UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

PARKERVISION, INC.,

Plaintiff,

v.

INTEL CORPORATION,

Defendant.

Case No. 6:20-cv-00108-ADA

JURY TRIAL DEMANDED

PARKERVISION'S OPPOSITION TO
INTEL'S MOTION TO TRANSFER

Table of Contents

Table of Authorities

Page(s)

Cases

I. Introduction.

Intel mentions that ParkerVision has litigated cases in other venues, but not in the Western District of Texas. But after *TC Heartland*, ParkerVision cannot file suit in Jacksonville, Florida, where it is headquartered and where products using Intel's infringing chips are being marketed and sold. Therefore, ParkerVision chose this District for this lawsuit – one where however, Intel has a well-established place of business with over 1,700 employees and office buildings. Indeed, Intel also admits that Austin is a convenient forum for it to litigate this case. But at the same time, Intel is asking the Court to deprive ParkerVision of its properly chosen forum and transfer this case to Oregon.

At various times in its brief, Intel compares venue factors between Waco and Oregon. *See e.g.*, D.I. 30 at 1, 5, 8, 12, etc. But that is misleading. Again, both Intel and ParkerVision agree that Austin is a convenient forum, and that transfer to the Austin Division is proper. *Id*. at 2. Intel also says that ParkerVision has no significant connections to the Western District of Texas. But that is also a diversion; a plaintiff's connection to its chosen forum carries no weight — instead, the focus is where the defendant has an established place of business or is incorporated. Once a plaintiff meets its burden in selecting a proper forum, that forum choice "should rarely be disturbed." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947). Indeed, it is a defendant's burden to show with "compelling" evidence that another acceptable venue is "clearly more convenient." Intel has not satisfied its heavy burden.

This case relates to wireless chip technology. Though Intel's accused chips are found in millions of iPhones, and Intel has thousands of employees at its facilities in Hillsboro, in its motion to transfer, Intel identifies only one relevant Intel witness in Oregon, Chris Hull. This is because, by Intel's own admission, the accused chips were designed "primarily overseas" in Germany and Austria. Thus, the *sole* basis to transfer this case to Oregon boils down to the

location of a *single* engineer in Oregon. The *only* documents that Intel identifies in its motion are schematic diagrams of the accused chips. But those schematics are electronic documents housed on a server in Santa Clara, California and can be accessed from Intel's facilities in Santa Clara and Arizona, in addition to Oregon. So the location of documents is not compelling evidence weighing in favor of transfer. Intel also mentions Kevin Constantine, the person who was responsible for Intel's business account with Apple. But Mr. Constantine is located in San Jose, *not* Oregon, and he is no longer an Intel employee.

These facts are insufficient for transferring this case to Oregon. The testimony of Messrs. Hull and Constantine are of no particular significance in this case. Mr. Hull's work focused on an *ancillary* component in *one* of the three accused chips while working *in* Europe where the accused chips were being developed. D.I. 30-1 at ¶10. Any information about this component can be obtained from Intel documents. Moreover, Intel is completely silent on all of its other employees who worked on the accused chips, the facilities in which they worked and their current whereabouts. Intel also ignores third party witnesses, such as Apple and Foxconn, both of whom have established businesses in Austin, and are connected to the accused products in this case. Indeed, Apple acquired Intel's chip business.

At bottom, Intel's transfer motion is just another big-tech attempt to dictate where litigations against them must proceed. Simply put, Intel cannot meet its heavy burden necessary to transfer this case, and its motion should be denied.

II. Factual background.

A. ParkerVision's "critical" and "revolutionary" RF technology.

In 1989, Jeff Parker and David Sorrells started ParkerVision in Jacksonville, Florida. *See* Parker Decl. at ¶4. Through the mid-1990s, ParkerVision focused on developing commercial video cameras, e.g., for TV broadcasts, which used radio frequency (RF) technology to

automatically track the camera's subject. *See id.* at ¶5.

Power and battery requirements for RF communications, however, made a cost effective, consumer-sized product impractical. *See id.* at ¶6. So ParkerVision's engineering team began researching ways to solve this problem. But at the time, a decade's-old RF technology called super-heterodyne dominated the consumer products industry and had its limitations with large circuitry and significant power demands. *See id.* at ¶7.

