IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION

CARDWARE INC.,	§	
Plaintiff,	§	
v.	§	**CASE NO. 7:24-CV-00278-DC-DTG**
GOOGLE LLC,	§	
Defendant,	§	

ORDER DENYING THE DEFENDANT'S MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA (DKT. NO. 49)

Before the Court is the defendant, Google LLC's motion to transfer venue (Dkt. No. 49). The defendant moves under 28 U.S.C. § 1404(a) to transfer venue from the Western District of Texas to the Northern District of California. For the following reasons, the motion is **DENIED**.

I. BACKGROUND

The plaintiff, CardWare Inc., filed this suit in the Midland-Odessa Division of the Western District of Texas, alleging infringement of four patents directed to systems for securely conducting in-store and online transactions using a mobile device. Dkt. No. 1 ¶¶ 1, 18. The accused products include Google-branded electronic devices that support Google Pay and Google Wallet functionalities, such as Google Pixel smartphones and smartwatches. *Id.* ¶¶ 28–30. The defendant, Google LLC, moves to transfer this suit to the Northern District of California. Dkt. No. 49. The motion is fully briefed, and the Court finds that a hearing is unnecessary. Dkt. Nos. 49, 66, 73, & 79.

II. ANALYSIS

The defendant's motion to transfer is governed by 28 U.S.C. § 1404(a), which allows a court to transfer a case to another district or division where it could have been brought "for the

convenience of parties and witnesses." 28 U.S.C. § 1404(a). A party seeking transfer under section 1404 "must show good cause" and that the transferee district is "clearly more convenient." *In re Volkswagen of Am.*, 545 F.3d 304, 315 (5th Cir. 2008) (en banc) ("*Volkswagen II*"). The Court determines whether transfer is proper by analyzing the well-known private and public interest factors.[1]

The plaintiff does not dispute that this case could have been brought in the Northern District of California. The Court agrees that the threshold inquiry is met and will begin by analyzing the private and public interest factors. For the reasons explained below, the Court finds that the interest factors do not establish that the Northern District of California is clearly more convenient.

A. The private factor considering the cost of attendance for willing witnesses does not favor transfer.

The defendant argues that almost all of its relevant employees with technical knowledge about Google Pay and Google Wallet's tokenization and tap-to-pay functionalities are based in the Northern District of California. According to the defendant, six of the seven employees that were involved in the research, development, and implementation of the accused software live in the Northern District of California. Dkt. No. 49 at 9. The other employee is based in Boulder, Colorado. *Id.* The plaintiff does not dispute this evidence. The plaintiff instead argues that the

[1] Private interest factors: "(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.* (quoting *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) ("*Volkswagen I*"). Public interest factors: "(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 conflicts of laws [or in] the application of foreign law." *Id.* (alternations in original).

defendant has several specifically identified employees based in this district. Dkt. No. 66 at 10. In reply, the defendant explains why each employee is not relevant. Dkt. No. 73 at 4.

The defendant also argues that the plaintiff has more potentially relevant witnesses in, or closer, to the Northern District of California. Dkt. No. 49 at 10. The defendant argues that the Court should disregard the plaintiff's presence in this district because the plaintiff and David Wyatt—the plaintiff's CEO and the patent inventor—moved from California to this district for the purpose of litigation. Dkt. No. 49 at 10. The plaintiff responds that its location in this district should be considered because its witnesses and documents are located in this district and have been for years. Dkt. No. 66 at 9; Dkt. No. 66-1 ¶¶ 5–8. The defendant notes that Mr. Wyatt and the plaintiff moved to this district in 2022. Dkt. No. 49 at 10. This lawsuit was filed in November 2024. At the time this lawsuit was filed, both Mr. Wyatt and CardWare were permanently located in this district. Dkt. No. 66-1 ¶¶ 5–8. Given the amount of time that has passed between the move and the filing of this lawsuit, the Court is not persuaded that the plaintiff's presence in the district is driven solely by patent-litigation.

The defendant also argues that the plaintiff's CEO and UX/UI engineer are in the Northern District of California and one of the plaintiff's software engineers is in Seattle. Dkt. No. 49 at 10. The defendant relied on a screenshot of an apparently fake LinkedIn profile for a "John Smith" who purported to be the plaintiff's California-based CEO. Dkt. No. 47-9. The profile has no followers, no recent posts, no profile photo, and lists being the CEO of CardWare as Mr. Smith's only job experience. *Id.* The plaintiff responds that it has no records of a John Smith ever working for the company. Dkt. No. 66-1 ¶ 17. After reviewing the screenshot, Mr. Wyatt contacted LinkedIn to have the fake profile removed from the website. *Id.* ¶ 18. The defendant appears to agree that the LinkedIn profile it initially relied on is fake, and instead

responds that there are certain "limitations" with relying on LinkedIn, so the Court should consider "the sworn testimony from both parties in determining convenience." Dkt. No. 73 at 2. The defendant also points to the plaintiff's reliance on a former Google employee's outdated LinkedIn page as another example of the limitations that arise when using LinkedIn. *Id.* This argument is insincere. Citing a LinkedIn profile that has not been updated since an employee left the company is not the same as attaching a fake LinkedIn profile.

