

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

HEADWATER RESEARCH LLC,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Case No. 7:25-cv-00231-DC-DTG

JURY TRIAL DEMANDED

ORAL ARGUMENT REQUESTED

**DEFENDANT GOOGLE LLC'S MOTION TO TRANSFER VENUE TO THE
NORTHERN DISTRICT OF CALIFORNIA UNDER 28 U.S.C. § 1404(a)**

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. STATEMENT OF FACTS	2
A. Headwater Has No Connection To WDTX And Originated In NDCA	2
B. Google’s Evidence And Witnesses Are Concentrated In NDCA.....	4
C. Many Likely Third-Party Witnesses Are In NDCA	6
III. LEGAL STANDARD.....	7
IV. ARGUMENT	8
A. This Case Could Have Been Filed in the NDCA	8
B. The Private Interest Factors Favor Transfer	8
1. Cost Of Attendance For Willing Witnesses Favors Transfer	8
2. The Relative Ease Of Access To Sources Of Proof Favors Transfer	12
3. The Availability Of Compulsory Process To Secure The Attendance Of Witnesses Favors Transfer	14
4. The Practical Problems That Make Trial Of A Case Easy, Expeditious, And Inexpensive Favor Transfer.....	16
C. The Public Interest Factors Also Favor Transfer.....	17
1. NDCA Has A Strong Interest In This Action.....	17
2. The Remaining Factors Are Neutral	19
V. CONCLUSION	20

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>10Tales, Inc. v. TikTok Inc.</i> , 2021 WL 2043978 (W.D. Tex. May 21, 2021)	20
<i>In re Acer Am. Corp.</i> , 626 F.3d 1252 (Fed. Cir. 2010)	11, 18
<i>Adaptix, Inc. v. HTC Corp.</i> , 937 F. Supp. 2d 867 (E.D. Tex. Mar. 28, 2013)	14
<i>AGIS Software Dev. LLC v. Huawei Device USA Inc.</i> , 2018 WL 2329752 (E.D. Tex. May 23, 2018).....	15
<i>In re Apple, Inc.</i> , 581 F. App’x. 886 (Fed. Cir. 2014).....	14
<i>Correct Transmission LLC v. ADTRAN, Inc.</i> , 2021 WL 1967985 (W.D. Tex. May 17, 2021)	16
<i>Cortex MCP, Inc. v. Visa, Inc.</i> , 2023 WL 11990868 (W.D. Tex. Nov. 3, 2023).....	19
<i>DataQuill, Ltd. v. Apple Inc.</i> , 2014 WL 2722201 (W.D. Tex. June 13, 2014)	9
<i>In re DISH Network L.L.C.</i> , 2021 WL 4911981 (Fed. Cir. Oct. 21, 2021).....	14
<i>Emerging Auto. LLC v. Kia Corp.</i> , 2024 WL 3170398 (E.D. Tex. June 25, 2024).....	14
<i>In re Genentech, Inc.</i> , 566 F.3d 1338 (Fed. Cir. 2009)	2, 8, 12
<i>In re Google LLC</i> , 2021 WL 4427899 (Fed. Cir. Sept. 27, 2021)	11, 13, 19
<i>In re Google LLC</i> , 2021 WL 5292267 (Fed. Cir. Nov. 15, 2021)	9, 11
<i>In re Google LLC</i> , 58 F.4th 1379 (Fed. Cir. 2023)	18
<i>In re Google</i> , 2017 WL 977038 (Fed. Cir. Feb. 23, 2017)	17

Headwater Rsch. LLC v. Amazon.com, Inc. et al,
 No. 25-CV-286-ADA (W.D. Tex. Jun. 20, 2025) 17

In re Hoffmann-La Roche Inc.,
 587 F.3d 1333 (Fed. Cir. 2009) 19

In re HP Inc.,
 2018 WL 4692486 (Fed. Cir. Sept. 25, 2018) 15

In re Hulu, LLC,
 2021 WL 3278194 (Fed. Cir. Aug. 2, 2021)..... 15

In re Juniper Networks, Inc.,
 14 F.4th 1313 (Fed. Cir. 2021) 19

Koss Corp. v. Apple Inc.,
 2021 WL 5316453 (W.D. Tex. Apr. 22, 2021) 15

Lynk Labs, Inc. v. Home Depot USA, Inc.,
 2022 WL 1593366 (W.D. Tex. May 19, 2022) 15

In re Media Matters for Am.,
 143 F.4th 631 (5th Cir. 2025)8, 20

In re Nintendo Co., Ltd.,
 589 F.3d 1194 (Fed. Cir. 2009) 2

Parus Holdings Inc. v. LG Elecs. Inc.,
 2020 WL 4905809 (W.D. Tex. Aug. 20, 2020)..... 13

S.M.R Innovations LTD v. Apple Inc.,
 756 F. Supp. 3d 453 (W.D. Tex. 2024)..... 17

In re Samsung Elecs. Co., Ltd.,
 2023 WL 8642711 (Fed. Cir. Dec. 14, 2023) 10

SimpleAir, Inc. v. Google Inc.,
 No. 2:14-cv-11-JRG, Dkt. 354 (E.D. Tex. Oct. 13, 2015) 9

In re TikTok, Inc.,
 85 F.4th 352 (5th Cir. 2023)18, 20

In re Toyota Motor Corp.,
 747 F.3d 1338 (Fed. Cir. 2014) 10

Valtrus Innovations Ltd. v. Google LLC,
 2025 WL 2076627 (N.D. Tex. July 22, 2025).....13, 19

In re Volkswagen AG,
371 F.3d 201 (5th Cir. 2004) 11

In re Volkswagen of Am., Inc.,
545 F.3d 304 (5th Cir. 2008) 8, 11, 18

WAG Acquisition, L.L.C. v. Google LLC,
2022 WL 9569437 (W.D. Tex. Oct. 5, 2022) 13, 20

WAG Acquisition, LLC v. Amazon.com, Inc.,
2022 WL 9544373 (W.D. Tex. Oct. 14, 2022) 17

Wet Sounds, Inc. v. Audio Formz, LLC,
2017 WL 4547916 (W.D. Tex. Oct. 11, 2017) 11

WirelessWerx IP, LLC v. Google,
LLC, 2023 WL 11921792 (W.D. Tex. Apr. 14, 2023) 16

