

Case No. \_\_\_\_\_

---

---

*In the*  
**United States Court of Appeals**  
*for the*  
**Federal Circuit**

---

IN RE GOOGLE LLC,  
*Petitioner.*

---

*On Petition for a Writ of Mandamus to the  
United States District Court for the Western District of Texas (Waco),  
Case No. 6:20-cv-00881-ADA, Honorable Judge Alan D. Albright*

---

---

**PETITION FOR WRIT OF MANDAMUS  
[NON-CONFIDENTIAL]**

---

---

DAVID M. COOPER  
QUINN EMANUEL & SULLIVAN LLP  
51 Madison Avenue, 22nd Floor  
New York, New York 10010  
(212) 849-7000 Telephone  
(212) 849-7100 Facsimile  
davidcooper@quinnemanuel.com

CHARLES K. VERHOEVEN  
MELISSA J. BAILY  
JORDAN R. JAFFE  
LINDSAY M. COOPER  
QUINN EMANUEL & SULLIVAN LLP  
50 California Street, 22nd Floor  
San Francisco, California 94105  
(415) 875-6449 Telephone  
(415) 875-6700 Facsimile  
charlesverhoeven@quinnemanuel.com  
melissabaily@quinnemanuel.com  
jordanjaffe@quinnemanuel.com  
lindsaycooper@quinnemanuel.com

*Attorneys for Petitioner Google LLC*

---

---



## **CERTIFICATE OF INTEREST FOR GOOGLE LLC**

Counsel for Petitioner Google LLC hereby certifies as follows:

1. The full name of every party represented by me is: Google LLC.
2. The real parties in interest are: Google LLC.
3. All parent corporations and any publicly held companies that own 10% or more of the stock of the parties I represent are as follows:

Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company. No publicly held company owns 10% or more of Alphabet Inc.'s stock.

4. The names of all law firms and the partners or associates that appeared for the party now represented by me in the trial court or that are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

Quinn Emanuel: Charles K. Verhoeven, Melissa J. Baily, David M. Cooper, Jordan R. Jaffe, Lindsay M. Cooper.

Scott, Douglass & McConnico: Paige Arnette Amstutz.

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal: None.

6. Organizational Victims and Bankruptcy Cases: N/A

/s Charles K. Verhoeven  
Charles K. Verhoeven  
*Counsel for Petitioner*

## TABLE OF CONTENTS

	Page
INTRODUCTION .....	1
RELIEF SOUGHT .....	4
ISSUE PRESENTED .....	4
BACKGROUND .....	5
A. The Parties Are Located In California .....	5
B. The Asserted Patents .....	5
C. The Parties Collaborated On The Accused Functionality.....	5
D. The Parties Agreed To Litigate Disputes Relating To The Collaboration In California .....	6
E. Sonos’s Complaint .....	7
F. Google Sought Transfer To The Northern District Of California, But The District Court Refused.....	7
STANDARD OF REVIEW .....	11
I. THE DISTRICT COURT’S REFUSAL TO APPLY THE FORUM SELECTION CLAUSE WAS PATENTLY ERRONEOUS .....	12
A. The District Court Erroneously Disregarded That Sonos Put The Parties’ Collaboration At Issue .....	13
B. The District Court Erroneously Held That The Forum Selection Clause Does Not Apply Even While Conceding The Agreement Is Relevant To Google’s Defenses .....	16
II. THE DISTRICT COURT’S ANALYSIS OF THE § 1404(a) FACTORS WAS PATENTLY ERRONEOUS.....	20
A. The Private Interest Factors Strongly Favor Transfer.....	20
B. The Public Interest Factors Strongly Support Transfer .....	27
CONCLUSION .....	32

**STATEMENT REGARDING CONFIDENTIAL MATERIAL OMITTED**

Pursuant to Federal Circuit Rule 30(h)(1)(A), portions of pages 2, 4, 6, 7, 8, 14, 15, 16, 17, 18, 19, 24, 31, and 3 have been omitted from the nonconfidential version of the present Petition, pursuant to the February 12, 2021 Standing Order Regarding Filing Documents Under Seal In Patent Cases And Redacted Pleadings. The omitted materials contain information that Respondent Sonos, Inc. contends is confidential.

## TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases</u>	
<i>In re Acer America Corp.</i> , 626 F.3d 1252 (Fed. Cir. 2010) .....	25
<i>In re Apple Inc.</i> , 979 F.3d 1332 (Fed. Cir. 2020) .....	30, 31
<i>Atl. Marine Constr. Co. v. U.S. Dist. Ct.</i> , 571 U.S. 49 (2013).....	12, 20
<i>Beiser v. Weyler</i> , 284 F.3d 665 (5th Cir. 2002) .....	14, 18
<i>Cheney v. U.S. Dist. Ct.</i> , 542 U.S. 367 (2004).....	11
<i>CloudfChange, LLC v. NCR Corp.</i> , No. 6:19-CV-005132020, WL 6439178 (W.D. Tex. Mar. 17, 2020) .....	23, 24
<i>Fintiv, Inc. v. Apple Inc.</i> , No. 6:18-cv-372, 2019 WL 4743678 (W.D. Tex. Sep. 10, 2019).....	21
<i>Gen. Protecht Grp., Inc. v. Leviton Mfg. Co.</i> , 651 F.3d 1355 (Fed. Cir. 2011) .....	13, 17
<i>In re Genentech, Inc.</i> , 566 F.3d 1338,1345 (Fed. Cir. 2009) .....	25, 27, 29
<i>In re Hoffman-La Roche</i> , 587 F.3d 1333 (Fed. Cir. 2009) .....	30
<i>In re Hulu, LLC</i> , No. 2021-142 (Fed. Cir. Aug. 2, 2021).....	<i>passim</i>
<i>J.V. &amp; Sons Trucking, Inc. v. Asset Vision Logistics, LLC</i> , No. 1:20-CV-163-H, 2020 WL 10458645 (N.D. Tex. Dec. 15, 2020) .....	13, 14, 18