ParkerVision engineers developed an innovative method of RF direct conversion by a process of sampling a RF carrier signal and transferring energy to create a down-converted baseband signal. *See id.* at ¶8. ParkerVision's technology led to improved RF receiver performance, lower power consumption, reduced size, and integration benefits. *See id.*

With the rise in popularity of smartphones in the mid-2000's, a critical need for smaller, more efficient receivers capable of supporting multiple frequency bands emerged. *See id.* at ¶9. ParkerVision addressed this need. *See id.* In fact, ParkerVision began licensing negotiations with Qualcomm in the late 1990's. *See id.* at 11. Qualcomm evaluated ParkerVision's patented technology and commented in internal emails that "[t]his is virtually *the holy grail of RF receiver designs* – achievable and within practical limits!" *See id* at ¶12.[1] Qualcomm's then-division president stated that "this is *critical technology* based on what we have seen so far. It offers *revolutionary rf versus power performa[n]ce* based on early te[s]t resul[t]s." *See id.* A number of companies, including Intel, shifted to using ParkerVision's technology, and it helped make today's mobile devices a reality by enabling RF chips used in these devices to be smaller, cheaper, and more efficient, and have higher performance.

[1] Unless indicated otherwise, all emphasis is added.

B. Intel's infringing wireless chips.

From 2016 to 2019, Intel made and sold the accused wireless chips – Intel PMB 5750, PMB 5757, and PMB 5762. See D.I. 14 at 32. These chips are used in millions of Apple iPhones (namely, iPhone 7, 8, X, XS, XS Max, XR) and are critical to their operation, providing the means by which iPhones communicate with cellular networks, such as AT&T. *Id*. at 34.

C. Intel acquired Infineon's wireless chip business in Germany.

After trumpeting that Intel's largest design and development facility is in Hillsboro, Oregon, Intel concedes that the "transceiver chips at issue here were primarily designed overseas," *not* Oregon. D.I. 30 at 4. Intel recognized that it needed to compete in the smart phone business with companies such as Qualcomm. To jump-start its wireless chip business, Intel acquired Infineon Technologies AG's Wireless Solutions business (along with about 3500 employees) for $1.4 billion. *See* Daignault Decl., Ex. A. Intel formed a new company – Intel Mobile Communications GmbH ("IMC"), located outside of Munich in Neubiberg, Germany.[2]

In addition to Germany, an IMC-owned company – Danube Mobile Communications Engineering based in Linz, Austria (also known as "DMCE" or "Intel Linz") – employed engineers to work on the design of the accused chips. *See* Daignault Decl., Ex. B. Intel Linz was a research spinoff from the Johannes Kepler University in Linz. *See* Daignault Decl., Ex. C. Much of DMCE's focus was the development of RF transceivers, the technology that is at issue in this case. *See* Daignault Decl., Ex. D. Many of the DMCE engineers (such as Drs. Harald Pretl and Krzysztof Dufrêne) working at Intel Linz or Kepler University *are fact witnesses in this case*. *See* Daignault Decl., Exs. E and F. Notably, Intel Linz's engineers (including Dr. Pretl and

[2] During a time when Intel was designing the accused chips, Intel employees from around the world visited ParkerVision's website 58 times, including by using search terms related to ParkerVision's technology. Ex. 2, Parker Decl. at ¶21.

Dr. Dufrêne) wrote a 2018 paper describing one of the accused chips in this case.[3]

D. Apple acquired Intel's wireless chip business in December 2019.

In 2019, Apple acquired Intel's wireless chip business, including about 2,200 employees in offices in California (Santa Clara and San Diego), Germany (Munich), Austria (Linz), and India (Bangalore). *See* Daignault Decl., Ex. H. Thus, Apple possesses relevant documents, and former Intel employees with information relevant to this case now work for Apple. D.I. 30 at 4-5. Apple is within the subpoena power of this Court buy *not* the district court in Portland.

III. Legal standard.

This Court is well aware that the party moving for transfer carries a heavy burden of showing good cause to transfer. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 314 (5th Cir. 2008). "Unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Gulf Oil Corp.*, 330 U.S. at 508 (1947); *see QR Spex, Inc. v. Motorola, Inc.*, 507 F.Supp.2d 650,664 (E.D. Tex. 2007) (characterizing movant's burden under §1404(a) as "heavy").

