No.

United States Court Of Appeals For The Federal Circuit

IN RE TCL ELECTRONICS HOLDINGS LTD., TCL CORPORATION, SHENZHEN TCL NEW TECHNOLOGIES CO. LTD., TCL KING ELECTRICAL APPLIANCES (HUIZHOU) CO., LTD.,

Petitioners,

ON PETITION FOR A WRIT OF MANDAMUS TO THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, CASE NO. 2:18-CV-00546, JUDGE RODNEY GILSTRAP

PETITION FOR WRIT OF MANDAMUS

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Dated: May 26, 2020

FORM 9. Certificate of Interest **Form 9 Rev. 10/17**

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

IN RE TCL ELECTRONICS HOLDINGS LTD., TCL CORPORATION, SHENZHEN TCL NEW TECHNOLOGIES CO. LTD., TCL KING ELECTRICAL APPLIANCES (HUIZHOU) CO., LTD.

v. ____________________

Case No. ____________

CERTIFICATE OF INTEREST

Counsel for the:
☒ (petitioner) ☐ (appellant) ☐ (respondent) ☐ (appellee) ☐ (amicus) ☐ (name of party)

TCL ELECTRONICS HOLDINGS LTD., TCL CORPORATION, SHENZHEN TCL NEW TECHNOLOGIES CO. LTD., TCL KING ELECTRICAL APPLIANCES (HUIZHOU) CO., LTD.

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
TCL Corporation		None.
TCL Electronics Holdings, Ltd.		See attached.
Shenzhen TCL New Technologies Co. Ltd.		See attached.
TCL King Electrical Appliances (Huizhou) Co., Ltd.		See attached.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court **(and who have not or will not enter an appearance in this case)** are:

Jennifer H. Doan, Joshua R. Thane, Cole Alan Riddell, Kyle Randall Akin - Haltom & Doan

Christopher M. Bonny, Lance Shapiro, Scott Stephen Taylor - Ropes & Gray LLP

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. *See* Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

5/26/2020
Date

/s/ Douglas Hallward-Driemeier
Signature of counsel

Please Note: All questions must be answered

Douglas Hallward-Driemeier
Printed name of counsel

cc: ______________________

Reset Fields

CERTIFICATE OF INTEREST (Cont.)

Petitioner **Shenzhen TCL New Technologies Co. Ltd.**, is a subsidiary of Petitioner **TCL King Electrical Appliances (Huizhou) Co. Ltd.**, which is a subsidiary of TCL Holdings (BVI) Ltd., which is a subsidiary of TTE Corporation, which is a subsidiary of Petitioner **TCL Electronics Holdings Ltd.**, which is a subsidiary of TCL Industries Holdings (H.K.) Ltd., which is a subsidiary of TCL Industrial Holdings Co., Ltd. Aside from the foregoing, no publicly held company owns 10% or more of the stock of **Shenzhen TCL New Technologies Co. Ltd.**, **TCL King Electrical Appliances (Huizhou) Co. Ltd.** or **TCL Electronics Holdings Ltd.**

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STATEMENT OF RELATED CASES

Pursuant to Federal Circuit Rule 47.5(a), counsel for Petitioners TCL Electronics Holdings, Shenzhen TCL New Technologies Co., Ltd., TCL Corporation, and TCL King Electrical Appliances (Huizhou) Co., Ltd. (collectively, "Petitioners") is unaware of any appeal in or from the same proceeding in the United States District Court for the Eastern District of Texas.

STATEMENT OF JURISDICTION

This Court has mandamus jurisdiction under the All Writs Act, 28 U.S.C. § 1651.

RELIEF SOUGHT

Petitioners seek an order directing the district court to transfer the case brought in the Eastern District of Texas ("EDTX") to the Northern District of California ("NDCA").

ISSUES PRESENTED

1. Did the district court commit legal error in denying transfer, where it incorrectly restricted its analysis to "the situation which existed when suit was instituted" to exclude post-filing developments weighing in favor of transfer, except to incorrectly weigh *against* transfer the court's experience with the case gained during its six-month delay in ruling on the motion?
2. Did the district court commit legal error by denying transfer, where it improperly resolved all disputed facts and inferences against transfer?
3. Did the district court commit a clear abuse of discretion in weighing the public and private factors affecting transfer when it treated EDTX as more convenient than NDCA, notwithstanding that *no parties, witnesses, or evidence* are located in EDTX, whereas two third parties accused of direct infringement and the majority of relevant witnesses and evidence are located in or near NDCA?

I. INTRODUCTION

In reaching its conclusion that a district in which *no party, no third party, no witness, and no document* is present is more convenient than the district where (or near where) the accused third-party entities and their witnesses and documents reside, the district court committed several legal and factual errors. This suit reflects a growing trend in which creative plaintiffs seek to evade the holding in *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514 (2017), by suing a defendant in the supply chain in a court where the real focus of the infringement allegations—non-parties accused of direct infringement—could not be sued under *TC Heartland*, and where no parties, witnesses, or documents are located.[1] A proper application of transfer principles under 28 U.S.C. § 1404 should nonetheless lead to proceeding in the venue where the relevant entities and evidence are located. The district court's numerous errors make transfer virtually impossible, however, and largely negate *TC Heartland*'s significance.

First, in mistaken reliance on *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960), the district court committed legal error by refusing to consider post-complaint facts. As Supreme Court and circuit precedent make clear, however, the section 1404

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[1] Matthew Bultman, *Foreign Cos. Expected to Test Venue Rules After* TC Heartland*,* Law360 (June 5, 2017) (quoting Yar Chaikovsky—trial counsel for Canon—as stating that plaintiffs will "try to name just the foreign corporations" to avoid the Supreme Court's restrictions in *TC Heartland*).

convenience and interest-of-justice analysis is not limited to facts as of the complaint's filing. The district court exacerbated that error by disregarding post-complaint facts *favoring* transfer, while simultaneously relying on its own delay in ruling on transfer as weighing *against* transfer. Under this approach, post-filing developments become a one-way ratchet against transfer.

Second, the court committed legal error by resolving all factual disputes and inferences *against* transfer, rather than making relevant factual determinations. By weighing plaintiff's attorney argument and speculation more heavily than the inconvenienced parties' sworn testimony, the district court made it impossible to satisfy the transfer standard.

