

No. 21-\_\_\_\_

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**UNITED STATES COURT OF APPEALS FOR THE  
FEDERAL CIRCUIT**

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IN RE SAMSUNG ELECTRONICS CO., LTD. AND  
SAMSUNG ELECTRONICS AMERICA, INC.

*Petitioners*

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On Petition for a Writ of Mandamus to the  
United States District Court for the Western District of Texas,  
No. 6:20-cv-00259-ADA  
Hon. Alan D. Albright

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**SAMSUNG ELECTRONICS CO., LTD. AND  
SAMSUNG ELECTRONICS AMERICA, INC.'S  
PETITION FOR WRIT OF MANDAMUS**

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April 6, 2021

**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

**CERTIFICATE OF INTEREST**

**Case Number** 21-

**Short Case Caption** In re Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.

**Filing Party/Entity** Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.

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I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 04/06/2021

Signature: /s/ Bradley N. Garcia

Name: Bradley N. Garcia

FORM 9. Certificate of Interest

Form 9 (p. 2)  
July 2020

<b>1. Represented Entities.</b> Fed. Cir. R. 47.4(a)(1).	<b>2. Real Party in Interest.</b> Fed. Cir. R. 47.4(a)(2).	<b>3. Parent Corporations and Stockholders.</b> Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.  <input type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.  <input type="checkbox"/> None/Not Applicable
Samsung Electronics Co., Ltd.		None
Samsung Electronics America, Inc.		Samsung Electronics Co., Ltd.
	Google LLC	XXVI Holdings Inc.; Alphabet Inc.

Additional pages attached

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**5. Related Cases.** Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

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Ikorongo Texas LLC v. LG Electronics Inc., No. 6:20-cv-0257-ADA (W.D. Tex.)	Ikorongo Texas LLC v. Lyft, Inc., No. 6:20-cv-00258-ADA (W.D. Tex.)	Ikorongo Texas LLC v. Uber Technologies, Inc., No. 6:20-cv-00843-ADA (W.D. Tex.)

**6. Organizational Victims and Bankruptcy Cases.** Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

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## STATEMENT OF RELATED CASES

There are related district court cases, but none are consolidated for pre-trial purposes. In the action giving rise to this petition (“the Samsung action”), Plaintiff Ikorongo Texas LLC (“Ikorongo Texas”) sued Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc., on March 31, 2020, for alleged infringement of U.S. Patent Nos. RE 41,450, RE 45,543, RE 47,704, and 8,874,554. *Ikorongo Texas LLC v. Samsung Electronics Co.*, No. 6:20-cv-00259-ADA, Dkt. 1 (W.D. Tex.). The next day, an amended complaint was filed adding Plaintiff Ikorongo Technology LLC (“Ikorongo Technology”) (and together with Ikorongo Texas, “Plaintiffs”). *Id.*, Dkt. 2.

On March 31, 2020, Ikorongo Texas also filed separate suits alleging infringement of some or all of the same patents against (1) LG Electronics Inc. and LG Electronics U.S.A., Inc., (2) Bumble Trading Inc., and (3) Lyft Inc. *Ikorongo Texas LLC v. LG Electronics Inc.*, No. 6:20-cv-00257-ADA, Dkts. 1, 2 (W.D. Tex.); *Ikorongo Texas LLC v. Bumble Trading Inc.*, No. 6:20-cv-00256-ADA, Dkts. 1, 2 (W.D. Tex.); *Ikorongo Texas LLC v. Lyft, Inc.*, No. 6:20-cv-00258-ADA, Dkts. 1, 2 (W.D. Tex.). In each suit, as in this one, the next day an Amended Complaint was filed adding Plaintiff Ikorongo Technology. The defendants in each suit moved to transfer the actions to the Northern District of California, but Bumble withdrew its motion to transfer. *Bumble*, No. 20-cv-00258,

Dkts. 29, 39. The district court denied transfer in each of the remaining actions on March 1, 2021. *LG*, No. 20-cv-00257, Dkt. 76; *Samsung*, No. 20-cv-00259, Dkt. 67; *Lyft*, No. 20-cv-00258, Dkt. 68. The district court entered essentially identical orders denying Petitioners' motion to transfer in this case and the LG defendants' motion to transfer in that case. *LG*, No. 20-cv-00257, Dkt. 76; *Samsung*, No. 20-cv-00259, Dkt. 67.

Similarly, on September 15, 2020, Ikorongo Texas filed another separate suit alleging infringement of some of the same patents against Uber Technologies, Inc. *Ikorongo Texas LLC v. Uber Technologies, Inc.*, No. 6:20-cv-00843-ADA, Dkts. 1, 2 (W.D. Tex.). There, as in this case, the next day an Amended Complaint was filed adding Ikorongo Technology. Uber moved to transfer the action to the Northern District of California, and that motion is currently pending. *Id.* Dkt. 26.

This petition challenges the district court's order denying transfer in the Samsung action, *Samsung*, No. 20-cv-00259, Dkt. 67. There have been no other appeals or writ proceedings arising from the Samsung action.

### **CIRCUIT RULE 28(j) CERTIFICATION**

Pursuant to Circuit Rule 28(j), Petitioners state that the body of this petition is identical—except for record citations and references to Petitioners—to the body of a petition filed this same day by LG Electronics Inc. and LG Electronics U.S.A.,

Inc., who are represented by the same counsel and challenge a materially identical order issued by the same district court.

## INTRODUCTION

Venue rules are intended “to allocate suits to the most appropriate or convenient federal forum,” *In re HTC Corp.*, 889 F.3d 1349, 1356 (Fed. Cir. 2018), and to prevent both “the waste of time, energy and money” and “unnecessary inconvenience” to “litigants, witnesses and the public” that arise when litigation is conducted in an inconvenient forum, *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964). Plaintiffs here concocted a novel scheme that flouts those important public policies and long-established case law by seeking—through various pre-filing maneuvers—to effectively confine their suit to their chosen district no matter how inconvenient that forum is. The district court denied Petitioners’ motion to transfer on two alternative grounds, both of which turned, either completely or in part, on Plaintiffs’ pre-filing maneuvering. This Court should issue a writ of mandamus to correct those errors and require this case to be transferred.