<i>Manetti-Farrow, Inc. v. Gucci Am., Inc.</i> , 858 F.2d 509 (9th Cir. 1988) .....	14
<i>MaxEn Capital, LLC v. Sutherland</i> , 2009 WL 936895 (S.D. Tex. Apr. 3, 2009) .....	14
<i>In re Radmax, Ltd.</i> , 720 F.3d 285 (5th Cir. 2013) .....	11
<i>Saint Lawrence Commc’ns LLC v. Amazon.com, Inc.</i> , No. 2:19-CV-00027-JRG, 2019 WL 2904756 (E.D. Tex. July 5, 2019) ....	19, 20
<i>In re Samsung Elec. Co. Ltd.</i> , 2 F.4th 1371 (Fed. Cir. 2021) .....	23, 24, 29
<i>Shaw v. Delta Air Lines, Inc.</i> , 463 U.S. 85 (1983) .....	14
<i>Sun v. Advanced China Healthcare, Inc.</i> , 901 F.3d 1081 (9th Cir. 2018) .....	13, 15, 16, 18
<i>TGI Friday’s Inc. v. Great Nw. Restaurants, Inc.</i> , 652 F. Supp. 2d 750 (N.D. Tex. 2009) .....	14
<i>In re TracFone Wireless, Inc.</i> , 852 F. App’x 53 (Fed. Cir. Apr. 20, 2021) .....	22, 23
<i>In re TS Tech USA Corp.</i> , 551 F.3d 1315 (Fed. Cir. 2008) .....	11
<i>In re Volkswagen AG</i> , 371 F.3d 201 (5th Cir. 2004) .....	12
<i>In re Volkswagen of Am., Inc.</i> , 545 F.3d 304 (5th Cir. 2008) .....	11
<i>Walsh v. Microsoft Corp.</i> , No. 1:13-CV-13, 2014 WL 12600740 (S.D. Tex. Mar. 21, 2014) .....	14
<i>Wellogix, Inc. v. SAP America, Inc.</i> , 58 F. Supp. 3d 766 (S.D. Tex. 2014) .....	14

**Statutory Authorities**

28 U.S.C. § 1404(a) ..... *passim*

**Rules and Regulations**

Cir. R. 32(b) .....34

Fed. R. App. P. 21(d)(1) .....34

Fed. R. App. P. 32(a)(5).....34

Fed. R. App. P. 32(a)(6).....34

Fed. R. App. P. 32(f).....34

## INTRODUCTION

In an order denying Google’s motion to transfer, the district court refused to enforce a mandatory, exclusive forum selection clause the parties had agreed upon, whereby all disputes “relating to” their collaboration agreements would be litigated in California. The district court acknowledged that the agreements would be relevant to the litigation, but held nonetheless that the agreements do not “relat[e] to” the dispute, thereby narrowing the forum selection clause in direct conflict with its plain language and the uniform case law applying it. The district court’s novel theory for limiting the applicability of a forum selection clause has substantial, troubling implications for the many cases in which parties agree to choose a forum for patent litigation other than that court. Mandamus is warranted to correct the district court’s clear errors of law on this issue and on the issue of 28 U.S.C. § 1404(a), where the district court’s order rested on the same reasoning this Court had rejected several hours before in *In re Hulu, LLC*, No. 2021-142 (Fed. Cir. Aug. 2, 2021).

\* \* \*

Google and Sonos began collaborating in 2013 on the functionality that Sonos now accuses of infringing two patents-in-suit. In connection with their collaboration, Google and Sonos executed at least six contracts, each of which contains or specifically incorporates a mandatory exclusive forum selection clause requiring that all disputes related to the agreements be litigated in California. Sonos’ Complaint

puts the parties' collaboration directly at issue in this case, and Google asserts six defenses that rely in whole or in part on one of those agreements.

In accordance with the parties' agreements, Google moved in January 2021 to transfer this case to the Northern District of California. On August 2, 2021, just eight days before a scheduled *Markman* hearing, the District Court for the Western District of Texas (Albright, J.) denied the motion, committing clear errors by refusing to enforce the parties' mandatory exclusive forum selection clauses and analyzing the 28 U.S.C. § 1404(a) factors in a manner that directly conflicts with this Court's recent precedents.

I. The forum selection clause applies here, and the district court's disregard of the plain language of the clause warrants mandamus. Under this Court's case law, interpreting an identical forum selection clause, transfer is required if there is a "non-frivolous" nexus between this case and the parties' [REDACTED]. There is far more than a non-frivolous nexus here because Sonos's own allegations of copying and willfulness rest on the collaboration governed by the [REDACTED]. In addition, the district court *agreed* that the [REDACTED] likely will be "relevant to" Google's defenses—and, indeed, the [REDACTED] is a critical, necessary factor in those defenses. The district court's conclusion that an agreement that is unquestionably relevant to the dispute is somehow not "relat[ed] to" that dispute veers far from the required legal analysis.

**II.** The district court compounded its erroneous refusal to apply the forum selection clause with a series of legal and factual errors in analyzing the factors that govern transfer under 28 U.S.C. § 1404(a). To highlight just a few of these errors: The court held that the convenience of Google’s party witnesses should not be given significant weight because “Google can compel their testimony,” Appx2494, in direct conflict with *Hulu*, Slip Op. at 10. The court also held that it could ignore the location of third-party prior art witnesses in California, *see* Appx2489, again in direct conflict with *Hulu*, Slip Op. at 6-7. The district court’s analysis further rested on serious factual errors, such as the conclusion that a key witness in this case is a “third party” when in fact he currently works for Sonos, the location of an individual the district court described as a “former Google employee” who does not appear to have ever worked for Google at all, and the conclusion that four individuals beyond the subpoena power of both courts would willingly travel to trial when there is no record evidence of that. Properly considered, the private interest factors weigh heavily in favor of the Northern District of California (“NDCA”), as the overwhelming majority of witnesses (both Google’s employees and third parties) and other sources of proof are in the NDCA.

The public interest factors also strongly favor transfer. The NDCA has a substantial local interest in this case given that both parties maintain offices there, Google was founded there, maintains its headquarters and largest U.S. offices there,

and designed and developed the accused functionality there. The NDCA is also more familiar with California law, which governs the contractual issues presented by the [REDACTED]. The *only* public-interest factor the district court held to weigh against transfer was court congestion, but this too favors the NDCA, where the parties have an open case assigned to Judge William H. Alsup, who has significantly fewer current active cases than the district court. Regardless, the district court ignored this Court's precedents prohibiting the great weight the district court attempted to put on its supposed ability to move to trial more quickly.

