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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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INVT SPE LLC,

*Plaintiff,*

v.

HTC Corporation, and  
HTC America, Inc.,

*Defendants.*

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CASE NO.: 2:17-cv-03740-JMV-JBC

**INVT'S OPPOSITION TO  
DEFENDANT HTC CORP.  
AND HTC AMERICA, INC.'S  
MOTION TO TRANSFER**

***Oral Argument Requested***

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## **INTRODUCTION**

Defendant HTC, a multi-billion dollar global conglomerate, fails to meet the significant burden of proving that convenience “*strongly*” favors transferring this case to California. Nor does Defendant meet the even “*greater burden*” compelled by its financial standing and international presence. Defendant also fails to recognize that INVT’s choice of New Jersey venue is a “paramount concern” entitled to significant deference. This is especially true because INVT chose New Jersey for numerous “rational and legitimate reasons.”

Chief among these reasons is judicial economy, which strongly favors venue in New Jersey. INVT has three co-pending lawsuits in New Jersey, including against ZTE—a New Jersey corporation with a significant presence in this District. ZTE has not, and will not, move to transfer its case, so these overlapping issues will undisputedly be heard in New Jersey. All three related lawsuits implicate the *same* asserted patents, *same* wireless standards, *same* inventors, *same* technical specifications, and involve *numerous overlapping issues*, including discovery, claim construction, and infringement proof. Transferring HTC’s case to California would create parallel litigation and lead to potentially inconsistent outcomes, inefficiencies, and waste of judicial resources.

INVT’s case is also intimately tied to New Jersey. Wireless carriers with a significant presence in New Jersey, including Verizon and AT&T, collaborated

with Defendant to design, develop, test, validate, certify, and distribute the infringing products. Although Qualcomm purportedly manufactures the wireless chips used by Defendant's infringing products, the specifications for those products are dictated in part by Verizon, AT&T, and other major carriers. Defendant, by its own admission, leverages its "long-term unique relationships" with the major carriers to "tailor its products and services to the needs of each carrier," and the same carriers distribute Defendant's products "in all key markets," including here in New Jersey. Defendant also concedes that, for the infringing products, "*testing is performed in New Jersey . . .*." The relevance of these wireless carriers is further corroborated by the responsibilities of Defendant's former New Jersey employees, who worked with wireless carriers to design, develop, test, and validate the Accused Products. Those employees have since gone on to work for Verizon and other companies.

New Jersey is also the proper venue because numerous potential non-party witnesses—"the single most important factor in a Section 1404 analysis"—reside in or near New Jersey, including Verizon, AT&T, and Qualcomm employees. Likewise, the asserted patents originated with Panasonic, which has its domestic headquarters in New Jersey, and the patent attorney who prosecuted those patents resides closer to New Jersey than California.

Realizing that it has almost *no connections* to California, Defendant attempts to manufacture a “center of gravity” there by pointing to a mishmash of unnamed Taiwanese and Washington employees, undisclosed Qualcomm individuals, and unidentified Qualcomm agreements—agreements that, according to Qualcomm, may potentially only “relate to patents” and nothing more. Defendant falls far short of its burden, particularly because Defendant fails to name a single witness that would be *unavailable* for trial in New Jersey, as required under the law. And Defendant’s arguments regarding documents and source code are similarly flawed—Defendant never disputes that such information could be produced in New Jersey.

New Jersey has substantial ties to Defendant and its distributors, Defendant’s infringing products, the asserted patents, and countless non-party witnesses. Judicial economy and other practical considerations also favor New Jersey over California. For the reasons stated herein, Defendant’s transfer motion should be denied.

### **RELEVANT FACTS**

#### **I. THIS CASE AND TWO RELATED CASES INVOLVE COMMON ISSUES RELATED TO INVT’S STANDARD-ESSENTIAL PATENTS.**

Plaintiff INVT SPE LLC has asserted seven standard-essential U.S. Patents (“the Asserted Patents”). Dkt. 1, Compl. ¶¶ 1-5, 46-151. INVT’s inventions have been adopted worldwide, as standard and essential to wireless communications.

*Id.* ¶¶ 17-18, 25-33. The inventions address fundamental issues relating to faster and better data transmission, which improve the consumer experience. *Id.*; *see also id.* ¶¶ 50, 66, 81, 94, 109, 124, 140.

The Asserted Patents read on technical standards related to data transmission using Long-Term Evolution (“LTE”), Enhanced Data Rates for GSM Evolution (“EDGE”), and several second (“2G”) and third generation (“3G”) technologies (collectively, “the Accused Standards”).<sup>1</sup> *Id.* ¶¶ 17-18. These Accused Standards are fundamental to allowing products and services from unrelated competitors to operate seamlessly with the telecommunications networks of major carriers, including the two largest carriers, Verizon Wireless (“Verizon”) and AT&T Mobility (“AT&T”). *Id.* ¶¶ 13, 29. Any device that incorporates technology using the Accused Standards necessarily infringes the Asserted Patents. *Id.*

Defendant infringes—by itself and in conjunction with its distributors and third parties—the Asserted Patents by making, testing, and selling products such as mobile phones, tablets, and other wireless devices (“Accused Products”) that incorporate the Accused Standards. *Id.* ¶¶ 4, 8-9, 12-15, 46-151. Defendant admits

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<sup>1</sup> The accused 2G and 3G standards relate to General Packet Radio Service (“GPRS”), Universal Mobile Telecommunications System (“UMTS”), High Speed Packet Access (“HSPA”), Enhanced General Packet Radio Services (“EGPRS”), and Wideband Code Division Multiple Access (“WCDMA”). Dkt. 1, Compl. ¶¶ 17, 46-151.

“most, if not all, of the HTC Accused Products” contain a “cellular baseband processor” that “implements functionalities required for the HTC Accused Product to comply with the [accused] standard.” Dkt. 43 at 4; Dkt. 42-3 ¶ 7.

INVT has filed related actions against two other telecommunications companies—ZTE and Apple<sup>2</sup>—in this Court, implicating the same Asserted Patents, Accused Standards, inventors, and technical specifications and functionalities as this case. *INVT SPE LLC v. ZTE Corp. et al.*, No. 2:17-cv-06522-JMV-JBC, Dkt. 1 ¶¶ 44-148 (filed Aug. 29, 2017) (“ZTE”); *INVT SPE LLC v. Apple Inc.*, No. 2:17-cv-01622-JMV-JBC, Dkt. 1 ¶¶ 46-151 (filed May 25, 2017) (“Apple”). INVT’s actions against HTC, ZTE, and Apple involve numerous overlapping issues, including discovery, claim construction issues, and infringement proof (i.e., whether the Asserted Patents cover the Accused Standards and Accused Products). ZTE, a New Jersey corporation, has not and will not move to transfer its case, so these overlapping issues will undisputedly be heard in New Jersey.