Plaintiffs seek nationwide damages for alleged infringement of four patents. Until 11 days before this suit was filed, the sole owner of the asserted patents, Ikorongo Technology, had full rights to assert the patents anywhere in the country, and could have sued Petitioners in the Northern District of California (“NDCA”). But Ikorongo Technology then assigned to Ikorongo Texas—a related entity created approximately one month before suit was filed—the exclusive rights to the

asserted patents in carefully chosen geographic locations: all but one county in each of the Eastern District of Texas (“EDTX”) and Western District of Texas (“WDTX”). Ikorongo Texas then filed suit in the WDTX, and Ikorongo Technology was added as a co-plaintiff in an Amended Complaint the next day.

This suit, however, has no meaningful connection to the WDTX; not a single relevant document or witness is located there. The vast majority of both are instead located in the NDCA, where most of the allegedly infringing technology was developed. When Petitioners moved under 28 U.S.C. § 1404(a) to transfer the suit to the NDCA, Plaintiffs argued that their pre-filing maneuvers categorically defeated that motion. In patent infringement actions, proper venue under 28 U.S.C. § 1400(b) turns on, among other things, “where the defendant has committed acts of infringement.” According to Plaintiffs, because their “Texas” entity had rights to the asserted patents only in specified parts of Texas, any “acts of infringement” *as to that entity* could have occurred *only* in those carefully chosen districts in Texas. The district court accepted that argument and held that Petitioners could not show that the suit “might have been brought” in the NDCA by Ikorongo Texas as § 1404(a) requires.

That ruling was incorrect and will have far-reaching consequences if not reversed. Plaintiffs’ pre-filing contractual maneuvers had no plausible purpose except to defeat transfer under § 1404(a) and confine this suit to their chosen

venue. This Court and the Supreme Court have repeatedly rejected similar efforts to manipulate venue rules. And although Plaintiffs' effort here appears to be novel, it provides a roadmap for other plaintiffs to file suits for nationwide damages in a preferred forum while effectively foreclosing the possibility of a transfer to more convenient locations: Just create a related entity, assign strategically chosen geographic patent rights to that entity, have that entity sue first, and then join the original entity in the same suit. The district court's rationale overlooks that § 1400(b) is intended to protect *defendants* from suit in inconvenient forums, not provide plaintiffs an artificial hook to limit the jurisdictions to which their suit might be transferred. There is no reason to read § 1400(b)'s focus on "where the defendant has committed acts of infringement" to turn on the type of pre-filing contractual maneuvering that Plaintiffs engaged in here.

The district court alternatively ruled that transfer was not warranted even if the suit could have been brought in the NDCA. That ruling was a clear abuse of discretion and was impacted in multiple respects by Plaintiffs' improper pre-filing maneuvering. The relevant documents and majority of potential third-party witnesses are located in the NDCA, where the allegedly infringing applications were developed. No documents and no relevant witnesses are located in the WDTX. The district court nevertheless minimized the importance of those crucial

factors and relied exclusively on its belief that judicial economy would be promoted by retaining this case in the WDTX because Plaintiffs filed other suits involving the same patent family in the WDTX. Especially because those suits were part and parcel of Plaintiffs' improper scheme to defeat a transfer motion, that consideration cannot outweigh the undisputed evidence showing that the NDCA is clearly a more convenient forum for the parties and witnesses.

### **RELIEF SOUGHT**

Petitioners respectfully petition for a writ of mandamus directing the district court to vacate its March 1, 2021 order denying transfer of this action and to transfer this action to the NDCA.

### **ISSUES PRESENTED**

1. Whether the district court erred by holding that Plaintiffs' pre-filing assignment of geographically limited patent rights to a newly minted related entity precluded transfer regardless of the convenience of parties and witnesses.
2. Whether the district court clearly abused its discretion by denying Petitioners' motion to transfer where the most important factors—sources of proof, the availability of compulsory process, and the convenience of witnesses—clearly favor the NDCA, and the only record-supported reasons weighing against transfer are speculation about court congestion and the fact that Plaintiffs filed similar suits against other defendants in the WDTX.

## STATEMENT OF FACTS

### **I. The Parties And Plaintiffs' Claims**

Petitioners are Samsung Electronics Co., Ltd. (“SEC”) and Samsung Electronics America, Inc. (“SEA”). SEC is a Korean-chartered corporation with its principal place of business in Korea. Appx136 ¶ 6. SEC designed, engineered, and manufactured the accused Samsung devices outside the United States, mostly in Korea. Appx137 ¶¶13, 14.

SEA is a corporation founded under the laws of New York with its principal place of business in Ridgefield Park, New Jersey. Appx141 ¶7. SEA has offices in various states, including California, New York, New Jersey, Washington, Kansas, Georgia, and Texas. *Id.* SEA has over 300 employees in the Northern District of California. Appx142 ¶12.

Plaintiffs are Ikorongo Texas and Ikorongo Technology. Both have the same address in Chapel Hill, North Carolina. Appx26 ¶¶1-2. Neither entity appears to conduct any non-litigation business in Texas.

### **II. The Asserted Patents, Accused Applications, And Relevant Third Parties**

Plaintiffs allege that Petitioners’ smartphones and tablets infringe four patents—U.S. Patent Nos. RE41,450; RE45,543; RE47,704; and 8,874,554 (collectively, the “Asserted Patents”). The three reissue patents are directed to users sharing geographic location data with a group of other users using mobile

devices. Appx30 ¶21; Appx32 ¶31; Appx34 ¶41; Appx63-67 ¶¶2.a, 3.a, 4.a. The '554 patent is directed to providing location-based media recommendations. Appx36 ¶51; Appx61-62 ¶1.a.

Plaintiffs' infringement contentions are directed at functionality found in the Google Maps, Google+, Google Play Music, YouTube Music, and AT&T Secure Family applications (collectively, the "Accused Applications") running on products sold by Petitioners. Appx61; Appx63-64; Appx66.

