IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VLSI TECHNOLOGY LLC, Plaintiff, v. INTEL CORPORATION, Defendant.	))))))))))	C.A. No. 18-966 (VAC) (CJB) REDACTED - PUBLIC VERSION

OPENING BRIEF IN SUPPORT OF
INTEL CORPORATION'S MOTION TO TRANSFER VENUE

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August 6, 2018 - Original Filing Date
August 13, 2018 - Redacted Filing Date

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I. NATURE AND STAGE OF THE PROCEEDINGS

Defendant Intel Corporation ("Intel") respectfully submits this brief in support of its motion to transfer to the Northern District of California, where the parties are actively litigating another patent infringement suit filed ten months ago by plaintiff VLSI Technology LLC ("VLSI") that substantially overlaps with this action. This action should be transferred to California for the following reasons.

II. SUMMARY OF ARGUMENT

On October 2, 2017, VLSI sued Intel in the Northern District of California, alleging infringement of eight patents that VLSI had purchased from multiple companies (the "California Action"). On June 28, 2018, VLSI filed this action (the "Delaware Action")—without informing this Court of the California Action—alleging infringement of five patents that VLSI had purchased from the same companies and another related company. The California and Delaware Actions overlap in numerous important ways:

- Both actions include patents with the same general subject matter that are asserted against the same or similar functionality in the same Intel products.
- At least seven Intel witnesses have knowledge relevant to both actions.
- A substantial volume of the same technical, sales, marketing, financial, and licensing documents will need to be produced in both actions. The relevant source code and schematics for the Delaware Action will be produced on the same secure computer in California on which the code and schematics for the California Action have already been produced.
- The analysis of alleged damages in both actions will be intertwined and will rely on substantially the same discovery.
- Both actions include patents acquired from the same third-party companies. The discovery needed from these third parties will substantially overlap.
- VLSI is likely to present the same witnesses in both actions.

- In both actions, VLSI alleges that a prior owner of certain asserted patents provided Intel with pre-suit notice. The facts surrounding the alleged pre-suit notice is likely to be the same in both actions.

Given this significant overlap, VLSI's filing of a new action in this District—rather than either filing in the Northern District of California or, simpler still, seeking to amend its existing complaint in the California Action—can only be understood as an attempt to evade the court that VLSI originally chose. By filing in this District, VLSI is attempting to avoid the possibility that this action will be coordinated and/or consolidated with the California Action and assigned to the same judge and the same previously-set trial date. VLSI's strategic desire to avoid coordination and/or consolidation with the California Action does not justify wasting judicial and party resources with duplicative, piecemeal litigation in two courts thousands of miles apart.[1]

Equally significant, the parties have no connection to this District other than their organization in Delaware, whereas Intel and the evidence, witnesses, and events giving rise to VLSI's infringement allegations have a strong connection to the Northern District of California and the West Coast:

- Intel did not design, develop, or manufacture the accused products or the accused functionality in Delaware.
- Intel has no offices, facilities, or employees who work in Delaware (with the exception of a single employee who works for Intel Americas from his home in Newark).
- Intel has no witnesses in Delaware.

[1] VLSI failed even to inform this Court of the California Action on the Civil Cover Sheet as required by D. Del. LR 3.1. That rule lists four types of cases that would be deemed related. As shown herein, three of those categories apply to this action and the California action. *See* D. Del. LR 3.1(b) (cases are related if they "(1) [a]rise from the same or substantially identical transactions, happenings, or events as the case at bar; (2) [i]nvolve the same or substantially the same parties or property; . . . or (4) [f]or other reasons would entail substantial duplication of labor if heard by different judges"). Intel has since filed a Notice of Related Action in both this action, as required by L.R. 3.1(b), and the California Action. (Declaration of Mark D. Selwyn ("Selwyn Decl.") ¶¶ 5-6 & Exs. 10-11.)

- Intel has no documents or servers in Delaware.
- VLSI has no known offices, employees, or business activity in Delaware.
- None of the named inventors appear to reside in Delaware.
- Intel's worldwide headquarters are in Santa Clara, California, in the Northern District of California and about a 15-minute drive to the federal court in San Jose, where VLSI's first-filed action is pending. Intel has other substantial facilities in California, including San Jose and Folsom.
- The accused products and functionalities were designed and developed in multiple Intel facilities, namely Santa Clara; Folsom; Hillsboro, Oregon; and Israel.
- The Intel engineers who are knowledgeable about the accused functionalities work in these facilities. Intel operates multiple daily shuttle flights to San Jose from Folsom (about a 45-minute flight) and Oregon (about a 90-minute flight) for its employees. Intel's witnesses for the Delaware Action and the California Action regarding financial information and licensing are located in Santa Clara.
- Intel has organized and managed the document collection process for the California Action from Santa Clara, and intends to do the same for the Delaware Action.
- VLSI's likely witnesses are located in the Northern District of California and in the Chicago area. For example, Eran Zur, Managing Director of Intellectual Property Finance Group at Fortress Investment Group ("Fortress"), who signed some of the patent assignments on behalf of VLSI, is located in San Francisco, which is in the Northern District of California. Marc Furstein, Fortress' President who signed VLSI's Certificate of Formation, is shown as working in San Francisco on Fortress' Web site. VLSI's CEO Michael Stolarski is located in the Chicago area.