The determination of convenience "turns on a number of public and private interest factors, none of which can be said to be of dispositive weight." *Action Indus., Inc. v. US. Fid. & Guar. Co.*, 358 F.3d 337, 340 (5th Cir. 2004). The private factors include: "(l) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive." *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004). The public factors include: "the administrative difficulties flowing from

[3] Daignault Decl., Ex. G; *See also* Declaration of Dr. Michael Steer ("Steer Decl.") at 10; Daignault Decl., Ex. J (noting that "Intel Linz took part in the development" of the accused Smarti6T chip.)

court congestion; the local interest in having localized interests decided at home; the familiarity of the forum with the law that will govern the case; and the avoidance of unnecessary problems of conflict of laws of the application of foreign law." *Id.*

In considering the factors, this Court recognized that the moving party bears a substantial burden because of "partial deference to plaintiff's choice of forum, [and] the standard under which cases may be transferred is when the transferee district is "clearly more convenient" than the transferor district, and not just a "little more convenient." *See Uniloc 2017 LLC v. Apple Inc.*, 2020 U.S. Dist. LEXIS 109037, at *10 (W.D. Tex. June 19, 2020) (*citing Sanger Ins. Agency, Inc. v. HUB Int'l, Ltd.*, No. 2:13-CV-528, 2014 U.S. Dist. LEXIS 153094, 2014 WL 5389936, at *5 (E.D. Tex. Mar. 25, 2014) (holding that the defendants failed to satisfy their burden of "clearly more convenient," a "significant burden," which is "a difficult burden to carry"); *Konami Digital Ent't Co., Ltd. v. Harmonix Music Sys., Inc.*, No. 6:08CV286, 2009 U.S. Dist. LEXIS 24748, 2009 WL 781134, at *1 (E.D. Tex. Mar. 23, 2009) (citing *Volkswagen II*, 545 F.3d at 314 n.10) (stating that a plaintiff's choice of venue must be respected because that choice places the burden on the defendant to demonstrate why venue should be transferred).

IV. Argument.

The issue before the Court is whether Portland, Oregon is a clearly more convenient venue than Austin, Texas for this case to be heard.[4] Intel has a well-established and significant business presence in Austin.[5] And ParkerVision chose this district because of the speed and efficiency of the Court, and its extensive experience with the many issues that arise in patent cases. To deprive ParkerVision of its chosen forum, Intel has a heavy burden. Intel fails to satisfy

[4] Intel's repeated references in its brief to the Waco Division is a red-herring and irrelevant because Intel admits that Austin is a convenient forum for this case to proceed.
[5] Intel has an office in Austin with over 1,700 employees. https://www.intel.com/content/www/us/en/corporate-responsibility/intel-in-texas.html

this burden. The public and private interest factors weigh *against* transfer.

A. The private interest factors weigh *against* transferring this case to Oregon.

1. The sources of proof are *not* more conveniently located in Oregon.

Intel must demonstrate that transfer will result in *more* convenient access to sources of proof. *Fintiv, Inc. v. Apple Inc.*, No. 6:18-cv-00372-ADA, 2019 U.S. Dist. LEXIS 171102, at *5 (W.D. Tex. Sep. 10, 2019). This factor weighs *against* transfer. Neither witnesses nor documents are more conveniently located in Oregon. And, at least two relevant third parties, Apple and Foxconn, have offices in Austin and therefore, within the Court's subpoena power.

a. The accused chips have no connection to Oregon.

By its own admission, Intel designed the accused chips in *Germany* and *Austria*, not Oregon. D.I. 30-1 at ¶10. As a result, most, if not all, of the relevant evidence will be from witnesses and documents located in these countries. Moreover, after Apple's acquisition of Intel's wireless chip business, at least some of that design and development evidence is now controlled by Apple, which has multiple offices in Austin (about 7000 employees), but *no* offices in Oregon. https://www.apple.com/ newsroom/2019/11/apple-expands-in-austin/. *See Thomas Swan v. Finisar Corp.*, No. 13-cv-178-JRG, 2014 U.S. Dist. LEXIS 773(E.D. Tex. Jan. 6, 2014) (finding this factor neutral at best, in part, because of "relevant evidence from … numerous other non-party customers and distributors who maintain a significant presence in EDTX.").