Accordingly, Google respectfully requests that this Court issue a writ of mandamus directing the district court to transfer this case to the Northern District of California.

### **RELIEF SOUGHT**

Google respectfully requests that the Court grant this petition for a writ of mandamus, vacate the district court's order dated August 2, 2021, and remand with instructions to transfer this action to the United States District Court for the Northern District of California.

### **ISSUE PRESENTED**

Whether the district court clearly abused its discretion in refusing to transfer this case to the Northern District of California.

## **BACKGROUND**

### **A. The Parties Are Located In California**

Google is a California-based company that has been headquartered in the NDCA since its founding in 1998. Appx622. Sonos is also a California-based company. Appx1030. Sonos was founded and continues to maintain its principal place of business in Santa Barbara, California. *Id.* Sonos also has a significant presence in the NDCA, with an office at 550 Montgomery Street in San Francisco. Appx2404. Sonos does not have any offices in Texas.

### **B. The Asserted Patents**

Sonos refers to U.S. Patent Nos. 9,967,615 (“’615 patent”) and 10,779,033 (“’033 patent”) as the “*cloud queue*” patents. Appx2149 at 17:3-8 (emphasis added). Sonos accuses Google’s “cloud queue” functionality—the functionality that allows casting playback of Google Play Music, YouTube Music, or YouTube to a Cast receiver—of infringing both the ’615 and ’033 patents in this case. Appx1052-1087.

### **C. The Parties Collaborated On The Accused Functionality**

Sonos collaborated closely with Google on “cloud queue” for Google Play Music between 2013 and 2015, during which time Sonos engineer Tad Coburn, the named inventor of the ’615 and ’033 patents (Appx0090, Appx0120), was personally

involved in weekly “Google/Sonos Sync[s]” (Appx2026), regular calls to discuss “cloud queue” development (Appx2028), and multiple day-long in-person meetings with Google’s “cloud queue” team in the NDCA (Appx2030, Appx2032). Mr. Coburn posed detailed technical questions to Google regarding “cloud queue” (Appx2034-2038, Appx2040-2048, Appx2050-2056), requested specific features and capabilities (Appx2034-2038, Appx2040-2048), asked Google to share its “cloud queue” API design before the public release (Appx2034)—which Google did (Appx2058-2059, Appx2061-2063)—and provided feedback on Google’s design (Appx2065-2066, Appx2068-2072).

**D. The Parties Agreed To Litigate Disputes Relating To The Collaboration In California**

In 2013, at the outset of their collaboration, Google and Sonos executed the [REDACTED], which covers the ownership and assertion of intellectual property related to the collaboration. Appx0637-0646 at §§ 3.4-3.5. The [REDACTED] incorporates the following mandatory forum selection clause from the parties’ [REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Appx0637-0646 at § 1.1; Appx0649-0653 § 10.2 (capitalization in original).<sup>1</sup>

### **E. Sonos's Complaint**

On September 29, 2020, Sonos filed a Complaint in the Western District of Texas, alleging that Google infringed the “cloud queue” patents, among others. Appx0001. In the operative Second Amended Complaint, Sonos accuses Google of (i) “work[ing] with Sonos” to “gain[] access to Sonos’s engineers, products, and technology” (Appx1032); (ii) leveraging Google’s non-public “access”—obtained through the collaboration governed by the [REDACTED]—to “cop[y] Sonos’ technology” (Appx1032-1033), and (iii) infringing Sonos’ patents by leveraging the non-public “knowledge it had gleaned from Sonos” during the collaboration (Appx1033). Sonos incorporates these allegations into each of its claims (Appx1066, Appx1084-1085, Appx1092, Appx1106, Appx1116), and the allegations regarding the collaboration form the sole basis for Sonos’ copying contention. Appx1032-1033.

### **F. Google Sought Transfer To The Northern District Of California, But The District Court Refused**

Because a mandatory exclusive forum selection clause requires this case to be litigated in California, and because this case is strongly connected to the Northern

---

<sup>1</sup> The parties entered into at least six agreements related to the collaboration referenced by Sonos in its Complaint; every one of those agreements contains (or specifically incorporates) a mandatory California forum selection clause. *See* Appx0764-0765 at ¶ 11; Appx0649-0653 at § 10.2; Appx0637-0646 at § 1.1; Appx0768-0769 at ¶ 11; Appx0772-0774 at § 7.1; Appx0777-0778 at ¶ 11.

District of California, Google moved in January 2021 to transfer the case under 28 U.S.C. § 1404(a). Appx0603. After five months of venue discovery, Sonos opposed Google's motion. Appx1617. The parties completed briefing on July 21, 2021 (Appx2254), and the district court held a hearing on July 23, 2021. Appx2425; Appx2427. The district court denied Google's motion to transfer on August 2, 2021, eight days before the scheduled *Markman* hearing. Appx2474; Appx2501.

First and foremost, the district court refused to enforce the parties' mandatory exclusive forum selection clause. In particular, the district court recognized that Sonos "put the parties' collaboration at issue" (Appx2482), but held that "Sonos's infringement claims are not related to the [REDACTED] because their resolution *does not* require the application of various provisions of the [REDACTED]." Appx2483 (quotation marks and brackets omitted; emphasis in original). It also held that the forum selection clause did not apply because "Google's defenses require the Court to look beyond the [REDACTED] and its provisions." Appx2484. It concluded by stating: "The Court stresses that it is not deciding Google's defenses are frivolous in and of themselves, nor that the [REDACTED] will not be relevant to those defenses if and when Google asserts them. The Court merely finds that the connection between the [REDACTED] and Google's defenses (as well as Sonos's Complaint) is not 'non-frivolous' in this context, preventing the application of the forum selection clause." Appx2485.