XR Commc’ns, LLC v. HP Inc.,
2022 WL 3448746 (W.D. Tex. Aug. 17, 2022) 17

Zitovault, LLC v. Amazon.com, Inc.,
2015 WL 11089482 (E.D. Tex. Dec. 7, 2015) 17

Statutes

28 U.S.C. § 1400(b) 8

28 U.S.C. § 1404(a) 1, 7, 10

Other Authorities

Fed. R. Civ. P. 45(c)(1)(B) 15

U.S. Patent No. 8,839,388 12

U.S. Patent No. 9,615,192 3, 9

TABLE OF EXHIBITS

Ex. 1	'192 Filing Application
Ex. 2	'320 Filing Application
Ex. 3	Evidentiary Hearing Transcript, <i>Headwater Rsch., LLC v. Samsung Elecs. Co., Ltd.</i> , No. 2:23-cv-103-JRG-RSP, Dkt. 338 (E.D. Tex.)
Ex. 4	Headwater Partners I LLC, Limited Liability Company Application for Registration, California SOS (Oct. 14, 2008)
Ex. 5	ItsOn Inc., Statement and Designation by Foreign Corporation, California SOS (Oct. 14, 2008)
Ex. 6	Headwater Management LLC, Application to Register a Foreign Limited Liability Company, California SOS (Oct. 18, 2011)
Ex. 7	61/207,739 Provisional Patent Application
Ex. 8	Headwater Partners II LLC, Application to Register a Foreign Limited Liability Company, California SOS (Oct. 20, 2011)
Ex. 9	Gregory Raleigh, Lexis SmartLinx Person Report (Limited) (Aug. 26, 2025)
Ex. 10	Clarity Wireless Inc., Articles of Incorporation (Dec. 18, 1996)
Ex. 11	<i>Cisco Systems to Acquire Clarity Wireless Corporation</i> , CISCO (Sept. 15, 1998)
Ex. 12	Woodside Networks, Inc., Statement and Designation by Foreign Corporation, California SOS (Nov. 30, 2000)
Ex. 13	Airgo Networks, Inc., Amended Statement and Designation by Foreign Corporation, California SOS (Aug. 6, 2002)
Ex. 14	Dave Boyce, <i>Does Woodside Town Hall Make It Too Difficult To Build Or Remodel?</i> , THE ALMANAC (Sept. 11, 2015)
Ex. 15	<i>Android at Google I/O 2010</i> , GOOGLE DEVELOPERS BLOG (June 2, 2010)
Ex. 16	Excerpted Trial Transcript (Vol. 1), <i>Headwater Rsch., LLC v. Samsung Elecs. Co., Ltd.</i> , No. 2:23-cv-103-JRG-RSP, (E.D. Tex. Apr. 21, 2025)
Ex. 17	Charles Giancarlo, Lexis SmartLinx Person Report (Limited) (Aug. 27, 2025)
Ex. 18	Krista Jacobsen, Lexis SmartLinx Person Report (Limited) (Aug. 27, 2025)

Ex. 19	“Contact” webpage, Jacobsen IP Law
Ex. 20	Cory Modlin, Lexis SmartLinx Person Report (Limited) (Aug. 27, 2025)
Ex. 21	Samsung’s Fourth Supplemental Initial Disclosures, <i>Headwater Rsch. LLC v. Samsung Elecs. Co., Ltd.</i> , No. 2:23-cv-103-JRG-RSP, Dkt. 336-4 (Feb. 21, 2025)
Ex. 22	Michael Schallop biography, Van Pelt, Yi & James LLP
Ex. 23	ItsOn-ABC LLC, Articles of Organization, California SOS (Dec. 28, 2017)
Ex. 24	Sherwood Partners, Inc., Articles of Incorporation with Statement of Conversion, California SOS (Feb. 7, 2014)
Ex. 25	Minutes for Jury Trial Day No. 3, <i>Headwater Rsch. LLC v. Samsung Elecs. Co., Ltd.</i> , No. 2:22-cv-422-JRG-RSP, Dkt. 491 (E.D. Tex. Jan. 15, 2025)
Ex. 26	Excerpted Trial Transcript (Vol. 4), <i>Headwater Rsch., LLC v. Samsung Elecs. Co., Ltd.</i> , No. 2:23-cv-103-JRG-RSP (E.D. Tex. Apr. 24, 2025)
Ex. 27	Qualcomm Global Office Locations webpage
Ex. 28	Memorandum Order, <i>Headwater Rsch. LLC v. AT&T Inc.</i> , No. 2:23-cv-397-JRG-RSP, Dkt. 255 (E.D. Tex. July 25, 2025)
Ex. 29	“Contact Us” webpage, InterDigital
Ex. 30	Google LLC, Statement of Information, California SOS (Sept. 7, 2023)
Ex. 31	Excerpted Trial Transcript (Vol. 2), <i>Headwater Rsch., LLC v. Samsung Elecs. Co., Ltd.</i> , No. 2:23-cv-103-JRG-RSP (E.D. Tex. Apr. 22, 2025)
Ex. 32	PTX-091, <i>Headwater Rsch., LLC v. Samsung Elecs. Co., Ltd.</i> , No. 2:23-cv-103-JRG-RSP (E.D. Tex.)
Ex. 33	Order Granting Defendant’s Motion to Transfer, <i>Cub Club Inv., LLC v. Apple, Inc.</i> , No. 6:20-cv-856-ADA, Dkt. 28 (W.D. Tex. Sept. 7, 2021)
Ex. 34	Driving Directions from Midland, TX to Tyler, TX, Google Maps,
Ex. 35	Driving Directions from Midland, TX to ██████████, Google Maps,
Ex. 36	Driving Directions from San Francisco, CA to ██████████, Google Maps,
Ex. 37	Complaint for Patent Infringement, <i>Headwater Rsch., LLC v. Motorola Mobility LLC</i> , 4:23-cv-4496-KAW, Dkt. 1 (N.D. Cal. Aug. 30, 2023)

Ex. 38	Defendants' Response In Opposition to Plaintiff's Omnibus Motions <i>In Limine, Headwater Rsch. LLC v. Samsung Elecs. Am., Inc.</i> , 2:23-cv-103-JRG-RSP, Dkt. 286 (E.D. Tex. Dec. 9, 2024)
Ex. 39	Summary of Patents Prosecuted for Headwater by Krista Jacobsen
Ex. 40	Headwater's Motion to Compel Compliance with Deposition Subpoena, <i>In re Subpoena to James Kolotouros</i> , 5:24-mc-80255-SVK, Dkt. 1 (N.D. Cal. Oct. 10, 2024)
Ex. 41	Order Denying Motion to Comply with Deposition Subpoena, <i>In re Subpoena to James Kolotouros</i> , 5:24-mc-80255-SVK, Dkt. 9 (N.D. Cal. Nov. 19, 2024)
Ex. 42	Kolotouros's and Samsung's Opposition to Headwater's Motion to Compel Compliance with Deposition Subpoena, <i>In re Kolotouros</i> , 5:24-mc-80255-SVK, Dkt. 7 (N.D. Cal. Oct. 30, 2024)
Ex. 43	U.S. Patent No. 9,615,192
Ex. 44	U.S. Patent No. 10,321,320
Ex. 45	Open Patent Cases in WDTX and NDCA, Lex Machina (Sept. 1, 2025)
Ex. 46	Time to Trial in WDTX, DocketNavigator (July 31, 2025)
Ex. 47	Time to Trial in NDCA, DocketNavigator (July 31, 2025)
Ex. 48	Defendants' Motion to Dismiss for Lack of Standing, <i>Headwater Rsch. LLC v. Samsung Elecs. Co., Ltd.</i> , 2:22-cv-422-JRG-RSP, Dkt. 274 (E.D. Tex. May 28, 2024)
Ex. 49	Excerpted Trial Transcript (Vol. 3), <i>Headwater Rsch., LLC v. Samsung Elecs. Co., Ltd.</i> , No. 2:23-cv-103-JRG-RSP (E.D. Tex. Apr. 23, 2025)
Ex. 50	Samsung's First Amended Answer and Defenses to Headwater's Complaint for Patent Infringement, <i>Headwater Rsch. LLC v. Samsung Elecs. Co. Ltd.</i> , No. 2:23-cv-641-JRG-RSP, Dkt. 58 (E.D. Tex. Jan. 17, 2025)
Ex. 51	Memorandum Order, <i>Headwater Rsch. LLC v. Samsung Elecs. Co., Ltd.</i> , 2:22-cv-422-JRG-RSP, Dkt. 401 (E.D. Tex. Aug. 2, 2024)
Ex. 52	Trial Transcript, <i>SimpleAir, Inc. v. Google Inc.</i> , No. 2:14-cv-11-JRG, Dkt. 354 (E.D. Tex. Oct. 13, 2015)
Ex. 53	David Wise Deposition Transcript, <i>Headwater Rsch. LLC v. Samsung Elecs. Co., Ltd.</i> , Case No. 2:23-cv-103-JRG-RSP, Dkt. 320-2 (E.D. Tex. Feb. 7, 2025)