Tellingly, Intel has *not* provided any evidence that the accused chips have any connection to Oregon or any other Intel facility in the United States. In particular, Intel has *not* identified any of its *21,000* employees in Oregon (other than Chris Hull) – or for that matter, any of its other employees – who may have relevant information to this case. And Intel has *not* identified any design, marketing, or financial documents located in Oregon.

b. Intel has identified only one witness in Oregon.

As to the location of witnesses in Oregon, the *sole* Intel witness Intel identifies is Chris Hull. Intel also mentions Kevin Constantine, a *former* employee who managed the Apple account, but he is located in San Jose working for a third-party, Qorvo, Inc. D.I. 30 at 6-7. That one, single Intel witness may have relevant information to this case out of the other 21,000 Intel employees working in Oregon is *not* compelling evidence weighing in favor of transferring this case to Oregon; this is particularly true when Intel admits that Austin is also a convenient venue.

But additionally, Mr. Hull's testimony has no particular significance in this case over other witnesses in Germany and Austria. Indeed, if Mr. Hull's role or personal knowledge were so important to the accused chips, Mr. Hull would certainly have been one of the *2,200* Intel employees who transferred to Apple in 2019, when Apple acquired Intel's business.

Chris Hull was involved only in the design of *one ancillary* feature (a local oscillator) in *one of three* accused wireless chips. D.I. 30-1 at ¶12. Mr. Hull was *not* involved in the design of the relevant down-conversion circuitry that is the subject of the patents-in-suit. *See* Steer Decl. at ¶6. And to the extent that ParkerVision needs information about the oscillator, it can obtain that information directly from Intel documents, including schematic diagrams of the accused chips, which reflect the *actual* implementation of the oscillator. *Id.* at ¶9. As such, Mr. Hull's statement that he has "the most direct knowledge of the local oscillator in the SMARTi5" and "personal knowledge of the duty cycle in the SMARTi5" (D.I.. 30-1 at ¶16) is irrelevant.

Intel claims that Mr. Hull is "the engineer with primary responsibility for designing the circuits at the *core* of ParkerVision's allegations." D.I. 30 at 2. But that is a hyperbole. The core of ParkerVision's patents-in-suit and infringement allegations is the down-conversion circuitry

(e.g., switches, capacitors, amplifiers), *not* the local oscillator that Mr. Hull worked on.[6] *See* Steer Decl. at ¶¶6-8.

As to Mr. Constantine (who is currently in San Jose, *not* Oregon), though he may have led the efforts to market the accused chips to Apple (D.I. 30 at 6), it is unclear what relevant testimony he could provide. There is no evidence Mr. Constantine has relevant technical, marketing or revenue/sales information related to the accused chips or is the only person with relevant knowledge (or some special knowledge) pertaining to Intel's interactions with Apple. Intel's silence to those facts exposes Intel's failure in meeting its heavy burden to transfer this case. And given that Mr. Constantine no longer works for Intel, any relevant documents will not be in his possession or control. Indeed, it is unclear why Intel focuses on Mr. Constantine other than his location in San Jose, which is only a couple of hours closer to Portland than Austin.

Finally, Intel fails to meet its burden on this factor because it does not provide an adequate outline of Mr. Hull's and Mr. Constantine's testimony (not to mention the other supposed, but unidentified witnesses and engineers[7]), so that the Court can understand their relevance to the case. *ADS Sec. L.P. v. Advanced Detection Sec. Servs.*, No. A-09-CA-773 LY, 2010 U.S. Dist. LEXIS 27903, at *11 (W.D. Tex. Mar. 23, 2010) ("The moving party must identify specific witnesses and outline the substance of their testimony."); *see also* 15 Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3851 (3d ed. 2007) (Given "a general allegation that necessary witnesses are located in the transferee forum, without identifying them

[6] Intel changes its tune later in the brief, acknowledging that the oscillator on which Mr. Hull worked merely "*plays a role* in the alleged infringement." D.I. 30 at 10.

