

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ELM 3DS INNOVATIONS LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	
SK HYNIX INC., SK HYNIX AMERICA)	
INC., HYNIX SEMICONDUCTOR)	Civil Action No. 14-1432-LPS-CJB
MANUFACTURING AMERICA INC,)	
and SK HYNIX MEMORY SOLUTIONS)	
INC.,)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff Elm 3DS Innovations, LLC (“Elm 3DS” or “Plaintiff”) filed this action for patent infringement against Defendants SK hynix Inc., SK hynix America Inc., Hynix Semiconductor Manufacturing America Inc., and SK hynix Memory Solutions Inc., (collectively, “Defendants” or “SK hynix”). Presently pending before the Court is Defendants’ motion to transfer venue (“Motion”) to the United States District Court for the Northern District of California (“Northern District of California”). (D.I. 16) For the reasons that follow, the Court orders that Defendants’ Motion be DENIED.¹

I. BACKGROUND

A. Procedural Background

Plaintiff filed the instant case on November 21, 2014. (D.I. 1) Plaintiff’s Amended Complaint now alleges that Defendants infringe 13 patents (collectively, the “patents-in-suit” or

¹ Our Court has made clear in recent decisions that a motion to transfer venue should be treated as a non-dispositive motion. *See TSMC Tech., Inc. v. Zond, LLC*, Civil Action No. 14-721-LPS-CJB, 2015 WL 328334, at *1 (D. Del. Jan. 26, 2015). Thus, the Court titles this document as a “Memorandum Order.”

“asserted patents”): United States Patent No. 7,193,239, United States Patent No. 7,474,004, United States Patent No. 7,504,732, United States Patent No. 8,035,233, United States Patent No. 8,410,617, United States Patent No. 8,629,542, United States Patent No. 8,653,672, United States Patent No. 8,791,581, United States Patent No. 8,796,862, United States Patent No. 8,841,778, United States Patent No. 8,907,499, United States Patent No. 8,928,119, and United States Patent No. 8,933,570. (D.I. 13 at ¶ 1) On December 1, 2014, Chief Judge Leonard P. Stark referred the instant case to this Court to resolve any and all matters with regard to scheduling, as well as any motions to dismiss, stay and/or transfer venue. (D.I. 6)

Defendants filed the instant Motion on March 31, 2015. (D.I. 16) Initial briefing on the Motion was completed on May 11, 2015. (D.I. 28) On May 22, 2015, Defendants filed a motion seeking leave to amend their opening brief in support of their Motion (“Motion for Leave to Amend”), (D.I. 33), briefing on which was completed on June 5, 2015, (D.I. 39).²

B. Factual Background

Plaintiff is a Delaware limited liability company (“LLC”); its principal place of business is in Carmel, California, which is located in the Northern District of California. (Declaration of Matthew J.M. Pelikan, D.I. 27 (“Pelikan Decl.”) at ¶ 3) The company owns patents, including

² The Motion for Leave to Amend addresses whether Defendants’ opening brief can be amended to make reference to the declaration of Farhad Tabrizi. Mr. Tabrizi is an individual whom, as is further discussed below, has some relationship to the allegations in this case. Because the Court finds the referenced material would be “helpful in the resolution of this matter,” *McCann v. Snyder*, No. CIV. A. 95-568-SLR, 1997 WL 309446, at *1 (D. Del. Apr. 3, 1997), because it does not see how the inclusion will unduly prejudice Plaintiff under the circumstances, and because Defendants did not unduly delay in obtaining this evidence, (*see* Declaration of Jas S. Dhillon, D.I. 33-4 at ¶¶ 3-8), the Motion for Leave to Amend will be GRANTED. The parties’ joint request for a teleconference to address this motion, (D.I. 40), is DENIED.

the asserted patents, that relate to semiconductor technologies for the design and manufacture of three-dimensional integrated circuits. (D.I. 13 at ¶¶ 13, 25; Pelikan Decl. at ¶ 6; D.I. 26 at 4 & n.2) The President of Elm 3DS, Glenn J. Leedy, is the inventor of the asserted patents; Mr. Leedy currently resides in Carmel. (D.I. 13 at ¶¶ 4, 14 & ex. 8 at 1)

Plaintiff was formed as an LLC on June 20, 2014, when it was named “3DS IP Holdings, LLC.” (Declaration of Harold H. Davis, D.I. 19 (“Davis Decl.”), ex. 1) The record is not clear as to when 3DS IP Holdings, LLC was assigned the patents-in-suit. (*Id.*, exs. 1, 2) On November 20, 2014, 3DS IP Holdings, LLC changed its corporate name to Plaintiff’s current name (“Elm 3DS Innovations, LLC”). (*Id.*, ex. 2) Elm 3DS Innovations, LLC was assigned the patents-in-suit from 3DS IP Holdings, LLC on the same date—November 20, 2014. (*Id.*)

SK hynix Inc. is a Korean corporation with its principal place of business located in the Republic of Korea. (Declaration of Dong Hyeon Kim, D.I. 18 (“Kim Decl.”) at ¶ 2) The corporation’s United States-based business relates to stacked memory products, such as the sales and marketing of the accused products at issue in this case. (*Id.* at ¶ 10) Those sales and marketing efforts occur in its San Jose, California offices, located in the Northern District of California. (*Id.*) The accused products are designed in Korea and manufactured in either Korea or China. (*Id.* at ¶ 11)

The three other named Defendants, SK hynix America Inc. (“SKHYA”), Hynix Semiconductor Manufacturing America Inc. (“HSMA”), and SK hynix Memory Solutions Inc. (“SKHMS”) are substantially owned direct or indirect subsidiaries of SK hynix Inc. (*Id.* at ¶ 2) SKHYA is a California corporation with its principal place of business in San Jose, California. (*Id.* at ¶¶ 3, 10) It is “typically” responsible for the importation and direct sales of the accused

memory products in the United States, based out of its San Jose office. (*Id.* at ¶¶ 10-11) HSMA is a California corporation that was located in Eugene, Oregon. (*Id.* at ¶ 4) It ceased operations in 2008, and while it has a mailing address in San Jose, it does not currently function as an operating company. (*Id.*) SKHMS is a Delaware corporation with its principal place of business in San Jose, California. (*Id.* at ¶ 5) It was formed in 2012, and primarily provides controller hardware, advanced flash management systems and firmware for NAND-based storage solutions to a wide range of market segments. (*Id.* at ¶¶ 5-6)

Elm 3DS is also the plaintiff in two additional patent infringement suits pending in Delaware. *See Elm 3DS Innovations, LLC v. Samsung Electronics Co., Ltd.*, Civil Action No. 14-1430-LPS-CJB (D. Del); *Elm 3DS Innovations, LLC v. Micron Tech., Inc.*, Civil Action No. 14-1431-LPS-CJB (D. Del). These two other cases (the “other Elm 3DS Actions,” and collectively with the instant case, the “Elm 3DS Actions”) were filed on the same date as the instant case. (*Id.*) One of the other two cases involves allegations of infringement of 12 of the asserted patents in this case; the other case involves infringement allegations as to all 13 patents. (*Id.*; Pelikan Decl. at ¶ 4) Like this case, the other Elm 3DS Actions are assigned to Chief Judge Stark.