No employees of any Samsung entity control the design and development of any features of the Accused Applications. Appx136 ¶¶8. Instead, the Accused Applications were developed by third parties. Third-party Google LLC is a Delaware limited liability company with its principal place of business in Mountain View in the NDCA. Appx143 ¶2. Google's Mountain View headquarters and nearby offices in the NDCA are the strategic center of Google's business. *Id.* Google's employees knowledgeable about the accused Google Maps and Google+ features are based in the NDCA. Appx144-145 ¶¶4-8. The teams who worked on location-sharing for Google Maps, Android location infrastructure, and the accused Google+ features are all located in Mountain View. Appx144-145 ¶¶5, 7-8. Google is unaware of any employees located in the WDTX who have worked on the accused Google Maps and Google+ functionality. Appx144-145 ¶¶5, 8. Google's employees knowledgeable about the accused Google Play Music

and YouTube Music features are located primarily in New York City, with team members also located in Seattle and Mountain View. Appx145-146 ¶¶9-10.

The remaining Accused Application, AT&T Secure Family, was researched, designed, and developed by a team of 30 engineers at third-party Location Labs at its headquarters in Emeryville, California within the NDCA. Appx101-120; Appx122-123; Appx125-127; Appx200-205. Location Labs was later acquired by Avast Software s.r.o. (“Avast”). Appx125-127. Avast currently has four U.S. offices, two of which (the Silicon Valley and Emeryville offices) are in NDCA. Appx129-132. Avast does not have any offices in Texas. *Id.* Although AT&T is headquartered in Dallas, Texas, it did not develop Secure Family.

### **III. Procedural Background**

#### **A. Plaintiffs’ Pre-Filing Maneuvers**

Ikorongo Texas initiated this suit on March 31, 2020, alleging infringement of the Asserted Patents. Appx12. Ikorongo never served that complaint on Petitioners. Appx4. The next day, Ikorongo Technology was added as a co-plaintiff in an amended complaint. Appx26. On those same days, in the same sequence, Plaintiffs filed three similar suits against other defendants in the WDTX alleging infringement of some or all of the Asserted Patents. *See supra* at ix-x (statement of related cases). They did the same in a similar suit against Uber six months later. *Id.*

Plaintiffs allege that Ikorongo Texas owns exclusive rights to the Asserted Patents, including the rights to sue for infringement and collect damages, but only in “a specified part of the United States ... that includes specific counties within the” WDTX. Appx28 ¶9. Plaintiffs allege that Ikorongo Technology owns the exclusive rights to the Asserted Patents everywhere else, which includes “at least one county within the” WDTX. Appx28 ¶10. The Amended Complaint seeks nationwide damages. Appx28 ¶11; Appx38.

The record developed in litigating Petitioners’ motion to transfer paints a fuller picture of Plaintiffs’ efforts to manipulate their corporate structure in an effort to anchor the cases in the WDTX. Until one month before this suit was filed, Ikorongo Texas did not exist and Ikorongo Technology owned the exclusive, geographically unlimited rights to the Asserted Patents. Appx171. Approximately one month before the suit was filed, Ikorongo Texas was formed. Appx134. Then, on March 20, 2020—just 11 days before the suit was filed—Ikorongo Technology assigned to Ikorongo Texas, through various individuals, the geographically limited rights described above. Appx168-191. Ikorongo Technology retained exclusive rights to the Asserted Patents in the rest of the country, including one county in each of the WDTX and the EDTX. Appx28 ¶11; Appx179.

The same person—Hugh Svendsen—signed the relevant assignment documents on behalf of both Plaintiffs. He signed the initial transfer from

Ikorongo Technology, as its manager, to various individuals. Appx173. And he signed the later assignment from those various individuals to Ikorongo Texas as its manager. Appx185. Both entities share the same North Carolina address. Appx26 ¶¶1, 2.

**B. Petitioners’ Motion To Transfer And The District Court’s Ruling**

On September 11, 2020, Petitioners moved to transfer this suit to the NDCA under 28 U.S.C. § 1404(a). Petitioners emphasized, among other things, that every relevant document is accessible from and many potential witnesses are located in the NDCA, while no relevant documents or witnesses are located in the WDTX.

In opposing Petitioners’ motion, Plaintiffs made a novel argument: transfer was impossible because Ikorongo Texas’s carefully circumscribed geographic rights in the Asserted Patents meant Petitioners committed no “acts of infringement” in the NDCA *as to that entity* under § 1400(b), as required for transfer under § 1404(a). Appx155. In reply, Petitioners countered on multiple grounds, including that if this pre-filing maneuvering prevented transfer “regardless of convenience,” any patent holder could defeat the purpose of § 1404(a) simply by “incorporating a new company and assigning to that company the right to sue only in a particular district.” Appx194. The district court agreed with Plaintiffs’ argument, however, holding that Ikorongo Texas could not have

sued in the NDCA because “acts of infringement as to Ikorongo Texas” under § 1400(b) could occur only in the WDTX or the EDTX. Appx210.

The court also held that transfer was unwarranted under § 1404(a) “even assuming” Petitioners had “met the threshold issue as to Ikorongo Texas.”

Appx211. As detailed *infra* Part III, the district court discounted the importance of the many witnesses in the NDCA and relied heavily on (1) its estimation that its time-to-trial would be faster than in the NDCA and (2) the fact that the defendant in one of the simultaneously filed suits involving only a subset of the Asserted Patents and different accused products had withdrawn its motion to transfer. Appx211-218.

#### **STATEMENT OF REASONS WHY THE WRIT SHOULD ISSUE**

The district court erred by allowing Plaintiffs to defeat Petitioners’ transfer motion by strategically dividing geographic rights to the Asserted Patents. This Court and the Supreme Court have long warned against artificial venue manipulation, and such manipulation contravenes the purpose of §§ 1400(b) and 1404(a). If this Court does not intervene, others will surely imitate Plaintiffs’ tactic, which will only further undermine those statutes. The district court also clearly abused its discretion in its alternative ruling finding that the balance of convenience factors did not warrant transfer. A writ of mandamus is warranted.