III. STATEMENT OF FACTS

A. VLSI's Eight-Patent California Action Substantially Overlaps With The Five-Patent Delaware Action Filed Ten Months Later

1. The California Action

In the California Action, VLSI alleges infringement of eight patents that VLSI bought from NXP B.V., NXP USA, Inc. ("NXP USA"), and Freescale Semiconductor, Inc. ("Freescale") (now NXP USA). (*See* Selwyn Decl. ¶ 3 & Ex. 1 ("California Compl.").) The California Action is pending before Judge Freeman in San Jose. Although the parties have already invested considerable time and effort in the California Action (*e.g.*, VLSI has served its

Infringement Contentions and Damages Contentions, and Intel has served its Invalidity Contentions, as required by the Patent Local Rules), the case is still at a relatively early stage. On January 19, 2018, Judge Freeman entered an Initial Case Management Order, which scheduled the *Markman* hearing for December 14, 2018, the close of fact discovery for November 21, 2019, and trial for June 1, 2021. (*See* Selwyn Decl. ¶ 7 & Ex. 12 (California Action Case Management Order).)

2. The substantial overlap of subject matter of the California and Delaware Actions

The subject matter of the California and Delaware Actions overlaps in substantial ways.

First, both actions involve multiple patents directed to power management in integrated circuits and low voltage memory devices.[2] For example, both U.S. Patent No. 7,523,331 ("'331 patent") in the Delaware Action and U.S. Patent No. 7,675, 806 ("'806 patent") in the California Action relate to powering down one memory while keeping another memory available to store data when the device is in a low power mode, such as when the battery is low or when the device is in standby mode. (Selwyn Decl. ¶ 4 & Ex. 8 ('331 patent) at Title, 1:16-33; *id.* ¶ 4 & Ex. 2 ('806 patent) at Title ("Low Voltage Memory Device and Method Thereof"), 1:18-31.) Similarly, U.S. Patent No. 8,020,014 ("'014 patent") in the California Action and U.S. Patent No. 7,246,027 ("'027 patent") in the Delaware Action both relate to reducing an amount of power provided to a circuit by making adjustments to the power supply during use. (*Id.* ¶ 4 & Ex. 6 ('027 patent) at Abstract ("A method and apparatus for conserving power of a mixed-signal system-on-a-chip having analog circuitry"), claim 1; *id.* ¶ 4 & Ex. 4 ('014 patent) at 1:7-10 ("The present invention relates to a method for power management . . . for power reduction of a cache

[2] Power management refers to a set of features designed to reduce power consumption in certain circuits or components. Power management is a relevant design consideration in battery-powered electronic devices or in standby modes.

memory during a low power mode.").) U.S. Patent No. 8,081,026 and the '027 patent in the Delaware Action and U.S. Patent No. 8,004,922 ("'922 patent") in the California Action all generally relate to controlling power supplies to portions of a circuit. (*Id*. ¶ 4 & Ex. 6 ('027 patent) at Abstract; *id*. ¶ 4 & Ex. 9 ('026 patent) at 3:12-19; *id*. ¶ 4 & Ex. 3 ('922 patent) at 2:24-39.)

Second, both actions include the same accused products, including several generations of Intel's Core and Xeon brand processors. For example, VLSI has accused numerous generations of Intel's Core line of processors of infringing all but one of the patents in the California Action and all but one of the patents in the Delaware Action. (*Compare* California Compl. ¶¶ 19, 36, 53, 70, 81, 98, 126 *with* D.I. 1 ("Delaware Compl.") ¶¶ 48, 75, 107, 133.)[3] VLSI also has generally accused several generations of Intel's Xeon's processors in its California complaint and specifically accused Xeon processors of infringing U.S. Patent No. 6,212,633 ("'633 patent") in the Delaware Action and U.S. Patent No. 7,709,303 in the California Action. (*Compare* California Compl. ¶ 70 *with* Delaware Compl. ¶ 17; *see also* Selwyn Decl. ¶¶ 8-9.)[4]

Third, both actions involve patents purchased from the same third-party companies, namely, NXP B.V., NXP USA, and Freescale. (Selwyn Decl. ¶¶ 29-35 & Exs. 31-37 (Assignments).) Therefore, both actions will involve third-party discovery from these same companies.