II. DISCUSSION

A. Legal Standard

Section 1404(a) of Title 28 provides the statutory basis for a transfer inquiry.³ It provides

³ In analyzing a motion to transfer in a patent case, it is the law of the regional circuit that applies. *Intellectual Ventures I LLC v. Checkpoint Software Techs. Ltd.*, 797 F. Supp. 2d 472, 487 n.7 (D. Del. 2011) (citing *Micron Tech., Inc. v. Rambus Inc.*, 645 F.3d 1311, 1331 (Fed. Cir. 2011)).

that “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.” 28 U.S.C. § 1404(a). The party seeking a transfer has the burden “to establish that a balancing of proper interests weigh[s] in favor of the transfer[.]” *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 25 (3d Cir. 1970) (internal quotation marks and citation omitted); *see also Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995). That burden is a heavy one: “unless the balance of convenience of the parties is *strongly in favor of defendant*, the plaintiff’s choice of forum should prevail.” *Shutte*, 431 F.2d at 25 (internal quotation marks and citation omitted) (emphasis added); *see also CNH Am. LLC v. Kinzenbaw*, Civil Action No. 08-945(GMS), 2009 WL 3737653, at *2 (D. Del. Nov. 9, 2009).

The Third Circuit has observed that courts must analyze “all relevant factors” to determine whether “the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum.” *Jumara*, 55 F.3d at 879 (internal quotation marks and citation omitted). Nevertheless, it has identified a set of private interest and public interest factors that should be taken into account in this analysis (the “*Jumara* factors”). The private interest factors to consider include:

[1] [The] plaintiff’s forum preference as manifested in the original choice, [2] the defendant’s preference, [3] whether the claim arose elsewhere, [4] the convenience of the parties as indicated by their relative physical and financial condition, [5] the convenience of the witnesses—but only to the extent that the witnesses may actually be unavailable for trial in one of the fora, and [6] the location of books and records (similarly limited to the extent that the files could not be produced in the alternative forum).

Id. (citations omitted). The public interest factors to consider include:

[1] [T]he enforceability of the judgment, [2] practical considerations that could make the trial easy, expeditious, or inexpensive, [3] the relative administrative difficulty in the two fora resulting from court congestion, [4] the local interest in deciding local controversies at home, [5] the public policies of the fora, and [6] the familiarity of the trial judge with the applicable state law in diversity cases.

Id. at 879-80 (citations omitted).

B. Discussion

The Court will proceed with the transfer analysis, including a review of the *Jumara* factors and how they impact whether transfer should be granted.

1. Appropriateness of Transferee Venue

The first step in the transfer analysis is to determine whether the movant has demonstrated that the action could have been brought in the proposed transferee venue in the first instance. *See Mallinckrodt, Inc. v. E-Z-Em Inc.*, 670 F. Supp. 2d 349, 356 (D. Del. 2009). Here, there is no dispute that it could have. (D.I. 26 at 6; D.I. 28 at 1 n.1) SK hynix, Inc. is a foreign corporation, and the three subsidiary Defendants are incorporated in California and/or have their principal places of business in California.⁴ *See* 28 U.S.C. § 1391(c); 28 U.S.C. § 1400(b); *In re Princeton Digital Image Corp.*, 496 F. App'x 73, 75 (Fed. Cir. 2012); (Kim Decl. at ¶¶ 2-5).

2. Application of the *Jumara* Factors

a. Private Interest Factors

i. Plaintiff's choice of forum

When analyzing the first *Jumara* private interest factor—the “plaintiff’s forum preference as manifested in the original choice”—the court should not consider simply the fact of that

⁴ SK hynix’s technology and innovation center is located in San Jose, where 407 out of its 443 U.S.-based employees work. (Kim Decl. at ¶ 8)

choice, but the reasons behind the choice. *Pragmatus AV, LLC v. Yahoo! Inc.*, Civil Action No. 11-902-LPS-CJB, 2012 WL 4889438, at *4 & n.5 (D. Del. Oct. 15, 2012) (“*Pragmatus I*”) (citing cases), *adopted by* 2013 WL 174499 (D. Del. Jan. 16, 2013) (“*Pragmatus II*”); *see also Affymetrix, Inc. v. Synteni, Inc.*, 28 F. Supp. 2d 192, 200 (D. Del. 1998). “If those reasons are rational and legitimate then they will weigh against transfer, as they are likely to support a determination that the instant case is properly venued in this jurisdiction.” *Pragmatus I*, 2012 WL 4889438, at *4 (internal quotation marks, brackets and citations omitted) (citing cases); *see also Intellectual Ventures I LLC v. Altera Corp.*, 842 F. Supp. 2d 744, 753-54 (D. Del. 2012) (“*Altera*”).⁵

Plaintiff argues that among the legitimate and rational reasons it had to sue here were: (1) it was formed here; (2) at least one Defendant in each of the Elm 3DS Actions is incorporated here; and (3) “substantial efficiencies to the parties and the judicial system” would result from having the related actions pending in one court. (D.I. 26 at 7) Our Court has repeatedly found that it is rational and legitimate for a plaintiff to sue in a District in which it is incorporated, as such a plaintiff has previously associated itself with the forum and availed itself of the benefits and consequences of the State’s laws. *See, e.g., McRo, Inc. v. Activision Blizzard, Inc.*, Civil Action No. 12-1508-LPS-CJB, 2013 WL 6571618, at *4 (D. Del. Dec. 13, 2013) (citing cases), *adopted by* 2013 WL 6869866 (D. Del. Dec. 30, 2013); *Altera*, 842 F. Supp. 2d at 754.

⁵ On the other hand, where a plaintiff’s choice of forum was made for an improper reason—such as where the choice is arbitrary, irrational, or selected to impede the efficient and convenient progress of a case—it should not be afforded substantial weight. *Pragmatus I*, 2012 WL 4889438, at *4; *Affymetrix*, 28 F. Supp. 2d at 200 (noting that if a plaintiff had no good reason, or an improper reason, for filing suit in this District, this would likely weigh in favor of transfer).