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<sup>2</sup> The related Apple case should also remain in New Jersey for many of the same reasons discussed in this opposition.

## **II. THIS MATTER IS INTIMATELY CONNECTED WITH NEW JERSEY.**

### **A. Defendant engages major wireless carriers, such as Verizon, to distribute the Accused Products, and relevant information is located in New Jersey.**

Defendant is one of the country's largest providers of consumer electronics, and is one of the world's largest manufacturers of EDGE/3G/LTE user devices. Dkt. 1, Compl. ¶ 24. Defendant has a massive, national presence, and has a sales office in Bedminster, New Jersey. *See* Ex. 1. However, instead of setting up an army of its own retail stores, Defendant primarily relies on "major carriers and local retail channels" to distribute the Accused Products and "maintain[] a presence in all key markets, including the United States . . . ." *See* Ex. 2 at 30, 43, 147.

In Defendant's own words: "HTC promotes products directly to mass-market consumers via long-term unique relationships with the world's largest telecommunications service providers that include the four big mobile operators in the United States . . . ." *Id.* at 142. Defendant confirms it "sells its products to third-party distributors, and expects the sales of the Accused Products to encompass all of the United States." Dkt. 43 at 24 (citing Dkt. 43-1 ¶ 5). Leading these third-party distributors is Verizon—a wireless carrier with its corporate headquarters located in Basking Ridge, New Jersey. Ex. 3. Defendant's "New Jersey Employees (current and former) focus mainly on supporting HTC's U.S. carrier customers, including Verizon Wireless." Dkt. 43-1 ¶ 11.



Accordingly, Verizon and other major carriers will have relevant information about the distribution and sale of the Accused Products on Defendant's behalf, relevant to both infringement and damages. *See Gemalto S.A. v. HTC Corp. et al.*, No. 6:10-cv-561, 2011 U.S. Dist. LEXIS 133612, at \*12 (E.D. Tex. Nov. 18, 2011) (Verizon's New Jersey sales documents are relevant to HTC's infringement). Public information indicates that Verizon witnesses, documents, and other sources of proof are likely to reside in New Jersey, including at Verizon's corporate headquarters. Verizon's significant presence in this District also includes numerous executives likely involved in the distribution, sale, and marketing of Defendant's Accused Products, including at least the following:

- **Anthony Dennis** (Flemington, New Jersey), Verizon's Executive Director of Wireless Marketing, is responsible "generating RFP guidance for OEMs" and "negotiating features, network service enablement" with a "[s]trong working relationship with leadership teams in major OEMs . . . ." Ex. 4;
- **Matthew Carr** (Basking Ridge, New Jersey), Verizon's VP of Marketing & Field Operations, is "[r]esponsible for all marketing and sales operations efforts nationally across six markets." Ex. 5;
- **Brian Higgins** (Basking Ridge, New Jersey), Verizon's VP of Device and Product Marketing." Ex. 6; and
- **Bruce Knauf** (Basking Ridge, New Jersey), Defendant's former Product Management Manager, who now works as Verizon's Manager of "Product Management, Device Marketing." Ex. 7.

These and other potentially relevant Verizon employees will have documents relating to the distribution, sales, and marketing of the Accused Products, including documents maintained at Verizon's headquarters in New Jersey.

**B. Defendant extensively collaborated with wireless providers located in New Jersey to develop the Accused Products to comply with the Accused Standards, and relevant information is located in or close to New Jersey.**

Defendant also works extensively with wireless providers located in New Jersey to develop the Accused Products. The two largest wireless carriers—Verizon and AT&T—have a significant presence in New Jersey. As previously mentioned, Verizon is headquartered here. Ex. 3. AT&T conducts research and development on its network through its subsidiary, AT&T Labs, which has only three locations—two in New Jersey (Bedminster and Middletown) and another within 100 miles of this District (New York, New York). Ex. 8.

Verizon and AT&T are more than just Defendant's customers and distributors. "Defendant collaborates with both Verizon and AT&T, as well as other major carriers, to develop and incorporate the Accused Standards into the Accused Products so that those products can communicate with their respective provider networks." *See* Dkt. 1 ¶ 15. Defendant publicly boasts that its relationships with wireless carriers "not only keep HTC abreast of user demand but also allow HTC to better *tailor its products and services to the needs of each carrier partner.*" Ex. 2 at 142 (emphasis added); *see also id.* at 44 (stating the HTC

One M8 “passed all carriers testing and sold simultaneously through 230 carriers worldwide”). The same report states: “HTC continues to invest more developing resources to ensure HTC devices [] fully *meet the demands of global telecom carriers* to ensure HTC’s leadership position in 4G market and technology.” *Id.* at 49 (emphasis added). For example, Defendant works with Verizon “to ensure that Defendant’s accused products and services comply with 3GPP technical specifications, infringing one or more of the Asserted Patents.” *Id.* For example, Defendant admits it organizes “*compatibility testing* for the cellular standards that are at issue in this case” *pursuant to Verizon’s specifications*, relevant to infringement. Dkt. 43 at 24 (citing Dkt. 42-1 ¶ 10) (emphasis added).

Likewise, AT&T’s public comment to the Federal Communications Commission touted the intimate relationship between handset manufacturers like Defendant and wireless providers in developing the Accused Products:

The development process for innovative handsets is typically *very collaborative between the network operator and handset manufacturers* (e.g., Apple and AT&T regarding the iPhone). In fact, many design concepts for devices are suggested by network operators based upon their experience and understanding of consumer preferences for particular functionalities and features. Since technologies and consumer preferences are evolving rapidly, wireless operators can and do serve as a valuable resource to device manufacturers to help guide the device design process.

Additionally, network operator and device manufacturer collaboration and optimization activity is already

important with traditional and ‘smart’ handsets and will become exponentially more important because more specialized wireless devices demand even greater optimization to maximize their performance using limited network resources.

Ex. 9 at Ex. 1 at 10 (emphasis added). “AT&T works with virtually every major handset manufacturer . . . to help *design, customize, and optimize their devices* to operate on the AT&T network.” *See id.*, Appx. at 3 (emphasis added); *see also id.*, Appx. at 2 (stating “AT&T routinely and actively works with all major manufacturers to design and deploy innovative new devices”); *see also ZTE*, Dkt. 1 ¶¶ 44-148; *Apple*, Dkt. 1 ¶¶ 46-151. This collaborative process often begins “12 to 18 months prior to launch,” and involves “a rigorous testing and certification process . . . to work out bugs and optimize the user experience.” *Id.*, Appx. at 3. Verizon echoed these statements in its annual report, confirming that it also “collaborate[s] with various device manufacturers in the development of distinctive smartphones and other wireless devices that can access the growing array of data applications and content available over the Internet.” Ex. 10 at 16.