[3] VLSI has identified accused Intel products by functionality or components, and in some instances, has also identified a single product model or generation of products. (Selwyn Decl. ¶ 8.) VLSI's allegations purporting to show how Intel infringes the limitations of the asserted claims are unexplained and unsupported. Although these vague allegations fail to give Intel sufficient notice as to all the products and functionalities that may be at issue, Intel has identified relevant witnesses and documents to the extent that the allegations can be understood.

[4] Two counts in VLSI's Delaware complaint identify accused functionality without identifying a specific product. (*See* Delaware Compl. ¶¶ 46, 97.) The evidence cited for these two counts is for Core products. (Selwyn Decl. ¶ 9.)

Fourth, VLSI's complaints in both actions allege that Freescale provided Intel with notice of certain asserted patents on May 30, 2014, when Freescale provided Intel with claim charts. (*Compare* California Compl. ¶¶ 28, 77, 104 *with* Delaware Compl. ¶ 54.) Therefore, discovery regarding VLSI's allegation of pre-suit notice will overlap in both actions.

Fifth, the damages analysis in both actions will necessarily be intertwined, because the accused products and the accused functionality overlap. The apportionment analysis will likely proceed in a similar manner in both actions. Because of the extraordinary complexity of the accused products, the damages analysis in both actions will require consideration of the same enormous range of features, and how the accused functionality relates to the whole. Given the overlapping accused products and patent subject matter, holding separate trials may pose a risk of double counting or inconsistent outcomes.

3. The substantial overlap of evidence relevant to the California and Delaware Actions

There is also significant overlap in the witnesses and documents relevant to the California and Delaware Actions.

For example, Intel has thus far identified seven witnesses from its Initial Disclosures in the California Action whom it will also disclose in its Initial Disclosures for the Delaware Action: Thomas Herrgott, Intel's witness knowledgeable about sales of the accused products; Keith Gray, Intel's licensing witness; and technical witnesses Sanjeev Jahagirdar and Varghese George in Folsom; Steve Gunther and Arun Krishnamoorthy in Oregon; and Efraim Rotem and Nadav Shulman in Israel. (Selwyn Decl. ¶ 10.)

VLSI is also likely to have overlapping witnesses in both actions. These witnesses include VLSI's CEO Michael Stolarski and Fortress' Eran Zur, both of whom signed patent assignments—some of which included patents asserted in both actions–on behalf of VLSI; and

Marc Furstein, who signed the Certificate of Formation of VLSI. (Selwyn Decl. ¶ 13 & Ex. 15 (VLSI Certificate of Formation); *id.* ¶¶ 22-28 & Exs. 31-37 (Assignments).)

Intel also expects to produce a substantial amount of the same documents in both actions. To address the infringement allegations, Intel expects to produce a substantial volume of the same highly sensitive source code, schematics, and RTL code. This information will be produced on the same source code computers in the same Los Angeles office of Intel's counsel in both cases. To address the damages allegations, Intel expects to produce (at least) the same financial information including sales and cost data for the accused products, marketing documents, pricing documents, performance testing documents, market research, and patent license agreements. Many of the same technical documents that show the relative size of the functionalities in the end products—which will be critical to the apportionment analysis—likely will also need to be produced in both cases. (Selwyn Decl. ¶ 12.)

B. Neither Party Has Connections To This District Other Than Its Place of Formation

1. VLSI

VLSI is a non-practicing patent holding company that was formed in Delaware on June 27, 2016. (Selwyn Decl. ¶ 13 & Ex. 15 (VLSI Certificate of Formation).) VLSI has no apparent connection to this District other than its formation in Delaware and a registered agent. VLSI does not make or sell any products. It does not appear to have any offices, employees, operations, or even a listed phone number in Delaware. Although VLSI alleges that "[t]he address of the registered office ***of VLSI*** is Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801" (Delaware Compl. ¶ 1 (emphasis added)), VLSI admits in the next sentence that this is not the address of VLSI but of its registered agent, The Corporation Trust Company, which also represents thousands of other companies—including Intel. (*Id.*; *see also*

Selwyn Decl. ¶¶ 13-16, 21 & Exs. 15-18, 23.) VLSI is not listed in the Delaware Better Business Bureau, the Delaware Chamber of Commerce, or the local Wilmington, Delaware "White Pages" phone book. (*Id*. ¶¶ 17-20 & Exs. 19-22.) It does not appear that VLSI has ever had any presence of any kind in Delaware other than its formation. In fact, VLSI has not even identified its principal place of business—or if it even has one—in either complaint. Since its formation, VLSI's only discernible activity has been its acquisition of patents and its initiation of infringement lawsuits against Intel.