Additionally, it is rational for a plaintiff to choose to sue a defendant in that defendant's state of incorporation—a district where a plaintiff can have some certainty that there will be personal jurisdiction over the defendant. *See, e.g., TSMC Tech., Inc. v. Zond, LLC*, Civil Action No. 14-721-LPS-CJB, 2014 WL 7251188, at *15 (D. Del. Dec. 19, 2014) (citing cases), *adopted by* 2015 WL 328334 (D. Del. Jan. 26, 2015); *Altera*, 842 F. Supp. 2d at 754.

Absent further argument, these two legitimate reasons alone would result in this *Jumara* factor weighing squarely against transfer. In the Court's view, these reasons do not become any less "legitimate" simply because Plaintiff (and its principal, Mr. Leedy) are based in the Northern District of California. (D.I. 28 at 5)⁶ Plaintiffs may choose to litigate in fora other than where they are physically based, for any number of understandable reasons (including the reasons set out above).

Defendants counter that Plaintiff's choice of forum should be given little or no weight, because Plaintiff has engaged in "venue manipulation." (*Id.* at 3-4) Defendants first argue this is so because Plaintiff registered as a Delaware LLC five months prior to filing its Complaint, and was assigned the patents a day prior to filing suit. (*Id.*; *see also* D.I. 33-2 at 7) Defendants next argue that SKHMS—the only Defendant incorporated in Delaware—was named in this suit

⁶ In their briefing, the parties dispute whether Delaware is Plaintiff's "home turf" (in light of the fact that Plaintiff was formed here, but does not have a place of business here). (D.I. 26 at 6-7; D.I. 28 at 2-3) The Court has previously concluded that whether Delaware is called a plaintiff's "home turf," in and of itself, has no independent significance as to the overall *Jumara* balance of convenience analysis, nor to the analysis regarding this first *Jumara* private interest factor. The Court did so after examining, in some detail, Third Circuit case law and the cases in this District that first referenced the "home turf" rule. *See McRo, Inc.*, 2013 WL 6571618, at *3 n.8 (citing cases); *Pragmatus I*, 2012 WL 4889438, at *5-6. While the Court will consider Plaintiff's corporate status to the extent it is relevant to particular *Jumara* factors, the Court's focus as to this first private interest factor will be on the legitimacy of Plaintiff's reasons for filing suit in this forum. *Id.*

“solely in an effort to obtain venue in this District.” (D.I. 33-2 at 7; *see also* D.I. 28 at 4 n.2)

As to the first argument, there are certainly cases where a plaintiff’s incorporation history—considered in light of the entire record—could suggest an improper attempt to manipulate venue. For example, in *In re Microsoft Corp.*, 630 F.3d 1361, 1364-65 (Fed. Cir. 2011), the Federal Circuit found that where a plaintiff incorporated in Texas just 16 days before filing litigation in a Texas federal district court, that was the type of “recent, ephemeral” act that appeared to be taken “in anticipation of litigation.”⁷ It is worth noting, however, that before coming to this conclusion, the *In re Microsoft Corp.* Court also took note of a number of other key facts. These included that although the plaintiff was clearly operated from the United Kingdom, it maintained an office in Texas at which it did not employ any individuals. *In re Microsoft Corp.*, 630 F.3d at 1362, 1364-65. Additionally, plaintiff’s website directed inquiries to that Texas office, but plaintiff’s principal simply answered those inquiries from his home in the United Kingdom. *Id.* at 1362.⁸

Here, the Court is not prepared to conclude that Plaintiff’s formation as a Delaware entity

⁷ *See also Gian Biologics, LLC v. Biomet Inc.*, Civil Action No. 10-865-LPS, 2011 WL 2470636, at *1-3 (D. Del. June 21, 2011) (suggesting that were plaintiff’s incorporation in Delaware just prior to the filing of the instant lawsuit to have been “litigation-contrived[,]” this could result in plaintiff’s Delaware corporate status being given lesser or no weight in the transfer calculus) (emphasis omitted).

⁸ Other Federal Circuit venue cases have involved similarly manipulative acts that appear to have been intended to mislead a court. *See In re Zimmer Holdings, Inc.*, 609 F.3d 1378, 1381 (Fed. Cir. 2010) (“This is a classic case where the plaintiff is attempting to game the system by artificially seeking to establish venue by sharing office space with another of the trial counsel’s clients.”); *id.* (noting that another situation demonstrating venue manipulation would be where a party, in anticipation of litigation, simply moved thousands of key case documents from one district into its preferred district, so that it could later claim to the court that the location of key documents favored its position) (citing *In re Hoffmann-La Roche Inc.*, 587 F.3d 1333, 1336-37 (Fed. Cir. 2009)).

five months prior to suit (without more) should lead to a finding of venue manipulation. For one thing, and particularly with regard to Delaware, “business entities choose their situs of incorporation for varied reasons, including the ability to sue and be sued in that venue.” *Cradle IP, LLC v. Texas Instruments, Inc.*, 923 F. Supp. 2d 696, 699 (D. Del. 2013).⁹ Thus, there is often an element of long-term “business/litigation strategy” inherent in the decision to form an entity in a state where the entity wishes to pursue litigation. But that reality does not generally give rise to the conclusion that the decision to incorporate is a fraud or fiction, or one born of illegitimate motives. *Id.* at 697, 699 (concluding that plaintiff’s incorporation in Delaware, less than four months before it brought suit in this District, should not detract from the weight given to plaintiff’s choice of forum).¹⁰ Here, Defendants have not demonstrated that Plaintiff’s corporate status, even though of recent vintage, is anything other than the product of a legitimate,

⁹ See also *Micron Tech.*, 645 F.3d at 1332 (“Given that both parties were incorporated in Delaware, they had both willingly submitted to suit there, which weighs in favor of keeping the litigation in Delaware.”); Jens C. Dammann, *Freedom of Choice in European Corporate Law*, 29 Yale J. Int’l L. 477, 493 (2004) (“Indeed, as the case of Delaware suggests, corporations may well choose to incorporate in a particular state, precisely because they seek access to that state’s courts. The quality of Delaware’s courts is generally portrayed as an important or even as the single most important reason for reincorporating in Delaware.”) (footnotes omitted); Franklin A. Gevurtz, *Why Delaware LLCs?*, 91 Or. L. Rev. 57, 105 (2012) (listing reasons why limited liability corporations choose to form in Delaware, including “Delaware’s judicial infrastructure”).