## I. Governing Legal Standards

Fifth Circuit law applies to this Court’s review of § 1404(a) rulings. *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008). Under Fifth Circuit law, a petitioner seeking mandamus relief must (1) show a “clear and indisputable” right to the writ; (2) have “no other adequate means to attain the relief he desires”; and (3) demonstrate that “the writ is appropriate under the circumstances.” *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 311 (5th Cir. 2008) (en banc) (citation omitted). This Court has repeatedly recognized that, under Fifth Circuit law, mandamus is appropriate to correct transfer denials that are “clear abuses of discretion.” *In re Toyota Motor Corp.*, 747 F.3d 1338, 1339 (Fed. Cir. 2014) (collecting cases).

The § 1404(a) analysis proceeds in two steps. First, the court asks whether the “action ‘might have been brought’ in the destination venue.” *In re Volkswagen*, 545 F.3d at 312 (quoting 28 U.S.C. § 1404(a)). A patent infringement case may be brought in “the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.” 28 U.S.C. § 1400(b). Second, a court must assess whether transfer is warranted based on a number of factors concerning “the convenience of parties and witnesses” and “the proper administration of justice.” *In re Microsoft Corp.*, 630 F.3d 1361, 1363 (Fed. Cir. 2011).

## **II. This Action Could Have Been Brought In The Northern District Of California Under § 1400(b)**

The district court's holding that Petitioners could not show the action "might have been brought" in the NDCA turned entirely on Ikorongo Texas's strategically limited geographic rights to the Asserted Patents. Appx210. Under a long line of precedent examining similar pre-filing attempts to manipulate venue, the district court should have disregarded Plaintiffs' pre-filing maneuvering and treated this action as what it is: a nationwide suit for infringement of the Asserted Patents. Moreover, even if Plaintiffs' pre-filing maneuvering is not ignored, the district court also erred in interpreting § 1400(b) to turn on a plaintiff's contractual rights rather than a plain reading of where "the defendant [allegedly] has committed acts of infringement" as the statute requires.

### **A. This Court And The Supreme Court Have Repeatedly Rejected Attempts By Plaintiffs To Manipulate Venue And Jurisdiction**

In *Van Dusen v. Barrack*, 376 U.S. 612 (1964), the Supreme Court held that § 1404(a) "should be construed to prevent parties who are opposed to a change of venue from defeating a transfer which, but for their own deliberate acts or omissions, would be proper, convenient and just." *Id.* at 625. Crediting Plaintiffs' pre-filing maneuvering in this case contravenes that principle. And although Plaintiffs' specific scheme here appears to be novel, this Court and the Supreme

Court have repeatedly rejected similar efforts to manipulate venue and jurisdictional laws.

For example, in *In re Microsoft*, the plaintiff had opened an office in the EDTX that “staffed no employees,” transferred documents to that in-district office, and reincorporated under the laws of Texas sixteen days before filing suit. 630 F.3d at 1364-65. The plaintiff then cited those connections to its preferred district in opposing transfer, and the district court credited those maneuvers “without scrutiny.” *Id.* at 1364.

This Court disagreed and issued a writ ordering transfer, explaining that the “Supreme Court has long urged courts to ensure that the purposes of jurisdictional and venue laws are not frustrated by a party’s attempt at manipulation.” *Id.* The Court therefore concluded that it need not “honor” the connections that plaintiff made to its preferred forum “in anticipation of litigation and for the likely purpose of making that forum appear convenient.” *Id.* As the Court put it, those steps “were recent, ephemeral, and a construct for litigation and appeared to exist for no other purpose than to manipulate venue.” *Id.* at 1365.

Similarly, in *In re Zimmer Holdings Inc.*, 609 F.3d 1378 (Fed. Cir. 2010), the plaintiff claimed that the EDTX was its “principal place of business.” *Id.* at 1381. But this Court looked to “the realities” of the case—that the claimed location was essentially empty “office space” shared with the plaintiff’s lawyer’s

other clients—and concluded that “the plaintiff is attempting to game the system by artificially seeking to establish venue[.]” *Id.* And in *In re Hoffmann-La Roche Inc.*, 587 F.3d 1333 (Fed. Cir. 2009), the plaintiff transferred 75,000 pages of documents relevant to the suit to its chosen district “in anticipation of litigation.” *Id.* at 1336. This Court again concluded that the “assertion that these documents are ‘Texas’ documents is a fiction which appears to ... have been created to manipulate the propriety of venue.” *Id.* at 1336-37. In both cases, this Court granted writs directing transfer.

Those decisions are supported by broader jurisprudence condemning manipulation of venue and jurisdictional rules. Both *In re Microsoft* and *In re Zimmer Holdings* drew on *Hertz Corp. v. Friend*, 559 U.S. 77 (2010), which cautioned against efforts to manipulate diversity of citizenship jurisdiction. The Supreme Court instructed courts to disregard a corporation’s claimed “principal place of business” when assessing diversity of citizenship under 28 U.S.C. § 1332(c)(1) “if the record reveals attempts at manipulation—for example, that the alleged [principal place of business] is nothing more than a mail drop box, a bare office with a computer, or the location of an annual executive retreat.” *Id.* at 97.

*In re Microsoft* also relied on *Miller & Lux, Inc. v. East Side Canal & Irrigation Co.*, 211 U.S. 293 (1908), and *Lehigh Min. & Mfg. Co. v. Kelly*, 160 U.S. 327 (1895), in which the “Supreme Court held that a corporation could not

create federal diversity jurisdiction by merely assigning its claim to an otherwise fictitious subsidiary for just that purpose” or by transferring property to a related entity. *In re Microsoft*, 630 F.3d at 1364. In both cases a party attempted to create diversity jurisdiction by assigning rights to a related entity. But in both cases the Supreme Court disregarded the effort because it was “only a device” to manipulate jurisdiction. *Miller*, 211 U.S. at 303.

This Court has also rejected efforts to manipulate personal jurisdiction rules. In *Dainippon Screen Mfg. Co. v. CFMT, Inc.*, 142 F.3d 1266 (Fed. Cir. 1998), a parent corporation that sold products throughout the country and thus could be subject to personal jurisdiction in many jurisdictions assigned its patent rights to a “holding company” and then licensed the patents back to itself. The goal was to allow the parent company to “threaten its competitors with infringement” suits but then argue in any declaratory judgment action seeking to invalidate the patents that the holding company was a necessary party and was subject to personal jurisdiction only in its state of incorporation. *Id.* at 1271. This Court gave the plaintiff a “‘chutzpah’ award” and deemed the holding company subject to personal jurisdiction elsewhere. *Id.*

In short, this Court and the Supreme Court have consistently rejected a range of creative attempts by plaintiffs to manipulate venue and jurisdictional rules in anticipation of litigation.