The people and entities currently associated with VLSI that Intel has identified have no evident connection to this District:

- VLSI is a subsidiary of CF VLSI Holdings LLC, which is a privately-held Delaware company with the same registered agent as VLSI and no known presence in Delaware. (*Id*. ¶¶ 22, 23, 27 and Exs. 24, 25, 29.)

- VLSI has identified NXP B.V. as an interested non-party in the California Action. NXP B.V. is a Dutch company with no offices or employees in Delaware. (*Id*. ¶¶ 24, 25 and Exs. 26, 27.)

- Michael Stolarski, whom VLSI also identified as an interested non-party in the California Action and is identified on VLSI's assignment agreements for the '633 and '026 patents as VLSI's CEO, is a patent attorney in the Chicago area with no known offices or employees in Delaware. (*Id*. ¶¶ 28-30 & Exs. 30-32.)

- Eran Zur of Fortress signed the assignment agreements for the '331, '027, and '552 patents on VLSI's behalf, and is located in San Francisco, which is in the Northern District of California. (*Id*. ¶¶ 31-33, 36 & Exs 33-35, 38.)

- Marc Furstein, President and Chief Operating Officer of Fortress, is shown as working in San Francisco on Fortress' Web site. (*Id*. ¶ 37 & Ex. 39.)

- Eric Scheuerlein is an attorney who represented VLSI in connection with the assignments for the patents-in-suit. (*Id*. ¶¶ 22-28 & Exs. 31-37.) Mr. Scheuerlein's firm, Daylight Law, P.C., is located in Redwood City, which is in the Northern District of California. (*Id*. ¶¶ 38-39 & Exs. 40-41.) Neither Mr. Scheuerlein nor his firm has any known offices or employees in Delaware.

Finally, neither the previous owners of the patents asserted in the Delaware Action, nor the named inventors, are located in Delaware. All five patents were acquired from entities that

were or are now part of an NXP entity. Two of the patents were acquired from NXP B.V., a Dutch company with no presence in Delaware. (Selwyn Decl. ¶¶ 25, 29, 33 & Exs. 27, 31, 35.) Two other patents were acquired from SigmaTel LLC and Freescale Semiconductor, Inc., both of which were located in Austin, Texas; Freescale acquired SigmaTel, which then merged with NXP Semiconductor USA, Inc., which was a California company. (*Id*. ¶¶ 31-32, 40-41 & Exs. 33-34, 42-43.) The fifth patent was acquired from NXP USA, Inc., which is incorporated in Delaware but located in Austin, Texas with no known offices or employees in Delaware. (*Id*. ¶ 30 & Ex. 32.)

2. Intel

Founded in 1968, Intel is a leader in the design and development of semiconductor technology and microprocessor products. Intel's worldwide headquarters have always been in Santa Clara, California (in the Northern District of California), where it has over 6,500 employees. (Declaration of Thomas Herrgott ("Herrgott Decl.") ¶ 5.) In total, Intel employs over 15,000 people in California at three major sites in Santa Clara, San Jose (also in the Northern District of California), and Folsom (in the Eastern District of California), as well as at other California facilities. (*Id*. ¶¶ 5-6.) [redacted] (*Id*. ¶ 7.)

Intel is a Delaware corporation, but does not maintain a physical presence in Delaware. Intel has no offices or facilities in Delaware, does not design, develop, or manufacture any products in Delaware, and does not maintain any documents or servers in Delaware. (*Id.* ¶ 8.) Intel Americas, Inc., a subsidiary of Intel Corporation, has three employees who reside in Delaware; one works as a field sales engineer from his home and two work outside Delaware.

(*Id.*) None of these employees has any information relevant to this action. No other Intel entity has any Delaware employees. (*Id.*)

IV. ARGUMENT

This Court may transfer a case to "any other district or division where it might have been brought" "[f]or the convenience of parties and witnesses" and if the transfer is "in the interest of justice." 28 U.S.C. § 1404(a). Courts in the Third Circuit perform a two-step inquiry to evaluate whether transfer is warranted. First, the Court determines "whether the action could have been brought originally in the proposed transferee forum." *Mitel Networks Corp. v. Facebook, Inc.*, 943 F. Supp. 2d 463, 467 (D. Del. 2013). Second, the Court evaluates "whether transfer would best serve the convenience of the parties and witnesses as well as the interests of justice." *Id.* Courts look to both "private interest factors" and "public interest factors" to determine whether transfer would best serve the convenience of the parties and witnesses as well as the interest of justice. *See Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879-80 (3d Cir. 1995); *Good Tech. Corp. v. MobileIron, Inc.*, No. 14–1308–LPS–CJB, 2015 WL 1458091, *2 (D. Del. Mar. 27, 2015). An analysis of these factors shows that this action should be transferred to the Northern District of California so that it can be coordinated or joined with the first case VLSI filed against Intel.