¹⁰ See also *Micro Design LLC v. Asus Computer Int’l*, Civil Action No. 14-837-LPS-CJB, 2015 WL 2089770, at *5 (D. Del. May 1, 2015) (concluding that “Plaintiff’s formation as a Delaware entity just over one month before filing suit” was insufficient to cause this factor to favor transfer); *Cruise Control Techs. LLC v. Chrysler Grp. LLC*, Civil Action No 12-1755-GMS, 2014 WL 1304820, at *3 (D. Del. Mar. 31, 2014) (finding that the fact that plaintiff’s LLC was formed in Delaware just four days prior to filing suit did not prevent this factor from counseling against transfer, and “declin[ing] to strip the plaintiff’s forum choice of the deference due merely because the plaintiff may have been formed primarily to enforce patent rights”).

business-related choice. (See Pelikan Decl. at ¶¶ 3, 10 & ex. D (noting that it is not uncommon for established corporations to form intellectual property holding subsidiaries as part of corporate strategy))¹¹

Similarly, it does not give the Court pause that the patents-in-suit were assigned to Plaintiff (that is, to “Elm 3DS Innovations, LLC”) just one day prior to suit. The patents-in-suit were but some of a host of patents assigned on that date. (See Davis Decl., ex. 2) And, as noted above, prior to that date, the patents were owned by this same Delaware LLC for some indeterminate amount of time, though the entity, formed five months prior to suit, was then using a slightly different corporate name (“3DS IP Holdings, LLC”). Cf. *Intellectual Ventures I LLC v. Checkpoint Software Techs. Ltd.*, 797 F. Supp. 2d 472, 480 (D. Del. 2011) (“*Checkpoint Software*”) (concluding that the first private interest factor militated against transfer, although the plaintiff had organized in Delaware less than a month prior to filing suit, where plaintiff’s predecessors-in-interest were Delaware entities that had been formed in Delaware well prior).

Defendants’ second argument is that SKHMS was named as a Defendant solely to manipulate venue. The limited record on this point indicates that there is a dispute between the parties as to whether SKHMS uses accused products in the course of designing and developing controllers, advanced flash management systems, and NAND firmware (and thus, could be guilty of infringement of the patents-in-suit). (Davis Decl., ex. 7 at 1-2; D.I. 26 at 10) There is insufficient evidence for the Court to conclude that such an allegation is without merit, or that it

¹¹ Mr. Leedy founded Elm Technology Corporation in 1992, and since November 1996, that entity has been a Wyoming corporation. (Pelikan Decl. at ¶ 2 & ex. A) According to Plaintiff, the Elm 3DS entities were formed to separate certain intellectual property assets from Elm Technology Corporation’s intellectual property portfolio. (*Id.* at ¶ 3)

was proffered solely to manipulate venue.¹²

Therefore, because Plaintiff has cited a number of legitimate and rational bases for its forum preference, and because there is insufficient evidence that Plaintiff filed here for improper reasons, this factor weighs against transfer.

ii. Defendant's forum preference

As for the second private interest factor—the defendant's forum preference—Defendants prefer to litigate in the Northern District of California. In analyzing this factor, our Court has also “tended to examine whether the defendant can articulate rational, legitimate reasons to support that preference.” *Pragmatus I*, 2012 WL 4889438, at *6 (citation omitted).

Defendants note that they wish to litigate in the Northern District of California because SK hynix's U.S.-based operations are located there, as are many likely party witnesses and relevant documents. (D.I. 33-2 at 9) This is a clear, legitimate basis for seeking transfer. *See, e.g., Nalco Co. v. AP Tech Grp. Inc.*, C.A. No. 13-1063-LPS, 2014 WL 3909114, at *1 (D. Del. Aug. 8, 2014); *Genetic Techs. Ltd. v. Natera, Inc.*, C.A. No. 12-1737-LPS, 2014 WL 1466471, at *1 (D. Del. Apr. 15, 2014).

Accordingly, the second private interest *Jumara* factor weighs in favor of transfer.¹³

¹² In their reply brief, Defendants seem to assert that Plaintiff has not alleged sufficient facts to demonstrate that SKHMS could possibly be responsible for direct patent infringement. (D.I. 28 at 4 n.2) But although Defendants have filed a pending motion to dismiss, (D.I. 24), that motion does not address allegations of direct infringement against SKHMS (or any other Defendant). Thus, such claims would proceed forward in this Court were the motion to transfer denied.

¹³ Plaintiff does not argue that Defendants' choice of forum is entitled to no weight, but it does suggest that this factor is automatically entitled to less weight than that given to Plaintiff's choice of forum. (D.I. 26 at 12-13) As the Court has previously concluded, it “cannot find any authority from the Third Circuit suggesting that the weight accorded to *this particular*

iii. Whether the claim arose elsewhere

The third private interest *Jumara* factor asks “whether the claim arose elsewhere.” As a matter of law, a claim regarding patent infringement arises “wherever someone has committed acts of infringement, to wit, ‘makes, uses, offers to sell, or sells any patented invention’ without authority.” *McRo, Inc.*, 2013 WL 6571618, at *5 (citations omitted). Nevertheless, as to this factor, this Court typically focuses on the location of the production, design and manufacture of the accused instrumentalities. *Id.* (citing cases); *Altera*, 842 F. Supp. 2d at 755 (“[I]f there are significant connections between a particular venue and the events that gave rise to a suit, this factor should be weighed in that venue’s favor.”) (quoting *In re Hoffmann-La Roche Inc.*, 587 F.3d 1333, 1338 (Fed. Cir. 2009)).

In this case, it is undisputed that the design and manufacture of the accused products took place in Korea and China. (Kim Decl. at ¶ 11) As to U.S.-based infringement, it is also undisputed that at least some significant percentage of the sales of accused products giving rise to the suit took place in the Northern District of California.¹⁴ So too did most, if not all, of the alleged wrongful offers for sale, importation and marketing of the accused products. (D.I. 33-2 at 9-10; Kim. Decl. at ¶¶ 10-11) For its part, Plaintiff asserts that Defendants operate on “an international level[,]” that the accused products are sold “throughout the United States” and that “there are infringing sales in Delaware.” (D.I. 26 at 13 (emphasis, internal quotation marks and

Jumara factor should automatically be reduced or lessened in every case, as compared to the weight accorded to the first private interest factor.” *Pragmatus I*, 2012 WL 4889438, at *7 (emphasis in original) (citing *In re Amendt*, 169 F. App’x 93, 96 (3d Cir. 2006)).