Third, the court made numerous clearly erroneous determinations, including by repeatedly disregarding the convenience and local interest of third parties and third-party witnesses located in California. Indeed, the court made inconsistent statements, counting the third-party California witnesses as unwilling witnesses and yet excluding them from its analysis of the availability of compulsory process for unwilling witnesses, to ensure these factors would weigh *against* transfer.

Mandamus here is proper not only to correct the legally and factually erroneous analysis of "the convenience of parties and witnesses" and "interests of justice" under section 1404(a), but also because these errors present unsettled issues

and questions of first impression on which the district court requires guidance, lest section 1404(a) become a dead letter.

II. STATEMENT OF FACTS

Though Canon, Inc. technically brought this patent infringement suit against several foreign entities, its claims are aimed squarely at Roku, Inc. and TTE Technology Inc., U.S.-based third parties that, under *TC Heartland*, Canon *could not* have sued in EDTX.

Canon asserts claims of patent infringement against TCL King Electrical Appliances (Huizhou) Co., Ltd. ("TCL King"); TCL Electronics Holdings Ltd. ("TCL Holdings"); Shenzhen TCL New Technologies Co. Ltd. ("Shenzhen TCL"); and TCL Corporation (collectively, "Defendants" or "TCL")[2] for a variety of accused products featuring "television systems that integrate the Roku operation system." Appx40-41 (¶¶2-5); Appx58-60 (¶¶52-57); Appx63-130 (Counts I-XV). Defendants are Chinese companies with no or very little presence in the United States. *E.g.*, Appx159-160 (¶5-7). TCL King manufactures the accused products, while its subsidiary Shenzhen TCL conducts research and development. Appx135-136 (¶¶7-8); Appx159 (¶3). Neither TCL Holdings nor TCL Corporation performs work related to the accused products. *See* Appx159 (¶3); Appx162 (¶6).

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[2] Canon sued eight foreign TCL entities, but consented to dismissal of the others. *See* Appx39; Appx259.

Canon's claims focus on two third parties: Roku and TTE. Indeed, Canon's first amended complaint mentions them *over 150 times*. *E.g.,* Appx74-79 (¶¶89-92, 97, 101-103). Canon puts Roku at the heart of its case, targeting Roku's operating system as the accused technology allegedly causing infringement by the accused products.[3] *E.g.*, Appx58-60 (¶¶52-57). Canon also asserts that TTE, a subsidiary of TCL Holdings, Appx37 (¶13), engages in direct infringement by using, selling, and importing the accused products. *E.g.*, Appx64-66 (¶¶65-67). Canon repeatedly describes Roku and TTE as direct infringers and "agents" of the Defendants. *E.g.,* Appx74 (¶¶89-91); Appx77-78 (¶101).

A. This Litigation Has No Connection to EDTX.

Apart from the nationwide sale of the accused products, this case has no connection to EDTX. *None* of the parties has any connection to EDTX—in fact, none of the *documents or witnesses of any* party or third party is even located in the district. [4]

[3] While Roku is not a party to this case, Canon sued Roku in April 2019 and then dismissed the case without prejudice. *Canon, Inc. v. Roku, Inc.*, No. 6:19-cv-245 (W.D. Tex.). Roku filed for *inter partes* review of the patents in suit, identifying Defendants as its privies. Appx268. Defendants also have an indemnification agreement with Roku.

[4] In another case, Canon recently sought transfer from EDTX to the location of its U.S. subsidiary, asserting transfer was appropriate where "most of the documents and witnesses were in another jurisdiction, *and none were in this District*." Mot. to Transfer at 1-3, 15 *Optimum Imaging Techs. LLC v. Canon Inc.*, No. 2:19-cv-00246-JRG (E.D. Tex. Nov. 12, 2019), ECF No. 39, (emphasis added).

Canon's documents and witnesses are located in Japan, where it is incorporated. Appx40 (¶1); Appx185, Appx195. TCL's documents and employees are primarily located in China, though TCL King has a single employee, located in Corona, California (near NDCA), with knowledge of U.S. clients, the manufacture of accused products, and the location of documents. Appx159-160 (¶¶5-8); Appx162 (¶¶5-6).

Roku—one of the true targets of this suit—similarly has no connection to EDTX. Roku is headquartered in NDCA, where its work on the accused technology is primarily performed. Appx165-166 (¶¶4, 7). No Roku witness or evidence is in EDTX. Appx167 (¶14). Roku specifically identified six witnesses in NDCA who are knowledgeable about the accused technology and accused products and willing to testify. Appx165-167 (¶¶1, 6-13). Though Roku has a facility in Austin (in the Western District of Texas, "WDTX"), the individuals who designed, developed, and are responsible for the accused technology, including the Roku OS, are located in NDCA. Appx167 (¶15).

TTE—the other true target of this suit—similarly has no connection to EDTX beyond its nationwide marketing, sale, and distribution of the accused products. Appx169 (¶6). TTE is located in Corona, California (near NDCA), and has no employees or documents in EDTX. Appx169-172 (¶¶1, 5, 8, 13-14). TTE identified four employees in California, including Chris Larson, the head of marketing and

sales, who are knowledgeable about the accused products and willing to testify. Appx169-171 (¶¶1, 4-5, 9-12). A TTE sales director who resides in Texas, but outside EDTX, has limited access to sales information and is supervised by Mr. Larson. Appx172 (¶13); Appx212 (¶¶4-5).

B. TCL's Timely Motion to Transfer Was Pending for Six Months.

On December 27, 2018, Canon sued TCL Holdings, located in China, alleging infringement of five patents. Appx19; *see* Appx40 (¶2); Appx57-58 (¶50). After TCL Holdings moved to dismiss for lack of personal jurisdiction, Canon filed a First Amended Complaint alleging infringement against seven additional foreign TCL entities. Appx20-21; Appx40-41 (¶¶3-9). On September 12, 2019—within a month of the new defendants' timely motion to dismiss, Appx23, and before the court had even held a scheduling conference, Appx25—all defendants jointly moved to transfer to NDCA. Appx24.[5] In support, defendants provided sworn declarations identifying the Roku and TTE employees most knowledgeable about the accused technology and products and who were willing to testify, despite the inconvenience of traveling from California to EDTX. Appx166-167 (¶¶6-13); Appx170-171 (¶¶4-5, 9-12).