The district court then held that the § 1404(a) factors did not support transfer. Turning first to the private interest factors, the district court found that the cost of attendance for willing witnesses weighs against transfer by disregarding the convenience of party witnesses. Appx2491-2495. Addressing Google’s 12 NDCA-based witnesses and Sonos’s two California-based witnesses, the court determined that it would not be inconvenient for them to travel to Waco, Texas for trial based on the recently-rejected proposition that the parties can “compel [the] testimony” of their own employees. Appx2494. The district court also made a number of significant factual mistakes in its analysis of this factor. First, the court concluded that Tad Coburn, a key Massachusetts-based witness and the named inventor of two patents-in-suit, is a “third-party” when in fact he currently works for Sonos. Appx2494. Second, while the court relied heavily on the location of “four former Google employees located in the northeastern United States,” one of these employees never worked for Google at all. *Id.* Third, there is no record evidence that the “four former Google employees” would be *willing* witnesses; all four are third parties and outside the subpoena power of either court.

Analyzing the compulsory process factor, the court ignored the eight NDCA-based third parties that Google identified based on the mistaken and recently-rejected proposition that “prior art witnesses are generally unlikely to testify at trial.” Appx2489. Instead, the court held that this factor weighed against transfer based on

the presence of a single former Google employee in WDTX who Sonos contends may have information regarding the integration of unspecified and unaccused third-party applications. Appx2491.

Considering the access to sources of proof, the district court ignored Google's sworn evidence that the accused functionalities were designed and developed in NDCA and thus that relevant documents were "created and maintained there." Appx2487. Instead, the court determined that this factor weighs against transfer because Google's electronic documents are stored in data centers across the country, one of which is 100 miles away from WDTX in Midlothian, Texas. *Id.* The court found that the final factor, other practical considerations, was neutral. Appx2495-2496.

Turning to the public interest factors, the district court found that only a single factor weighed against transfer. Specifically, the district court relied on a single snapshot of a hand-selected data point—the district-wide time to trial in NDCA versus WDTX over the past three years only—to conclude that court congestion weighed against transfer. Appx2497. The court reached this conclusion despite the fact that the judge who will handle the case in NDCA has a significantly lower current active caseload than the district court. *Id.* And although it is well-established that court congestion is the most speculative factor, the court's analysis of this factor tipped the scales on all four public interest factors, outweighing both NDCA's strong local

interest in the dispute and the fact that NDCA would be more familiar with California law which governs the CIA. Appx2496.

Having neutralized or diminished the importance of several factors favoring transfer, the district court denied Google's motion. Appx2496.

### STANDARD OF REVIEW

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*) (“*Volkswagen I*”) (*quoting Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380-81 (2004) (internal citations omitted)).<sup>2</sup> The second factor is necessarily satisfied where a district court improperly denies transfer under § 1404(a). *Id.* at 319; *In re Radmax, Ltd.*, 720 F.3d 285, 292 n.2 (5th Cir. 2013). The first and third factors are also satisfied where a district court reached a “patently erroneous result” by relying on clearly erroneous factual findings, erroneous conclusions of law, or misapplications of law to fact. *Volkswagen II*, 545 F.3d at 310-12, 318-19.

In a normal § 1404(a) analysis, the court considers the well-established public and private interest factors. The public interest factors include: “(1) the administrative

---

<sup>2</sup> In reviewing issues related to a § 1404(a) transfer, “this court applies the laws of the regional circuit in which the district court sits, in this case the Fifth Circuit.” *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008).

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 conflicts of laws [or in] the application of foreign law.” *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) (“*Volkswagen I*”). The private interest factors include: (1) “relative ease of access to sources of proof;” (2) “availability of compulsory process to secure the attendance of witnesses;” (3) “cost of attendance for willing witnesses;” and (4) “all other practical problems that make trial of a case easy, expeditious and inexpensive.” *Volkswagen II*, 545 F.3d at 315.

# **I. THE DISTRICT COURT’S REFUSAL TO APPLY THE FORUM SELECTION CLAUSE WAS PATENTLY ERRONEOUS**

When a forum selection clause is implicated, transfer is warranted except under “extraordinary circumstances.” *Atl. Marine Constr. Co. v. U.S. Dist. Ct.*, 571 U.S. 49, 62 (2013). It is the plaintiff’s burden to show that the contractual forum is improper, and it may only invoke the public interest factors to do so. *Id.* Here, the district court did not find any extraordinary circumstances that would overcome the forum selection clause, and instead denied transfer on the basis that the clause supposedly did not apply to this litigation. *See* Appx2480-2485. As explained below, this conclusion was clearly erroneous as a matter of well-established law.

**A. The District Court Erroneously Disregarded That Sonos Put The Parties' Collaboration At Issue**

The broad forum selection clause here sets a low bar for the connection required between the litigation and the agreement. The parties here agreed that California courts would have exclusive venue over “any dispute relating to this agreement.” Appx0637-0646 at § 1.1; Appx0649-0653 § 10.2 (capitalization omitted). This Court has interpreted a forum selection clause with precisely the same language as requiring only a “non-frivolous” nexus between the case and the agreement at issue. *Gen. Protecht Grp., Inc. v. Leviton Mfg. Co.*, 651 F.3d 1355, 1359 (Fed. Cir. 2011). More generally, courts uniformly hold that “relating to” in a forum selection clause should be broadly construed to apply where there is any connection to the agreement. *See, e.g., Sun v. Advanced China Healthcare, Inc.*, 901 F.3d 1081, 1086-87 (9th Cir. 2018) (“[F]orum-selection clauses covering disputes ‘relating to’ a particular agreement apply to any disputes that reference the agreement or have some ‘logical or causal connection’ to the agreement.”); *J.V. & Sons Trucking, Inc. v. Asset Vision Logistics, LLC*, No. 1:20-CV-163-H, 2020 WL 10458645, at \*4 (N.D. Tex. Dec. 15, 2020) (“[W]hen interpreting forum-selection clauses with ‘relate to’ language, Texas courts consistently interpret those clauses broadly to encompass all claims that have some

possible relationship with the agreement.”) (citing numerous cases).<sup>3</sup> This broad interpretation necessarily follows from the plain meaning of “‘relates to’ as having a ‘connection with’ or ‘reference to,’” such that “[t]he phrase ‘relates to’ generally conveys a sense of breadth.” *Beiser v. Weyler*, 284 F.3d 665, 669 (5th Cir. 2002) (quoting *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983)).<sup>4</sup>