¹⁴ As to particular purchasers of accused products, five out of SK hynix’s top ten U.S.-based customers are located in the Northern District of California, while five are located somewhere else in the United States. (Kim Decl. at ¶ 9)

citation omitted))

The direct and indirect infringement claims at issue are based on Defendants’ “making, using, selling, offering for sale, and/or importing into the United States” accused products or “encouraging third parties to use, sell, offer for sale and/or import into the United States” accused products. (D.I. 13 at ¶ 3) A significant amount of the accused “selling” and most if not all of the accused “using” “offering for sale” “importing” and “encouraging” emanates from the Northern District of California, while only some indeterminate (and presumably small) amount of allegedly infringing activity occurs in Delaware. Under such circumstances, the Court finds that this factor weighs in favor of transfer.

iv. Convenience of the parties as indicated by their relative physical and financial condition

In assessing the next private interest factor—“the convenience of the parties as indicated by their relative physical and financial condition”—this Court has traditionally examined a number of issues. These issues include: “(1) the parties’ physical location; (2) the associated logistical and operational costs to the parties’ employees in traveling to Delaware (as opposed to the proposed transferee district) for litigation purposes; and (3) the relative ability of each party to bear these costs in light of its size and financial wherewithal.” *Audatex N. Am., Inc. v. Mitchell Int’l, Inc.*, C.A. No. 12-cv-139 (GMS), 2013 WL 3293611, at *4 (D. Del. June 28, 2013) (internal quotation marks and citations omitted); *McKee v. PetSmart, Inc.*, C.A. No. 12-1117-SLR-MPT, 2013 WL 1163770, at *4 (D. Del. Mar. 20, 2013) (citations omitted).

Defendants suggest that litigating in the Northern District of California is more

convenient for both sides' employee trial¹⁵ witnesses, because: (1) any of Defendants' U.S.-based witnesses will be found there; (2) Defendants' Korea-based witnesses would find travel there (as opposed to Delaware) to be shorter (by about 10-14 hours of travel time and 2,900 miles) and less disruptive for work purposes; and (3) Plaintiff's principal Mr. Leedy, who is the inventor, is based there. (D.I. 33-2 at 11-12; Kim Decl. at ¶ 14) In cases where most of the parties have their places of business in the transferee district (even though some are incorporated in Delaware), our Court has tended to recognize that at least some net gain in party convenience would occur were the case to proceed in that district. *Audatex*, 2013 WL 3293611, at *4-5; *see also Altera*, 842 F. Supp. 2d at 755-56.

On the other hand, at least three factors give the Court pause in concluding that transfer would promote a notable gain in party convenience. First, the amount of any trial-related travel for employees is not likely to be large—and would be zero if (as with most cases) this case never goes to trial.¹⁶ Second, SK hynix is a “large” international corporation, boasting 443 U.S.-based employees and a number of large corporate clients (such as Apple, Intel, Nvidia and HP). (D.I. 33-2 at 12; Kim Decl. at ¶¶ 8-9) Perhaps as a result, Defendants do not suggest that they would

¹⁵ In the proposed schedule submitted by the parties, it was agreed that no party witness would be required to be deposed in Delaware unless the witness chose that location for their deposition. (D.I. 23, ex. A at ¶ 9(f)(iii); D.I. 26 at 14)

¹⁶ *See Graphics Props. Holdings Inc. v. Asus Computer Int'l, Inc.*, 964 F. Supp. 2d 320, 328-29 (D. Del. 2013) (“[A]s a practical matter, regardless of the trial venue, most of the discovery [in a patent case involving Defendant] will take place in California or other locations mutually agreed to by the parties.”); *Human Genome Scis., Inc. v. Genentech, Inc.*, C.A. No. 11-082-LPS, 2011 WL 2911797, at *7 (D. Del. July 18, 2011) (noting that the likelihood that few case events would occur in Delaware—particularly few if the case did not go to trial—weighed against transfer, as did technological advances that allow traveling employees to more easily interact with their office while away).

be unable to easily bear any increased costs associated with litigating in Delaware (as opposed to the proposed transferee forum). And third, although Plaintiff is physically located in the transferee forum, it is involved in two additional patent lawsuits in this District. It is reasonable to infer that requiring Plaintiff to litigate one lawsuit in Northern California, while the other two proceed in Delaware, would add to its inconvenience. *Graphics Props. Holdings Inc. v. Asus Computer Int'l, Inc.*, 964 F. Supp. 2d 320, 328-29 (D. Del. 2013).

In the end, with many possible employee witnesses located in the Northern District of California (and none in Delaware), the Court recognizes that this factor should weigh in Defendants' favor to at least some degree. But in light of the other counter-balancing factors discussed above, the Court concludes that this factor only slightly favors transfer. *See, e.g., Audatex*, 2013 WL 3293611, at *4-5 (concluding the same when both parties operated out of the proposed transferee district, both had sufficient resources to litigate in either forum and both were incorporated in Delaware); *Altera*, 842 F. Supp. 2d at 755 (concluding the same, where all parties were located in or near the proposed transferee district, but the record did not indicate that litigating in Delaware would impose an "undue financial burden" on defendants, who had extensive operations and significant annual sales).

v. Convenience of the witnesses to the extent that they may actually be unavailable for trial in one of the fora

The "convenience of the witnesses" is the next factor, "but only to the extent that the witnesses may actually be unavailable for trial in one of the fora[.]" *Jumara*, 55 F.3d at 879. Of particular concern here are fact witnesses who may not appear of their own volition in the venue-at-issue and who could not be compelled to appear by subpoena pursuant to Federal Rule of Civil Procedure 45. *ADE Corp. v. KLA-Tencor Corp.*, 138 F. Supp. 2d 565, 569 (D. Del.

2001); *Affymetrix*, 28 F. Supp. 2d at 203-05.

In *Jumara*, the Third Circuit made clear that in order for this factor to meaningfully favor the movant, the movant must come forward with some amount of specificity. This is evident from the wording of the factor itself, which notes that a witnesses' convenience should be considered "only to the extent that the witnesses may *actually be* unavailable for trial in one of the fora[.]" *Jumara*, 55 F.3d at 879 (emphasis added). It is also evident from the legal authority that the *Jumara* Court cited to in setting out this factor, which explains:

The rule is that these applications [for transfer] are not determined solely upon the outcome of a contest between the parties as to which of them can present a longer list of possible witnesses located in the respective districts in which each party would like to try the case. The party seeking the transfer must clearly specify the key witnesses to be called and must make a general statement of what their testimony will cover. The emphasis must be on this showing rather than numbers. One key witness may outweigh a great number of less important witnesses. If a party has merely made a general allegation that witnesses will be necessary, without identifying them and indicating what their testimony will be the application for transfer will be denied.