[7] Intel makes assertions about other potential witnesses, implying that there are "engineers" in Oregon who have "knowledge of the structure, function, and operation" of the accused chips, and multiple "third parties witnesses" located in California. But Intel does not identify them or their testimony, so they are not relevant to this analysis. D.I. 30 at 1-2, 10-12.

and providing sufficient information to permit the district court to determine what and how important their testimony will be, the application for transferring the case should be denied.")

c. No documents are located in Oregon.

The only relevant documents that Intel identifies are "highly confidential schematics" for the circuits in the accused chips. D.I. 30 at 8. But Intel admits that these schematics are housed on a server in Santa Clara, *not* Oregon.

In addition to these schematics not being located in Oregon, Intel concedes that they are equally accessible to engineers in three different locations: Arizona, Santa Clara and Oregon. D.I. 30 at 7; D.I.. 30-1 at ¶18. Accordingly, as a readily accessible source of these schematics, Arizona is closer to Texas than Santa Clara or Oregon. Moreover, given that the schematic diagrams are in an electronic format, Intel can just as easily provide permission to access these diagrams from Intel's office in Austin. Because this factor only requires the Court to consider "relative ease of access, not absolute ease of access" the ability to access electronic documents from anywhere further suggests that this factor is at best neutral. *Godo Kaisha Ip Bridge v. Intel Corp.*, No. 17-CV-00676-RWS, 2018 U.S. Dist. LEXIS 221582, at *13 (E.D. Tex. Aug. 28, 2018) ("that many of the same documents might be available in Arizona and New Mexico lessens the weight of the factor") *rev'd on other grounds*, *Godo Kaisha Ip Bridge v. Intel Corp.*, No. 17-CV-00676-RWS, D.I. 157 (E.D. Tex. Sept. 28, 2018).

Other than the schematic diagrams, Intel does *not* mention the location of *any* other specific documents to support its motion to transfer to Oregon. Indeed, given Intel's own admission that the accused chips "were primarily designed overseas" *in Germany and Austria* (D.I. 30 at 4; Hull Decl. at ¶9), most, if not all, relevant documents are likely in Europe. Intel's silence as to other sources of proof is not the way for Intel to meet its heavy burden.

d. Intel ignores other potential witnesses.

Intel completely ignores a whole host of other potential witnesses: (1) current/former Intel engineers (some of whom now work for Apple), including engineers *in Europe*, who have knowledge relating to (a) the two accused chips that Mr. Hull did not work on[8] and (b) the relevant down-conversion circuity for the chip Mr. Hull worked on, (2) employees of Apple and Apple's contract manufacturer, Foxconn,[9] who both have offices in Austin (*not* Oregon) and who were involved in the purchase/shipment of the accused chips, (3) the inventors of the patents-in-suit (mostly third party witnesses) who Intel admits are scattered throughout the United States including *in Texas* (Intel Br. at 6), (4) ParkerVision witnesses, including ParkerVision's CEO, Jeffrey Parker, who lives in Florida which is a *shorter flight to Austin* than Portland, and (5) ParkerVision's prosecuting attorneys who are based in Washington, D.C. which is a *shorter flight to Austin* than Portland. Parker Decl. at ¶20.

Intel says that the variety of locations of ParkerVision witnesses "does not favor one district over the other." D.I. 30 at 11. This is a telling admission. By Intel's own recitation, Messrs. Hull and Constantine, the engineers abroad and the former Intel employees who have now joined Apple are all located in a variety of locations. Under Intel's rationale, this variety of witness locations also does not favor one district over the other, and certainly does not compel transferring this case from Austin, an admittedly convenient venue, to Oregon.

2. The availability of compulsory process.

Intel asserts that this factor is neutral. *See* Intel Br. at 14. Not so. This factor weighs *against* transfer. Apple and Apple's contract manufacturer, Foxconn, have offices in Austin, and

[8] For example, a number of Intel's Austria engineers wrote a paper in 2018 describing the Intel PBM 5757 (SMARTi 6T) chip. *See* Ex. G; *see also* Steer Decl. at 10. One or more of these engineers are potential witnesses in this case.
[9] *See* Daignault Decl., Ex. I.

may have relevant knowledge about the accused products in this case. Both of these companies are within the subpoena power of this Court, but not Oregon. As such, both parties have available to it a compulsory process to secure the attendance of an Apple or Foxconn witnesses.