Due to their collaboration with Defendant, at least Verizon and AT&T likely have relevant information, including details about at least the following:

1. Defendant’s joint development initiative with Verizon and AT&T, including on each wireless carrier’s specifications for the Accused Products and their wireless modem chips;

2. How the Accused Products integrate and comply with the Accused Standards and related technical specifications;
3. Defendant's direct and indirect infringement, including information related to "carrier testing" and certification performed on the Accused Products and internal wireless modem chips;
4. How Defendant's Accused Products communicate with each carrier's wireless network using wireless modem chips, including information about design, customization, and optimization, which relates to both infringement and the value of the patented inventions; and
5. The importance of the Accused Standards to the Accused Products, including consumer preferences and financial benefits for particular functionalities and features, relevant to patent damages and apportionment.

Public information indicates that Verizon witnesses, documents, and other sources of proof are likely to reside in New Jersey, including at Verizon's corporate headquarters. Verizon's significant presence in and near this District includes numerous executives and engineers potentially involved with the development, design, compliance, enablement, and certification of Defendant's Accused Products. These potential witnesses include at least Verizon's Executive Director of Network Implementation responsible for "[l]ead[ing] the national Project Management Office in the implementation of all new network wide initiatives." Ex. 11. Verizon's Executive Director was previously responsible for "[n]egotiating pricing structures as well as strategic business, tactical, and technical aspects of the Verizon Wireless/Vendor relationships resulting in the

achievement of product implementation, design decisions, and financial goals.” *Id.* Verizon’s Chief Engineer and Head of Wireless Networks also resides in New Jersey. Ex. 12;

Verizon’s relevance is further corroborated by the responsibilities of Defendant’s former technical employees, who worked with New Jersey wireless carriers to design, develop, test, and validate the Accused Products. For example, Defendant’s former “Technical Account Manager,” was responsible for “the technical elements of latest HTC smartphone devices and manage[d] the *technical approval process efforts for [a] Tier-1 Wireless Operator in Bedminster, NJ.*” Ex. 13 (emphasis added). He has crucial “carrier process and requirements insight” and is now responsible for “Device Requirements” at Verizon, where he works with Defendant to “communicate . . . with various development organizations overseas.” *Id.*

Defendant’s former “Technical Manager” of “Product Development” served as a “liaison between [the] Verizon Wireless and HTC teams [and was] a technical contact for handset engineering, device certification, sales engineering and product marketing . . . .” Ex. 14 (emphasis added). He also “[m]anaged relationship[s] with third party software application vendors, test houses and validation labs like Cetecom” and was responsible for both “hardware and software *verification* and *validation*” for the Accused Products. *Id.* (emphasis added). He has since been

hired by Verizon to “[l]ead and facilitate all implementation related meetings, internal and external, as they relate to driving requirements, project plan development and execution,” before moving on to other companies. *Id.*

Potential AT&T witnesses, documents, and sources of proof relevant to both infringement and damages also appear to reside within 100 miles of this District.

AT&T’s substantial presence in or near this District includes executives, directors, and technical engineers likely involved with distributing, developing, and certifying the Accused Products, including:

- **Kris Rinne** (Annapolis, Maryland), AT&T’s former Senior VP of Network Technology. Ex. 15. Ms. Rinne was integral to AT&T’s development of its “wireless device requirements and certification . . . .” *Id.* Annapolis is within 100 miles of this Court’s federal courthouse in Trenton;
- **Sarat Puthenpura** (Bedminster, New Jersey), AT&T Labs’ Executive Director of Service Quality Management Research, who has helped AT&T develop “a number of areas in telecommunication,” including those related to the UMTS and LTE standards. Ex. 16; and
- **Gagan L. Choudhury** (Middletown, New Jersey), AT&T Labs’ Technical lead for “Optimization, Reliability and Customer Analytics” with a specialty in LTE. Ex. 17.

Further, AT&T’s three research locations—two of which are in New Jersey, and the third in New York—may have documents and additional sources of proof relevant to INVT’s claims. Other potential AT&T witnesses likely reside near its

wireless headquarters in Atlanta, Georgia, which is closer to New Jersey than to the Northern District of California. Ex. 18.

**C. Qualcomm has a significant presence in New Jersey, and relevant information is located in or close to New Jersey.**

Defendant's purported wireless modem chip supplier, Qualcomm, has a significant presence in New Jersey. Although Qualcomm is headquartered in San Diego, Qualcomm's only domestic LTE-research facility is located in Bridgewater, New Jersey. Ex. 19. Qualcomm's R&D in New Jersey includes "development of highly integrated solutions for Qualcomm's *wireless communications chipset development* in Bridgewater, NJ"—the same category of chipsets supplied to Defendant for use in the Accused Products. Ex. 20 (emphasis added). Qualcomm's corporate website also advertises that its New Jersey R&D facility "contributes significantly to [Qualcomm's] ability to innovate and continue [its] leadership in the wireless industry" and "has a mission to advance 4G and 5G knowledge and implementation." Ex. 21. That same facility is actively hiring experts on "4G standards" and "mobile IP networking." Exs. 22 and 23. INVT anticipates potentially seeking third-party discovery from relevant current and/or former Qualcomm witnesses, including those within New Jersey with pertinent information about the Accused Products.



**D. Panasonic—the original patent holder—has its domestic headquarters in New Jersey.**

The Asserted Patents originated with Panasonic Corporation (“Panasonic”), which has its domestic headquarters in Newark, New Jersey. *See* Dkt. 1, Exs. A-G. Accordingly, New Jersey has substantial ties to Defendant, the Accused Products, the Asserted Patents, and countless non-party witnesses.

**LEGAL ARGUMENT**

Defendant’s motion should be denied because Defendant has failed to meet its burden of showing that “the balance of convenience of the parties is *strongly* in favor” of transfer. *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 25 (3d Cir. 1970) (holding that transfer should “not be liberally granted”) (emphasis in original). This elevated standard is especially appropriate here, because “[u]nless the defendant ‘is truly regional in character’—that is, it operates essentially exclusively in a region that does not include [this District]—transfer is often inappropriate.” *Intellectual Ventures I LLC v. Altera Corp.*, 842 F. Supp. 2d 744, 751 (D. Del. 2012) (denying transfer to N.D. Cal.). Defendant is undisputedly not a “regional” defendant—it boasts publicly that it “maintains a presence in all key markets” around the world, with revenue numbers in the billions. Ex. 2 at 30, 38. As a “multi-billion dollar [company] doing business on an international scale,” Defendant has an even “greater burden to meet in seeking transfer.” *Robocast, Inc. v. Apple, Inc.*, No. 11-235, 2012 U.S. Dist. LEXIS 24879, at \*7 (D. Del. Feb. 24,

2012) (denying defendant’s transfer motion to N.D. Cal.). Defendant has not met that “greater burden.” Based on the record, both the public and private interest factors weigh heavily against transfer.