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[5] As foreign entities who waived cumbersome service formalities, defendants had 90 days to file responsive pleadings. Appx34; Appx20-23. With brief unopposed motions to extend the time to answer, defendants timely filed their motions to dismiss. *See* Appx20, Appx23.

Canon filed a response on October 4, 2019, relying heavily on LinkedIn profiles of irrelevant Roku employees in Austin, outside of EDTX. Appx188-189, Appx191. Despite briefing being completed on October 22, 2019, *see* Appx25, and defendants' unopposed request for hearing on November 7, 2019, Appx238-239, the district court did not act on the motion.

Over six months after the motion was filed, on March 25, 2020, Defendants filed a motion requesting a ruling on the motions to dismiss and transfer.[6] The motion for ruling explained that Canon's discovery requests confirmed the materiality of Roku's and TTE's documents and witnesses in NDCA to Canon's claims. In particular, Canon had served subpoenas seeking documents, corporate testimony, and testimony from seven Roku employees and four TTE employees in NDCA and CDCA. Appx285-286 n.3; Appx298. Tellingly, as Defendants pointed out, Canon had not sought to depose any Roku or TTE employees in Texas. Appx285 n3. Indeed, Canon had removed every potential Texas-based witness from its amended initial disclosures served on March 13, 2020. *Compare* Appx225-235, *with* Appx272-279. On the same day as the motion for ruling, the district court denied Defendants' motion to dismiss, but still did not rule on the motion to transfer. *See* Appx28.

[6] Defendants' motion also requested to stay the litigation. Appx287 n.4.

On April 7, 2020, less than three weeks before the then-scheduled close of fact discovery and one day before responding to Defendants' motion for ruling, Canon sought to serve deposition subpoenas on seven Roku employees in Austin (outside EDTX). Appx316; Appx263. A few days later, Canon subpoenaed TTE's Texas-based sales-person for deposition in Houston (outside EDTX). Appx336.

The district court denied Defendants' motion to transfer on April 24, 2020, and denied the motion for ruling as moot. Appx1-2.

C. Despite the Lawsuit's Lack of Connection to EDTX, the District Court Denied Transfer.

The district court first determined that both EDTX and NDCA are "places of proper venue," because as foreign corporations, Defendants could "be sued in any judicial district under 28 U.S.C. § 1391(c)(3)." Appx4. The court next analyzed the "public and private factors relating to the convenience of the parties and witnesses as well as the interests of particular venues in hearing the case." *Id.* The court stated that this analysis was limited to "the situation which existed when suit was instituted." *Id.* (citing *Hoffman*, 363 U.S. at 343). Beyond requiring defendants to meet an "elevated burden" to show transfer is "clearly more convenient," the district court effectively imposed a still-higher burden by "draw[ing] all reasonable inferences and resolv[ing] factual conflicts in favor of the non-moving party." Appx3.

1. *The district court found the private factors to be neutral or to weigh against transfer.*

The district court determined that the ease of access to sources of proof was neutral. Despite Defendants' evidence that TCL King, TTE, and Roku all had highly relevant documents in California concerning the alleged direct infringement, the court found TCL "failed to show that transfer to [NDCA] will result in more convenient access to sources of proof." Appx5-6. Instead, the court relied on Canon's counsel's unsupported speculation that Roku "*likely* stores" documents in Austin, and that TTE's Dallas-based witness would "*presumably* have access" to documents on the accused products. *Id.* (emphasis added). The court determined that neither district was more convenient because the "relevant documents are located across the world—in China, Hong Kong, Japan and throughout the United States," including "at least in Austin, Corona, Dallas, Los Gatos, and San Jose," weighing Austin and Dallas equally to the others based on speculation. Appx6.

The district court then found that compulsory process weighed slightly against transfer. Appx8. The court credited Canon's assertion (based solely on eleventh hour discovery *requests*) that "key Roku and TTE witnesses, with knowledge of the accused products and development cycles, are present in Texas," but refused to consider any other witnesses, including the California witnesses whose relevance was substantiated by declarations. *Id.* The court explained that it was "largely uncomfortable speculating as to which…witnesses will actually testify," without

even addressing (as noted in Defendants' Motion for Ruling) that Canon had subpoenaed Roku, TTE, and their California employees for deposition in California. Appx8; Appx285 n.3.

The district court next found the convenience of the parties to be neutral. The court expressed concern that "both parties are cherry-picking witnesses" for their "desired venues," and again stressed the difficulty of knowing which witnesses would actually testify. Appx10. Though it did not consider the inconvenience to Roku or TTE's California witnesses in the compulsory process factor, the district court also "decline[d] to consider the cost to witnesses from Roku or TTE wherever they may be located," on the theory that "no evidence show[ed] that the employees of these non-party companies are *willing* witnesses." *Id.* The court disregarded sworn testimony to the contrary. Appx166-167 (¶¶6, 13); Appx170-171 (¶¶5, 12). The court then found that EDTX "presents a lower cost barrier to at least Plaintiff's three experts" and its prosecution attorneys, located outside EDTX. Appx10; *see* Appx193.

Crediting "its experience with the asserted patents" and "its expenditure of time and resources in this case," all of which post-dated the filing of the transfer motion, the district court also found that judicial economy weighed slightly against transfer. Appx11.

2. *The district court also found the public factors to be neutral or weigh against transfer.*

The district court found that court congestion "weights against transfer" because EDTX's average time to trial was "several months faster." Appx11. Moreover, again crediting its own experience presiding over the case during the motion's pendency, the court speculated that transfer would result in "some additional delays associated with getting up to speed." *Id.*

The district court also found that the local interest factor was neutral. Importantly, because "the localized interests of non-parties, if any, are not properly a part of the venue analysis," the district court excluded Roku and TTE from the local interest factor. Appx12. The court found that EDTX had "no more or less meaningful a connection to this case" than NDCA, since "the accused products are 'sold throughout the United States.'" *Id.*[7]

Weighing the private and public factors together, the court denied the motion to transfer, finding that "Defendants have not met their elevated burden to show that the Northern District of California is *clearly more convenient*." Appx12. The district court then denied TCL's motion for ruling as moot.

[7] The parties and court agreed that the other public factors were neutral. Appx12.