15 Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure: Jurisdiction and Related Matters* § 3851, at 425-28 (2d ed. 1986) (cited in *Jumara*, 55 F.3d at 879). In light of this, in order for the movant to convincingly argue that this factor squarely favors transfer, the Court believes that the movant must provide specificity as to: (1) the particular witness to whom the movant is referring; (2) what that person's testimony might have to do with a trial in this case; and (3) what reason there is to think that the person will "actually" be unavailable for trial (as opposed to the proffer of a guess or speculation on that front).

Here Defendants argue that this factor favors transfer because there are several non-party witnesses located within the Northern District of California (and are therefore outside of the

subpoena power of this Court), rendering their attendance at trial here uncertain. (D.I. 33-2 at 12-14)

For example, Defendants contend that relevant prior art inventors, whose testimony will be important for the question of invalidity, reside in Northern California. (*Id.* at 13) Defendants list 13 persons or entities associated with allegedly relevant prior art, along with (in many cases) a bare reference to the piece of prior art at issue. (*Id.* at 4-5) Yet as to these persons or entities, no explanation is provided as to *why* their testimony will actually be relevant to invalidity. Nor have Defendants made any effort to demonstrate that any such witness would actually be unlikely to participate in a trial in Delaware. (D.I. 26 at 14); *see also McRo, Inc.*, 2013 WL 6571618, at *9 (“Absent some concrete evidentiary showing that [potential third party witnesses] would be unlikely to testify, it is difficult to give [d]efendants’ argument as to their potential unavailability significant weight.”) (citing cases); *Pragmatus I*, 2012 WL 4889438, at *10 & n.9. Thus, the Court cannot give this argument much force.¹⁷

Defendants, however, do also identify Mr. Tabrizi as such a witness. They note that he is a former SK hynix employee, who had “important interactions with Mr. Leedy about his patent portfolio.” (D.I. 33-2 at 13) Mr. Tabrizi is the only person other than Mr. Leedy referenced by name in the Amended Complaint. (D.I. 13) According to the Amended Complaint, Mr. Leedy

¹⁷ Defendants cite to *OpenTV, Inc. v. Netflix, Inc.*, Civil Action No. 12-1733 (GMS), 2014 WL 1292790 (D. Del. Mar. 31, 2014) in support of their showing with respect to this factor. (D.I. 28 at 7) In that case, however, the defendant’s evidence far exceeded that proffered here, as the defendant devoted four pages of its opening brief to: (1) explaining why two prior art systems would be particularly crucial to its invalidity defense; (2) identifying the specific individuals who helped develop these systems; and (3) explaining the defendant’s lack of relationship to those persons. (*OpenTV, Inc. v. Netflix, Inc.*, Civil Action No. 12-1733 (GMS), D.I. 17 at 3-7, 13-14)

met with Mr. Tabrizi in 2000 or 2001—shortly after the issuance of the first patent in the 3DS family of patents—a meeting also attended by “approximately 60 Hynix engineers[.]” (*Id.* at ¶ 32) Mr. Tabrizi has apparently provided a declaration stating that he would not voluntarily travel to Delaware to appear for trial, due to the magnitude of his work-related commitments. (Declaration of Jas S. Dhillon, D.I. 33-4 (“Dhillon Decl.”) at ¶¶ 5, 8 & ex. 1)¹⁸

It is hard to know if this meeting will turn out to be important at trial. Defendants, for their part, do not do much more to explain why it might (nor do they assert why Mr. Tabrizi’s testimony will otherwise be significant). But if the meeting is important, and Mr. Tabrizi is unwilling to provide live testimony about it at trial, presumably one (or more) of the other 60 SK hynix employees in attendance at the meeting could do so.

Ultimately, much of Defendants’ argument here is unspecific and/or speculative. Moreover, the practical impact of this factor is limited, in light of the fact that so few civil cases today proceed to trial (and at trial, so few fact witnesses testify live). *Collectis S.A. v. Precision Biosciences, Inc.*, 858 F. Supp. 2d 376, 382 n.6 (D. Del. 2012); *Altera*, 842 F. Supp. 2d at 757-58. In light of the specific evidence that was provided as to Mr. Tabrizi’s potential unavailability, this factor should weigh at least somewhat in Defendants’ favor. But because it is not clear that Mr. Tabrizi is a significant witness in the case, the Court finds the factor to weigh slightly in favor of transfer. *Cf. Ithaca Ventures k.s. v. Nintendo of Am. Inc.*, C.A. No. 13-824-GMS, 2014 WL 4829027, at *5 (D. Del. Sept. 25, 2014) (finding this factor to “minimally

¹⁸ Defendants did not attach the actual declaration to their proposed amended opening brief. (D.I. 33) But they did attach exhibits relating to that declaration that make it clear that Mr. Tabrizi has stated that he does not intend to appear in Delaware for trial. (Dhillon Decl. at ¶ 5; D.I. 33-4, ex. 1)

favor[] transfer” where the movant “only identified a single third-party witness” that would be unavailable to testify, who had been specifically referenced by name in the plaintiff’s complaint); *see also* (*Ithaca Ventures k.s. v. Nintendo of Am. Inc.*, Civil Action No. 13-824-GMS, D.I. 1 at ¶ 16).

vi. Location of books and records

Next the Court considers “the location of books and records (similarly limited to the extent that the files could not be produced in the alternative forum).” *Jumara*, 55 F.3d at 879. “In patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer. Consequently, the place where the defendant’s documents are kept weighs in favor of transfer to that location.” *In re Genentech, Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009) (internal quotation marks and citation omitted). Yet this factor is commonly given little weight, as technological advances have “shortened the time it takes to transfer information, reduced the bulk or size of documents or things on which information is recorded . . . and have lowered the cost of moving that information from one place to another.” *Cypress Semiconductor Corp. v. Integrated Circuit Sys., Inc.*, No. 01-199-SLR, 2001 WL 1617186, at *3 (D. Del. Nov. 28, 2001) (internal quotation marks and citation omitted); *see also Cellectis*, 858 F. Supp. 2d at 382; *ADE Corp.*, 138 F. Supp. 2d at 571.