**B. Under Those Established Principles, Plaintiffs’ Maneuvers Should Be Disregarded**

Those settled principles require ignoring Plaintiffs’ blatant attempt to manipulate the applicable venue rules and effectively confine their suit to the WDTX, no matter how inconvenient that forum is for Petitioners and third parties. As in the foregoing cases, Plaintiffs plainly took every step of their pre-filing efforts in anticipation of opposing transfer on the basis the district court allowed.

As detailed *supra* at 7-9, one month before this suit was filed, Ikorongo Technology formed Ikorongo Texas, an “otherwise fictitious subsidiary.” And just 11 days before the suit was filed, Ikorongo Technology assigned to Ikorongo Texas carefully curated geographic rights to the Asserted Patents, i.e., exclusive rights in some, but not all, counties within the WDTX and EDTX. The same manager even signed the requisite assignments on behalf of both entities, and the entities share the same North Carolina address. Ikorongo Texas then filed this suit and three others in the WDTX, but did not even bother to serve Petitioners with that complaint. Ikorongo Technology joined the suits via an Amended Complaint the very next day. *See supra* at ix-x, 7-8 (collecting record citations).

This is exactly the type of tactic the Supreme Court warned against in *Van Dusen*, and that this Court has accordingly disregarded as improper “attempt[s] at manipulation” “made in anticipation of litigation.” *In re Microsoft*, 630 F.3d at 1364; *see supra* Part II.A. There is no basis to conclude Ikorongo

Texas was created and given these specified geographic rights for any purpose except specifically in anticipation of opposing Petitioners’ transfer motion from Texas to a more convenient forum. *In re Microsoft*, 630 F.3d at 1364.

This Court therefore need not “honor” Plaintiffs’ strategic maneuvers. *Id.* Instead, the Court should treat this case as what it is: a suit for nationwide damages for alleged infringement of the Asserted Patents by the owners of those patents. That suit plainly “might have been brought” in the NDCA as § 1404(a) requires. SEC is subject to suit in any judicial district under the alien-venue rule of § 1391(c)(3). *See In re HTC Corp.*, 889 F.3d 1349 (Fed. Cir. 2018). As for SEA, neither Plaintiffs nor the district court doubted that Ikorongo Technology—which owned the complete and exclusive rights to the Asserted Patents until 11 days before this suit was initiated—could have brought suit in the NDCA because “acts of infringement” *as to its rights* occurred in that district and SEA has offices there. Appx209 n.1.

**C. The District Court’s Ruling Would Lead To Results Contrary To The Purposes Of The Venue Statutes**

The district court’s contrary approach will encourage copycat efforts and lead to problematic results. Using Plaintiffs’ scheme, any patent holder could preemptively defeat a § 1404(a) motion by merely incorporating a new company and assigning to that new company rights to the patent only in a portion of a particular judicial district, and first suing with that new company. The original

patent holder could then join that same action and, together with the new company, seek nationwide damages. The prospect for transfer out of the chosen district would be all but foreclosed, even if another district is plainly more convenient. That is precisely what Ikorongo Technology accomplished here.

The district court identified one theoretically possible way to defeat Plaintiffs' scheme: § 1400(b) provides for venue where an entity resides, so a domestic corporate defendant could move to transfer to its state of incorporation. *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514 (2017); Appx210-211. But where an entity is incorporated (e.g., Delaware) bears no necessary relation (and frequently no relation at all) to the district that would be most convenient under the "individualized, case-by-case consideration of convenience and fairness" inquiry that § 1404(a) requires. *In re Genentech, Inc.*, 566 F.3d 1338, 1346 (Fed. Cir. 2009) (quoting *Van Dusen*, 376 U.S. at 622). In most cases, Plaintiffs' scheme will allow a patent holder to sue a domestic entity for nationwide damages in the patent holder's chosen forum and leave the defendant with no recourse under § 1404(a). Allowing plaintiffs to arbitrarily confine a suit for nationwide damages to this extent is contrary to the recognized purpose of § 1404(a): to "prevent the waste of time, energy, and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense" that results "when defendants are forced to expend resources litigating

substantive matters in an inconvenient venue.” *In re Google Inc.*, 2015 WL 5294800, at \*1 (Fed. Cir. July 16, 2015) (quoting *Van Dusen*, 376 U.S. at 616 (internal quotation marks omitted)).

**D. “Where the Defendant Has Committed Acts of Infringement” Under 28 U.S.C. § 1400(b) Focuses On Where the Defendant’s Conduct Occurred**

Even if the Court does not conclude that Ikorongo Texas and its geographically limited rights should be disregarded entirely, the district court was still incorrect to conclude that Ikorongo Texas could not have brought its suit in the NDCA.

As noted, Ikorongo Texas could have sued SEC in the NDCA because foreign defendants may be sued in any district. 28 U.S.C. § 1391(c)(3). As for SEA, 28 U.S.C. § 1400(b) provides that an “action for patent infringement may be brought ... where the defendant has committed acts of infringement and has a regular and established place of business.” SEA has offices in the NDCA and is accused of committing “acts of infringement” in that district because it has allegedly been “selling” and “offering for sale” the accused products throughout the country. Appx30 ¶21; Appx32 ¶31; Appx34 ¶41; Appx36 ¶51.

The district court was not persuaded by that straightforward analysis, reasoning that Petitioners could not show that they are alleged to have committed any “acts of infringement *as to Ikorongo Texas*” in the NDCA. Appx210.

Infringement of Ikorongo Texas’s contractually defined right in the patents, the court posited, “could have only occurred” within specified regions of Texas. *Id.*

Although this Court has never addressed that issue, the district court was wrong as a matter of law to conclude that Plaintiffs’ contractual arrangements limit where venue is proper in this case under § 1400(b).