III. STANDARD OF REVIEW

A writ of mandamus is proper if: (1) the right to issuance of the writ is clear and indisputable; (2) there is no other adequate means to attain the relief; and (3) this Court is satisfied that the writ is appropriate under the circumstances. *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380-81 (2004). Mandamus may be employed to correct "a clear abuse of discretion or usurpation of judicial power." *In re Link_A_Media Devices Corp.*, 662 F.3d 1221, 1222 (Fed. Cir. 2011). Abuse of discretion exists when the district court "relies on an erroneous conclusion of law" or makes "clearly erroneous" findings. *In re EMC Corp.*, 677 F.3d 1351, 1355 (Fed. Cir. 2012); *Minn. Mining and Mfg. Co. v. Norton Co.*, 929 F.2d 670, 673 (Fed. Cir. 1991). Mandamus may be used to contest a patently erroneous error denying transfer. *In re EMC*, 677 F.3d at 1354.

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to another district court or division where it might have been brought." 28 U.S.C. § 1404(a). The Federal Circuit applies "the law of the regional circuit" to review a district court's ruling on a motion to transfer. *Link_A_Media*, 662 F.3d at 1222-23. A movant in the Fifth Circuit must "demonstrate[] that the transferee venue is clearly more convenient." *In re Volkswagen of Am., Inc. ("Volkswagen II")*, 545 F.3d 304, 315 (5th Cir. 2008) (en banc).

IV. REASONS THE WRIT SHOULD ISSUE

A. The District Court Legally Erred by Restricting Its Analysis to "the Situation which Existed when Suit Was Instituted," While Weighing Against Transfer the Experience the Court Gained During Its Own Delay.

The district court's error in excluding post-complaint developments, except for the experience gained during its own delay, is doubly wrong. First, by restricting its analysis to "the situation which existed when suit was instituted," the district court misapplied *Hoffman*, which does not concern the public and private factors for transfer. Appx4. Second, by nonetheless crediting the experience gained during its own delay in ruling on transfer (necessarily a post-complaint development), Appx11, the court improperly put a thumb on the scale against transfer, and rewarded its violation of the clear directive to rule *promptly* on transfer motions *before* forcing the parties to spend "time, energy, and money" litigating the merits in an inconvenient forum, *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964).

1. *The district court legally erred by restricting its analysis to "the situation which existed when suit was instituted."*

Repeating an error common in EDTX that recently attracted this Court's attention on mandamus, *see* Supp. Br. Order, *In re Apple*, No. 20-112 (Fed. Cir. Mar. 3, 2020) (ECF No. 28) (seeking supplemental briefing on proper time frame for considering judicial economy), the district court mistakenly limited the convenience and interest-of-justice inquiry to the facts at the time of the complaint's filing. Appx4. While section 1404(a)'s *initial* inquiry into whether the transferee forum is

a *proper* forum is "expressly limited by the final clause of § 1404(a) restricting transfer to those federal districts in which the action *might have been brought*," *Van Dusen*, 376 U.S. at 616 (emphasis added); *Hoffman*, 363 U.S. at 343, its second inquiry, into whether the case should be transferred "[f]or the convenience of parties and witnesses, in the interests of justice," section 1404(a), is *not* restricted to the situation at filing, and instead takes into account post-complaint developments. *Van Dusen*, 376 U.S. at 621-23 (finding the "might have been clause" does not "narrow the range of permissible federal forums beyond those permitted by federal statute," thereby furthering the second step's "goals of convenience and fairness").

Indeed, the Supreme Court itself has recognized that transfer motions should consider "*when circumstances change…* making a once convenient forum inconvenient." *Ferens v. John Deere Co.*, 494 U.S. 516, 530-31 (1990) (emphasis added). The Federal, Second, Third, Fourth, Seventh, Eighth, and Tenth Circuits similarly recognize that the section 1404(a) "convenience" and "justice" analysis considers post-complaint developments. *See In re Volkswagen of Am., Inc. ("Volkswagen III")*, 566 F.3d 1349, 1351 (Fed. Cir. 2009); *In re Vistaprint, Ltd.*, 628 F.3d 1342, 1344, 1346 (Fed. Cir. 2010); *In re Google Inc.*, No. 2017-107, 2017 WL 977038, at *2 (Fed. Cir. Feb. 23, 2017); *In re Warrick*, 70 F.3d 736, 740 (2d Cir. 1995); *In re Fine Paper Antitrust Litig.*, 685 F.2d 810, 819 (3d Cir. 1982); *General Tire & Rubber Co. v. Watkins*, 373 F.2d 361, 368 (4th Cir. 1967); *Research*

Automation, Inc. v. Schrader-Bridgeport Int'l, Inc. 626 F.3d 973, 978, 982 (7th Cir. 2010); *Knowlton v. Allied Van Lines, Inc.*, 900 F.2d 1196, 1200-01 (8th Cir. 1990); *Montero v. Tulsa Airport Improvements Trust*, 770 F. App'x 439, 441 n.4 (10th Cir. 2019).[8]

The law on *forum non conveniens,* from which section 1404(a) derives,[9] further confirms that courts should evaluate post-filing developments in determining whether to maintain venue. *E.g., Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257 & n.25 (1981) (recognizing post-complaint events, including agreement to provide relevant records in particular jurisdiction, affect forum analysis). Ignoring post-complaint events would force courts to retain jurisdiction when doing so would not promote judicial economy, or to transfer when efficiencies and convenience can no longer be achieved. *See, e.g.*, *In re Air Crash Disaster Near New Orleans, La. On July 9, 1982*, 821 F.2d 1147, 1166 (5th Cir. 1987) (judgment vacated on other

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[8] In an unpublished opinion lacking analysis of the text or precedent, one panel of the Federal Circuit misapplied the limitation from *Hoffman* to the "convenience" and "justice" analysis. *In re EMC Corp.*, 501 F. App'x 973, 976 (Fed. Cir. 2013) ("Motions to transfer venue are to be decided based on 'the situation which existed when suit was instituted.'"). This decision is not binding precedent, Fed. Cir. R. 31.1(d), and, as cited in text, this Court has frequently considered post-complaint facts in its transfer analysis.