A. Like VLSI's First-Filed Action, This Action Could Have Been Brought In The Northern District Of California

To show that a case could have been brought in the proposed transferee venue, Intel need only show that the venue would have been proper in the transferee district and that the transferee court would have jurisdiction. *See Smart Audio Techs., LLC v. Apple, Inc.*, 910 F. Supp. 2d 718, 728 (D. Del. 2012). Under 28 U.S.C. § 1400(b), a patent infringement action may be brought

"where the defendant has committed acts of infringement and has a regular and established place of business."

This action could indisputably have been filed in the Northern District of California. VLSI has already sued Intel in that district, and there is no dispute that venue is proper. Nor could there be: Intel's headquarters—its "regular and established place of business"—are located in the Northern District of California (Herrgott Decl. ¶ 5), and VLSI has asserted that Intel has committed acts of infringement in that district (California Compl. ¶ 5). The Northern District of California therefore would be an appropriate venue. *See* 28 U.S.C. § 1400(b).

B. Transfer Would Best Serve The Convenience Of The Parties And Witnesses, And Is In The Interests Of Justice

Both the "private interest factors" and "public interest factors" weigh in favor of transfer, and would best serve the convenience of the parties and witnesses as well as the interests of justice.

1. The private interest factors weigh heavily in favor of transfer to VLSI's first-chosen forum

The private interest factors that courts consider include (1) the parties' forum preferences; (2) whether the events giving rise to the suit took place in the transferee court; (3) whether transfer would be more convenient for the parties and witnesses; and (4) whether the relevant evidence is located in the transferee court. *See Jumara*, 55 F.3d at 879-80. Here, the private interest factors weigh heavily in favor of coordinating/joining this case with VLSI's first-filed case in California.

(a) VLSI's choice of forum deserves little weight

When analyzing this factor, "the court should not consider simply the fact of [the plaintiff's] choice, but the reasons behind that choice." *Ross v. Institutional Longevity Assets LLC*, No. 12–102–LPS–CJB, 2013 WL 5299171, at *6-7 (D. Del. Sept. 20, 2013) (affording no

weight to plaintiff's choice of Delaware because plaintiff had an "improper forum shopping motive"), *report and recommendation adopted*, 2013 WL 5613998, at *1 (D. Del. Oct. 11, 2013). By filing first in California, VLSI acknowledged that the Northern District of California was the most appropriate forum. There can be little doubt that, by filing second in Delaware, VLSI is attempting to avoid having this action coordinated or consolidated with the California Action before the same judge.

VLSI's motivations are further evidenced by its own lack of ties to this District. *See supra* at Section III.B.1. Because VLSI is a non-practicing entity with no facilities, operations, or employees in Delaware, its choice of forum should be given little weight. *See OpenTV, Inc. v. Netflix, Inc.*, No. 12-1733-GMS, 2014 WL 1292790, at *2 (D. Del. Mar. 31, 2014) ("Although the plaintiff's choice of venue is ordinarily entitled to deference, *see Jumara*, 55 F.3d at 879, its preference is entitled to less than the paramount consideration when it files suit where it is incorporated but not physically located[.]" (internal quotation marks omitted)); *Blackbird Tech LLC v. Cloudfare, Inc.*, Nos. 17-283, -284, 2017 WL 4543783, at *5 (D. Del. Oct. 11, 2017) (transferring case where parties were all incorporated in Delaware but plaintiff "has no physical presence in that state"; where "the chosen forum is actually not inherently more convenient for the plaintiff, the plaintiff's preference is accorded less weight"); *Memory Integrity, LLC v. Intel Corp*., No. 13–1804 GMS, 2015 WL 632026, at *3 (D. Del. Feb. 13, 2015) ("Memory Integrity cannot reap the full benefits of heightened deference as a result of its minimal connection to Delaware.").