Here, there is no real dispute that many of the relevant books and records are likely to be found in the Northern District of California, and that none will be found in Delaware.¹⁹ (D.I. 33-2 at 1; D.I. 26 at 15; Kim Decl. at ¶ 12) And there is no real dispute that these books and records

¹⁹ Although Defendants note that some relevant documents are physically located in Korea, these documents “can be accessed from SKHYA’s San Jose headquarters.” (Kim Decl. at ¶ 12)

could be easily produced in Delaware for trial. The Court thus finds this factor to weigh in favor of transfer, though only slightly. *See, e.g., Joao Control & Monitoring Sys., LLC v. Ford Motor Co.*, C.A. No. 12-cv-1479 (GMS), 2013 WL 4496644, at *6 (D. Del. Aug. 21, 2013); *Altera*, 842 F. Supp. 2d at 759.

b. Public Interest Factors

The Court below addresses the three public interest factors that were asserted by the parties to be anything other than neutral. (D.I. 33-2 at 15-19; D.I. 26 at 16-18)

i. Practical considerations that could make the trial easy, expeditious, or inexpensive

The first of these public interest factors is “practical considerations that could make the trial easy, expeditious, or inexpensive[.]” *Jumara*, 55 F.3d at 879.

The main practical consideration cited by Plaintiff is the existence of the other Elm 3DS Actions. (D.I. 26 at 16-17) Plaintiff asserts that transfer would increase the costs for both parties because “if this case remains in Delaware, the Defendants will proceed on the same pre-trial schedule, will jointly argue claim construction, and will jointly brief ‘common’ dispositive issues.” (*Id.* at 17; *see also* D.I. 23, ex. A)

As is noted *supra*, the three Elm 3DS Actions each involve infringement actions brought by Plaintiff against three different sets of Defendants, regarding different products.²⁰ However, all involve allegations of infringement of the same patents-in-suit,²¹ such that many common

²⁰ Plaintiff asserts, however, that these products are “technically very similar[.]” that “all use Mr. Leedy’s patented technology in the same manner” and that “[f]unctionally, the defendants’ products are nearly identical.” (Pelikan Decl. at ¶ 4)

²¹ Again, the same 12 patents are alleged to be infringed by each Defendant, and an additional patent is alleged to be infringed by Micron and SK hynix.

issues (like claim construction and patent validity) would likely be addressed in each. (D.I. 26 at 17) As a result (and as could have been expected at the time the Motion was filed), similar issues have cropped up among the three cases early on. Those include nearly identical disputes as to how accused products should be appropriately identified, what the process should be for narrowing the list of such products, and what types of core technical documents should be provided as to such products. (D.I. 32, 41-42; *see also* D.I. 30, 34, 35, Civil Action No. 14-1430-LPS-CJB; D.I. 25, 26, 34, 35, Civil Action No. 14-1431-LPS-CJB)

In many recent cases involving the same patents, where one defendant sought transfer from this District, our Court has recognized the efficiencies that could be captured were the motion denied and all related cases litigated by one court in one place.²² Indeed, the Federal Circuit has also repeatedly acknowledged that such efficiency-related concerns are a “paramount consideration” in the transfer context. *In re Volkswagen of Am., Inc.*, 566 F.3d 1349, 1351 (Fed. Cir. 2009) (citing “the existence of multiple lawsuits involving the same issues” as a “paramount

²² See, e.g., *Graphics Props. Holdings*, 964 F. Supp. 2d at 330 (finding this factor to weigh “heavily against transfer” where the court had “at least 11 other cases pending in Delaware, each of which involves one or more of the asserted patents[,]” such that “even if the present case were transferred to California, the Court would still need to learn the technology claimed in the asserted patents, construe the claims of those patents, resolve summary judgment motions (if any), address the parties’ discovery disputes, and ultimately try the cases that proceed to trial”); *FastVDO LLC v. Paramount Pictures Corp.*, 947 F. Supp. 2d 460, 464 (D. Del. 2013) (“There are twenty-four other related suits pending in this district; while this case will be argued separately, there are efficiencies in having all related cases considered in a single district.”); *Smart Audio Techs., LLC v. Apple, Inc.*, 910 F. Supp. 2d 718, 733-34 (D. Del. 2012) (denying a motion to transfer one of four related suits, and holding that “the commonalities that . . . exist between the four lawsuits may allow the court to develop some familiarity with the patents and technology involved, thereby conserving judicial time and resources. This is an important practical consideration, and the court therefore finds that this factor weighs against transfer.”) (footnote omitted).

consideration when determining whether a transfer is in the interest of justice”).²³

To be sure, the potential for such efficiency gains might be even greater, were there a larger number of co-pending cases in the District. See *In re Zimmer Holdings, Inc.*, 609 F.3d 1378, 1382 (Fed. Cir. 2010); *Good Tech. Corp. v. AirWatch, LLC*, Civil Action No. 14-1092-LPS-CJB, 2015 WL 296501, at *10 (D. Del. Jan. 21, 2015). And the negative impact of transfer might be more stark if, at the time of the Motion’s filing, this Court had already done a deep dive into the patented technology via the *Markman* or summary judgment process. See, e.g., *Selene Commc’ns Techs., LLC v. Trend Micro Inc.*, C.A. No. 14-435-LPS, 2015 WL 237142, at *2 (D. Del. Jan. 16, 2015); *TSMC Tech., Inc.*, 2014 WL 7251188, at *20. But on the other hand, because these cases involve 12-13 asserted patents, it can be reasonably inferred that the amount of work required of a district court (or two district courts, if this case is transferred) to see them through will be greater than average. That fact increases the potential costs to the court system from transfer.

Defendants, for their part, point to the following as relevant “practical considerations” favoring transfer: (1) the costs and burdens to the parties of traveling to Delaware for court; (2) the likelihood that third party witnesses will appear in the transferee forum (as opposed to this Court) for trial; (3) the “not . . . great” cost of transporting to Delaware a “stand-alone computer with [Defendants’] sensitive technical documents” on it for trial; and (4) the cost of hiring local

²³ See also *In re Altair Eng’g, Inc.*, 562 F. App’x 978, 979 (Fed. Cir. 2014) (refusing to issue a writ of mandamus to transfer a case, due in part to the existence of co-pending cases in that jurisdiction, and holding that “a district court may properly consider any judicial economy benefits . . . including those arising from having the same judge handle suits against multiple defendants involving the same patents and technology”) (internal quotation marks and citations omitted); *In re EMC Corp.*, 501 F. App’x 973, 976 (Fed. Cir. 2013); *In re Vicor Corp.*, 493 F. App’x 59, 61 (Fed. Cir. 2012); *In re Vistaprint Ltd.*, 628 F.3d 1342, 1346 (Fed. Cir. 2010).