[9] *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 60 (2013) (explaining "[s]ection 1404(a) is merely a codification of the doctrine of *forum non conveniens*," which allows for transfer, rather than dismissal).

grounds) (limiting analysis would exclude relevant factors "which frequently develop or occur after the action commences," including "discovery, stipulations, admissions, the joinder or dismissal of parties").

Notwithstanding this clear precedent, EDTX continues to improperly extend *Hoffman* to section 1404(a)'s second step. *See* Supp. Br. Order, *In re Apple*. Here, the district court erred by ignoring post-complaint developments, which confirmed the centrality of *California*, and not EDTX, to this litigation. As Defendants told the court in the motion for ruling, Canon sought documents and corporate testimony from Roku in NDCA and TTE in CDCA, and subpoenaed for deposition seven Roku employees and four TTE employees in California, Appx285 n.3; Appx299. Canon's discovery conduct confirms that Roku and TTE are central to Canon's case and, as stated in Roku's and TTE's sworn testimony, Appx166-167 (¶¶7-15); Appx171-172 (¶¶8-14), any relevant witnesses and evidence from Roku and TTE are in California, not Texas.[10]

[10] Since denial of the motion to transfer, Canon's aggressive approach to discovery forced Roku to file two motions to quash in NDCA concerning Canon's requests for production and Roku's source code. *See* Appx376 (Transfer Order, *Canon, Inc. v. TCL Electrical Holdings, Inc*., 20-mc-80079-JCS, -80080-JSC (NDCA May 14, 2020), ECF No. 24). Seeking transfer of these motions to EDTX, Canon emphasized Roku's central role to the EDTX action, including that Roku would be involved in any negotiation for reasonable royalty between TCL and Canon. Appx369 (Canon Reply ISO Transfer, *Canon, Inc. v. TCL Electrical Holdings, Inc*., 20-mc-80079-JCS, -80080-JSC (NDCA May 13, 2020), ECF No. 21-04). Despite the inconvenience to Roku, NDCA transferred these motions to EDTX based on

As further evidence of California's centrality to this litigation, Canon did not even seek to depose anyone in Texas until April 2020, just three weeks before the then-scheduled close of fact discovery (though it was aware of them long before).[11] Only after Defendants had moved for a ruling in March, *pointing out* Canon's failure, did Canon suddenly seek depositions of Roku and TTE employees in Austin and Houston. *See*, Appx316; Appx336; Appx263. By ignoring these developments that show the importance of third-party evidence and witnesses in California, the district court eschewed "the common-sense approach" to section 1404(a)'s analysis. *See Cont'l Grain Co. v. The FBL-585*, 364 U.S. 19, 24 (1960).

2. *The district court further erred by nonetheless counting its* own *delay—a post-complaint development—*against *transfer.*

Even while refusing to consider post-complaint developments in favor of transfer, the district court nonetheless counted *against* transfer the experience it gained during the time of its own delay ruling on the transfer motion. The court thus erroneously applied an unjustifiable rule that post-complaint events matter only if they disfavor transfer.

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exceptional circumstances, including a risk of overlap on the merits and EDTX's fast-moving schedule. Appx376-377 (Transfer Order).

[11] Indeed, Canon removed all Texas-based witnesses from its Amended Initial Disclosures on March 13, 2020, confirming their lack of relevance. *Compare* Appx225-235, *with* Appx272-279.

Delayed action on transfer motions frustrates the purpose of transfer "to prevent the waste of time, energy, and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Van Dusen*, 376 U.S. at 616; *In re Google Inc.*, No. 2015-138, 2015 WL 5294800, at *1 (Fed. Cir. July 16, 2016) (advising courts to address transfer motion "at the outset of litigation"). To avoid such waste, "[j]udicial economy requires that [a] district court should not burden itself with the merits of the action until it is decided [whether] a transfer should be effected." *McDonnell Douglas Corp. v. Polin,* 429 F.2d 30, 30 (3d Cir.1970). This requirement preserves judicial resources and prevents courts from using delay to "boot strap[]"retention of the case. *In re Horseshoe Entm't*, 337 F.3d 429, 433 (5th Cir. 2003) (finding transfer motion "should have taken a top priority in the handling of this case").

Here, the district court not only disregarded that clear directive, it compounded its error by improperly weighing its own delay against transfer, finding that "its experience with the asserted patents coupled with *its expenditure of time and resources in this case* causes this factor to slightly weigh against transfer." Appx11 (emphasis added). During the six months that the transfer motion was pending, the district court's experience largely consisted of case management and

addressing Defendants' motions to dismiss. *See* Appx24-31; Appx263-265. It had heard argument on claim construction, but not yet ruled.[12] Appx28-32.

The court further weighed its delay against transfer by reasoning that there was now insufficient time to transfer to NDCA "without some additional delays associated with getting up to speed." Appx11. That concern rings hollow given the considerable discovery remaining. *See, e.g.*, Appx341 (extending discovery deadlines before ruling); Appx30-31 (requesting leave to serve supplemental infringement contentions, Dkt. 136, and to file second amended complaint, Dkt. 148[13]); Appx363 (further extending discovery deadlines). Moreover, the problem is one of the court's own making. If the court had promptly ruled on the transfer motion, NDCA would already be familiar with the case. The court's analysis directly contradicts Fifth Circuit law, which teaches that "garden-variety delay associated with transfer is not to be taken into consideration when ruling on a § 1404(a) motion to transfer." *In re Radmax, Ltd.*, 720 F.3d 285, 289 (5th Cir. 2013).

[12] Contrary to the claim in the transfer order, the court had not "issued a Claim Construction Order" when it denied the transfer motion, but did so a week later. Appx11 n.3; *see* Appx32 (Dkt. 149).

[13] Canon now seeks to add yet another foreign defendant to this case without identifying any connection to EDTX, which may lead to an extension of the current schedule, as that defendant has not yet even been served. *See* Appx348.

Ultimately, the district court cannot bootstrap its retention of venue by failing to prioritize Defendants' timely transfer motion. *See McDonnell Douglas,* 429 F.2d at 30 (instructing courts to refrain from the merits until transfer is decided). The court's refusal to consider relevant post-complaint facts, particularly Canon's subpoenas demanding onerous discovery from Roku and TTE, marred the court's analysis of the convenience of witnesses and interests of justice. The court's inconsistent reliance on its own post-filing delay to tilt the judicial economy and court congestion factors against transfer compound that error. A writ of mandamus is needed to resolve the legal error in this case, and prevent courts from continuing to engage in such skewed analysis of transfer motions.