Ex. 54	Defendants' Motion for Summary Judgment, <i>Headwater Rsch. LLC v. Samsung Elecs. Co., Ltd.</i> , 2:22-cv-422-JRG-RSP, Dkt. 273 (E.D. Tex. May 28, 2024)
Ex. 55	Defendants' Opposition to Motion to Quash Subpoena & Motion to Transfer, <i>In re Subpoena to Krista Jacobsen</i> , 2:25-mc-4-JRG-RSP, Dkt. 8 (E.D. Tex. May 21, 2025).
Ex. 56	Memorandum Opinion & Order Granting Defendant's Motion to Transfer Venue, <i>L2 Mobile Techs. LLC v. Google LLC</i> , 6:21-cv-358-ADA, Dkt. 52 (W.D. Tex. Jan. 7, 2022)
Ex. 57	Order Granting-In-Part and Denying-In-Part Defendants' Motion to Dismiss or Transfer, <i>VirtaMove, Corp. v. Amazon.com, Inc.</i> , 7:24-cv-30-ADA-DTG, Dkt. 87 (W.D. Tex. Jan. 22, 2025)
Ex. 58	Order, <i>VirtaMove, Corp. v. Amazon.com, Inc.</i> , 7:24-cv-30-ADA-DTG, Dkt. 108 (W.D. Tex. May 21, 2025)
Ex. 59	<i>How We Started And Where We Are Today</i> , GOOGLE
Ex. 60	<i>Our Locations</i> , GOOGLE
Ex. 61	Sinead Carew, <i>Andreessen Horowitz Leads \$15.5 Million Funding of ItsOn Mobile Firm</i> , REUTERS (Oct. 30, 2012)
Ex. 62	Complaint, <i>Headwater Rsch. LLC v. Samsung Elecs. Am., Inc.</i> , 2:22-cv-422-JRG-RSP, Dkt. 1 (E.D. Tex. Oct. 26, 2022)
Ex. 63	Complaint, <i>Headwater Rsch. LLC v. Samsung Elecs. Am., Inc.</i> , 2:23-cv-103-JRG-RSP, Dkt. 1 (E.D. Tex. Mar. 10, 2023)
Ex. 64	Headwater's Final Election of Asserted Claims, <i>Headwater Rsch. LLC v. Samsung Elecs. Am., Inc.</i> , 2:23-cv-103-JRG-RSP, Dkt. 392 (E.D. Tex. Apr. 17, 2025)
Ex. 65	Complaint for Declaratory Judgment of Non-Infringement of U.S. Patent Nos. 9,232,403 and 9,491,564, <i>Google LLC v. Headwater Rsch. LLC</i> , No. 5:25-cv-7453 (N.D. Cal. Sept. 3, 2025)

I. INTRODUCTION

Google LLC (“Google”) respectfully requests transfer to the Northern District of California (“NDCA”) under 28 U.S.C. § 1404(a) because NDCA is clearly the more convenient forum for this lawsuit. Plaintiff Headwater Research LLC (“Headwater”) has no ties to the Western District of Texas (“WDTX”) and instead has roots in Northern California. Indeed, named inventor Gregory Raleigh listed Woodside, California, in NDCA as his residence address when filing the asserted patents. *See Exs. 1 & 2*. During the time he allegedly conceived of the claimed invention, Dr. Raleigh was working in NDCA at Headwater Partners I LLC—the predecessor entity from which Headwater was born—and its sister company ItsOn; companies he founded in NDCA.¹ Even now, Dr. Raleigh resides much closer to NDCA in a town less than five miles from California. Headwater has also chosen to avail itself of NDCA in a prior patent litigation. *See, e.g., Ex. 37*.

Headwater asserts Google’s Firebase Cloud Messaging system (“FCM”) infringes the asserted patents. Google’s witnesses related to both Headwater’s infringement allegations and Google’s invalidity defense are primarily in NDCA, not WDTX. Google created the FCM technology (previously branded as GTalkService, C2DM, and GCM) in NDCA in early 2007 and, for eighteen years, has developed and managed FCM primarily from there. Despite being accused of infringement, GTalkService (FCM’s predecessor) invalidates the asserted patents under Headwater’s own accusations because it predates the asserted patents’ alleged 2009 priority date. Thus, key non-infringement and invalidity witnesses with knowledge of FCM’s development and operation are in NDCA. These individuals created FCM technical documents and source code, which are maintained primarily in Google’s Northern California offices.

¹ Headwater relocated to the Eastern District of Texas (“EDTX”) prior to commencing patent litigation.

NDCA is also more convenient for relevant third parties. The company that retains the electronically stored information (“ESI”) of ItsOn—which allegedly implemented and productized Headwater’s patented technology—ItsOn-ABC, appears to be in NDCA. Many former Headwater and ItsOn employees also apparently remain in NDCA—Charles Giancarlo (ItsOn Co-founder), Krista Jacobsen (Headwater Head Counsel), Cory Modlin (Headwater Technical Advisor), and James Fitzgerald (ItsOn Lead Software Engineer of Android Client Technology). These and other third parties in or near NDCA may have information relevant to Google’s invalidity, estoppel, disclaimer, waiver, and prosecution history estoppel defenses. Google is unaware of any relevant third parties located in the WDTX.

For all these witnesses, NDCA is more convenient than WDTX. The same is true for others who reside near either venue as traveling to NDCA would be easier given the greater availability of flights to the San Francisco Bay Area. Where “the transferee venue is ‘clearly more convenient’ than the venue chosen by the plaintiff,” the case should be transferred. *In re Nintendo Co., Ltd.*, 589 F.3d 1194, 1197 (Fed. Cir. 2009) (quoting *In re Genentech, Inc.*, 566 F.3d 1338, 1342 (Fed. Cir. 2009)). Accordingly, Google respectfully requests that the Court transfer this case to NDCA.

II. STATEMENT OF FACTS

A. Headwater Has No Connection To WDTX And Originated In NDCA

Headwater has no presence in this District and originates in NDCA. The First Amended Complaint states, “[i]n 2008, Dr. Raleigh formed Headwater”—referring to Headwater Partners I LLC, the predecessor entity from which Plaintiff Headwater was created. ECF No. 28 (First Amended Complaint (“FAC”)) ¶ 30; *see* **Ex. 3** at 12:18-13:3; **Ex. 4**. Dr. Raleigh simultaneously founded Headwater’s sister company, ItsOn, Inc. (“ItsOn”), in 2008 to “license and productize Headwater’s patented technology.” **Ex. 3** at 25:18-23. He merged Headwater Partners I LLC with Headwater Management LLC (another company he founded) to form Headwater, the Plaintiff, in

2011. *Id.* at 12:18-13:3; FAC ¶ 31. Headwater Partners I LLC, Headwater Management LLC, and ItsOn were all originally headquartered in NDCA.² **Exs. 4-6.**

The asserted patents also have strong ties to NDCA. Both of the asserted patents in this case claim priority to four provisional and four nonprovisional applications (Exs. 43, 44; Yang Decl. XX), all of which list Dr. Raleigh as the inventor residing in Woodside, California (Ex. 65 ¶ 25). Five of those applications were prosecuted by Van Pelt, Yi & James LLP, based in Cupertino, California at the time of filing (now based in Palo Alto) and/or by Sheppard, Mullin, Richter & Hampton LLP in Palo Alto, and the other three were filed and/or prosecuted by employees of Headwater Partners I LLC, located in Redwood City, California at the time. *Id.* ¶¶ 23, 24. Their connection to NDCA was further confirmed at an evidentiary hearing on whether Headwater had standing to assert patent infringement in a prior case against Samsung—including of U.S. Patent No. 9,615,192 (the “’192 patent”), asserted here. **Ex. 3** at 13:6-15.³ There, Dr. Raleigh testified that he conceived of the claimed invention during a collaboration between ItsOn (headquartered in NDCA) and Best Buy—allegedly after he departed from Qualcomm.⁴ *Id.* at 16:13-19:2.