The statute says simply that venue is proper where “*the defendant has committed* acts of infringement.” 28 U.S.C. § 1400(b) (emphasis added). The statute does not say that venue is proper only where “acts of infringement *as to each plaintiff*” occurred. Again, both Petitioners are alleged to have infringed the Asserted Patents nationwide, including in the NDCA, and nothing in the text of the statute suggests that Plaintiffs’ peculiar contracts with each other should have any relevance to the analysis.

The statute’s purpose also undermines the district court’s conclusion. Venue rules are meant to protect *defendants*. *See, e.g., In re Cray Inc.*, 871 F.3d 1355 (Fed. Cir. 2017) (explaining that § 1400(b) “was a restrictive measure, limiting a prior, broader venue” rule). That purpose is inconsistent with a reading that would allow a plaintiff to artificially limit the districts to which a suit may be transferred merely by artificially limiting its own rights. *See Van Dusen*, 376 U.S. at 621 (citing the purposes of § 1404(a) and declining to read phrase “might have been brought” in a way that “would grant personal representatives bringing wrongful-

death actions the power unilaterally to reduce the number of permissible federal forums simply by refraining from qualifying as representatives in States other than the one in which they wished to litigate”); *Atl. Marine Constr. Co. v. U.S. Dist. Court for W. Dist. of Tex.*, 571 U.S. 49 (2013) (holding contractual forum-selection clause does not render forum improper if it is otherwise proper under federal venue laws).

Focusing on the *defendant’s* contacts with the proposed forum also conforms to this Court’s precedent under §§ 1400(b) and 1404(a). For example, *In re Genentech, Inc.*, 566 F.3d 1338 (Fed. Cir. 2009), held it was clear error for a district court to conclude that the transferee forum’s lack of jurisdiction over a plaintiff heavily disfavored transfer. *Id.* at 1346. This Court explained that “[t]here is no requirement under § 1404(a) that a transferee court have jurisdiction over the plaintiff or that there be sufficient minimum contacts with the plaintiff; there is only a requirement that the transferee court have jurisdiction over the defendants in the transferred complaint.” *Id.* The patent venue rules focus on a *defendant’s* activities in the forum; they do not turn on anything about the plaintiffs.

Finally, the practical reality of this case bears repeating. Although Plaintiffs argued below—without support—that their artifice of filing an initial complaint with just Ikorongo Texas the day before filing an Amended Complaint with both

entities should affect the analysis, the Amended Complaint is the operative complaint. *See, e.g., Eason v. Holt*, 73 F.3d 600, 603 (5th Cir. 1996) (“[T]he amended complaint ... supersede[s] the original complaint under the well-settled law of this circuit.”); Fed. R. Civ. P. 15(c). And that complaint seeks nationwide damages on behalf of two entities that together own the entire rights to the Asserted Patents. Furthermore, it is undisputed that Ikorongo Technology could have sued Petitioners in the NDCA and even Ikorongo Texas could have sued SEC in the NDCA under the alien-venue rule of § 1391(c)(3). Section 1400(b) governs where the “action” may be brought. Even if infringement in the NDCA does not technically infringe Ikorongo Texas’s carefully limited rights, Petitioners are alleged in this “action” to have committed “acts of infringement” in the NDCA within the meaning of § 1400(b).

### **III. The Private and Public Interest Factors Clearly Weigh In Favor of Transfer**

This Court should also overrule the district court’s convenience analysis and order that the case be transferred to the NDCA. In cases arising from the Fifth Circuit, this Court “has granted writs of mandamus to correct denials of transfer that were clear abuses of discretion under governing legal standards.” *In re Toyota*, 747 F.3d at 1339. This is such a case.

“The determination of ‘convenience’ turns on a number of public and private interest factors, none of which can be said to be of dispositive weight.” *Action*

*Indus., Inc. v. U.S. Fid. & Guar. Co.*, 358 F.3d 337, 340 (5th Cir. 2004). The private factors include: “(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive.” *In re Volkswagen*, 545 F.3d at 315 (quotation omitted). The public factors include: “(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws of the application of foreign law.” *Id.*

The district court clearly abused its discretion in weighing those factors here. There are no relevant documents or witnesses in the WDTX, and many of both are in the NDCA. The district court made clearly erroneous factual findings and legal errors in discounting the witness-related factors, which under governing law are the driving force in the transfer analysis. The only factors the district court identified as disfavoring transfer—“practical problems” and “administrative difficulties”—are secondary, and in any event they do not weigh against transfer here.

**A. The Private Interest Factors Favor Transfer**

**1. Sources of proof are more readily accessible in the NDCA than the WDTX.**

Ease of access to sources of proof is a “meaningful factor” in the convenience analysis. *In re Volkswagen*, 545 F.3d at 316. Here, nearly all documents related to the development or operation of the Google Accused Applications, including the source code, and technical documents related to the accused AT&T Secure Family application are either physically present in or electronically accessible from the NDCA. Appx144-145 ¶¶4-8; Appx200-205. Ikorongo has not identified any documents or evidence located in the WDTX. The district court properly found that this factor “tilts” toward transfer, but noted its disagreement with Fifth Circuit precedent requiring it to consider the location of documents. Appx214 & n.2.

**2. Compulsory process for relevant witnesses is available in the NDCA, not the WDTX.**

Petitioners identified more than a dozen potential third-party witnesses in the NDCA that have knowledge of material facts relevant to this litigation—in particular, the Google engineers who developed the accused functionality in Google Maps and Google Plus and the Avast engineers who developed the accused AT&T Secure Family application. Appx144-146 ¶¶5, 8, 10; Appx200-205. Moreover, named inventors of two of the Asserted Patents live in the NDCA. Appx56-57 ¶8. These potential third-party witnesses are subject to compulsory

process in the NDCA. By contrast, Plaintiffs did not identify a single relevant third-party witness in the WDTX. Plaintiffs pointed to unnamed “end users” of Samsung phones, but such users are present in every judicial district. Appx214-215. The district court—appropriately—did not rely on those end users in its analysis. *Id.* The factor thus weighs heavily in favor of transfer.