B. The District Court Legally Erred by Drawing Inferences and Resolving Factual Conflicts in Favor of the Non-Moving Party and Against Transfer.

1. *Section 1404(a) requires the court to make factual findings on convenience and fairness.*

In addition to applying a double-standard for considering post-complaint developments, the district court multiplied the burden for supporting transfer by holding that, in assessing whether Defendants satisfied the "clearly more convenient" standard, the court was *required* to "draw all reasonable inferences and resolve factual conflicts in favor of the non-moving party," *i.e.*, *against* transfer. Appx3. As demonstrated by the district court's own authorities, this is a standard borrowed from Rule 12(b)(3) motions to *dismiss*—a case dispositive context—not

to *transfer*. *See id.* (citing *Cooper v. Farmers New Century Ins. Co.*, 593 F. Supp. 2d 14, 18-19 (D.D.C. 2008) (reciting standard for "Rule 12(b)(3) motion") and *Sleepy Lagoon, Ltd., v. Tower Grp., Inc.*, 809 F. Supp. 2d 1300, 1306 (N.D. Okla. 2011) (ultimately citing *Audi AG v. Izumi*, 204 F. Supp. 2d 1014, 1017 (E.D. Mich. 2002) (reciting standard for "motion to dismiss for improper venue"))).[14] Drawing inferences and resolving factual conflicts in favor of the non-moving party overemphasizes the weight of plaintiff's choice of forum and risks manipulation of venue.

The 12(b)(3) context and the § 1404 context are very different—and there is no reason in addressing a *transfer* motion to apply this preference against the movant. To evaluate a motion to transfer under section 1404(a), district courts must weigh the facts affecting the convenience of the parties and the interests of justice. As the Supreme Court has explained, under section 1404(a), "the trial judge can, *after findings*, transfer the whole action to the more convenient court." *Van Dusen*, 376 U.S. at 622 (emphasis added). "Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an 'individualized,

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[14] *Sleepy Lagoon*, 809 F. Supp. 2d at 1306 (citing *U.S. v. Gonzales & Gonzales Bonds and Ins. Agency, Inc.*, 677 F. Supp. 2d 987, 991 (W.D. Tenn. 2010), citing *Nisby v. Barden Miss. Gaming, LLC*, No. 06-2799 MA, 2007 WL 6892326, at *2 (W.D. Tenn. Sept. 24 2007), citing *Gone to the Beach, LLC v. Choicepoint Servs., Inc.*, 434 F. Supp. 2d 534, 537 (W.D. Tenn. 2006), citing *Audi AG v. Izumi*, 204 F. Supp. 2d 1014, 1017 (E.D. Mich. 2002)).

case-by-case consideration of convenience and fairness.'" *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen*, 487 U.S. at 622)); *Piper Aircraft*, 454 U.S. at 263 (finding "each case turns on its facts" for *forum non conveniens); In re Microsoft Corp.*, 630 F.3d 1361, 1363 (Fed. Cir. 2011) ("[T]he trial court [must] weigh a number of case-specific factors relating to the convenience of the parties and witnesses, and the proper administration of justice, *based on the individualized facts on record*." (emphasis added)).

In the Fifth Circuit, "plaintiff's choice of venue corresponds to the burden that a moving party must meet in order to demonstrate that the transferee venue is a clearly more convenient venue." *In re TS Tech USA Corp.*, 551 F.3d 1315, 1320 (Fed. Cir. 2008). Giving additional deference to the non-moving plaintiff's every assertion "giv[es] inordinate weight to the plaintiff's choice of venue," *id.*, making transfer virtually impossible.

The standard applied by the district court undermines the "underlying premise of § 1404(a)…that courts should prevent plaintiffs from abusing their privilege" in their choice of forum "by subjecting defendants and third parties to venues that are inconvenient." *Volkswagen II*, 545 F.3d at 313 (citing *Norwood v. Kirkpatrick*, 349 U.S. 29 (1955)). This Court has repeatedly demonstrated that plaintiff's evidence must be evaluated, and not simply accepted on its face, to guard against plaintiff's manipulation of venue. *See In re Zimmer Holdings, Inc.*, 609 F.3d 1378, 1381 (Fed.

Cir. 2010) (rejecting "uncorroborated contentions" from plaintiff that its principal place of business was in the transferor forum); *In re Hoffman-La Roche Inc.*, 587 F.3d 1333, 1337 (Fed. Cir. 2009) (giving no weight to presence of 75,000 pages of documents, which the court found were moved into the forum in anticipation of litigation to manipulate venue); *In re Microsoft*, 630 F.3d at 1364-65 (issuing writ of mandamus for transfer, including because plaintiff's incorporation and maintenance of documents in the transferor forum had "no other purpose than to manipulate venue").

2. *By drawing inferences and resolving factual conflicts in Canon's favor, the district court skewed its analysis of the cost of attendance and availability of evidence in Canon's favor, rather than in favor of the most convenient venue.*

The district court improperly credited Canon's attorney arguments and speculation to find that "there is no evidence" that Roku's and TTE's witnesses are willing witnesses and "decline[d] to consider the cost" of their attendance. Appx10. Yet, TCL provided this very evidence: Thomas Gong, Financial Controller of and Director at TTE, and Tom McFarland, OEM Director of Business Development at Roku, submitted declarations testifying to their own willingness to attend trial and identifying other California-based employees with relevant knowledge who are also willing to testify. Appx170-171 (¶¶5, 9-12); Appx166-167 (¶¶6, 8-13). Though there was no such sworn evidence for the Texas witnesses, the district court should have considered them willing witnesses because the Fifth Circuit does not require

an affirmative showing of witnesses' willingness to consider how transfer affects their convenience. *In re Volkswagen AG ("Volkswagen I")*, 371 F.3d 201, 204-05 (5th Cir. 2004) (finding convenience of numerous third-party witnesses should have been considered without making any finding of willingness); *In re Genentech Inc.*, 566 F.3d 1338, 1343-44 (Fed. Cir. 2009) (same).