The fake LinkedIn account provided by the defendant calls into question the credibility of the defendant's evidence. The defendant asks the Court to overlook the fake screenshot and instead focus on the sworn testimony of the parties, but the screenshot was attached to the declaration of Matthias A. Kamber—the defendant's attorney. Dkt. No. 73 at 2; Dkt. No. 47 (Kamber Decl.). Troublingly, Mr. Kamber declared that the screenshot is "a true and correct copy of the LinkedIn profile for John Smith," which "indicates John Smith is CardWare's current CEO based in Berkeley, California." Dkt. No. 47 ¶ 10. Publicly available information, however, identifies Mr. Wyatt as the plaintiff's CEO. Dkt. No. 66-14 (Exhibit 13). Basic due diligence by the defendant would have revealed that "John Smith" is not the plaintiff's CEO. In the very least, the screenshot casts doubt on all the defendant's evidence, including its sworn testimony.

The record establishes that most of the plaintiff's witnesses are located in this district and most of the defendant's witnesses are located in the Northern District of California. Considering the number of witnesses in both districts, the Court is unable to say that this factor makes the Northern District of California clearly more convenient.

B. The private factor considering the ease of access to sources of proof does not favor transfer.

The defendant relies on its arguments above regarding the willing witnesses' cost of attendance. The defendant argues that its documents about the company's products and services are created and maintained by the employees it identified above. Dkt. No. 49 at 12–13. These employees are the custodians that maintain the defendant's relevant documents. *Id.* The plaintiff responds that the defendant has not identified any physical evidence in the Northern District of California. Dkt. No. 66 at 11. Instead, the plaintiff argues that the defendant's evidence is maintained electronically and can be accessed from anywhere, including in this district. Dkt. No. 66 at 11; Dkt. No. 66-20 (Gwinn Dep. at 276:2-14 (acknowledging that the defendant's documents are stored on "the cloud" and can be accessed anywhere)); Dkt. No. 66-25 (Ibarra Dep. at 54:11–55:10 (same)).

The defendant also argues, without proof, that the plaintiff's evidence can also be accessed from the Northern District of California. Dkt. No. 49 at 14. Because the plaintiff was previously based in that district, the defendant speculates that the plaintiff's evidence is likely available in the Northern District of California. *Id*. The defendant provides no persuasive evidence to convince the Court to join its speculation.

The plaintiff also relies on its arguments above to establish that its sources of proof are located in this district. The plaintiff maintains that its physical evidence—including its source code, product samples, and prototypes—is located in this district. Dkt. No. 66 at 8–9; Dkt. No. 66-1 ¶¶ 9, 21. The plaintiff also asserts that evidence related to damages is located in this district. *Id.* at 18. The Court finds that this factor also fails to support transfer.

C. The private factor considering the availability of compulsory process does not support transfer.

The defendant argues that it intends to subpoena Anthony C. Murabito and Jose S. Garcia, who are attorneys at the California-based law firm that prosecuted the asserted patents—Murabito, Hao & Barnes LLP. Dkt. No. 49 at 14. The plaintiff argues that prosecution documents are not relevant because there is no inequitable conduct defense raised. Dkt. No. 66 at 14. Despite this, Mr. Murabito, the lead prosecution attorney, is willing to testify at trial in this district if necessary. Dkt. No. 66-42 (Murabito Decl. ¶¶ 1–2).

The defendant also argues that it intends to subpoena third parties like Apple, Visa, and PayPal. The defendant intends to subpoena Apple for information regarding industry praise. Dkt. No. Dkt. No. 49 at 15 (citing Dkt. No. 44 at 5–6 (identifying Apple's CEO, Tim Cook, Senior Vice President, Eddie Cue, and Vice President of Internet Services, Jennifer Bailey, as praising workable mobile wallets)). The defendant intends to subpoena Visa and PayPal for information regarding tokenization or tap-to-pay functionalities in support of the defendant's non-infringement and invalidity defenses. Dkt. No. 49 at 15. The plaintiff argues that the defendant provides no evidence that any of these third parties have information about the accused products. Dkt. No. 66 at 12. The defendant also provides no evidence about where this unspecified information is stored. The defendant fails to identify any specific individuals and points only to the headquarters of Apple, Visa, and PayPal as evidence that relevant information might be stored in the Northern District of California.

Finally, the defendant argues that relevant prior artists are located in the Northern District of California. The defendant only identifies one prior artist—Mohammad Anwar Khan, the co-founder of ViVoTech, who is based in the Northern District of California. Dkt. No. 49 at 15. The

plaintiff argues that there is no evidence that Mr. Khan is relevant to this case because the defendant did not chart any ViVOtech prior art in its invalidity contentions. Dkt. No. 66 at 13. The relevance of Mr. Kahn is difficult to obtain as neither he nor his company are included in the defendant's invalidity contention. This raises serious credibility concerns about placing any reliance on Mr. Kahn's potential testimony.