counsel in Delaware. (D.I. 33-2 at 16-17) Some of these issues have been raised, in the same way, as to other *Jumara* factors, and so the Court will not “double-count” them here. *See McRo, Inc.*, 2013 WL 6571618, at *12 n.15. Nevertheless, the Court acknowledges that Defendants will face additional “costs,” not accounted for previously, were this case to proceed in this District.²⁴

In the end, however, the Court concludes that the magnitude of those costs is significantly outweighed by the costs the federal court system would bear in adjudicating three very similar cases involving the same 12 or 13 patents in two different venues. For these reasons, the Court finds this factor to weigh against transfer.

ii. Administrative difficulties in getting the case to trial

The next factor is the “relative administrative difficulty in the two fora resulting from court congestion[.]” *Jumara*, 55 F.3d at 879. Defendants assert that this factor favors transfer because recent statistics make clear that “judges in the District of Delaware have a heavier case load than those in [the Northern District of California].” (D.I. 33-2 at 18) The evidence submitted by Defendants shows that in the 12-month period ending December 31, 2014: (1) this District had 601 pending cases on a per-District Judge basis, 155 more than the Northern District of California (which had 446 pending cases); and (2) the median time interval from filing to trial was 3.6 months longer in this District (29.2 months) than it was in the Northern District of California (25.6 months). (Davis Decl., ex. 4) Though the number of patent cases in this District may be greater than in the transferee district, (D.I. 33-2 at 19), the proffered statistics

²⁴ Were the case transferred, of course, Plaintiff would face additional costs too. If it wanted its choice of venue in the other two Elm 3DS Actions to be respected, then it would face the added costs associated with litigating cases involving the same patents in two different court systems. (D.I. 26 at 18)

demonstrate that this Court is able to move those cases to trial at a roughly similar rate. Thus, this factor is therefore neutral.²⁵

iii. Local interests in deciding local controversies at home

In patent litigation, the local interest factor is typically neutral, as patent issues tend to raise controversies that are more properly viewed as national, not local, in scope. *Graphics Props. Holdings*, 964 F. Supp. 2d at 330. Nevertheless, “[w]hile the sale of an accused product offered nationwide does not give rise to a substantial interest in any single venue . . . if there are significant connections between a particular venue and the events that gave rise to a suit, this factor should be weighed in that venue’s favor.” *In re Hoffmann–La Roche*, 587 F.3d at 1338 (citations omitted); *see also Graphics Props. Holdings*, 964 F. Supp. 2d at 330-31.

Our Court’s case law indicates that Plaintiff’s formation in Delaware (and the fact that one Defendant is also incorporated here) could be said to foster a local interest in Delaware as to the outcome of this dispute. *See Human Genome Scis., Inc. v. Genentech, Inc.*, C.A. No. 11-082-LPS, 2011 WL 2911797, at *11 (D. Del. July 18, 2011) (“Delaware has an interest in adjudicating disputes involving companies incorporated in Delaware[.]”). This interest, however, is counterbalanced here by the fact that some of the Defendants are headquartered in the proposed transferee district. *See id.* For these reasons, and with little more in the record as to

²⁵ *See, e.g., Good Tech. Corp. v. MobileIron, Inc.*, Civil Action No. 14-1308-LPS-CJB, 2015 WL 1458091, at *9 (D. Del. Mar. 27, 2015) (finding this factor to be neutral where, *inter alia*, the median time to trial was between three to five months faster in the proposed transferee district than in this District during the relevant time periods); *Checkpoint Software*, 797 F. Supp. 2d at 486 (concluding the same, where the difference in time to trial favored the transferee district by 3.7 months, an “‘inconsequential’” amount) (internal citation omitted).

this factor,²⁶ the Court finds the factor to be neutral. *See Graphics Props. Holdings*, 964 F. Supp. 2d at 331; *Checkpoint Software*, 797 F. Supp. 2d at 475-76, 486.

c. Conclusion Regarding Impact of *Jumara* Factors

In sum, Plaintiff's choice of forum and the "practical considerations" factor weigh squarely against transfer. Defendants' forum preference and whether the claim arose elsewhere are factors weighing squarely in favor of transfer, while the "convenience of the parties" factor, the "convenience of the witnesses" factor and the location of books and records all weigh slightly in favor of transfer. The remainder of the *Jumara* factors are neutral.

To be sure, Defendants' request to transfer presents a close case. There are a number of connections between the Northern District of California and the facts, witnesses and documents that are likely to be important to this matter. This results in a greater number of *Jumara* factors tipping Defendants' way. Yet a close look at many of those factors indicates that they may not actually have much of a practical impact in this case. In the end, the Court is prepared to say that the balance of convenience is in favor of Defendants.

But after a careful review, the Court is not prepared to conclude that this balance "is *strongly* in favor of" Defendants. *Shutte*, 431 F.2d at 25 (emphasis added). Even a quick read of the Complaint renders it understandable why this case was brought in Delaware. If Plaintiff did


²⁶ Defendants also suggest that because Plaintiff "accuses Apple products of infringing the asserted patents, impugning the work reputation of Apple and its employees who reside in Northern California[,] this should further tip the scales toward transfer. (D.I. 33-2 at 17-18) If the record contained any evidence indicating that the resolution of this case might meaningfully impact the reputation of Apple—a "large and powerful" corporation with "vast financial resources" that is "omnipresent in daily life"—the Court's conclusion might be different. *See Smart Audio*, 910 F. Supp. 2d at 731 & n.12 (internal quotation marks and citation omitted); *Robocast, Inc. v. Apple, Inc.*, Civil Action Nos. 11-235-RGA, 10-1055-RGA, 2012 WL 628010, at *2 (D. Del. Feb. 24, 2012). But no such record is before the Court.

not wish to file the suit in the district where Defendants have their places of business, it would almost certainly choose the district where it was formed, where one of the Defendants is incorporated and where other related Defendants are incorporated. Moreover, as the Third Circuit has recognized in the only post-*Jumara* case in which it has analyzed the *Jumara* factors in detail, a “most important factor is the avoidance of duplicative litigation: [a]djudicating almost identical issues in separate fora would waste judicial resources.” *In re Amendt*, 169 F. App’x 93, 96 (3d Cir. 2006). That concern is especially acute here, with the prospect of two districts being required to handle very similar cases involving 12 or more patents at the same time. The force of these Plaintiff-friendly considerations are enough, in light of the entire record, to warrant the denial of Defendants’ Motion.

III. CONCLUSION

The Court hereby ORDERS that the Motion be DENIED.

Dated: August 20, 2015



Christopher J. Burke
UNITED STATES MAGISTRATE JUDGE