The district court clearly abused its discretion in setting aside TCL's evidence of willingness in favor of Canon's unsupported assertion otherwise. *See* Appx193; *In re Zimmer*, 609 F.3d at 1381 (disregarding "uncorroborated contentions"). Attending trial in NDCA where Roku's headquarters and knowledgeable employees are located and near TTE's office and employees is substantially more convenient and less expensive than in EDTX. Appx170-171 (¶¶5, 12); Appx166-167 (¶¶6, 13); Appx180 (showing Corona is closer to NDCA than EDTX). Roku's and TTE's Texas employees have limited knowledge about the accused technology, and are located outside EDTX. *Infra* § C.1. Thus, even considering the Texas witnesses or Canon's expert witnesses and prosecution attorneys, none of whom is in EDTX, the cost of attendance factor weighs in favor of transfer.

The district court also improperly drew inferences and resolved factual conflicts in Canon's favor concerning ease of access to third-party evidence. TCL provided declarations testifying that Roku maintains relevant documents at its headquarters in NDCA, Appx167 (¶16), and that TTE's relevant documents are

located near NDCA at its office in Corona, California. Appx172 (¶14). These declarations also show that neither Roku nor TTE have documents in EDTX, and any documents in Austin or Dallas respectively do not relate to the accused technology. *See* Appx167 (¶14-15); Appx172 (¶13).

Canon speculated, but offered no evidence, about the availability of documents from Roku or TTE in Texas. Appx195 (noting "Roku's development center in Austin *likely* stores" and TTE's employee in Dallas "will *presumably* have access" to relevant documents) (emphasis added)). Yet, the court credited this speculation to find that the domestic "sources of proof are scattered across *Texas* and California, including at least in *Austin,* Corona, *Dallas,* Los Gatos, and San Jose." Appx6 (emphasis added). Contrary to the court's conclusion, Canon's speculation about documents in Texas cannot outweigh TCL's proffered evidence that the relevant documents are in California. *See Hoffman-La Roche*, 587 F.3d at 1337 n.3 (finding district court could not rely on speculation of court's ability to compel witnesses to attend trial).

By resolving the conflict between TCL's evidence and Canon's speculation in Canon's favor, the court failed to account for the convenience of NDCA and gave undue weight to Canon's choice of EDTX. *Genentech*, 566 F.3d at 1345-46 (finding California had greater access to proof given location of documents on accused

infringing products in and near the district, when no documents were located in Texas). Mandamus is warranted to correct this legal error.

C. By Maintaining Venue in EDTX with No Parties, No Witnesses, and No Evidence, Despite NDCA's Access to Witness and Evidence and Interest in the Dispute, the District Court Clearly Erred in Weighing the Private and Public Venue Factors.

While the court's legal errors merit mandamus, so too does its clearly erroneous analysis of the public and private venue factors. This analysis is riddled with inconsistent and unsupported findings; disregard for evidence and witnesses from Roku, TTE, and TCL King; and disregard for the local interests regarding third parties. This case should not proceed in EDTX, which has no parties, no witnesses, and no evidence, when TCL has shown that NDCA clearly better serves "the convenience of parties and witnesses" and the "interests of justice."

1. *The district court entirely excluded Roku's and TTE's California witnesses from its analysis, failing to properly consider them in the cost of attendance factor or, despite improperly finding them unwilling, in the compulsory process factor.*

As discussed above, the court credited Canon's speculation to find that Roku's and TTE's witnesses were unwilling to attend trial. *Supra* § B.2. Based on that finding, the district court "decline[d] to consider the cost to witnesses from Roku or TTE wherever they may be located." Appx10. Yet, the court also improperly limited its analysis of compulsory process. While the court felt "largely uncomfortable speculating as to which subset of the identified potential witnesses

will actually testify at trial," the court credited Canon's assertion that "key Roku and TTE witnesses, with knowledge of the accused products and development cycles, are present *in Texas*." Appx8 (emphasis added). Based on these witnesses located *outside* EDTX, the court found the compulsory process factors "to weigh slightly against transfer." *Id.* Thus, the court whipsawed between improperly finding all of Roku's and TTE's witnesses to be unwilling (despite sworn testimony otherwise), meaning they would be subject to the compulsory process factor, and then excluding any such witnesses outside of Texas from consideration in the compulsory process factor.

The district court further abused its discretion when it relied on unverified LinkedIn profiles, showing Roku's Austin employees work with the accused products, as proof that Roku's Austin employees had knowledge of the accused technology. *See* Appx8-9. TCL provided sworn testimony to the contrary: Roku's California employees are "most knowledgeable about the accused features and functionalities" and "[n]o employees in the Austin office were involved in developing, or currently are responsible for, the technologies that Canon has accused." Appx166-167 (¶¶7, 15). Canon's focus on seeking discovery from Roku, TTE, and their California employees further confirms that the California employees (and not the Texas employees whom Canon did not subpoena for testimony for over six months) have knowledge relevant to Canon's claims. Thus the court further erred

by giving the most weight to employees with the least knowledge, and wholly excluding the employees with the most knowledge about the accused technology.

As discussed above, the court should consider all of Roku's and TTE's employees in the cost of attendance factor to weigh in favor of transfer. *Supra* § B.2. The court should then weigh the compulsory process factor in favor of transfer, because relevant witnesses reside in and near NDCA, while only witnesses with limited knowledge reside near EDTX. *In re Acer Am. Corp.*, 626 F.3d 1252, 1255 (Fed. Cir. 2010) (comparing potential subpoena power of EDTX over defendant's employees outside of EDTX and NDCA's subpoena power over companies and witnesses in NDCA).

Even considering the compulsory process factor more narrowly based on the allegedly unwilling Texas employees, the court erred by giving too much weight to those witnesses, when sworn testimony and Canon's discovery requests indicate that they are not key to this case. In the alternative, the court should have found that the compulsory process factor was neutral because *none* of the relevant Texas witnesses resides within EDTX or within 100 miles of the court, and there was no information on the expense of such travel. Fed. R. Civ. P. 45(c); *see Hoffman-La Roche*, 587 F.3d at 1337 (finding district court gave too much weight to ability to compel Texas witness residing more than 100 miles from EDTX).