**I. THE PRIVATE INTEREST FACTORS WEIGH HEAVILY AGAINST TRANSFER.**

INVT’s choice of New Jersey venue is entitled to significant deference—and should not be disturbed—because New Jersey is intimately connected to this dispute. *See infra* Facts § II. Accordingly, the private interest factors weigh heavily against transfer to California. *Telebrands Corp. v. Mopnado*, No. 2:14-07969, 2016 U.S. Dist. LEXIS 10671, at \*33-34 (D.N.J. Jan. 12, 2016) (listing the private interest factors), *report and recommendation adopted*, 2016 U.S. Dist. LEXIS 10316 (D.N.J. Jan. 28, 2016).

**A. INVT’s venue choice merits significant deference; Defendant’s preference does not.**

INVT’s choice of forum is a “paramount concern” in deciding Defendant’s transfer motion. *Linwood Trading Ltd. v. Am. Metal Recycling Servs.*, No. 14-5782, 2015 U.S. Dist. LEXIS 115395, at \*4 (D.N.J. Aug. 28, 2015) (citing *Shutte*, 431 F.2d at 25). Even where “the chosen forum is not the plaintiff’s home forum,” the weight given to that choice “is not diminished greatly” where the dispute has “contacts with [that] chosen forum . . . .” *Ramada Franchise Sys. v. Timeless Towns of the Ams.*, No. 96-4394, 1997 U.S. Dist. LEXIS 13861, at \*8-9 (D.N.J.

Jan. 13, 1997). Further, the plaintiff’s choice of a foreign forum is entitled to “increased weight” if its choice is based on “rational and legitimate reasons.” *Smart Audio Techs., LLC v. Apple, Inc.*, 910 F. Supp. 2d 718, 727 (D. Del. 2012) (denying transfer motion to N.D. Cal. where “related lawsuits” existed in Delaware).

Such “rational and legitimate” reasons are found here. INVT filed suit in this District because its case is intimately connected with New Jersey. Defendant maintains a sales office<sup>3</sup> in New Jersey that, by its own admission, provides support to major carriers including Verizon and AT&T—third parties that work with Defendant to *develop* and *distribute* the Accused Products and who maintain a significant presence in New Jersey. *Id.* The Asserted Patents originated with Panasonic, which has its domestic headquarters in New Jersey. *Id.* § II.D. *See infra*

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<sup>3</sup> Venue is proper in this District over Defendant HTC Corp., a foreign defendant under § 1391. *3G Licensing, S.A. v. HTC Corp.*, No. 17-cv-0083, 2017 U.S. Dist. LEXIS 207202, at \*4-5 (D. Del. Dec. 18, 2017) (finding venue over HTC Corp. proper in any venue in the United States and rejecting the argument that *TC Heartland* impacted venue analysis over a foreign corporation). Venue is proper over Defendant HTC America, Inc. at least because it admits it has an office in Bedminster, New Jersey, with employees that “focus mainly on supporting HTC’s U.S. carrier customers, including Verizon Wireless,” and Verizon is also located in New Jersey. *Compare* Dkt. No. 43 at 10, Dkt. No. 43-1 (Wiggins Decl.) at ¶ 10 (admitting HTC America has office in Bedminster, NJ), *with Clipay Corp. v. Newell Cos.*, 527 F. Supp. 733, 740 (D. Del. 1981) (finding venue was proper because defendant had a “regular and established place of business” where it rented space to accommodate full-time salespersons).

Facts § II.A. Further, numerous potential non-party witnesses reside in or near New Jersey, as explained further below. Additionally, ZTE—a defendant in a related action—is incorporated here in New Jersey, where it has a significant presence. *Id.* § I. ZTE has not moved to transfer, and thus INVT’s related claims against ZTE will be heard in New Jersey. Therefore, INVT’s choice of venue is entitled to significant deference and “increased weight” based on INVT’s “rational and legitimate reasons” for filing here.

Defendant’s cited authority is inapposite. *See* Dkt. 43 at 12 (citing *LG Elecs. Inc. v. First Int’l Computer*, 138 F. Supp. 2d 574 (D.N.J. Apr. 11, 2001)).

Defendant has ***no relevant connections*** to California, as fully explained later. Further, unlike in *LG*, (1) Defendant makes no “marketing and sales decisions” in California; (2) Defendant has not established that only “a very small amount” of its sales occurs in New Jersey compared to California; and (3) California does not have “[t]hree separate related patent infringement actions” pending. *Id.* at 582, 590 (comparing 0.2% of all sales in New Jersey to 47% of all sales in California), 592. INVT’s forum choice “should not be lightly disturbed.” *Shutte*, 431 F.2d at 25.

**B. New Jersey—not California—is more convenient for numerous potential non-party witnesses.**

“Compulsory process over non-party witnesses has been referred to as the single most important factor in a Section 1404 analysis.” *Quintiles IMS, Inc. v. Veeva Sys.*, No. 17-177, 2017 U.S. Dist. LEXIS 97905, at \*14 (D.N.J. June 23,

2017) (denying transfer to N.D. Cal.). The “forum’s *inability* to reach non-party witnesses” is what matters. *Am. Fin. Res., Inc. v. Nationstar Mortgage, LLC*, No. 14-7555, 2015 U.S. Dist. LEXIS 94562, at \*15-16 (D.N.J. July 21, 2015) (denying transfer) (emphasis added). As explained above, New Jersey is more convenient for numerous non-party witnesses. *See infra* Facts § II. Importantly, this Court has subpoena power over those witnesses, weighing heavily against transfer. *Telebrands*, 2016 U.S. Dist. LEXIS 10671, at \*33-34.