Finally, although Headwater purports to maintain an office in Tyler, Texas (in EDTX), Dr. Raleigh resides in, and likely operates Headwater from, [REDACTED]

[REDACTED] **Ex. 9.** Dr. Raleigh also has numerous ties to NDCA. For example, the FAC describes:

² Headwater Partners II LLC, another related Headwater entity founded by Dr. Raleigh in 2011, was also originally headquartered in the San Francisco Bay Area in NDCA. **Ex. 8.**

³ Samsung alleged that GTalkService invalidated the patent in that case. Headwater voluntarily dropped the ’192 patent prior to trial, so no jury decided invalidity issue. *Compare* Ex. 63 with Ex. 64.

⁴ Contradictorily, Dr. Raleigh admitted during a public interview that he conceived the invention “[a]t Qualcomm” and “took it to the then CEO of Qualcomm” during his employment. **Ex. 48** at 3. If true, Headwater lacks standing to assert the patents given the terms of Dr. Raleigh’s patent assignment agreement with Qualcomm. *Id.* at 1-2.

- Dr. Raleigh’s time working at Stanford, located in NDCA (FAC ¶ 24);
- Dr. Raleigh co-founding Clarity Wireless in Mountain View, CA, located in NDCA (FAC ¶ 26; **Ex. 10**);
- Clarity Wireless’s acquisition by Cisco (FAC ¶ 26) where the team was relocated to San Jose, CA located in NDCA (**Ex. 11**); and
- Dr. Raleigh’s co-founding of Airgo Networks, Inc. (f/k/a Woodside Networks, Inc.) with a principal place of business in Redwood City, CA, in NDCA (FAC ¶ 27; **Exs. 12 & 13**).

Dr. Raleigh also appears to own property in NDCA, as public records indicate that he was a longtime resident of Woodside, California. *See Exs. 9 & 14.*

B. Google’s Evidence And Witnesses Are Concentrated In NDCA

Google is headquartered in Mountain View, CA, with several other offices in the San Francisco Bay Area in NDCA. **Exs. 59 & 60.** The allegedly infringing product, FCM, is a cloud service for messages and notifications on mobile devices. Declaration of Todd Hansen (“Hansen Decl.”) ¶ 3. FCM was originally launched in 2007 as GTalkService (*id.*), which Google intends to assert as prior art. Declaration of Lance Yang Decl. ¶ 3. GTalkService was rebranded to C2DM, then to GCM, before being renamed FCM. Hansen Decl. ¶ 3. Engineers primarily developed GTalkService, C2DM, GCM, and FCM in Google’s NDCA offices. *Id.*

Today, Todd Hansen leads the FCM team. *Id.* ¶ 4. Mr. Hansen is based in one of Google’s San Francisco Bay Area offices and has worked on Google’s messaging service since the days it was called GTalkService. Hansen Decl. ¶¶ 2, 4. He specializes in building scalable, maintainable, and performant core services for FCM. *Id.* ¶ 4. He leads a team [REDACTED] of whom are direct reports. *Id.* [REDACTED] work from Google’s San Francisco Bay Area offices. *Id.* Of the four employees who work remotely, [REDACTED]. *Id.* None reside in WDTX. *Id.*

Several of those engineers who report directly to Mr. Hansen have potentially relevant

experience and/or institutional knowledge regarding FCM, including Sampson Chen and Fred Quintana. *Id.* ¶ 5. Mr. Chen is a Software Engineer Manager who has worked on FCM for over ten years, and his team is responsible for the scalability and reliability of FCM’s operations. *Id.* Mr. Quintana is one of the Technical Leads for FCM (*id.*) and the author of “A Brief History of FCM”—a document outlining the development of the FCM technology since its inception that Samsung relied on at trial in its case against Headwater (also accusing FCM) to prove that GTalkService predated the patents asserted there. **Ex. 49** at 717:15-23 (“Q. Does this document provide a timeline of those different generations of FCM? A. Yes. Q. Okay. Now, what does this document say about those core features that you talked about just now? A. It demonstrates that they existed in the Google Talk service era. Q. All the way to today? A. Yeah.”). Both Mr. Chen and Mr. Quintana work from Google’s San Francisco Bay Area offices. Hansen Decl. ¶ 5.

Google employees who previously worked on GTalkService, C2DM, GCM, and FCM are also in NDCA. Debajit Ghosh, a Distinguished Software Engineer who [REDACTED], led the development of the earliest version of FCM (GTalkService) (Hansen Decl. ¶ 5) and presented the launch of C2DM at Google I/O (Google’s developer conference) in 2010 (**Ex. 15**). Mr. Ghosh has also testified in other patent cases involving GCM, FCM’s predecessor, including on the conception of GTalkService. *See, e.g.*, **Ex. 52** at 75:1-100:2. Ali Satter, former Product Manager for FCM from 2018 to 2023, works in Google’s San Francisco Bay Area offices.⁵ Hansen Decl. ¶ 5.

Because documents about Google’s products and services, including technical documents and source code, are created and maintained by employees working on those products and services,

⁵ The most recent Product Manager for FCM (who held the position from January to July 2025) works from Google’s San Francisco Bay Area offices and reported to a manager based in Google’s Houston, Texas office. Currently, there is no product manager for FCM. Hansen Decl. ¶ 5.

such documents for the FCM technology are primarily created and maintained in NDCA. *Id.* ¶ 6.

C. Many Likely Third-Party Witnesses Are In NDCA

Although Google’s investigation is in its early stages, numerous third-party witnesses and/or entities with knowledge likely relevant to Google’s defenses appear to be in NDCA. FCM runs on Android mobile phones. Long before this case, Dr. Raleigh apparently was well aware of Android’s capabilities and, in his role as ItsOn CEO, hired a team of Android software engineers to develop a product that used Android, including Android’s push technology at that time: C2DM and GCM. **Ex. 50** at 24; **Ex. 16** at 228:6-9 (“Q. ... ItsOn actually used the accused Google push messaging systems for its push messages. Correct? A. Yes.”), 230:1-4 (“Q. And what it describes here in the document is that ItsOn used GCM for the ItsOn server to send notifications to an Android phone. Correct? A. Yes.”).