The dispute here easily clears the low bar of a “non-frivolous” connection to the agreement based on Sonos’s own allegations. As discussed *supra* at E, Sonos alleges infringement in part based on the collaboration at issue in the [REDACTED]. And it alleges copying based entirely on that collaboration. *See supra* at *id.* Furthermore, there is no question that the alleged collaboration is relevant to Sonos’s allegations that Google

---

<sup>3</sup> See also, e.g., *MaxEn Capital, LLC v. Sutherland*, 2009 WL 936895, at \*6 (S.D. Tex. Apr. 3, 2009) (“Such clauses are broad, encompassing all claims that have some possible relationship with the contract, including claims that may only ‘relate to’ the contract.” (internal quotations and citation omitted); *Walsh v. Microsoft Corp.*, No. 1:13-CV-13, 2014 WL 12600740, at \*3 (S.D. Tex. Mar. 21, 2014) (same); *TGI Friday’s Inc. v. Great Nw. Restaurants, Inc.*, 652 F. Supp. 2d 750, 759 (N.D. Tex. 2009) (same).

<sup>4</sup> Courts have taken different views on whether federal or state law applies to the interpretation of a forum selection clause. See, e.g., *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 513 (9th Cir. 1988) (“[F]ederal law ... applies to interpretation of forum selection clauses.”); *Wellogix, Inc. v. SAP America, Inc.*, 58 F. Supp. 3d 766, 777 (S.D. Tex. 2014) (“The Fifth Circuit has applied federal law in this context .... Despite the choice-of-law clause in the NetWeaver Agreement, the parties also rely on federal law. This court will do the same.”); *J.V. & Sons Trucking*, 2020 WL 10458645, at \*4 (“Some courts have applied federal law when determining the scope of a forum-selection clause. ... [T]he Court does not find this line of cases persuasive.”). This Court need not resolve any choice-of-law issue because there is no material difference in the broad interpretation that courts across the country uniformly apply to forum selection clauses with “relating to” language.

willfully infringed by using the collaboration to gain access to people and information that it used to infringe. Appx1032-1033. Indeed, Sonos specifically argued in opposition to Google’s motion to dismiss the willful infringement allegations that the court should infer that Google acted egregiously based on the allegations that the parties “worked together to integrate Google’s products into the Sonos ecosystem.” Appx1631. In short, Sonos’s own allegations and arguments rest critically on the collaboration governed by the [REDACTED], and Sonos is therefore bound by the forum selection clause in the [REDACTED]. *See, e.g., Sun*, 901 F.3d at 1086–87 (holding that the forum selection clause applied where the “complaint itself” shows the connection to the agreement).

The district court clearly erred as a matter of law in applying a legal test for “relating to” that defies the plain meaning of that phrase and the case law applying it. According to the district court, “Sonos’s infringement claims are not related to the [REDACTED] because their resolution *does not* require the application of various provisions of the [REDACTED],” and the [REDACTED] does not “defeat Sonos’s claims directly.” Appx2483 (quotation marks and brackets omitted). However, the forum selection clause does not state that California is the proper forum only if the provisions of the [REDACTED] must be applied and would directly defeat the claim. Instead, it covers “[REDACTED]” Appx0637-0646 at § 1.1; Appx0649-0653 § 10.2. And “[t]he dispute need not grow out of the contract or require interpretation of the contract in

order to relate to the contract.” *Sun*, 901 F.3d at 1086. Thus, the district court’s entire analysis rests on the wrong legal test—the one courts use for a forum selection clause that applies only where the claim “arises under” the agreement, *not* the one courts use for a “relating to” clause. *See id.* (“[F]orum-selection clauses covering disputes ‘arising out of’ a particular agreement apply only to disputes ‘relating to the interpretation and performance of the contract itself.’ By contrast, forum-selection clauses covering disputes ‘relating to’ a particular agreement apply to any disputes that reference the agreement or have some ‘logical or causal connection’ to the agreement.”) (citations omitted).

Given the Complaint’s recognition that the allegations of copying and willfulness rest substantially on the agreement, the broad language of “relating to” is plainly satisfied. While the district court notes that the Complaint references the collaboration, rather than the [REDACTED] specifically, *see* Appx2483, that is a distinction without a difference. The collaboration occurred solely due to and based on the [REDACTED] the extent to which the collaboration supposedly evidences copying or willfulness thus is inextricably intertwined with—and certainly relates to—the [REDACTED] itself.

**B. The District Court Erroneously Held That The Forum Selection Clause Does Not Apply Even While Conceding The Agreement Is Relevant To Google’s Defenses**

Beyond Sonos’s own allegations, the forum selection clause is also indisputably connected to Google’s defenses. “[A] party seeking to enforce a forum selection

clause in the context of a [contractual] defense” need not “first establish, conclusively, that it would win the [contractual] defense.” *Gen. Protecht*, 651 F.3d at 1359. Rather, as noted above, there need only be a “non-frivolous dispute” about the defense. *Id.*

Here, once again, Google far exceeds that low bar. Several of Google’s affirmative defenses to Sonos’s ’615 and ’033 patent infringement claims require interpretation and application of the [REDACTED] Appx0546. For example, to resolve Google’s estoppel defense, a court must decide whether the intellectual property ownership clauses of the [REDACTED]—in addition to other Sonos conduct—led Google to reasonably infer that **Google**, not Sonos, owns any intellectual property embodied by the accused technology. Appx0546; Appx0638 at § 3.4. To resolve the waiver defense, a court must decide whether Sonos intentionally waived its rights to enforce the ’615 and ’033 patents or acted inconsistently with claiming those rights in light of Sonos’s execution of the [REDACTED] (along with other conduct). Appx0546. To resolve the limitation on liability defense, a court must apply Section 8.1 of the [REDACTED] which applies to claims for [REDACTED]” and limits damages to [REDACTED] except in limited circumstances. Appx0638 at § 8.1. And to resolve whether Sonos’s infringement claims are barred by the [REDACTED], a court must decide whether Sonos improperly attempted to “[REDACTED] in the jointly-developed technology in violation of the agreement. *See* Appx0638 at § 3.4.