Nevertheless, the district court concluded this factor was “neutral.” Appx215. That conclusion was based on two clear legal errors. First, the district court discounted the location of third-party engineers not within the WDTX’s subpoena power by stating that it had “previously held that certain third parties with locations within this District and their employees do fall within the Court’s subpoena power.” Appx215. That assertion—that the WDTX court has the power to subpoena a third party in the NDCA because her employer has an office in the WDTX—is clearly incorrect. Federal Rule of Civil Procedure 45(c) speaks in terms of where a *person* is located, not all the locations of his or her employer. *See* Fed. R. Civ. P. 45 (“within 100 miles of where the person resides, is employed, or regularly transacts business in person”).

Second, the district court put the burden on Petitioners to show that the potential third-party witnesses were in fact “unwilling to testify.” Appx215. Neither the Fifth Circuit nor this Court has imposed an affirmative obligation on movants to show that potential third-party witnesses are *in fact* unwilling to testify.

Instead, this Court, applying Fifth Circuit law, has presumed unwillingness and held that this “factor will weigh heavily in favor of transfer when more third-party witnesses reside within the transferee venue than reside in the transferor venue”—full stop. *In re Apple Inc.*, 581 F. App’x 886, 889 (Fed. Cir. 2014). That approach makes sense: any showing that a potential third-party witness would be *unwilling* to attend a *future* trial is inherently speculative and would require time-consuming consultation with each individual potential witness before a transfer motion could be filed. That is contrary to the principle that “[p]arties seeking a change of venue should act with reasonable promptness.” *Peteet v. Dow Chem. Co.*, 868 F.2d 1428, 1436 (5th Cir. 1989) (internal quotations omitted). The factor, after all, is the “*availability* of compulsory process,” *In re Volkswagen*, 545 F.3d at 316 (emphasis added), and it is the *availability* of subpoena power that guards against the possibility that third-party witnesses will be unwilling. Given the number of NDCA third-party witnesses who will potentially testify, this factor clearly weighs heavily in favor of transfer.

The district court relied on a Sixth Circuit case for the contrary approach, but even that case held only that absent a showing of unwillingness this factor should not be given “much weight.” *Duha v. Agrium, Inc.*, 448 F.3d 867, 877 (6th Cir. 2006). The district court clearly erred by disregarding the non-party witnesses in the NDCA and deeming this factor “neutral.” Appx215.

**3. Many relevant witnesses are in the NDCA; contrary to the district court, none are in the WDTX.**

The convenience of witnesses is “probably the single most important factor in a transfer analysis.” *In re Genentech*, 566 F.3d at 1343). This factor also weighs heavily in favor of transfer. As discussed above, Petitioners have identified more than a dozen third-party Google and Avast engineers located in the NDCA who are likely to testify, and Ikorongo has not identified a single likely witness in the WDTX.

The district court nevertheless concluded that this crucial factor “weighs only very slightly in favor of transfer.” Appx217. The district court again clearly erred. Most prominently, the district court stated that “Samsung has established that Google and Avast would have *few* potential witnesses in this District.” Appx218. In fact, there is no evidence Google and Avast have *any* witnesses in the WDTX; Ikorongo did not even suggest otherwise. The district court also reasoned that although Petitioners identified many potential witnesses in the NDCA, “few party witnesses and even fewer non-party witnesses will likely testify at trial.” *Id.* That assertion was not based on any evidence, and it is particularly inapt in this case because, given the nature of Plaintiffs’ claims, the Google and Avast engineers in the NDCA are the *most* likely to testify. See Appx61-67 ¶¶1.a, 2.a, 3.a, 4.a. Google and Avast engineers in the NDCA designed and developed the Google Maps, Google Plus, and AT&T Secure Family applications at the core of

Ikorongo's infringement allegations. Appx144-146 ¶¶5, 8, 10; Appx200-205.

Moreover, two of the Asserted Patents' inventors, who may also testify at trial, live in the NDCA. Appx56-57 ¶8.

Finally, the district court stated that the relative food and lodging costs in the two districts and the fact that Ikorongo "expressed a willingness to cover those expenses for non-party witnesses" were "not insignificant" factors weighing against transfer. Appx218. The district court cited no precedent supporting that rationale, and giving weight to the latter fact improperly allows a plaintiff to pay its way toward keeping a case in its preferred venue. Moreover, the "convenience of witnesses" is not purely about dollars and cents: "[w]itnesses not only suffer monetary costs, but also personal costs associated with being away from work, family, and community." *In re Volkswagen*, 545 F.3d at 317; *see In re Apple Inc.*, 979 F.3d 1332, 1342 (Fed. Cir. 2020).

At bottom, the evidence clearly established that there are numerous likely witnesses in NDCA and *zero* in WDTX. The district court's conclusion that this factor weighed "only very slightly" in favor of transfer was an abuse of discretion. *See, e.g., In re Acer Am. Corp.*, 626 F.3d 1252, 1255 (Fed. Cir. 2010) (this factor "clearly favors transfer" where a substantial number of party witnesses and third parties reside in or close to the NDCA, and the number of witnesses in EDTX is "insignificant" in comparison); *In re Genentech*, 566 F.3d at 1344-45 (this factor

weighed “substantially in favor of transfer” where a “substantial number of material witnesses reside within the transferee venue and the state of California, and no witnesses reside in the [EDTX]”).

**4. The district court clearly erred by treating co-pending litigation as the dominant factor in the private interest factor analysis.**

The district court emphasized that *Bumble*, a defendant in another case that is accused of infringing only two of the four patents asserted here withdrew its transfer motion. The court therefore reasoned that “judicial economy and the possibility of inconsistent rulings ... weigh[] against transfer.” Appx220.

That rationale is improper under this Court’s precedent, which holds that the “mere co-pendency of related suits in a particular district” does not “automatically” tip this factor against transfer. *In re Google*, 2017 WL 977038, at \*2 (Fed. Cir. Feb. 23, 2017). Indeed, this Court has ordered transfer in several cases despite co-pending suits involving the patents at issue. *Id.*; *see also, e.g., In re Toyota*, 747 F.3d at 1340-41. This Court has also specifically held that “substantial weight” should not be given to a co-pending suit when the suits, despite involving somewhat overlapping patents, involve different products and defendants. *In re Zimmer Holdings*, 609 F.3d at 1382.