***1. New Jersey is more convenient for Verizon and AT&T witnesses, weighing against transfer.***

INVT expects to rely on third-party discovery from Verizon—headquartered in New Jersey—and AT&T, because Defendant collaborates extensively with both entities to *design, develop, test, validate, certify, and distribute* the Accused Products. *See infra* Facts §§ II.A-B. Defendant concedes that, for the infringing products, “*testing is performed in New Jersey . . .*” Dkt. 42-3 ¶ 11. Therefore, Verizon and AT&T are more than mere “customers” or “direct infringers”—they are distributors and joint developers with potential information about Defendant’s direct, indirect, and joint infringement, including about the relevant categories of information discussed *infra*. *Id.* *See* Dkt. 1, Compl. ¶¶ 4, 8, 15, 21, 46-151. “AT&T and Verizon are likely to provide testimony from witnesses relevant to these claims.” *Brandywine Commc’ns. Techs., LLC v. Apple, Inc.*, No. 12-cv-262, 2012 U.S. Dist. LEXIS 198355, at \*11 (M.D. Fla. Aug. 23, 2012); *see also* Ex. 24 at 6

(stating that discovery is likely needed from “wireless network providers (also referred to as carriers) that support the accused products”). California would be significantly less convenient for these New Jersey witnesses.

Defendant’s claim—that “compatibility testing for the cellular standards that are at issue in this case is performed in San Diego, California, *as required by Verizon* (a cellular carrier and distributor)” —further highlights the relevance of wireless carriers to this case. Dkt. 43 at 24 (emphasis added). Although the relevant wireless chipsets are manufactured by Qualcomm, Defendant, by its own admission, leverages its “long-term unique relationships with . . . the four big mobile operators in the United States” to intentionally “*tailor its products and services to the needs of each carrier partner.*” *See infra* Facts § B (emphasis added). Indeed, Defendant’s former New Jersey employees (who now work for Verizon in New Jersey) were responsible for obtaining Verizon’s “technical approval” of the Accused Products. *Id.* Defendant’s former New Jersey employees were also responsible for managing Defendant’s relationship with “third party software application vendors, test houses and validation labs like *Cetecom*”—the same third-party testing laboratory identified by Defendant’s Senior Director. *Compare, e.g.,* Ex. 14 (emphasis added) *with* Dkt. 42-3 ¶ 10. These former employees are undoubtedly relevant, despite Defendant’s claim that its current “New Jersey Employees have never before been witnesses in any of HTC

America’s U.S. patent cases.” Dkt. 43 at 25. Therefore, New Jersey is more convenient for numerous potential non-party witnesses.

**2. *Potentially relevant current and former Qualcomm employees also reside in New Jersey.***

Potentially relevant current and/or former Qualcomm employees also reside within this District. *See infra* Facts § II.C. These employees include individuals who may be responsible for, among other things, the *same chipsets* that Defendant claims are incorporated into the Accused Products. *Id.*

Defendant’s motion relies heavily on its claims that California would be more convenient for Qualcomm. But Defendant has failed to meet its burden of identifying with “specificity” any “non-party witnesses in California that would be *unavailable* in New Jersey . . . .” *Quintiles*, 2017 U.S. Dist. LEXIS 97905, at \*15 (emphasis added); *see also Smart Audio*, 910 F. Supp. 2d at 732; *Core Wireless Licensing, S.A.R.L. v. Apple, Inc.*, No. 6:12-cv-100, 2013 U.S. Dist. LEXIS 24922, at \*12 (E.D. Tex. Feb. 22, 2013). Here, Defendant has failed to identify *any* party or non-party witness by name, much less why they would be *unavailable* here. Instead, Defendant submits a Qualcomm declaration alluding to the unnamed “vast majority of Qualcomm’s US-based employees.” *See infra* Facts § II.C. This “assertion of a potential likelihood that an un-named and otherwise unidentified third-party witness may or may not be used for trial sometime in the future” fails to meet its “burden to supply trustworthy and concrete information of the type

missing here.” *Wi-LAN Inc. v. HTC Corp.*, No. 2:11-cv-68, 2013 U.S. Dist. LEXIS 99635, at \*29-30 (E.D. Tex. July 17, 2013) (denying Defendant’s request for transfer to California). Therefore, “there exists the equal possibility that *no Qualcomm witness will testify at trial* and [California’s] absolute subpoena power will not be utilized.” *Id.* (emphasis added). *See also Corel Software, LLC v. Microsoft Corp.*, No. 2:14-cv-528, 2016 U.S. Dist. LEXIS 24003, at \*7 (D. Utah Feb. 26, 2016) (denying transfer to California or Washington where defendant “failed to show any of the witnesses are unwilling to come to trial in [the District] or that deposition testimony would be unsatisfactory”).

Absent specific proof, the “mere distance between California and [this Court] is not enough to tip this factor” in Defendant’s favor. *Smart Audio*, 910 F. Supp. 2d at 732 (denying transfer where Defendant “failed to demonstrate that [any non-party witnesses] will refuse to testify” in New Jersey). Moreover, that Defendant could secure declarations from Qualcomm’s employees suggests that Qualcomm would potentially cooperate with discovery in this proceeding. *See* Dkt. 42-4 and 42-5. Given that this opposition is INVT’s last opportunity to respond, any attempt by Defendant to submit further proof in its reply should be rejected.

Defendant’s arguments about Qualcomm’s “one or more potentially relevant patent agreements with Panasonic”—none of which have been produced to INVT—are equally vague and unsupported. Dkt. 43 at 6 (citing Dkt 42-5 ¶ 5). In



particular, the cited portion of Qualcomm’s declaration states only that “Qualcomm has entered into one or more agreements with Panasonic . . . relating to patents,” without providing additional details, and fails to specify what agreements, what patents, or what provisions might potentially relate to this case. Dkt 42-5 ¶ 5. This empty assertion cannot be credited. Further, to the extent any relevant agreements exist between Panasonic and U.S entities, such agreements would potentially favor venue in this District based upon Panasonic’s domestic headquarters in New Jersey.

Defendant also cherry-picks nineteen Qualcomm employees purporting to be “inventors of relevant prior art who live in California . . . .” Dkt. 43 at 22-23. These individuals should be given no weight in the transfer analysis, because Defendant fails “to explain why these [nineteen] individuals—among the presumably hundreds of other inventors and assignees of prior art related to this case—are of particular importance to Defendant[] aside from the fact that they are located within their desired venue.” *Core Wireless Licensing S.a.r.l. v. LG Elecs., Inc.*, No. 2:14-cv-912, 2016 U.S. Dist. LEXIS 107270, at \*11 (E.D. Tex. Aug. 12, 2016) (denying transfer to California).

Additionally, Defendant’s list of nineteen “prior art” inventors is “entirely based on information printed on the face of the invalidity references and [] these decades-old references may not reflect the current locations of these individuals.”