Once again, the district court clearly erred as a matter of law in disregarding the meaning of “relating to” and substituting a much narrower test. In particular, the district court recognized that the [REDACTED] likely will be relevant to the defenses, Appx2485, as a “brick[] in the evidentiary wall” for those defenses, Appx2484. That should have been the end of the matter; if the agreement is relevant to the claim, then it is “related” to the claim. *See Sun*, 901 F.3d at 1086-87 (requiring only “some logical or causal connection”) (quotation marks omitted); *J.V. & Sons Trucking*, 2020 WL 10458645, at \*4 (N.D. Tex. Dec. 15, 2020) (requiring only “some possible relationship”) (quotation marks omitted). There is no legal or logical support for the idea that an agreement may be relevant to a claim, but not “related to” it for purposes of a forum selection clause.

Similarly, the district court’s statements that “Google’s defenses require the Court to look beyond the [REDACTED] and its provisions” and “the [REDACTED] does not provide any direct defense,” Appx2484-2485, erroneously disregard the broad “relating to” standard. That standard does not require that the agreement *alone* provides a complete or “direct” defense. *See, e.g., Beiser*, 284 F.3d at 669 (holding “relates to” satisfied where it is “conceivable” that the agreement “will impact the disposition of the case”). In any event, the district court did not and could not dispute that (as discussed above) the agreement is a critical and necessary element of the defenses of estoppel, waiver, and limitation on liability. It cannot be correct to conclude that an agreement which is

necessary to resolve a dispute is also not “related to” that dispute. Moreover, the limitation of liability covers not only disputes related to the agreement, but disputes related to the “subject matter thereof” (Appx0638 at § 8.1), and this dispute certainly is related to the collaboration that is the subject matter of the agreement—a point the district court ignored entirely.

The district court cites only one district court order to support its novel, narrow reading of the forum selection clause. *See Saint Lawrence Commc’ns LLC v. Amazon.com, Inc.*, No. 2:19-CV-00027-JRG, 2019 WL 2904756 (E.D. Tex. July 5, 2019). But *Saint Lawrence* is readily distinguishable. It concerns a license agreement that undisputedly did not apply to the patents at issue, and the plaintiff *agreed* that it would not rely on the license agreement to establish knowledge, willfulness or damages in that case. *Id.* at \*4. Here, in contrast, the collaboration at issue in the agreement *does* concern the specific claims and intellectual property at issue. *Supra* at C. And Sonos has never agreed that it will not rely on the parties’ collaboration to prove its claims, nor would such agreement moot Google’s defenses. As discussed above, Sonos’s Complaint puts the collaboration—and thus the [REDACTED]—directly at issue (Appx1032-1033), and several of Google’s defenses rely on the [REDACTED] as well. Moreover, *Saint Lawrence* cannot overcome the plain language of “relating to” or the countless cases holding that this language applies when—as the district court

acknowledged here—the agreement is relevant to the elements of and defenses to the claims.

## **II. THE DISTRICT COURT’S ANALYSIS OF THE § 1404(a) FACTORS WAS PATENTLY ERRONEOUS**

Even without the forum selection clause, which should be decisive, the § 1404(a) factors clearly favor transfer. The district court’s decision to the contrary rested on a series of clear legal and factual errors that cannot withstand scrutiny.

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

As noted *supra* at I, given the presence of an applicable forum selection clause, the private interest factors are irrelevant. *Atl. Marine*, 571 U.S. at 64. But even if there were no applicable forum-selection clause, the district court’s analysis of those factors was clearly erroneous.

***Cost To Willing Witnesses.*** The district court’s analysis of the cost to willing witnesses contains multiple legal and factual mistakes.

***First***, the district court’s reasoning contradicts this Court’s recent precedent by disregarding the inconvenience that Google’s 12 NDCA-based witnesses and Sonos’s two California-based witnesses would experience in traveling to Waco, Texas for trial. The court agreed that Google’s witnesses are “undoubtedly relevant.” Appx2493-2494. However, citing its own prior decision as authority, it held that they should not be given “great weight” because they are “party witnesses” and “Google can compel

their testimony.” Appx2494 (citing *Fintiv, Inc. v. Apple Inc.*, No. 6:18-cv-372, 2019 WL 4743678, at \*1 (W.D. Tex. Sep. 10, 2019)). This Court recently rejected this exact proposition, holding that while “an employer’s cooperation in allowing an employee to testify may diminish certain aspects of inconvenience to the employee witness . . . it hardly eliminates the inconvenience.” *Hulu*, Slip Op. at 10. In *Hulu*, as here, the district court’s “discounting the inconvenience to [party] witnesses is fundamentally at odds with the purpose of a transfer for convenience of the witnesses.” *Id.*

**Second**, although the district court considered the location of “four former Google employees located in the northeastern United States” under this factor (Appx2494), there is no record evidence that any of these witnesses would be willing to come to trial. Since they are not willing witnesses, they should have been analyzed under the compulsory process factor (*Hulu*, Slip Op. at 8 (absent any record evidence to the contrary, third-party witnesses should be presumed unwilling to testify at trial)), and even under that factor they should not have been given any weight. All of these witnesses are outside the subpoena power of both WDTX and NDCA. Appx1671, Appx1862-1873.

**Third**, while it is not entirely clear what “four former Google employees located in the northeastern United States” the court is referring to, one of these individuals appears to be a journalist in Kalamazoo, Michigan. Appx1867 (Jason

Fitzpatrick). Although the court described this individual as a “former Google employee” (Appx2494), there is *no evidence that he ever worked for Google*. Appx1867. It was error for the court to accept Sonos’s assertion that this witness is likely to testify in this case without any analysis of his relevance whatsoever. *Hulu*, Slip Op. at 7 (“[A] bare and generalized analysis cannot be said to be providing ‘individualized, case-by-case consideration’ of the relevant factors, as is required for the analysis of a § 1404(a) motion”).