Although VLSI and Intel are both organized in Delaware, that alone should not defeat transfer because the parties have no other connection to this District. "Neither § 1404 nor *Jumara* list a party's state of incorporation as a factor for a venue inquiry." *In re Link_A_Media*

Devices Corp., 662 F.3d 1221, 1224 (Fed. Cir. 2011) (applying Third Circuit law). Where neither the parties nor their witnesses or documents are located in Delaware and the accused product was not designed or manufactured in Delaware, plaintiff's choice of forum is "not given as much deference" even where both parties are incorporated in Delaware. *See Brunswick Corp. v. Precor Inc.*, No. 00-691-GMS, 2000 WL 1876477, at *2 (D. Del. Dec. 12, 2000) ("Although both parties are incorporated in Delaware, Precor maintains its headquarters in the Western District of Washington and Life Fitness in Franklin Park, Illinois, . . . [and] neither of the parties, their witnesses, or any of the potentially relevant documents and records are located in Delaware. . . . [T]he plaintiff's preference for Delaware is not given as much deference because most of the events at issue, that is, the design and manufacture of the [products at issue] occurred outside of Delaware."); *see also OpenTV*, 2014 WL 1292790, at *1-2 (plaintiff's choice of forum not accorded substantial weight where both plaintiff and defendant incorporated in Delaware but had principal places of business in other districts).

(b) Intel has strong ties to the Northern District of California, where it is already litigating against VLSI

Rather than engaging in piecemeal litigation, Intel would far prefer to litigate this action in VLSI's first forum of choice, the Northern District of California. Besides already being the site of VLSI's first-filed lawsuit, the Northern District of California is the location of Intel's principal place of business, its key decisionmakers, and many of its relevant employees and documents. (Herrgott Decl. ¶¶ 5, 9; Selwyn Decl. ¶¶ 10-12.) *See Contour IP Holding, LLC v. GoPro, Inc.*, No. 15-1108-LPS-CJB, 2017 WL 3189005, at *9 (D. Del. July 6, 2017) ("As this Court has often held, the physical proximity of the proposed transferee district to a defendant's principal place of business (and relatedly, to witnesses and evidence potentially at issue in the case) is a clear, legitimate basis for seeking transfer."), *report and recommendations adopted*,

Contour IP Holding, LLC v. GoPro, Inc., No. 15-1108-LPS-CJB, 2017 WL 3225983, at *2 (D. Del. July 31, 2017) (court examines whether "defendant can articulate rational, legitimate reasons to support that preference, not simply examining where the defendant is incorporated" (internal quotation marks omitted)). In addition, it is significantly more convenient and less burdensome and expensive for Intel to litigate against VLSI in the same forum where the parties are already litigating. *See Teleconference Sys. v. Proctor & Gamble Pharm., Inc.*, 676 F. Supp. 2d 321, 335 (D. Del. 2009) (transferring cases where "key witnesses and documents are located in [the transferee venue] and are easier to access there than in Delaware"); *Semcon Tech, LLC v. Intel Corp.*, Nos. 12-531, -534, 2013 WL 126421, at *3 (D. Del. Jan. 8, 2013) (ordering transfer in part because of practical considerations including the cost of bringing witnesses across country to Delaware for trial).

(c) The central activities relevant to this dispute occurred outside Delaware

The design and development of the accused products and the accused functionality—which overlap with those at issue in the California Action—occurred in California, Oregon, and Israel. (Herrgott Decl. ¶¶ 9-10.) *See Contour IP Holding*, 2017 WL 3189005, at *9 ("[A]s to this factor, this Court typically focuses on the location of the production, design and manufacture of the accused instrumentalities."). ***None*** of the accused products was designed, developed, or manufactured in Delaware. (Herrgott Decl. ¶ 11.) Even though the events relevant to the transfer analysis arose in multiple Intel locations, Delaware is not one of them. *See Semcon Tech*, 2013 WL 126421, at *2 (ordering transfer because, inter alia, alleged infringing activities were taking place outside this District); *Memory Integrity*, 2015 WL 632026, at *4 (concluding that this factor weighed in favor of transfer because "no amount of product development or manufacture took place in Delaware").

(d) The convenience of the parties and witnesses favors transfer to the Northern District of California

The Northern District of California is far more convenient for the parties and witnesses. Neither VLSI nor Intel has any offices, relevant employees, or business operations in Delaware. Indeed, of all the potential witnesses in this case—*e.g.*, the named inventors, relevant Intel engineers and other employees, prosecuting attorneys, potential VLSI witnesses, and prior assignees—***not one*** is in Delaware. *See supra* Section III.B.1. *See OpenTV*, 2014 WL 1292790, at *1-4 (ordering transfer where both plaintiff and defendant were located in the Northern District of California, the accused products were designed and developed in the Northern District of California, and no relevant third-party witnesses resided in Delaware); *In re Zimmer Holdings, Inc.*, 609 F.3d 1378, 1381-82 (Fed. Cir. 2010) (finding that the convenience factors favored transfer where at least eight witnesses and defendant's principal place of business were located in the transferee district).