*Id.* For example, David Gesbert appears to reside in France. Ex. 25. Defendant’s argument was similarly rejected by another court, because “inventors of prior art rarely, if ever, actually testify at trial.” *Rockstar Consortium US LP v. HTC Corp.*, No. 2:13-cv-00895, 2014 U.S. Dist. LEXIS 102991, at \*12-13 (E.D. Tex. July 29, 2014) (denying HTC’s transfer motion to N.D. Cal.).<sup>4</sup>

Defendant’s arguments regarding Qualcomm also fail because Qualcomm, as a corporate entity, is within this Court’s subpoena power. *See infra* Facts § II.C. That is because “the availability of compulsory process is not measured as against a specific employee of a third-party corporation, but rather the corporation itself.” *Papst Licensing GmbH & Co., KG v. Apple, Inc.*, No. 6:15-cv-1095, 2016 U.S. Dist. LEXIS 177687 (E.D. Tex. Sept. 30, 2016) (denying transfer to N.D. Cal.); *see also Wultz v. Bank of China*, 298 F.R.D. 91, 98 (S.D.N.Y. 2014) (non-party company was subject to the court’s subpoena power “by virtue of having a branch office” in the state). Qualcomm has offices within 100 miles of this Court—and ***Qualcomm’s only domestic LTE research facility is located in New Jersey.*** *See infra* Facts § II.C.

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<sup>4</sup> Even taking Defendant at its word, it is just as likely, according to references cited on the face of the Asserted Patents, that Defendant may rely on individuals residing in New Jersey or within this Court’s subpoena power. *See* Appendix A (identifying 25 individuals residing within 100 miles of New Jersey who were named in references presented during prosecution of the Asserted Patents).

New Jersey is more convenient than California for a number of potential witnesses, including many residing within 100 miles of this District, and Defendant has failed to carry its burden with respect to any California witnesses. Therefore, the convenience of the witnesses weighs heavily against transfer.

**3. *New Jersey is more convenient for Panasonic witnesses and the prosecuting attorney for the Asserted Patents.***

New Jersey is also more convenient for Panasonic—the original assignee of the Asserted Patents. *See infra* Facts § II.D. Defendant plans to seek discovery and testimony from Panasonic witnesses, Ex. 24 at 2-4, and Panasonic’s domestic headquarters are located in Newark, New Jersey. To the extent Defendant relies on Panasonic employees overseas, the existence of international witnesses who must travel a significant distance to reach either forum does not favor transfer. *See In re Asus Computer Int’l*, 573 Fed. Appx. 928, 929 (Fed. Cir. 2014) (certain witnesses “would have to travel a significant distance regardless of where trial is located”).

Further, the primary prosecuting attorney for all the Asserted Patents, James E. Ledbetter, works in Washington, D.C. Ex. 26. Even if Mr. Ledbetter no longer maintains the prosecution files for the Asserted Patents, any relevant testimony about the prosecution would likely come from Mr. Ledbetter. New Jersey is significantly closer to Mr. Ledbetter than California.

**C. INVT’s claims also arose in New Jersey.**

Defendant touts its massive, international presence—publicly stating that it “maintains a presence in all key markets” worldwide. *See infra* Facts § II.A.

Defendant also sells its Accused Products everywhere in the U.S., including within New Jersey. *Id.* This Court has explained that “in nationwide actions, ‘there is not one location that is the ‘center of gravity’ of the litigation.” *Ezaki Glico Kabushiki Kaisha v. Lotte Int’l Am. Corp.*, No. 15-54772, 2017 U.S. Dist. LEXIS 157424, at \*8 (D.N.J. Sept. 25, 2017) (citing *Pippins v. KPMG LLP*, No. 11-0377, 2011 U.S. Dist. LEXIS 30678 (S.D.N.Y. Mar. 21, 2011)).

This Court should reject the “center of gravity” approach<sup>5</sup> in favor of “more recent cases from this District [that] have found that sufficient operative facts for patent cases occurred where the allegedly infringing products were sold *within the plaintiff’s chosen forum*.” *Interlink Prods. Int’l v. Fan Fi Int’l, Inc.*, No. 16-1142, 2017 U.S. Dist. LEXIS 53627, at \*10-11 (D.N.J. Apr. 7, 2017) (emphasis added); *see also Telebrands*, 2016 U.S. Dist. LEXIS 10671, at \*37 (“Defendant’s argument ignores the fact that, while the products at issue may have originated elsewhere, each was sold and shipped to consumers within New Jersey.”). To hold otherwise would effectively “eliminat[e] any deference to an intellectual property plaintiff’s

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<sup>5</sup> Based on INVT’s arguments submitted herein, INVT’s claims would also arise in New Jersey under the “center of gravity” approach.

choice of forum unless that forum is the location of the defendant's headquarters.” *Interlink Prods.*, 2017 U.S. Dist. LEXIS 53627, at \*12. This “sales” approach has been adopted in a variety of cases and situations—not simply ANDA cases. *See, e.g., id.* at \*10-11 (showerheads); *Ezaki*, 2017 U.S. Dist. LEXIS 157424, at \*8 (trademark); *Telebrands*, 2016 U.S. Dist. LEXIS 10671, at \*37 (mop products).

Like *Telebrands*, INVT’s claims arose in New Jersey even if the “central facts” of this lawsuit “occurred both in New Jersey and elsewhere . . . .” 2016 U.S. Dist. LEXIS 10671, at \*37. Indeed, Defendant should not be surprised that INVT’s claims arose in New Jersey—both Defendant and Verizon advertise their unique relationship based on joint efforts relating to the design, development, testing, and certification of the Accused Products. *See infra* Facts § II.A-B. And Verizon, headquartered in New Jersey, is responsible for distributing countless Accused Products for Defendant each year in the United States, including in this District. *Id.*

California would not prevail even under Defendant’s proposed “center of gravity” analysis. Defendant admits its San Francisco operations primarily focus on “hardware, software and usability design [(i.e., Industrial Design)],” and gives no reason why that would be relevant to this case. Other courts have recognized that “HTC’s work in California is not relevant in this case because it relates only to the ‘look and feel’ of HTC’s phones.” *Parthenon Unified Memory Architecture*

*LLC v. HTC Corp. et al.*, No. 2:14-cv-00690, 2015 U.S. Dist. LEXIS 102860, at \*7 (E.D. Tex. Aug. 5, 2015) (denying HTC’s request for transfer to N.D. Cal.).

Defendant also vacillates between several other locations, including Taiwan and Washington, for its purported “hub of activity.” Dkt. 43 at 2 (stating “the hub of activity centered around the production of the HTC Accused Products, including development, design and manufacturing, is in Taiwan”), 25. Neither location favors transfer to California. Defendant’s international employees must travel a significant distance to reach either forum, which favors INVT’s venue choice. *See In re Asus*, 573 Fed. Appx. at 929. And Defendant’s Washington employees are only three hours closer to California than New Jersey, even according to Defendant’s own declarant. Dkt. 43-1 ¶ 9.