Correcting these mistakes significantly changes the analysis. Eliminating former Google employees in the “northeastern United States” because they are not willing witnesses and beyond the subpoena power of both courts, eliminating the Michigan witness because he never worked at Google, and properly weighing the party witnesses leads to a balancing of 12 “undoubtedly relevant” Google witnesses in NDCA, two Sonos witnesses in Southern California, and one Sonos employee in Massachusetts (Tad Coburn, whom the district court erroneously referred to as a third party, when he is in fact a Sonos employee, *see supra*). In sharp contrast, there are no witnesses in or anywhere near Waco, Texas. Appx2491-2495. Concluding that such a balance does not strongly favor transfer was clear error. *In re TracFone Wireless, Inc.*, 852 F. App’x 53, 539 (Fed. Cir. Apr. 20, 2021) (district court erred in its analysis of the willing witness factor where “several of [movant’s] likely employee witnesses resid[e] in the transferee venue and [the district court did not] rely[] on the

location of a single potential witness within or even close to Waco, Texas”); *see also In re Samsung Elec. Co. Ltd.*, 2 F.4th 1371, 1379 (Fed. Cir. 2021) (district court erred in its analysis of the willing witness factor where “petitioners submitted undisputed affidavits identifying over a dozen third-party individuals with relevant and material information as residing in Northern California,” and “[b]y contrast, not a single witness has been identified as residing in or near the Western District of Texas”).

***Availability of Compulsory Process.*** The district court similarly erred in considering the availability of compulsory process for non-party witnesses who might not be willing to appear at trial. There are highly relevant third parties in the NDCA and within the NDCA’s subpoena power. For example, Google has identified at least six individuals and one entity with relevant information regarding prior art to the asserted patents, all of whom are based in NDCA. *See* Appx0610; Appx0780; Appx0802; Appx0819; Appx0833.

The district court improperly disregarded these witnesses and held that this factor slightly weighs against transfer. Appx2489. Citing its own prior decision, the court dismissed the prior art witnesses Google identified because “prior art witnesses are generally unlikely to testify at trial.” *Id.* (citing *CloudfChange, LLC v. NCR Corp.*, No. 6:19-CV-005132020, WL 6439178, at \*4 (W.D. Tex. Mar. 17, 2020)). However, this Court recently rejected the proposition that prior art witnesses should not be given any weight because they are unlikely to testify at trial. *Hulu*, Slip Op. at

6-7 (district court abused its discretion by “ignoring all of Hulu’s proposed prior art witnesses for the reason that ‘prior art witnesses are generally unlikely to testify at trial’”). In *Hulu*, “[t]he district court provided no analysis whatsoever to cast doubt that these particular prior art witnesses would play a role in an upcoming trial other than speculation that they would be ‘unlikely to testify at trial’ because generally prior art witnesses do not do so.” *Id.* at 7. The same is true here. The district court did not analyze the relevance of Google’s proposed prior art witnesses. Appx2489-2490. Instead, it summarily dismissed them based on its incorrect belief that prior art witnesses do not generally testify at trial. *Id.* This was clear error. *Hulu*, Slip Op. at 6-7; *see also Samsung*, 2 F.4th at 1379 (district court “erroneously discounted the convenience of third-party witnesses by presuming that ‘only a few . . . non-party witnesses will likely testify at trial’”). Further, as Google demonstrated, this is also incorrect as it pertains to Google, which regularly calls prior art witnesses at trial. Appx2016-2017.

Having erroneously disregarded all of Google’s third-party prior art witnesses, the district court concluded that Andrew Greene, a former Google employee based in Austin, Texas, was the “decisive element for this factor” because he may have information concerning the “integration of third-party applications.” Appx2491. Under Sonos’s theory of infringement, certain “third-party Cast-enabled app[lications]” may infringe the ’615 and ’033 patents (Appx1688), but Sonos’s

infringement contentions only specify one such “third-party Cast-enabled application”—Spotify (*id.*)—and Mr. Greene did not work on the Spotify team. Appx1829. Concluding that this entire factor weighs in favor of transfer because a single WDTX-based third party *may* have information regarding unspecified and thus unaccused “third-party applications” was clear error.

Properly considered, the eight third-party prior artists that Google identified in NDCA should have tipped this factor heavily in favor of transfer. To the extent Mr. Greene’s presence in WDTX is relevant at all, it does not outweigh the presence of eight relevant third parties in NDCA.

***Access To Sources Of Proof.*** As the accused infringer, Google’s documents provide “the bulk of the relevant evidence,” and the analysis “weighs in favor of transfer to [the] location” where those documents are kept. *In re Genentech, Inc.*, 566 F.3d 1338,1345 (Fed. Cir. 2009). The district court recognized this principle (Appx2487), but failed to faithfully apply it. Google demonstrated that engineers in the San Francisco Bay Area designed and developed the accused functionalities of the accused products (Appx0622-0625), which alone should have tipped this factor in favor of transfer. *See, e.g., In re Acer America Corp.*, 626 F.3d 1252, 1256 (Fed. Cir. 2010) (“Apple’s evidence is likely to be in Northern California, where Apple states its technical research, design, development, and testing work regarding the accused products occurs.”).

Google also went further, submitting a sworn declaration confirming that “documents in Google’s possession about its products and services are normally created and maintained by the employees working on those products and services,” which in this case means that “relevant documents . . . would be created and maintained in the San Francisco Bay Area.” Appx0625. Still, the district court rejected Google’s sworn evidence because in its view, Google’s evidence “conflates the creation of documents with the location of documents.” Appx2487. That is plainly not what Google said. Google’s declarant said that documents are *both* “created” *and* “maintained” in the San Francisco Bay Area. Appx0625. The district court’s apparent reading of the evidence as suggesting that *none* of Google’s documents will be found in the San Francisco Bay Area—its headquarters and the place where it designed and developed the accused functionalities at issue in this case—is implausible.

Even worse, the district court held that this factor weighs against transfer because Google maintains its electronic documents in data centers around the United States, one of which is in Midlothian, Texas. Appx2487. But relevant documents are no more physically located “in” Midlothian than they are physically located “in” Henderson, Nevada or The Dalles, Oregon—other locations where Google also maintains data centers. Appx1785. It was plain error for the district court to find that this factor weighs against transfer in the face of sworn testimony that Google’s

relevant documents are created and maintained in the San Francisco Bay Area. Appx0625.