2. *The district court also erroneously excluded Party witnesses from its analysis on cost of attendance for willing witnesses.*

TCL King Huizhou has an employee with "knowledge[] about the manufacture of the Accused Products" who maintains documents in Corona, California near NDCA. Appx159 (¶6). Yet the district court did not consider the greater convenience of NDCA to this party witness in analyzing the cost of attendance. Appx10. Nor did the court consider the convenience to party witnesses abroad. TCL's and Canon's witnesses traveling from China and Japan are closer to NDCA than to EDTX. Appx159-160 (¶¶6-8); Appx162 (¶¶5-6); Appx178. Trial in NDCA will be at least marginally more convenient for their evidence and witnesses. *See In re Nintendo Co., Ltd.*, 589 F.3d 1194, 1199 (Fed. Cir. 2009) (providing greater weight to inconvenience of domestic witnesses, but noting additional travel time for Japanese witnesses traveling to Texas rather than Washington). Combined with the substantially greater convenience of NDCA to Roku's and TTE's California witnesses, the cost of attendance factor weighs strongly in favor of transfer. The court's failure to consider these party witnesses contributed to its error in maintaining venue in EDTX, in which no parties or witnesses reside.

3. *The district court abused its discretion by refusing to consider NDCA's local interest based on Roku's and TTE's involvement in the case.*

Asserting "the localized interests of non-parties, if any, are not properly part of the venue analysis," the district court incorrectly determined that "the citizens of

the Eastern District of Texas have no more or less a meaningful connection to this case than any other venue." Appx12 (quotations omitted). Yet, Canon repeatedly places Roku, which is headquartered in NDCA, and TTE, located in CDCA, at the heart of its claims as the alleged direct infringers of its patents. *E.g.*, Appx58-60 (¶¶52-57); Appx74 (¶¶89-91).

Roku's development of the allegedly infringing technology in NDCA, Appx166 (¶7), establishes significant connections between that district and the events giving rise to this suit. *See Hoffman-La Roche*, 587 F.3d at 1338; *Adaptix, Inc. v. HTC Corp.*, 937 F. Supp. 2d 867, 878 (E.D. Tex. 2013) (finding "presence of individuals involved in developing the accused technology" provides local interest in patent infringement suit). Moreover, this case "calls into question the work and reputation" of Roku's employees, as well as the TTE employees "residing…near" NDCA. *Hoffman-La Roche*, 587 F.3d at 1336.

In contrast, EDTX has no parties, witnesses, or any material connection to this litigation. *See Nintendo*, 589 F.3d at 1198 (finding insufficient local interest when "[n]o parties, witnesses, or evidence have any material connection to the venue"); *Volkswagen II*, 545 F.3d at 317-18 (finding "no relevant factual connection to the Marshall Division," including when "not one of the plaintiffs has ever lived [there]"). Moreover, the court's disregard for the impact of third parties on the local interest factor allows Canon to hale Roku and TTE into a district with no ties to

them, the parties, or the evidence. *See Volkswagen II*, 545 F.3d at 317-18 (finding where witnesses "live and are employed" and location of "two of the three plaintiffs" affected weight of local interest); *Volkswagen I*, 371 F.3d at 204 (advising that local interest factor concerns "the parties and witnesses in all claims and controversies properly joined in a proceeding").

Because the burden of jury duty should not be placed on the people of a district with minimal ties to the litigation, this factor weighs in favor of transfer to NDCA, where Roku developed the accused technology, and near TTE, which sells the accused products. *See Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-09 (1947) (placing burden of jury duty on "the people of a community" with a "relation to the litigation").

In summary, contrary to the district court's findings, no factors weigh against transfer, and at least the ease of access to sources of proof, convenience of the witnesses, and local interest weigh in favor of transfer. Allowing the case to proceed in EDTX charts a path around *TC Heartland* and exemplifies how to hale an alleged direct infringer into an inconvenient forum based on artful pleading and venue arguments downplaying local interests and the accessibility of the alleged infringer's evidence and witnesses. Because the district court patently erred by maintaining jurisdiction in EDTX despite its lack of connection to the parties, witnesses, or controversy, in light of NDCA's greater convenience to the parties and witnesses

and its interest in the dispute, this Court should grant a writ of mandamus ordering transfer to NDCA.

V. MANDAMUS IS APPROPRIATE

Under Fifth Circuit law, "a party seeking mandamus for a denial of transfer clearly meets the 'no other means' requirement." *TS Tech*, 551 F.3d at 1322; *see also Volkswagen II*, 545 F.3d at 319 ("[T]he harm—inconvenience to witnesses, parties and other—will already have been done by the time the case is tried and appealed, and the prejudice suffered cannot be put back in the bottle."). Here, a writ of mandamus is also appropriate because it will "further supervisory or instructional goals" regarding "issues [that] are unsettled and important." *In re Queen's Univ. at Kingston*, 820 F.3d 1287, 1291 (Fed. Cir. 2016).

Additionally, mandamus is appropriate to address questions of "first impression," as well as "basic and undecided" questions troubling the community. *In re BP Lubricants USA Inc.*, 637 F.3d 1307, 1310, 1313 (Fed. Cir. 2011) (quoting *Schlagenhauf v. Holder*, 379 U.S. 104 (1964)); *see In re SpaldingSports Worldwide, Inc.*, 203 F.3d 800, 804 (Fed. Cir. 2000). The Federal Circuit recently recognized the need to address the timing of the venue analysis. Supp. Br. Order, *In re Apple*. Clarifying the appropriate standard for finding facts and the importance of third parties in venue's private and public factor analysis will also provide needed

instruction to the courts on evaluating venue in light of plaintiffs' tactic of using indirect infringement to target non-parties accused of direct infringement.

Where, as here, "[t]he district court clearly abused its discretion and reached a patently erroneous result[,] [a]nd it is indisputable that [the petitioners] ha[ve] no other adequate remedy that would provide [them] with relief," issuance of the writ "is appropriate." *Volkswagen II*, 545 F.3d at 319.

VI. CONCLUSION

For these reasons, the Court should issue a writ of mandamus directing the district court to transfer this case to the Northern District of California.

Dated: May 26, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2020, the foregoing Petition for Writ of Mandamus has been submitted electronically using the Court's CM/ECF system and was served upon the following counsel of record and district court judge via Federal Express:

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this petition complies with the type-volume limitation of Fed. R. App. P. 21(d)(1) because this brief contains 7,782 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of Fed. R. App. P. 32(c)(2) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14 point font.

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