Many former Headwater and ItsOn employees appear to still be in NDCA:

- Charles Giancarlo, ItsOn co-founder, appears to be located in [REDACTED]. *See Exs. 17 & 61.*
- Krista Jacobsen, Headwater’s Head Counsel from 2011 to 2014, appears to be located in [REDACTED]. *See Ex. 18 & 19.* Ms. Jacobsen testified by deposition at trial in a prior patent infringement suit Headwater brought against Samsung. *See Ex. 25.*
- Cory Modlin, a former Technical Advisor at Headwater, appears to be located [REDACTED]. *See Ex. 20 & Ex. 38* at 3.
- James Fitzgerald, the sixth employee to join ItsOn and its lead software engineer of Android Client Technology, appears to be located in [REDACTED]. *See Ex. 21.* Mr. Fitzgerald testified by deposition at trial in two prior patent infringement suits Headwater brought against Samsung. *See Exs. 25 & 26.*

These and other former Headwater and ItsOn employees have information potentially relevant to Google’s invalidity, estoppel, disclaimer, waiver, marking, and prosecution history estoppel defenses based on ItsOn’s and Dr. Raleigh’s apparent knowledge of C2DM and GCM. In addition, the law firm that Headwater hired to prosecute the patent application to which both

asserted patents claim priority, and Michael Schallop, the prosecuting attorney, who may have information and documents regarding Google’s standing defense, are in NDCA. *See Exs. 7 & 22.*

As stated by Headwater, ItsOn “implement[ed] Headwater’s patented technologies.” **Ex. 62** ¶¶ 20, 26, 34; *see also id.* ¶¶ 14, 16-39; **Ex. 3** at 25:18-23. Thus, ItsOn’s ESI that could further support Google’s defenses—including source code and technical assets—is also in NDCA. ItsOn filed bankruptcy, and its assets were liquidated into an “Assignment for Benefit of Creditors” entity (“ItsOn-ABC”), managed by Sherwood Partners. **Ex. 51** at 1-2. Headwater confirmed these assets still exist in ItsOn-ABC’s possession. *Id.* ItsOn-ABC and Sherwood Partners are both based in Mountain View, California. **Exs. 23 & 24.**

Headwater alleges FCM derives value from a Revenue Share Agreement and Mobile Application Distribution Agreement with Samsung. FAC ¶ 3. Google disputes these agreements’ relevance but notes Headwater previously sought discovery from James Kolotouros regarding them. Mr. Kolotouros is a third party who appears to reside in NDCA.⁶ **Exs. 40 & 41.**

Other third parties with relevant information are located in or closer to NDCA than WDTX. Southern California-based Qualcomm (**Ex. 27**), Dr. Raleigh’s former employer, may have information relevant to Google’s standing defense.⁷ Interdigital Inc.—a company with offices in NDCA but not Texas (**Ex. 29**)—may also have information potentially relevant to damages in this action (if any) given its recent efforts to acquire the Headwater patents (**Ex. 28**).

III. LEGAL STANDARD

A court may transfer a case “[f]or the convenience of parties and witnesses.” 28 U.S.C. § 1404(a). It first considers “whether a civil action ‘might have been brought’ in the destination

⁶ To the extent that Headwater stipulates to not seek discovery from Mr. Kolotouros, Google agrees to strike this paragraph and will not rely on his location for this Motion.

⁷ *See supra* n.5.

venue.” *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 312 (5th Cir. 2008) (“*Volkswagen II*”) (citation omitted). If so, courts weigh eight factors to determine if “good cause” exists for transfer:

(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; ... (4) all other practical problems that make trial of a case easy, expeditious and inexpensive[,] ... [5] the administrative difficulties flowing from court congestion; [6] the local interest in having localized interests decided at home; [7] the familiarity of the forum with the law that will govern the case; and [8] the avoidance of unnecessary problems of conflict of laws [or in] the application of foreign law.

Id. at 315 (citation omitted). “Good cause” is established if a movant shows “(1) that the marginal gain in convenience will be significant, and (2) that its evidence makes it plainly obvious—i.e., clearly demonstrated—that those marginal gains will actually materialize in the transferee venue.” *In re Media Matters for Am.*, 143 F.4th 631, 638 (5th Cir. 2025) (quotations and citation omitted).

IV. ARGUMENT

A. This Case Could Have Been Filed in the NDCA

The threshold transfer requirement is met since Google is headquartered in NDCA at 1600 Amphitheatre Parkway, Mountain View, California. *See* 28 U.S.C. § 1400(b); **Exs. 30 & 60**.

B. The Private Interest Factors Favor Transfer

1. Cost Of Attendance For Willing Witnesses Favors Transfer

“The convenience of the witnesses is probably the single most important factor in [the] transfer analysis.” *Genentech*, 566 F.3d at 1343 (citation omitted). Given that the vast majority (if not all) witnesses are either based in NDCA or located near California, and no known witness is based in WDTX, this factor strongly favors transfer.

Google’s headquarters have been in NDCA since its founding. **Exs. 59-60**. Google’s key employees, including those with technical knowledge of the accused features and products, are primarily in NDCA. Hansen Decl. ¶¶ 4-5. Mr. Hansen, the team lead of the accused products,

██████████ and works from Google’s San Francisco Bay Area offices. *Id.* ¶¶ 2, 4. Headwater’s infringement charts and complaint repeatedly invoke Mr. Hansen’s trial testimony from another Headwater case involving FCM, confirming his central role here. *See generally* ECF Nos. 28-1 & 28-2; *see also* FAC ¶ 2; ECF No. 28-1 at 1 (for element 1pre of the ’192 patent, citing a developer-facing video titled “Engage your users with Firebase Messaging” presented in part by Mr. Hansen). Headwater also relied on a presentation from Mr. Ghosh (also in NDCA) at that trial. **Ex. 31** (Trial Tr. Vol. 2) at 354:2-16, 452:21-453:6; **Ex. 49** (Trial Tr. Vol. 3) at 784:1-785:2; **Ex. 26** (Trial Tr. Vol. 4) 1081:14-23 (“I relied on the evidence ... provided by Google”). Mr. Ghosh also testified in other patent infringement cases involving FCM. *See, e.g., Ex. 52* (*SimpleAir*, No. 2:14-cv-11-JRG, Dkt. 354) at 75:1-100:2. Additionally, ██████████

██████████. Hansen Decl. ¶¶ 4-5. All Google’s key party witnesses have direct experience with developing the accused functionalities, which is relevant to noninfringement, state of the art, and invalidity. *Id.* ¶¶ 4-6.

Although Google has an Austin office, no employees responsible for the accused products’ design or development are based there. *Id.* ¶¶ 4-5. A party’s mere presence in the transferor district does not affect this factor if that presence is not relevant to the case. *See, e.g., In re Google LLC*, 2021 WL 5292267, at *2 (Fed. Cir. Nov. 15, 2021) (court correctly weighed factor in favor of transfer even where Google had employees in Austin, because employees with knowledge relating to case were mainly in NDCA and none were in Texas.). Indeed, this Court has granted transfer notwithstanding a defendant’s Austin office where “there [was] no evidence ... demonstrat[ing] a single employee from the Austin campus ha[d] knowledge and/or documents relevant to [the] case.” **Ex. 33** at 8; *see also DataQuill, Ltd. v. Apple Inc.*, 2014 WL 2722201, at

*1, 3 (W.D. Tex. June 13, 2014) (transferring to NDCA despite defendant “employ[ing] some 3,500 people” in this District where no witnesses were identified in WDTX). Accordingly, Google’s office in Austin is irrelevant to this case and does not affect the transfer analysis.⁸

Litigating this case in NDCA also appears more convenient for Headwater, which does not have a presence in WDTX. Indeed, Headwater previously chose to initiate patent litigation in NDCA against another defendant.⁹ See **Ex. 37**. While Headwater claims to have an office in Texas, it is in Tyler (in EDTX)—and over 400 miles away from this Court’s Midland division. **Ex. 34**. Further, Dr. Raleigh currently resides in, and likely operates Headwater from, [REDACTED]. **Ex. 9**. While [REDACTED] is over 1,400 miles from Midland (**Ex. 35**), it is only about 200 miles from (and via the airport in [REDACTED], a short direct flight to) the San Francisco Bay Area (**Ex. 36**). Dr. Raleigh also has substantial past and present ties to California. Headwater and its sister company ItsOn were founded by Dr. Raleigh and originally headquartered in Redwood City in NDCA. See *supra* Section II.A. [REDACTED]. **Exs. 9, 14**. And the FAC describes Dr. Raleigh’s extensive work in NDCA, including at Stanford, Clarity Wireless, and Airgo Networks. FAC ¶¶ 24, 26, 27.