The district court also erred in disregarding the eight third-party prior art witnesses that Google identified in NDCA who likely have relevant evidence as well. Appx0610, Appx0616-0617; Appx2487. The court dismissed these witnesses because “the bulk of the relevant evidence usually comes from the accused infringer.” *Id.* (citing *Genentech*, 566 F.3d at 1345). While that may be true, it does not render relevant prior art evidence in NDCA meaningless. It was plain error for the district court to discount this evidence entirely.

#### **B. The Public Interest Factors Strongly Support Transfer**

The public interest factors are all either neutral or weigh in favor of transfer, and the district court’s conclusion to the contrary—based solely on its view of court congestion—was clear error.

***Court Congestion.*** This Court has held that time to trial should be given little weight, as it “appears to be the most speculative” of the transfer factors. *Genentech*, 566 F.3d at 1347. Despite this guidance, the district court incorrectly found that the public interest factors as a whole weigh in favor of transfer based on its analysis of this factor alone. Appx2496-2497. This was clear error.

Google is not aware of any appreciable difference in court congestion between WDTX and NDCA, and the statistics that the district court relied on do not indicate

otherwise. Appx2497 (finding that median time to trial in NDCA on a district-wide basis is 29.3 months compared to 22.4 months in WDTX in the last three years).

To the extent this factor is considered at all, it should weigh in favor of NDCA. This case is unique because the parties already have case assignments in both districts,<sup>5</sup> and as Google demonstrated, the judge who is handling the parties' NDCA case has significantly fewer active cases than the district court (157 versus 1,050) (Appx2221; Appx2422), and a faster average time to trial (573 days versus 623 days). Appx2227; Appx2224. The district court held that these statistics are "inapposite" because they cover a "more than *twenty-year* timespan, encompassing nearly the entirety of Judge Alsup's time on the bench." Appx2497 (emphasis in original). That is not correct. Google's statistics regarding each judge's current active cases reflect the number of cases each judge had as of ***June 2021*** and indicate that the NDCA judge's docket is significantly less congested as of that date. Appx2227; Appx2224. It was clear error for the district court to ignore this evidence.

Further, even if the district court were correct that its docket is less congested than Judge Alsup's, neither Sonos nor the district court explained why a more rapid disposition of the case would be important enough to be assigned significant weight in

---

<sup>5</sup> The Honorable William H. Alsup is overseeing Google's NDCA declaratory judgment action involving claims for non-infringement of the WDTX patents-in-suit, and he has been monitoring this case closely. He has stayed the NDCA case pending resolution of Google's motion to transfer and indicated a willingness to take the case should it be transferred.

the transfer analysis. *Samsung*, 2 F.4th at 1380-81 (reversing district court’s analysis on the public interest factor because “neither respondents nor the district court pointed to any reason that a more rapid disposition of the case that might be available in the Western District of Texas would be important enough to be assigned significant weight in the transfer analysis”). Sonos did not seek preliminary injunctive relief. And rather than pursuing its case expeditiously, Sonos delayed the opening of fact discovery by at least eight months in order to conduct extensive venue discovery in an effort to defeat Google’s transfer motion.

Given the speculative nature of this factor, the district court should not have given this factor much weight. *Genentech*, 566 F.3d at 1347. It certainly should not have held that all of the public interest factors weigh against transfer based on its conclusion that this factor alone weighed against transfer—particularly given its conclusion that the localized interest factor, discussed below, weighs in *favor* of transfer.

***Local interest.*** The district court correctly found that the local interest factor weighs in favor of transfer, but it erred in finding that it only weighs “slightly” in favor of transfer. Appx2498. In this case, all relevant connections point to NDCA. Google was founded in the NDCA and still maintains its headquarters and largest U.S. offices there. Appx0622 at ¶¶ 2. The claims “call[] into question the work and reputation of several individuals residing in or near that district” because Google

designed and developed the accused functionality there. *In re Hoffman-La Roche*, 587 F.3d 1333, 1336 (Fed. Cir. 2009); Appx0622 at ¶¶ 5a-5f. Sonos itself is also a California company and maintains an office in NDCA. Appx2497-2498. As the district court correctly observed, Sonos does not even “attempt to point to any connections—significant or otherwise—between itself and [WDTX].” Appx2498.

Despite these clear connections to NDCA, the district court still held that this factor only weighs slightly in favor of transfer because it determined that Google’s “presence” in the forum “creates a local interest in this dispute.” Appx2498-2499. This conclusory statement does nothing to address or explain what about Google’s “presence” in the district creates a local interest in the dispute.

To the extent the district court is referring to Google’s Austin office—and it is not clear that it is (Appx2498-2499)—this Court recently rejected a virtually indistinguishable argument in *In re Apple Inc.*, 979 F.3d 1332, 1343 (Fed. Cir. 2020) (“*Apple III*”). In that case, the district court held that the local interest factor was neutral because Apple, whose headquarters is also in NDCA, planned to build “a second campus in Austin,” giving it “substantial presences in both NDCA and WDTX.” *Id.* at 1344 (citation omitted). This Court held that the district court “misapplied the law to the facts” by “so heavily weighing Apple’s general contacts with the forum that are untethered to the lawsuit, such as Apple’s general presence in WDTX.” *Id.* at 1345. What should have mattered, it explained, were “the ‘significant

connections between NDCA and *the events that gave rise to a suit,*” such as the plaintiff’s “‘presence in NDCA’ and absence from WDTX” and the fact that Apple developed and designed the accused products “in NDCA.” *Id.* (citations and brackets omitted).

The same is true here. Just as in *Apple III*, Google’s Austin office was not involved in the design or development of the allegedly infringing functionality. *See* Appx0623-0624 (confirming that none of the NDCA-based employees working on the accused functionality recall working with anyone from Google’s Texas offices on the design and development of the accused functionality). Similarly, the overwhelming majority of the relevant conduct occurred in NDCA; Google is headquartered there (Appx0622); Sonos has an office there (Appx2404); and the vast majority of Google’s employees—and, more specifically, the vast majority of Google employees who worked on the accused functionality—reside there. