. headquarters in Austin, where it likely maintains documents related to inventorship, conception, reduction to practice, and prosecution. *Id.* FLS responds that AMD is merely speculating about the location of these documents, and in any event, third parties likely also maintain their documents electronically. ECF No. 41 at 14–15.

The Court finds that this factor favors transfer slightly given that relevant documents reside in the Austin division. AMD's Motion includes a declaration from Shona Thomas, a member of the human resources department at AMD. ECF No. 29-1. Ms. Thomas declared, based on her "personal knowledge," "review of corporate records," and "discussions with AMD employees," that the Accused Products were "designed, developed, and tested in the Austin division," and related documents "are primarily located in its facilities in the Austin Division." *Id.* ¶¶ 2, 9. "AMD is not aware of any documents related to the Accused Products located in the Waco Division." *Id.* FLS failed to provide contradictory evidence or evidence that any relevant documents are located in the Waco division. Thus, this factor favors transfer, but only slightly—AMD would suffer little inconvenience from having to shuttle documentary evidence to Waco from Austin due to their proximity.

FLS's arguments primarily focus on the parties' electronic storage of relevant documentation. ECF No. 41 at 13–14. As explained above, this Court cannot disregard this factor merely because of technological advances in eDiscovery.

As to documents from non-parties—NXP, Intel, Hynix, the JEDEC committee—AMD has not provided any evidence suggesting that relevant documents are located in Austin, as opposed to any of the other offices or locations these entities maintain. Rather, as it was with witnesses affiliated with these entities, AMD's position that there is relevant non-party evidence in Austin is conjectural. The Court, therefore, gives no weight to non-party evidence. *But see VLSI Tech. LLC v. Intel Corp.*, No. 6:19-CV-00254-ADA, 2019 U.S. Dist. LEXIS 227809, at *9 (W.D. Tex. Oct. 7, 2019) ("Because NXP has its U.S. headquarters in Austin, documents relating to inventorship, conception, reduction to practice, and prosecution are more likely to be in Austin than in Waco.").

In view of the above, the Court finds that this factor favors transfer, but only slightly thanks to the proximity of Austin to Waco.

4. Practical Problems

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). The interests of justice may be best served by transferring ancillary matters pending in other forums to the forum of the main action, particularly if the main action is complex. *Bank of Texas v. Computer Statistics, Inc.*, 60 F.R.D. 43, 45 (S.D. Tex. 1973). "[T]he ability to transfer a case to a district with numerous cases involving some overlapping issues weighs at least slightly in favor of such a transfer." *In re Apple*, 979 F.3d at 1344. "[G]arden-variety delay associated with

transfer is not to be taken into consideration when ruling on a § 1404(a) motion to transfer" but delay in already protracted litigation may account for some weight. *In re Radmax*, 720 F.3d at 289.

AMD argues that this case is in an early stage and transfer "would not result in any meaningful delay." ECF No. 29 at 13–14 (citing *Mimedx Grp., Inc. v. Tex. Human Biologics, Ltd.*, No. 1:14-CV-464-LY, 2014 U.S. Dist. LEXIS 191022, at *6–7 (W.D. Tex. Aug. 11, 2014)). FLS responds that case coordination favors keeping this case in Waco, as FLS is also asserting the '108 Patent against Apple in a co-pending case in the Waco division. ECF No. 41 at 17 (citing *Future Link Systems, LLC vs. Apple, Inc.*, No. 6:21-cv-00263 (W.D. Tex.)).

AMD filed this Motion at an early stage, meaning that it is unlikely for transfer to result in any major delay. But the fact that this Court is also presiding over a case in Waco involving the '108 Patent weighs at least slightly in favor of transfer (though less so if the Court maintains this suit on its docket after transfer to Austin).

In view of the above, the Court finds this factor slightly favors maintaining this suit in Waco.

C. Public Interest Factors

1. 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; *In re Apple*, 979 F.3d at 1343. A faster average time to trial means more efficient and economical resolutions of the claims at issue. That said, "[a] court's general ability to set a fast-paced schedule is not particularly relevant to this factor." *In re Apple*, 979 F.3d at 1344. Recent Federal Circuit jurisprudence has muddled what facts are relevant to this factor. One recent opinion held that a difference in the number of pending cases between the transferor and transferee forums is "too tenuously related to any differences in speed by which these districts can bring cases to trial." *Id*. Yet in a more recent, unpublished

opinion, the Federal Circuit has stated that a "proper" analysis "looks to the number of cases per judgeship and the actual average time to trial." *In re Juniper Networks, Inc.*, No. 2021-156, 2021 U.S. App. LEXIS 29812, at *8 (Fed. Cir. Oct. 4, 2021). The Federal Circuit has not squared why cases per judgeship matter if, according to *Genentech*, time to trial is dispositive of this factor.