“When the distance between an existing venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct

⁸ Nor does the fact that a prior FCM product manager reported to an individual in Houston, or that one member of Mr. Hansen’s team works remotely from Texas, change the calculus, as on balance, more key witnesses are in or near NDCA than WDTX. See *In re Samsung Elecs. Co., Ltd.*, 2023 WL 8642711, at *2 (Fed. Cir. Dec. 14, 2023) (willing witness factor favored transfer from WDTX to NDCA when most potential witnesses were in Korea and NDCA, and only some Samsung marketing and sales employees were in EDTX); *In re Toyota Motor Corp.*, 747 F.3d 1338, 1340 (Fed. Cir. 2014) (“The comparison between the transferor and transferee forums is not altered by the presence of other witnesses and documents in places outside both forums.”).

⁹ While the asserted patents here may be unrelated to the patents asserted in *Headwater v. Motorola*, Headwater’s complaints are similar. Compare FAC ¶¶ 22-30, with, **Ex. 37** ¶¶ 2-10.

relationship to the additional distance to be traveled.” *Volkswagen II*, 545 F.3d at 317 (citation omitted). “[I]t is an ‘obvious conclusion’ that it is more convenient for witnesses to testify at home[.]” *Id.* (citation omitted). Distant witnesses “not only suffer monetary costs, but also the personal costs associated with being away from work, family, and community.” *Id.* Here, the time and the distance witnesses would need to travel favor transfer. A majority of Google and Headwater witnesses would need to travel about 1,500 miles from California (or farther) to Midland to testify, resulting in costly and unnecessary travel expenses and personal and professional disruptions. *See Wet Sounds, Inc. v. Audio Formz, LLC*, 2017 WL 4547916, at *3 (W.D. Tex. Oct. 11, 2017) (“[S]cheduling fact witnesses so as to minimize the time when they are removed from their regular work or home responsibilities gets increasingly difficult and complicated when the travel time from their home or work site to the court facility is five or six hours one-way as opposed to 30 minutes or an hour.”) (quoting *In re Volkswagen AG*, 371 F.3d 201, 205 (5th Cir. 2004)); *In re Acer Am. Corp.*, 626 F.3d 1252, 1255 (Fed. Cir. 2010) (“[T]he combination of multiple parties being headquartered in or near the transferee venue and no party or witness in the plaintiffs chosen forum is an important consideration”).

Because most material witnesses reside in or closer to NDCA, and no known witnesses reside in the WDTX, this most important factor overwhelmingly favors transfer. *In re Google LLC*, 2021 WL 4427899, at *4 (Fed. Cir. Sept. 27, 2021) (“[W]hen there are numerous witnesses in the transferee venue and the only other witnesses are far outside the plaintiff’s chosen forum, the witness-convenience factor favors transfer”). The Federal Circuit recently noted that the Court correctly found this factor favored transfer where, like here, “the Northern District of California would be more convenient for Google employees knowledgeable about the design and development of the accused functionalities as well as [the plaintiff’s] founder and CFO.” *In re*

Google LLC, 2021 WL 5292267, at *2. The same result is warranted here.

2. The Relative Ease Of Access To Sources Of Proof Favors Transfer

“In patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer.” *Genentech*, 566 F.3d at 1345 (citation omitted) (factor favored transfer based on defendant’s evidence). Documents about Google’s FCM products and services are primarily created and maintained by the employees who designed, developed, and worked on those products and services in Google’s San Francisco Bay Area offices. Hansen Decl. ¶ 6. Thus, relevant documents and source code regarding the accused FCM product and its predecessor products such as GTalkService—the main prior art Google intends to rely on—are primarily created and maintained in NDCA.

As for evidence relating to Headwater, it has previously confirmed that ItsOn-ABC—which is managed by Sherwood Partners—possesses ItsOn’s ESI. *See supra* Section II.C. ItsOn-ABC and Sherwood Partners are both located in NDCA. *Id.* Accordingly, documents relating to ItsOn, the company founded to “license and productize Headwater’s patented technology,” are also located in NDCA. **Ex. 3** at 25:18-23.

Furthermore, several third-party witnesses who are former ItsOn and Headwater employees likely have relevant evidence and appear to be in NDCA:

- Dr. Raleigh has stated that Mr. Giancarlo worked with him on his inventions. **Ex. 53** at 25:17-22.
- Deposition testimony of Mr. Fitzgerald was played at the trial of another Headwater case regarding ItsOn, its technology, and its relationship with Headwater. **Ex. 26** at 1054:23-1056:14. Mr. Fitzgerald testified that most of the software engineering he did during his time at ItsOn had to do with Android. *Id.* Mr. Fitzgerald may also be relevant to Google’s marking defense. *See Ex. 54.*
- Ms. Jacobsen was a prosecution attorney for U.S. Patent Application No. 12/380,780, issued as U.S. Patent No. 8,839,388—the earliest nonprovisional patent application to which both asserted patents claim priority. At least 69 of Dr. Raleigh’s patent applications were prosecuted by Ms. Jacobsen. **Ex. 39.** Ms. Jacobsen may be relevant to Google’s

standing defense.

- Mr. Modlin possesses salient evidence to support Google’s defenses, including inequitable conduct before the Patent Office.¹⁰ **Ex. 38** at 3-5 (arguing that testimony from Mr. Modlin about Headwater’s evaluation of prior art was relevant to inequitable conduct and secondary considerations of obviousness); **Ex. 55** at 5 (Mr. Modlin testified that “Dr. Raleigh was not receptive to prior art searches and would reprimand at least one employee for finding prior art”).

Third parties Qualcomm (in San Diego, California) and Interdigital (in the San Francisco Bay Area) also likely have additional evidence. In contrast, there is no indication that any relevant evidence was created or is maintained in WDTX. **Exs. 27-29**. Under these factors, transfer is strongly favored. *In re Google LLC*, 2021 WL 4427899, at *6 (“Because the accused products were designed and developed in the transferee venue and are not related to Google’s presence in Texas, we agree that the local interest factor should have been weighted strongly in favor of transfer.”); *WAG Acquisition, L.L.C. v. Google LLC*, 2022 WL 9569437, at *4 (W.D. Tex. Oct. 5, 2022) (factor favored transfer where “[m]ore sources of proof likely reside in, and are likely more easily accessed in, the NDCA than the WDTX[,] Google headquarters are located in the NDCA[,] ... Google has identified custodians of the key documents in the NDCA[,] ... [and] [plaintiff] has not pointed to any evidence that is more easily accessible in the WDTX.”); **Ex. 56** at 7-10 (third-party source code located in Los Angeles favored transfer to NDCA).