This stands in stark contrast to the Northern District of California.

Many Intel witnesses are located in, or a short flight from, the Northern District of California. The Intel witnesses knowledgeable regarding financial information and licensing are located in Santa Clara, and the technical witnesses knowledgeable about the accused products are located in Santa Clara, Folsom (a 45-minute shuttle flight to San Jose), Oregon (a 90-minute shuttle flight to San Jose), and Israel (requiring international travel whether to Delaware or California). Therefore, it would be far more convenient for the parties and their witnesses if the actions were in the same district and coordinated or consolidated to avoid duplication of effort. *See Good Tech.*, 2015 WL 1458091, *8-9 (transferring case to district where another action was pending because although the actions were "not mirror-image litigations," they shared much in common and "would almost certainly be deemed related"); *Ross*, 2013 WL 5299171, at *13 ("In

examining this *Jumara* factor, our Court has often cited the existence of related lawsuits in one of the fora at issue as being an important 'practical consideration' to be taken into account."). In contrast, if this action were to proceed in Delaware, the parties and witnesses would be required to spend considerable time and expense traveling to this District—to which neither party has any relevant ties.[5] *See Qinetiq Ltd. v. Oclaro, Inc.*, No. 09-372 (JAP), 2009 WL 5173705, at *4 (D. Del. Dec. 18, 2009) (transferring the case to the Northern District of California where "[n]early all of [the defendant's] witnesses on the design, development, sales and marketing of [accused] products [were] located"); *Semcon Tech*, 2013 WL 126421, at *6 (transferring the case against Intel to the District of Oregon in part because relevant employees of the defendant are likely in Oregon and there is "not a hint of likelihood" that any third-party witnesses reside within this Court's subpoena power).

(e) The location of the relevant evidence favors transfer to the Northern District of California

None of the relevant evidence for this action is in Delaware. Intel has organized and managed the document collection process for the California Action from Santa Clara, and intends to do the same for the Delaware Action. In the California Action, Intel has produced all documents to VLSI's counsel in California and has made its source code and schematics available for inspection on secure computers at Intel's counsel's office in Los Angeles, where VLSI's lead counsel is located. *See supra* Section III.A.3. Because of the sensitive nature of the source code and schematics, these computers cannot be connected to the Internet or any network, meaning that any additional production of source code or schematics requires travel to Los Angeles to add materials to the computers. (Selwyn Decl. ¶ 12.) This also weighs in favor of

[5] VLSI's counsel in the California Action, who presumably will also represent VLSI in this action, is Irell & Manella, located in Los Angeles.

transfer. *See In re Acer Am. Corp.*, 626 F.3d 1252, 1256 (Fed. Cir. 2010) (transfer is appropriate where "it appears that a significant portion of the evidence" is in the transferee venue and no likely source of proof is in the transferor venue).

2. The public interest factors also favor transfer

The public interest factors also weigh in favor of transfer. Three of the factors that courts typically consider are (1) practical considerations that could make the trial easy, expeditious, or inexpensive; (2) the relative administrative difficulty in the two fora resulting from court congestion; and (3) the local interest in deciding local controversies at home. *See Jumara*, 55 F.3d at 879-80. These factors weigh heavily in favor of transfer.

(a) Practical considerations—including judicial economy—strongly favor transfer to the Northern District of California

Transferring this action to the Northern District of California would facilitate the expeditious resolution of this action, make the litigation far easier and less expensive, and promote the interests of judicial economy.

First, this action substantially overlaps with the California Action in accused technology, witnesses, and other evidence. For example, as discussed above, several patents in both actions are directed to power management in integrated circuits and low voltage memory devices, and VLSI has accused many of the same products that are at issue in this action. (*Supra* Section III.A.2; Selwyn Decl. ¶¶ 8-9.) Transfer would make coordination and/or consolidation before the same judge possible, which would plainly be more efficient than conducting parallel litigation in two courts thousands of miles apart. Coordination or consolidation would allow for a single *Markman* process, a single technology tutorial, a single summary judgment and *Daubert* hearing, and ultimately a single trial. The California Action is currently at a relatively early stage—trial is still three years away—and it would be practical for this new action to "catch up"

with the California Action. *See Ross*, 2013 WL 5299171, at *13 (noting that courts in this District have "often cited the existence of related lawsuits in one of the fora at issue as being an important 'practical consideration' to be taken into account"); *Good Tech.*, 2015 WL 1458091 at *8-9 (transferring case where the patents asserted in the two cases were directed to different specific technologies in the same field; although the two actions were "not mirror-image litigations," they shared much in common and "would almost certainly be deemed related" in the Northern District of California and having a single judge oversee the two cases would benefit the judicial system).

Second, because the identified relevant engineers and other witnesses and documents are primarily in the Northern District of California or a short flight away, litigating this action in that district would be less expensive than litigating in Delaware. Witnesses relevant to both cases would need only appear once, common documents need only be produced once, and neither would need to be brought across the country for pretrial proceedings or trial. Litigating this action in Delaware, in contrast, would have none of these advantages. *See Linex Techs., Inc. v. Hewlett-Packard Co.*, No. 11-400-GMS, 2013 WL 105323, at *6 (D. Del. Jan. 7, 2013) (finding that the "practical considerations" factor weighs in favor of transfer because "the parties' aggregate litigation costs will be reduced by litigating in [the proposed transferee forum]"); *see also Teleconference Sys. v. Proctor & Gamble Pharm., Inc.*, 676 F. Supp. 2d 321, 335 (D. Del. 2009) ("With regard to practical considerations that could make the trial easy, expeditious or inexpensive, these strongly favor transfer because key witnesses and documents are located in [the transferee venue] and are easier to access there than in Delaware."); *Semcon Tech*, 2013 WL 126421, at *3 (D. Del. Jan. 8, 2013) (ordering transfer in part because of practical considerations including the cost of bringing witnesses across country to Delaware for trial).

(b) The relative administrative difficulty favors transfer

Litigating this case in the Northern District of California poses far less administrative difficulty than litigating it in this District. Because of the overlapping nature of the two actions, this action likely would be deemed related to the California Action and the currently-assigned judge would preside over both cases. One judge handling two coordinated cases or one consolidated case burdens the court system (and the parties) far less than two separate cases handled by different judges thousands of miles apart.

Transferring this case to the Northern District of California, where another action is already pending before a judge of that district, will further relieve the extraordinary burden from the dramatic increase in the number of patent cases currently affecting this District. As Cbief Judge Stark noted in his Annual Report to the Federal Bar Association posted on the Court's Web site in July 2018, in the thirteen months after the Supreme Court's *TC Heartland* decision, the number of patent case filings increased 64% over the thirteen-month period before the decision, from 577 to 947. (*See* Annual Report of the United States District Court for the District of Delaware to the Federal Bar Association 2018 ("Annual Rep.") at 2.) In 2017, this District had the highest number of patent cases per judge in the country: 207 per judge, which was a 62% increase from 128 cases per judge in 2016. (*Id.* at 11.)

(c) California has a strong interest in resolving this dispute

Intel employs approximately 15,000 people in California, including over 6,500 at its headquarters in Santa Clara and about 1,700 in San Jose, both in the Northern District of California, and about 6,000 in nearby Folsom. (Herrgott Decl. ¶¶ 5-6.) Intel's principal place of business and decisionmakers are located in the Northern District of California, [redacted] (*Id.* ¶¶ 5, 7.) California has a strong interest in resolving a dispute that involves one the largest companies—and employers—

in the state. *See In re Hoffmann-LaRoche Inc.*, 587 F.3d 1333, 1336 (Fed. Cir. 2009) (finding that the "local interest" compels transfer where the "accused drug was developed and tested" in the transferee district and the case would affect "the work and reputation of several individuals residing in or near [the transferee] district"); *Good Tech.*, 2015 WL 1458091, at *9 (finding that Delaware's interest in resolving disputes between its corporate citizens was counterbalanced by the transferee district's interest in disputes between parties that were headquartered in the district).

Delaware does not have a comparable interest in this case. This case does not involve any Delaware employees or products made in Delaware.[6]

V. CONCLUSION

For the foregoing reasons, Intel respectfully requests that this case be transferred to the Northern District of California.

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[6] Courts have examined other public interest factors, such as the enforceability of the judgment, the public policies of the fora, and the familiarity of the trial judge with the applicable state law in diversity cases. *See, e.g.*, *Jumara*, 55 F.3d at 879-80. These factors are neutral in this case: a judgment would be equally enforceable from either district; states do not have different public policies relevant to the transfer analysis in patent cases (*see, e.g., Cradle IP, LLC v. Texas Instr., Inc.*, 923 F. Supp. 2d 696, 701 (D. Del. 2013)); and, because this is not a diversity case, state law does not apply.

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August 6, 2018 - Original Filing Date
August 13, 2018 - Redacted Filing Date