3. Cost of attendance for willing witnesses.

"The convenience of the witnesses is probably the single most important factor in transfer analysis." *In re Genentech, Inc*., 566 F.3d 1338, 1343 (Fed. Cir. 2009). And "[w]hile the Court must consider the convenience of both the party and non-party witnesses, it is the convenience of non-party witnesses that is the more important factor and is accorded greater weight in a transfer of venue analysis." *Hammond Dev. Int'l, Inc. v. Google LLC*, No. 1:20-cv-00342-ADA, 2020 U.S. Dist. LEXIS 110984, at *11-12 (W.D. Tex. June 24, 2020) ("The convenience of party witnesses is given little weight.") This factor weighs *against* transfer.

Intel is so focused on Mr. Hull that it fails to analyze the cost of attendance for any third-party or ParkerVision witnesses. *Nat'l Cheng Kung Univ. v. Intel Corp.*, No. 2:13-CV-442-MHS-RSP, 2014 U.S. Dist. LEXIS 135683, at *6 (E.D. Tex. Sep. 26, 2014) (denying Intel's motion to transfer, and noting that Intel placed "heavy emphasis on its own witnesses without setting forth a thorough analysis of NKCU and third-party witnesses").

First, current and former Intel engineers (some of whom now work for Apple), including engineers *in Europe* who worked on the accused chips, are potential witnesses. Flights from Europe to Austin are shorter than flights from Europe to Portland. Moreover, as mentioned above, Apple and Intel both have offices in Austin; Apple does *not* have an office in Oregon. As such, it would be most convenient for these witnesses to participate in a case in Austin.

Second, as Intel admits, the inventors (mostly third parties) are not located in Oregon but, "scattered across the country in California, Florida, Idaho, [and] Texas. " D.I. 30 at 11.

Third, Intel's inconvenience argument for Messrs. Hull and Constantine rests on the

flawed premise that these individuals will need to travel for this case. If Messrs. Hull and Constantine are even deposed, those depositions can take place near their residences or place of work, as is customary in modern day patent litigation.[10] The only other travel would be for trial. But given the early stage of this case, there is no way for either party to know whether this case will even go to trial or whether Messrs. Hull and Constantine will be trial witnesses. Indeed, Intel has not represented – and cannot represent – that these individuals will be called at trial

Finally, with regard to ParkerVision witnesses, contrary to Intel's assertion (D.I. 30 at 12), Austin is more convenient than Portland due to the proximity of ParkerVision's Florida office to Texas. *See* Parker Decl., ¶20.

Thus, this factor does not favor transfer. *See Voxer, Inc. v. Facebook, Inc*., No. 6:20-cv-00011-ADA, 2020 U.S. Dist. LEXIS 109038, at *13-14 (W.D. Tex. June 22, 2020) ("Accordingly, because there may be Facebook witnesses with relevant information in both NDCA and WDTX, and because the inventors of the Patents-in-Suit are willing to testify in this District, the Court finds that the location of the Facebook witnesses is a neutral factor."); *Travelpass Grp. LLC v. Caesars Entm't Corp*., No. 5:18-CV-00153-RWS, 2019 U.S. Dist. LEXIS 147213, at *22 (E.D. Tex. Aug. 29, 2019) (agreeing with Magistrate that this factor was neutral, in part, because of "the wide geographical distribution … witnesses.")

4. Other practical problems.

This factor weighs *against* transfer. This case was filed six months ago and a lot has happened in that time – the Court has already held a scheduling conference, the parties have agreed to a schedule, ParkerVision served its infringement contentions, Intel's invalidity contentions are due in September 2020, a Markman hearing is set for January 2021, and

[10] If Mr. Hull needs access to the schematic diagrams for his deposition, his deposition can be taken at Intel's office in Oregon where he would have access to these diagrams.

discovery is set to start soon thereafter. Transferring this case to Oregon would delay the parties.