Although documents may be stored electronically, the “location of document custodians the location where documents are created and maintained . . . may bear on the ease of retrieval.” *Valtrus Innovations Ltd. v. Google LLC*, 2025 WL 2076627, at *4 (N.D. Tex. July 22, 2025) (citation omitted). Since California is where the key custodians are located and the geographic locus of evidence, this factor favors transfer to NDCA. *See Parus Holdings Inc. v. LG Elecs. Inc.*,

¹⁰ Google is investigating whether there is a factual basis to plead an inequitable conduct defense and intends to serve discovery on the issue.

2020 WL 4905809, at *3 (W.D. Tex. Aug. 20, 2020) (finding “the location of the documents favors transfer” to NDCA where “Google researches, designs, develops, and tests Google assistant in NDCA” since “it is likely ... Google will have the bulk of the documents relevant to this case in NDCA”); **Ex. 33** at 6 (finding this factor favored transfer because “Apple resides in the NDCA” and “the accused features were apparently developed at Apple’s offices in California”).

3. The Availability Of Compulsory Process To Secure The Attendance Of Witnesses Favors Transfer

“Transfer is favored” where, as here, the transferee district “has absolute subpoena power over a greater number of non-party witnesses” whose attendance may require a court order. *Adaptix, Inc. v. HTC Corp.*, 937 F. Supp. 2d 867, 874 (E.D. Tex. Mar. 28, 2013). When there is no indication that the non-party witnesses are willing to appear absent compulsory process, a court must presume that compulsory process will be required. *See In re DISH Network L.L.C.*, 2021 WL 4911981, at *3 (Fed. Cir. Oct. 21, 2021); *Emerging Auto. LLC v. Kia Corp.*, 2024 WL 3170398, at *9 (E.D. Tex. June 25, 2024). Because there are “more third-party witnesses resid[ing] within the transferee venue than resid[ing] in the transferor venue,” this factor “weigh[s] heavily in favor of transfer.” *In re Apple, Inc.*, 581 F. App’x. 886, 889 (Fed. Cir. 2014).

There are several potential third-party witnesses in NDCA and none in WDTX. The FAC makes clear that Headwater intends to rely on certain commercial agreements between Google and Samsung in this case.¹¹ *See* FAC ¶ 3. When it pursued similar theories in another case, Headwater served a third-party subpoena on James Kolotouros in NDCA and even sought to compel his testimony. *See generally Exs. 40 & 41*. Furthermore, several likely third-party witnesses such as ItsOn co-founder Charles Giancarlo, ItsOn Lead Android Software Engineer James Fitzgerald, Headwater former Head Counsel Krista Jacobsen, and Headwater Technical Advisor Cory Modlin

¹¹ Google disagrees that these agreements have any relevance to damages.

all appear to be in NDCA. *See supra* Sections II.B & IV.A. And to the extent individuals from Qualcomm or Interdigital are in California—which is likely given they are based and/or have offices there—they would be subject to NDCA’s subpoena power. *See* Fed. R. Civ. P. 45(c)(1)(B).

Prior case records indicate it is likely many would be unwilling to testify in WDTX.¹² Mr. Kolotouros refused to even provide deposition testimony in a prior Headwater case, asserting it was unduly burdensome given his position as a high-level executive, and Headwater was required to file an action in NDCA because EDTX lacked the requisite authority. **Ex. 42** at 6-7. In the prior cases, Mr. Fitzgerald and Ms. Jacobsen appeared at trial by deposition rather than in person in EDTX. *See Exs. 25 & 26*. Mr. Modlin testified at deposition that he had negative views of Headwater. **Ex. 38** at 3; *see also Lynk Labs, Inc. v. Home Depot USA, Inc.*, 2022 WL 1593366, at *6 (W.D. Tex. May 19, 2022) (“[G]iven her status as a former employee, the Court will treat Ms. Kramer as an unwilling witness the [transferee forum], but not this District, can compel.”); *cf. Koss Corp. v. Apple Inc.*, 2021 WL 5316453, at *7 (W.D. Tex. Apr. 22, 2021) (noting a third party working for plaintiff’s competitor would be “unlikely to willingly testify”). As for other non-party witnesses, there is no indication they would be willing to attend trial in WDTX; thus, they are “presumed to be unwilling and considered under the compulsory process factor.” *In re HP Inc.*, 2018 WL 4692486, at *3 n.1 (Fed. Cir. Sept. 25, 2018) (*citing AGIS Software Dev. LLC v. Huawei Device USA Inc.*, 2018 WL 2329752, at *6 (E.D. Tex. May 23, 2018)). In fact,

As several likely third-party witnesses are in or could be compelled to NDCA and none are known to reside within WDTX’s subpoena power, this factor favors transfer. *See In re Hulu, LLC*, 2021 WL 3278194, at *4 (Fed. Cir. Aug. 2, 2021) (“[W]e think that the Fifth Circuit would

¹² To the extent this Court finds that any of these individuals are willing witnesses, NDCA would still be more convenient for them than WDTX, supporting transfer under the first factor.

recognize that where, as 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.”); *WirelessWerx IP, LLC v. Google, LLC*, 2023 WL 11921792, at *3 (W.D. Tex. Apr. 14, 2023) (“Because the Northern District of California has subpoena power over at least eight more third-party witnesses than this Court, the factor weighs in favor of transfer.”).

4. The Practical Problems That Make Trial Of A Case Easy, Expeditious, And Inexpensive Favor Transfer

The Court “has previously held that the last private interest factor favors transfer when most witnesses are present in the transferee forum and the plaintiff has no presence in the Western District.” *Correct Transmission LLC v. ADTRAN, Inc.*, 2021 WL 1967985, at *5 (W.D. Tex. May 17, 2021) (citation omitted). As discussed, Google’s anticipated witnesses are in NDCA given that [REDACTED] on the FCM team and other employees with relevant knowledge regarding FCM and its predecessor prior art products are in the San Francisco Bay Area. *See supra* Section II.B. Third-party witnesses are also located in or near NDCA, and even Dr. Raleigh himself is closer to NDCA. In contrast, Google is not aware of any witnesses in this District, nor does Headwater have any presence in WDTX. Further, conservation of judicial resources favors transfer. As discussed *supra*, several potential third-party witnesses, including James Kolotouros, Charles Giancarlo, James Fitzgerald, Krista Jacobsen, and Cory Modlin, work or reside in NDCA. Transfer will prevent costly out-of-district motions to enforce compliance with these subpoenas. *See, e.g., Ex. 42.*

Although Headwater has since filed a case against Amazon asserting the same patents in

WDTX, this is immaterial to the analysis.¹³ First, the *Amazon* case did not exist until after this litigation commenced, and “[c]ourts evaluate these [public and private] factors based on the situation which existed at the time of filing[.]” *S.M.R Innovations LTD v. Apple Inc.*, 756 F. Supp. 3d 453, 460 (W.D. Tex. 2024). Second, Headwater has no specific connection with this District, as it has filed cases in other districts, including NDCA. *See, e.g., Ex. 37*. Finally, both the Federal Circuit and the Court have recognized that related cases have little weight when they “are in the early stages of trial,” especially if such cases have pending motions to transfer themselves. *XR Commc’ns, LLC v. HP Inc.*, 2022 WL 3448746, at *6 (W.D. Tex. Aug. 17, 2022) (granting motion to transfer despite related cases in WDTX); *In re Google*, 2017 WL 977038, at *2 (Fed. Cir. Feb. 23, 2017) (“Based on the district court’s rationale ... the mere co-pendency of related suits in a particular district would automatically tip the balance in non-movant’s favor regardless of the existence of co-pending transfer motions and their underlying merits. This cannot be correct.”).

The *Amazon* case was filed in June 2025, is in its early stages, and is before a different judge. It could also be subject to its own transfer motion, which Amazon has sought in similar patent cases. *See, e.g., WAG Acquisition, LLC v. Amazon.com, Inc.*, 2022 WL 9544373, at *1 (W.D. Tex. Oct. 14, 2022) (granting motion to transfer to the Western District of Washington)); *Zitovault, LLC v. Amazon.com, Inc.*, 2015 WL 11089482, at *2 (E.D. Tex. Dec. 7, 2015) (same); *Ex. 57* (same); *Ex. 58* (objections overruled).

C. The Public Interest Factors Also Favor Transfer

1. NDCA Has A Strong Interest In This Action

¹³ *Headwater Rsch. LLC v. Amazon.com, Inc. et al*, No. 25-CV-286-ADA (W.D. Tex. Jun. 20, 2025). Headwater recently also filed other cases against Google in WDTX, but they are irrelevant to the transfer analysis for the same reasons. To the extent the Court finds later-filed cases relevant, Google has filed a complaint seeking declaratory judgment of non-infringement of two patents against Headwater in NDCA. One of those patents is a parent of both asserted patents in this case, and the allegations in that action also involve FCM technology. *Ex. 65*.

This factor focuses on the “significant connections between a particular venue and the events that gave rise to a suit.” *In re Acer*, 626 F.3d at 1256; *see also Volkswagen II*, 545 F.3d at 318. NDCA has a strong local interest in this dispute for several reasons. First, the claimed invention was allegedly conceived there while Dr. Raleigh was working at ItsOn and Headwater Partners I LLC, the companies he founded in the San Francisco Bay Area. **Ex. 3** at 11:21-25, 13:6-15, 15:2-8; *see supra* Section II.A. Dr. Raleigh has asserted that he came up with the alleged invention during a collaboration between ItsOn (which was based in NDCA at the time) and Best Buy. **Ex. 3** at 16:13-19:2, 25:18-23. Eight provisional and nonprovisional applications to which the asserted patents claim priority list Dr. Raleigh as the inventor residing in Woodside, California (as do the face of the patents) and were filed and prosecuted in NDCA. **Exs. 43, 44, 65**; Yang Decl. ¶¶ 46, 47; *see also Ex. 3* at 13:6-15, 14:8-15:8. That “[t]he patented technology was invented in, and the patents prosecuted from,” NDCA demonstrates that the local interest factor favors transfer. *In re Google LLC*, 58 F.4th 1379, 1385 (Fed. Cir. 2023).

Moreover, Headwater’s FAC spends numerous paragraphs explaining Dr. Raleigh’s background, including his time working at Stanford, Clarity Wireless, Cisco, and Airgo Networks, all of which were located in NDCA. FAC ¶¶ 22-30. To the extent Dr. Raleigh’s background is relevant (as Headwater seems to contend, given that this information appears in both the *Motorola* complaint (**Ex. 37**) and the FAC), this further supports NDCA’s interest in this action.

Second, the product accused of infringement, FCM, was primarily developed by engineers in Google’s NDCA offices. *See In re TikTok, Inc.*, 85 F.4th 352, 364 (5th Cir. 2023) (“[T]he place of the alleged wrong is one of the most important factors”) (quotations and citation omitted). The individuals and teams who developed and work on the accused products are mainly based in NDCA, including Mr. Hansen, whom Headwater calls out by name in its FAC (FAC ¶ 2), and Mr.

Ghosh, whose presentation was extensively relied on by Headwater at trial in another case. **Ex. 31** at 354:2-16, 452:21-453:6; **Ex. 49** at 784:1-785:2; **Ex. 26** at 1081:14-23 (“I relied on the evidence ... provided by Google”); **Ex. 32**. NDCA thus has a strong local interest because “the cause of action calls into question the work and reputation of several individuals residing in or near that district.” *In re Hoffmann-La Roche Inc.*, 587 F.3d 1333, 1336 (Fed. Cir. 2009).

Third, witnesses with knowledge of the prior art are based in the NDCA—including Mr. Hansen and Mr. Ghosh, both of whom worked on and have knowledge about GTalkService. *See supra* Section II.B. As the Court has held, “the Northern District of California has an interest in adjudicating disputes regarding prior art from its inventors.” *Cortex MCP, Inc. v. Visa, Inc.*, 2023 WL 11990868, at *8 (W.D. Tex. Nov. 3, 2023); *see Valtrus Innovations Ltd. v. Google LLC*, 2025 WL 2076627, at *9 (N.D. Tex. July 22, 2025) (finding NDCA had a “stronger local interest in the case” than the transferor forum because “much of the relevant prior art” was developed in NDCA).

On the other hand, this lawsuit has no meaningful connection to WDTX. Headwater has no presence here, nor was its claimed technology developed here. No relevant Google employees with responsibilities related to the accused functionalities are based in WDTX, and Google’s presence in Austin with respect to other technologies does not demonstrate a local interest in this case. “Because the accused products were designed and developed in the transferee venue and are not related to Google’s presence in Texas ... the local interest factor should [be] weighted strongly in favor of transfer.” *In re Google LLC*, 2021 WL 4427899, at *6; *see In re Juniper Networks, Inc.*, 14 F.4th 1313, 1320-21 (Fed. Cir. 2021) (“Juniper’s general presence in the [WDTX] is not enough to establish a local interest in that district comparable to that of the [NDCA].”).

2. The Remaining Factors Are Neutral

The other public interest factors—administrative difficulties flowing from court congestion, the court’s familiarity with the law, and avoidance of conflicts from application of

foreign laws—are neutral. WDTX has more open patent cases (508) than NDCA (220), but the median times to trial are roughly the same (approximately 28 months and 30 months respectively). *See Exs. 45-47*. Although this Court’s default schedule could lead to a trial date sooner than the average time to trial in NDCA, the Federal Circuit and this Court have found that congestion is “the most speculative” and that 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.” *WAG v. Google*, 2022 WL 9569437, at *7. Further, “neither discovery nor a *Markman* hearing have occurred in this case” so “transfer at this stage of litigation would not likely create any meaningful delays.” *10Tales, Inc. v. TikTok Inc.*, 2021 WL 2043978, at *5 (W.D. Tex. May 21, 2021). Additionally, both courts are familiar and experienced with patent litigation issues, and there are no issues regarding conflict of laws or application of foreign law.

V. CONCLUSION

Five out of the eight factors favor transfer—including the most important, the cost of attendance for willing witnesses—as the majority of witnesses are located in or near NDCA, including Dr. Raleigh himself. Accordingly, the “marginal gain in convenience” from transferring this case will be “significant.” *In re Media Matters for Am.*, 143 F.4th at 638 (quotations and citation omitted) (emphasis omitted). In contrast, “not a single factor weighs in favor of refusing transfer” since WDTX “is thousands of miles away from the vast majority of relevant witnesses, and is wholly unconnected to the underlying dispute.” *In re TikTok*, 85 F.4th at 366. The gains will also clearly “actually materialize” as many of these witnesses have already testified or participated in prior cases involving the accused technology. *In re Media Matters for Am.*, 143 F.4th at 638 (quotations and citation omitted). There is thus good cause for transfer. For the foregoing reasons, Google respectfully requests that the Court transfer this case to NDCA.

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5, the undersigned hereby certifies that, on September 4, 2025, all counsel of record who have appeared in this case were served with a copy of the foregoing document via the Court's CM/ECF system

BY: /s/ Katharine L. Carmona
Katharine L. Carmona