That is the case here. Of the four Asserted Patents, only the ’543 and ’704 Patents are asserted in *Bumble*; the ’450 and ’554 Patents are not. And the subject

matter of the '554 Patent—providing location-specific media recommendations—is quite different from the technology of the '543 and '704 Patents, which relate to sharing a user's location. *See supra* at 5-6. In addition, the Accused Applications in Petitioners' accused products—Google Maps, Google Play, Google Play Music, YouTube Music, and AT&T Secure Family—are very different from the accused Bumble application, a social media dating application. Given these differences, gains in judicial economy by keeping both cases in the WDTX are minimal to non-existent.

The district court failed to assess the degree of relation between this suit and *Bumble*. Instead, it held that because some of the patents overlap, the risk of “potentially inconsistent rulings” weighed against transfer. But that will be true in *any* case where there is another pending case involving at least one patent. The district court's rationale would therefore “automatically tip” this factor against transfer whenever a plaintiff files multiple suits in the same district. *In re Google*, 2017 WL 977038, at \*2. Indeed, because this was the *only* factor—apart from court congestion, discussed *infra*—that the court found weighed against transfer, it is clear that the district court accorded almost dispositive weight to this factor. The district court erred by “allowing the co-pending litigation to dominate the analysis” while minimizing the other private interest factors, which, when properly considered, strongly weigh in favor of transfer. *In re Google*, 2017 WL 977038, at

\*2; see also *Oyster Optics, LLC v. Coriant Am. Inc.*, 2017 WL 4225202, at \*7 (E.D. Tex. Sept. 22, 2017) (ordering transfer despite five co-pending cases and noting “that, while judicial economy may ‘play a significant role’ in a court’s transfer analysis, it may not ‘dominate’ the analysis when other factors of note are present”); *Signal IP, Inc. v. Ford Motor Co.*, 2014 WL 4783537, at \*6 (C.D. Cal. Sept. 25, 2014) (similar).

## **B. The Public Interest Factors Favor Transfer**

The parties and the district court agreed that public factors (3) and (4) are neutral. Appx223. Taken together, the other two public factors support transfer.

### **1. The district court erred in finding the local interest factor neutral.**

The district court erroneously found the local interest factor neutral. Appx222. Three of the five Accused Applications were designed and developed in the NDCA—Google Maps, Google Plus, and AT&T Secure Family. Appx144-145 ¶¶4-8; Appx200-205. The district court recognized that the NDCA therefore had a “localized interest” because the suit “calls into question the work and reputation of several individuals residing” in the NDCA. Appx223 (quoting *In re Hoffmann-La Roche*, 587 F.3d at 1338).

On the other side of the ledger, the district court noted only that Ikorongo Texas’s claims “specifically relate to infringement in this District.” Appx223. That rationale not only improperly credits Plaintiffs’ improper pre-filing

maneuvering, but also ignores that the suit as a whole seeks damages for infringement throughout the country. It was a clear abuse of discretion to conclude that the WDTX's interest—which is indistinguishable from the interest of any other district—is equal in weight to the NDCA's local interest. *See In re Acer Am.*, 626 F.3d at 1256 (the “sale of an accused product offered nationwide does not give rise to a substantial interest in any single venue”). As this Court has put it, “if there are significant connections between a particular venue and the events that gave rise to a suit, this factor should be weighed in that venue's favor.” *Id.*; *see also In re Apple*, 979 F.3d at 1345.

**2. The district court gave too much weight to the court congestion factor.**

Finally, the district court found that court congestion weighs against transfer. It relied on its then-currently scheduled January 2022 trial date, its Order Governing Proceedings, which assertedly indicates a greater efficiency of bringing patent cases to trial in the WDTX as compared to the NDCA, and a finding in a prior case that the WDTX's time-to-trial was then 25% faster than the NDCA's. Appx221-222. This Court has previously rejected that reasoning.

“[A] court's general ability to set a fast-paced schedule is not particularly relevant to this factor.” *In re Apple*, 979 F.3d at 1344. Indeed, “scheduled trial dates are often subject to change.” *Id.* at 1344 n.5. And merely referencing the court's own statement in a prior case of time-to-trial statistics is hardly the type of

record evidence to demonstrate “an appreciable difference” in docket congestion between the forums. *In re Adobe Inc.*, 823 F. App’x 929, 932 (Fed. Cir. 2020). Further, because this factor is “the most speculative,” this Court has squarely held that it “should not alone outweigh all of th[e] other factors.” *In re Genentech*, 566 F.3d at 1347.

**C. The NDCA Is Clearly More Convenient Than The WDTX**

When the private and public interest factors are properly weighed, the NDCA is clearly more convenient than the WDTX. Four of the factors strongly favor transfer: the convenience and cost of attendance of witnesses, compulsory process, ease of access to sources of proof, and local interests. By contrast, only the judicial efficiency and court congestion factors are neutral or at most weigh slightly against transfer. There is, in short, “a stark contrast in relevance, convenience, and fairness between the two venues,” and a writ directing transfer is appropriate. *In re Hoffmann-La Roche*, 587 F.3d at 1336.

**CONCLUSION**

The Court should issue a writ of mandamus and direct the district court to transfer the case to the U.S. District Court for the NDCA.

Respectfully submitted,

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*/s/ Bradley N. Garcia*

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## CERTIFICATE OF COMPLIANCE

1. This petition complies with the type-volume limitation of Federal Rule of Appellate Procedure 21(d)(1). The body of the petition contains 7,645 words, excluding the portions exempted by rule.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief has been prepared in a proportionally spaced typeface using Microsoft® Word and 14-point Times New Roman type.

Dated: April 6, 2021

/s/ Bradley N. Garcia

Bradley N. Garcia

*Counsel for Petitioners*

## PROOF OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system on April 6, 2021.

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I declare under penalty of perjury under the laws of the United States that  
the foregoing is true and correct.

Dated: April 6, 2021

*/s/ Bradley N. Garcia*  
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