Because both the “sales” and “center of gravity” approaches favor New Jersey instead of California, this factor weighs against transfer.

**D. The convenience of the parties does not favor transfer.**

This Court also considers the convenience of the parties “as indicated by their relative physical and financial condition.” *Telebrands*, 2016 U.S. Dist. LEXIS 10671, at \*33-34; *see also Smart Audio*, 910 F. Supp. 2d at 731. This factor does not favor transfer, as indicated by the parties’ respective situations. New Jersey is convenient for INVT<sup>6</sup> for many reasons, including its copending actions against

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<sup>6</sup> Additionally, CF DB EZ LLC and Fortress Investment Group LLC are both

ZTE and Apple; and Defendant “has failed to demonstrate a specific physical or financial condition that would make litigating in [this District] burdensome and cannot point to any specific witnesses or documents that would be unavailable if the litigation proceeds in [this District].” *Apple Inc. v. High Tech Computer Corp.*, No. 10-166, 2011 U.S. Dist. LEXIS 4022, at \*8-9 (D. Del. Jan. 14, 2011) (denying HTC’s request for transfer to N.D. Cal.). And Defendant’s relevant witnesses all likely reside in Taiwan, Washington, or New Jersey—not California. *See infra* Argument § I.C.

Defendant identifies a number of Inventergy, Inc. (“Inventergy”) employees as potentially having knowledge about “pre-suit negotiations between Inventergy and HTC.” Dkt. 43 at 26. However, Defendant’s claims about the relevance of these negotiations are exaggerated at best. Notice in patent infringement cases is rarely disputed and typically established using documents without trial testimony. Regardless, Defendant does not demonstrate that the current and former Inventergy employees named in its motion would not cooperate with trial in New Jersey.

Accordingly, the convenience of the parties weighs against transfer.

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incorporated and headquartered in states bordering this District (Delaware and New York).

**E. The location of documentary evidence also weighs against transfer.**

Much of the potential documentary evidence exists in New Jersey. *See infra* Facts §§ II.A-D. Potentially relevant documents in or near New Jersey include at least Verizon, AT&T, and other wireless carrier documents relating to a laundry list of key issues. *See id.* §§ II.A-B.

It is insufficient for Defendant to suggest that relevant documents may also exist in Taiwan (i.e., “design, development, and testing documents” and “corporate finances and sales figures”), Washington (i.e., “sales and marketing records and documents”), or California (i.e., “documents relevant to the prior art”). Dkt. 43 at 9-11, 31. Documents located in Taiwan and Washington do not favor transfer because they are, by definition, outside the Northern District of California and could be easily produced in New Jersey as well. *Clark v. Burger King Corp.*, 255 F. Supp. 2d 334, 339 (D.N.J. 2003) (denying transfer). And whether purported “prior art” documents are located in California is irrelevant for the reasons identified previously. *See infra* Argument § II.B.2. Importantly, Defendant does not assert that it has relevant technical documents in California. *See Summit 6 LLC v. HTC Corp.*, No. 7:14-cv-00014, 2014 U.S. Dist. LEXIS 126800 (N.D. Tex. Sept. 10, 2014) (“HTC has no documents or proof in California, but instead in Taiwan or Bellevue, Washington.”).



The location of Qualcomm source code in California is likewise unpersuasive. Although Qualcomm asserts its “standard practice in the litigation context [is] to make such source code available for review in a controlled, secure environment at ProSearch Strategies’ facility in Los Angeles, California,” Qualcomm never states that its source code cannot be produced elsewhere. And Qualcomm has previously produced source code using other vendors with facilities in New Jersey, such as Iron Mountain. Ex. 27, Dkt. 382-2 at 45-62 (citing schematics made available by Qualcomm “on a Source Code Computer at the Iron Mountain Facility”); Ex. 28, Dkt. 9-9 at 4 (“The source code for the MSM6550 has been deposited at Iron Mountain and is ready for your review.”); Ex. 29 (identifying Iron Mountain facility in Pennsauken, New Jersey). Further, Qualcomm’s identified ProSearch facility is not located in Defendant’s chosen forum—it is based in Los Angeles. Dkt. 43-4 ¶ 8. Regardless, whether source code is located in California is irrelevant to trial. The location of Qualcomm’s source code does not favor transfer.

Even if Defendant could definitively establish that California holds the majority of the relevant documents and/or source code, such proof would still be incomplete. This Court has repeatedly held that the location of sources of proof is only relevant to the extent they “could not be produced in the alternative forum.” *MaxLite, Inc. v. ATG Elecs., Inc.*, 193 F. Supp. 3d 371, 394 (D.N.J. 2016) (denying

transfer to California); *Telebrands*, 2016 U.S. Dist. LEXIS 10671, at \*39 (same).

Similar to *Maxlite*, Defendant never identifies a single document that “could not be produced in New Jersey.” 193 F. Supp. 3d at 394. “Indeed, in the age of electronic discovery, it is hard to imagine that [Defendant] cannot produce relevant documentary evidence in New Jersey, and it certainly has not claimed (much less shown) that it cannot do so.” *Id.* This factor does not weigh in favor of transfer.

## **II. THE RELEVANT PUBLIC INTEREST FACTORS WEIGH HEAVILY AGAINST TRANSFER.**

The public interest factors also weigh heavily against transfer to California, or are neutral. *Telebrands*, 2016 U.S. Dist. LEXIS 10671, at \*34. In particular, New Jersey has a public interest in presiding over INVT’s three related actions, including the copending lawsuit against ZTE—a New Jersey corporation with a significant presence here—which is not subject to transfer. *See infra* Facts § I.

### **A. Practical considerations and judicial economy weigh heavily against transfer.**

This Court has explained that “allowing lawsuits with similar issues to proceed simultaneously in different districts leads to wastefulness of time, energy and money that [Section] 1404(a) was designed to prevent.” *Telebrands*, 2016 U.S. Dist. LEXIS 10671, at \*41 (discussing practical considerations) (internal quotations omitted). INVT’s pending actions against Defendant, ZTE, and Apple implicate the *same* Asserted Patents, Accused Standards, and technical

specifications, and will likely involve numerous overlapping issues, including at least discovery, claim construction, and infringement proof. *See infra* Facts § I. It is undisputed that the ZTE action will be litigated in New Jersey because ZTE has not moved to transfer, and will not do so. Transferring this case to California would create parallel litigation to ZTE’s case and “promote inefficiency, create the danger of inconsistent outcomes, and run counter to the public interest.”