The plaintiff argues that it intends to subpoena NXP Semiconductor and STMicroelectronics's for information regarding the defendant's sourcing of NFC modules from these third parties. Dkt. No. 66 at 13. The defendant argues that its sourcing of NFC modules is irrelevant and, that STMicro is headquartered in Coppell, Texas—potentially outside the Court's subpoena power.[2] Dkt. No. 73 at 6. The defendant's initial disclosures, however, identify NXP as a third-party that may have relevant information about the "[d]esign and development of prior art Google Wallet product." Dkt. No. 91-2 at 6 (Defendant's Initial Disclosures at 5).

The plaintiff also intends to subpoena RFCyber to establish the relevance of the settlement agreement between RFCyber and the defendant in a prior patent infringement suit concerning Google Pay. Dkt. No. 66 at 13. The plaintiff argues that this weighs against transfer because RFCyber has an office in this district, but not in California. *Id.* The defendant argues that RFCyber is incorporated in the Northern District of California and RFCyber is not relevant because the defendant itself has information relevant to what its licensing practices were. *Id.*

The Court is persuaded that there are more relevant witnesses subject to compulsory process in this District as compared to the potential transferee District, which fails to demonstrate that the transferee district is clearly more convenient.

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[2] Subpoena power, however, extends statewide provided the party would not incur substantial expense. Fed. R. Civ. P. 45(c)(1)(B)(ii).

D. The private factor accounting for other practical considerations does not favor transfer.

The parties agree that this factor is neutral, but the plaintiff argues that considerations of judicial economy favor an intra-district transfer to the Austin Division because there is a pending case involving the same patents and similar technologies in the Austin Division. Dkt. No. 66 at 17 (citing *CardWare, Inc. v. Apple Inc.*, No. 1:25-cv-00446-ADA (W.D. Tex. 2024)). As the parties agree this factor is neutral, the Court does not address the issue of intra-district transfer.

E. The public factor regarding administrative difficulties does not support transfer.

The Court finds that there is little material difference between the administrative difficulties flowing from congestion of either venue. The defendant argues that this factor is neutral. Dkt. No. 49 at 16. The plaintiff argues that publicly available statistics regarding time-to-trial and case load weigh in favor of maintaining this suit in the Western District of Texas. Dkt. No. 66 at 18. According to the U.S. District Judicial Caseload Profile, between January 1, 2024 and December 31, 2024, the median time-to-trial for civil in the Northern District of California was 34.5 months, compared to 33.9 months in the Western District of Texas. Dkt. No. 49 at 16. This factor does not support transfer.

F. The public factor considering the local interest does not favor transfer.

The defendant argues that its general presence in the Western District of Texas is not enough to establish a local interest in this district comparable to that of the Northern District of California because the design, development, implementation, and maintenance of the accused functionalities are done primarily by employees in the Northern District of California. Dkt. No. 49 at 17–18. The plaintiff argues that both parties have a strong presence in Texas. Dkt. No. 66 at 18. The plaintiff again points to the fact that it is a Texas entity, whose CEO, facilities, and

tangible evidence are all in this district. *Id.* The plaintiff further argues that it has employees here and is losing profits in this district because of the alleged infringement. Dkt. No. 66 at 18.

This factor accounts for the "significant connections between a particular venue and *the events that gave rise to a suit.*" *In re Apple Inc.*, 979 F.3d 1332, 1345 (Fed. Cir. 2020) (citation omitted) (emphasis in original). The defendant's argument discounts the plaintiff's presence in this district. The plaintiff's core products and services were developed in the district. Dkt. No. 66-1 ¶ 9. The plaintiff restarted and updated its product development work since it moved to the district. *Id.* While the defendant's general presence in this district, alone, might not be enough to overcome its local interest in the Northern District of California, its presence in the Northern District of California does not negate the plaintiff's local interest in this district. And, as explained above, the defendant's evidence offered in support of its argument that the plaintiff has only a weak relationship to this district—specifically its unexplained reliance on a fake LinkedIn profile of John Smith—calls into question the credibility of the defendant's evidence and its arguments.

The evidence establishes, however, that both parties have a strong presence in this District. The plaintiff and the defendant have locations and employees in this District. Only the defendant has a presence in the proposed transferee District. When considering the combined presence of the plaintiff and the defendant in this district, the Court finds that this factor fails to show that the transferee district is clearly more convenient.

G. The public factors regarding familiarity with the law and avoidance of unnecessary conflict of laws do not favor transfer.

Finally, the parties agree that these last two factors are neutral. Dkt. No. 66 at 19.

III. CONCLUSION

After carefully considering the briefs, the arguments, and the applicable law, the Court finds that the defendant has not met its burden of showing that the Northern District of California is clearly more convenient. It is **ORDERED** that the defendant's motion to transfer to the Northern District of California (Dkt. No. 49) is **DENIED**.

SIGNED this 7th day of August, 2025.

DEREK T. GILLILAND
UNITED STATES MAGISTRATE JUDGE