AMD argues that this transfer factor is neutral, "especially if the Court retains this case on its docket." ECF No. 29 at 14. Further, though the Austin division is not holding trial due to the pandemic, AMD suggests that trials will have resumed there by this case's trial date on October 10, 2022. *Id.* at 15. FLS did not dispute AMD's position.

The Court agrees with AMD and finds this factor to be neutral.

2. Local Interests

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. Local interests in patent case "are not a fiction." *In re Samsung Elecs. Co.*, Nos. 2021-139, 2021-140, 2021 U.S. App. LEXIS 19522, at *20 (Fed. Cir. June 30, 2021). "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). "[T]he sale of an accused product offered nationwide does not give rise to a substantial interest in any single venue." *In re Hoffmann-La Roche Inc.*, 587 F.3d 1333, 1338 (Fed. Cir. 2009). "This factor most notably regards not merely the parties' significant connections to each forum writ large, but rather the 'significant connections between a particular 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 original). But courts should not heavily weigh a party's general contacts with a forum that are untethered from the lawsuit, such as a general presence. *Id.* Moreover, "little or no weight should be accorded to a party's 'recent and ephemeral' presence in the transferor forum, such as by establishing an office in order

to claim a presence in the district for purposes of litigation." *In re Juniper Networks, Inc*., 2021 U.S. App. LEXIS 29036, at *14 (quoting *In re Microsoft Corp.*, 630 F.3d 1361, 1365 (Fed. Cir. 2011)).

AMD asserts that there are greater local interests in Austin, where AMD has been "for over 40 years, employs thousands of people . . . and designed, developed, tested, marketed, and sold many of the Accused Products." ECF No. 29 at 12. Further, NXP has its U.S. headquarters in Austin. *Id.* at 13. FLS responds that it has adduced evidence showing that none of the relevant engineering related to the products accused of infringing the '108 Patent occurred in Austin. ECF No. 41 at 15. Moreover, "AMD makes no attempt to show any relevant connection to Austin" when discussing NXP. *Id.*

Because of AMD's presence in Austin and absence from Waco; because the Accused Products were designed, developed, and tested in Austin; and because the lawsuit "calls into question the work and reputation of several individuals residing" in Austin, *In re Hoffmann-La Roche*, 587 F.3d at 1336, this factor favors transfer. *See In re Apple Inc.*, 979 F.3d at 1345.

The Court will not decide that NXP's U.S. headquarters in Austin is a location where acts occurred giving rise to this suit, as the Court believes that will not affect the judgment here. Further, though FLS has shown that relevant engineering related to the products accused of infringing the '108 Patent occurred outside of Austin, it has not shown that the engineering happened in Waco, or even that AMD did not otherwise design, develop, and test the Accused Products in Austin.

3. Familiarity of the Forum With Law-At-Issue

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

4. Conflict of Laws

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

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	Weighs slightly in favor of transfer
Availability of compulsory process to secure the attendance of witnesses	Neutral
Cost of attendance for willing witnesses	Weighs slightly in favor of transfer
All other practical problems that make trial of a case easy, expeditious and inexpensive	Weighs slightly against transfer
Administrative difficulties flowing from court congestion	Neutral
Local interest	Weighs in favor of transfer
Familiarity of the forum with law that will govern case	Neutral
Problems associated with conflict of law	Neutral

Four of the eight factors are neutral. Local interests, the relative ease of access to sources of proof, and cost of attendance for willing witnesses all favor transfer, though the latter two only slightly because of Waco's proximity to Austin. The all-other-practical-problems factor weighs slightly against transfer here because of a related case in Waco, but the Court finds that keeping this case on its docket after transfer would greatly diminish the impact of that related case. Given the foregoing, the Court finds that AMD has shown that the Austin division is clearly more convenient than the Waco division. Defendants' Motion is therefore **GRANTED**. The Court further **ORDERS** that the above captioned case is transferred to the Austin division while remaining on the docket of the undersigned.

SIGNED this 12th day of October, 2021.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that on October 18, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Ryan K. Yagura
Ryan K. Yagura