Indeed, it appears Intel's motion is nothing more than a thinly-veiled attempt to transfer this case to a forum of Intel's choice, thereby depriving ParkerVision of its chosen venue. *Fintiv*, 2019 U.S. Dist. LEXIS 171102, at *5 ("When the transferee venue is not clearly more convenient than the venue chosen by the plaintiff, the plaintiff's choice should be respected."). And given the lack of any relevant evidence in Oregon, it is clear that Intel chose Oregon for purely strategic reasons. In particular, Intel is seeking to transfer this case to a court where it believes there is a greater chance of obtaining a stay pending IPRs.[11] Indeed, Intel already filed an IPR petition and threatened to file IPR petitions on all of the patents-in-suit. Intel appears to be waiting for the pending motion to be decided before it files the remaining IPR petitions.

B. The public interest factors weigh *against* transfer.

1. Administrative difficulties flowing from court congestion.

As this Court noted in its *Fintiv* decision, the "relevant inquiry under this factor is actually '[t]he speed with which a case can come to trial and be resolved." *Fintiv*, 2019 U.S. Dist. LEXIS 171102, at *19. And while this is not a dispositive factor in view of recent Federal Circuit Decisions (*see, e.g., In re Adobe Inc.*, No. 2020-126, 2020 U.S. App. LEXIS 23803, at *9 (Fed. Cir. July 28, 2020)), it still slightly weights in favor of transfer. Here, the Court has set a trial date of February 7, 2022 –19 months away. Based on U.S. District Court statistics over a 12-month period ending in March 31, 2020, the median time to trial in this District is 24.6 months, while the median time to trial in Oregon is 25 months. *See* Daignault Decl., Ex. L. As such, it is highly unlikely that the Oregon court will conduct a trial by February 2022.

[11] See Daignault Ex. K. Based on data provided by Docket Navigator, from 2017-present, the District Court in Oregon has stayed cases pending IPRs 83% of the time. In contrast, this Court has stayed cases only 30% of the time pending IPRs.

In fact, one reason why ParkerVision chose this forum was the speed and efficiency by which this Court handles patent litigation. Transferring this case to Oregon would prejudice ParkerVision by depriving it of its chosen forum. This factor weighs *against* transfer.

2. Local interest in having localized interests decided at home.

Intel asserts that Oregon has a stronger local interest in this litigation than this district because Mr. Hull is located in Oregon and because of "Intel's many employees in Oregon" and the "Intel engineers in Oregon." D.I. 30 at 14. As discussed above, however, Mr. Hull's relevant knowledge is reflected in schematics and documents that are available electronically and accessible in Arizona, Santa Clara and Oregon. And Intel, as a party, has no more of an interest to have this case heard in Oregon than in another state where Intel has an established place of business, including Austin. In fact, in its alternative argument for transferring this case to Austin, Intel admits that Austin has an interest in the resolution of this case because Intel has a facility there. D.I. 30 at 15.

Apple, however, has an office campus in Austin. And where one of the defendant's customers is based in Texas and "likely has witnesses and evidence . . . [the Texas courts] likewise have an interest in adjudicating this dispute . . . ." *Thomas Swan*, 2014 WL 47343, at *5. While Intel's presence in both Oregon and Texas may be neutral, Apple's presence tips the scales to weigh *against* transfer.

3. Factors 3 and 4.

Intel concedes that these factors are neutral. D.I. 30 at 14-15. ParkerVision agrees.

V. Conclusion

For the foregoing reasons, this Court should deny Intel's motion to transfer this case to Oregon and grant Intel's motion to transfer this case to the Austin Division.

Dated: August 7, 2020

Respectfully submitted,

THE MORT LAW FIRM, PLLC

/s/Raymond W. Mort, III
Raymond W. Mort, III
Texas State Bar No. 00791308
raymort@austinlaw.com
100 Congress Avenue, Suite 2000
Austin, Texas 78701
Tel/Fax: 512-865-7950

OF COUNSEL:

Ronald M. Daignault
Chandran Iyer
Jason Charkow
Stephanie Mandir
GOLDBERG SEGALLA
rdaignault@goldbergsegalla.com*
ciyer@goldbergsegalla.com*
jcharkow@goldbergsegalla.com*
smandir@goldbergsegalla.com*
711 Third Avenue, Suite 1900
New York, New York 10017
Telephone: (646) 292-8700

*admitted *pro hac vice*

Attorneys for Plaintiff ParkerVision, Inc.