*Telebrands*, 2016 U.S. Dist. LEXIS 10671, at \*42.

Other courts have denied transfer requests by Defendant based on comparable facts. In *Apple Inc. v. HTC Corp.*, the Delaware court found “common issues of law and fact” among copending cases with “overlapping patents, common inventors and related technologies,” and held “[i]t would better serve the interests of justice and the efficient use of court resources if these issues were addressed by the same court.” No. 10-166, 2011 U.S. Dist. LEXIS 4022, at \*7-8 (D. Del. Jan. 14, 2011) (denying HTC’s motion for transfer to N.D. Cal.). Likewise, HTC’s transfer motion was denied in *Parthenon Unified Memory Architecture LLC v. HTC Corp.* because “judicial economy weigh[ed] against transfer” where copending cases involved “the same patents and technology.” 2015 U.S. Dist. LEXIS 102860, at \*14 (denying HTC’s motion for transfer to California).

Defendant pays short shrift to these practical considerations, claiming that INVT’s lawsuits are “in the infancy stages” and involve different accused

products. Dkt. 43 at 21. These objections are not credible, especially because, in other cases, “Defendant has acknowledged the importance of allowing the *same court* to hear cases ‘involv[ing] some of the *same claim terms, inventors, patent counsel, and technologies*’ because it allows ‘similar, and in some instances identical, issues of claim construction, invalidity, and enforceability,’” thereby mitigating the danger of inconsistent judgments. *Summit 6*, 2014 U.S. Dist. LEXIS 126800, at \*34, n.5 (denying HTC’s motion to transfer to N.D. Cal.) (emphasis added).

Defendant’s cited authority is also inapposite. Unlike INVT’s related lawsuits—which implicate the same Accused Standards, Asserted Patents, and technologies—the proceedings in *In re Zimmer Holdings, Inc.* had “negligible” overlap. 609 F.3d 1378, 1382 (Fed. Cir. 2010) (“Because the cases involve different products with only a single overlapping patent and no defendant is involved in both actions, it is likely that these cases will result in significantly different discovery, evidence, proceedings, and trial.”). By contrast, INVT’s standards-related cases pending before this Court will involve numerous overlapping issues of fact and law. *See infra* Facts § I.

**B. The local interest does not favor transfer.**

The local interest does not favor transfer in this case. That is because patent litigation implicates “constitutionally protected property rights” rather than a “local

controversy in most cases.” *Smart Audio*, 910 F. Supp. 2d at 733. Here, INVT’s lawsuit is “governed by federal law, brought against a multinational corporation, and concerning [products] sold and used nationwide.” *Id.* at 734 (finding the “local interest” factor neutral because the case was “truly a national controversy”). To the extent Defendant reiterates its arguments about the “locus of the majority of alleged culpable conduct,” those arguments fail for the same reasons discussed previously. *See infra* Argument § I.C.

Courts have also rejected Defendant’s argument in other cases. For example, in both *NFC Tech., LLC v. HTC Am.* and *Rockstar Consortium US LP v. HTC Corp.*, the court was “highly skeptical” of Defendant’s claim that “the Northern District of California ha[d] a favored interest in resolving cases involving intellectual property developed within the district.” No. 2:13-cv-01058, 2014 U.S. Dist. LEXIS 105230, at \*12-13 (E.D. Tex. Aug. 1, 2014) (denying transfer to N.D. Cal.); 2014 U.S. Dist. LEXIS 102991, at \*15 (same). Both courts subsequently gave Defendant’s argument “no weight in its analysis.” 2014 U.S. Dist. LEXIS 105230, at \*13; 2014 U.S. Dist. LEXIS 102991, at \*15.

Even if Defendant is correct that California has some local interest in this case, New Jersey’s local interest is stronger. Many companies implicated by INVT’s lawsuits—including ZTE, Verizon, and Panasonic America—are

headquartered or incorporated in New Jersey, and this Court therefore has an interest in those actions.

**C. Court congestion favors this District or is neutral.**

Both this District and the Northern District of California have busy dockets. While Defendant asserts this Court has a longer median time to trial in civil cases than the Northern District of California, this Court is more favorable for a number of metrics offered by Defendant:

- Median time to disposition from filing in all civil cases (6.5 months to California's 7.2 months);
- % of civil docket greater than 3 years old (4.1% to California's 5.8%);
- Average number of patent cases per judge (47.1 cases vs. California's 52.8 cases); and
- Average time to termination by judgment in patent cases (12.3 months to California's 12.6 months).

*See* Dkt. 43 at 32. Although this Court currently has a higher “median time to trial across all civil cases,” the parties are also more likely to reach an earlier resolution (either by judgment or disposition) in this Court, based on the above. *Id.* at 32-33.

More importantly, any judicial economy gained from transferring this case to California would be significantly overshadowed by the resources wasted from having multiple courts adjudicate INVT's claims against Defendant, ZTE, and Apple. Court congestion in this case weighs against transfer, or is neutral.

**D. Public policy does not favor transfer.**

Defendant's public policy argument relies on speculation that the "choice of law for the relevant patent agreements" involving Qualcomm and Panasonic "*may* be California." Dkt. 43 at 36 (emphasis added). This conjecture cannot be credited—it is equally likely that any purported agreement would be based on Delaware law (Qualcomm's state of incorporation), New Jersey law (Panasonic's domestic headquarters), or the law of any other state. Further, even if California law were implicated, this Court is equally capable of applying that law in this case.

**E. The remaining public interest factors are neutral.**

INVT agrees that the remaining public interest factors are neutral as to transfer.

**CONCLUSION**

Defendant has failed to meet its significant burden of showing that the balance of convenience strongly favors transfer to the Northern District of California. For this reason, Plaintiff INVT respectfully requests that the Court deny Defendant's transfer motion.

Dated: March 23, 2018

Respectfully submitted,

By: s/ Rayna E. Kessler

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I, Rayna E. Kessler, hereby certify that, on the date set forth below, I caused a true and correct copy of the following documents to be electronically filed and served via the Court's electronic filing system on the Office of the Clerk, United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07102:

1. Plaintiff INVT SPE LLC's Memorandum of Law in Opposition to Defendants HTC Corporation and HTC America, Inc.'s Motion to Transfer;
2. Declaration of Rayna E. Kessler with Exhibits 1-29 and Appendix A attached thereto; and
3. This Certificate of Service.

I further certify that I caused courtesy copies of the aforementioned documents to be sent via first-class mail to the Honorable John M. Vazquez, U.S.D.J., at the United States District Court District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey.

Dated: March 23, 2018

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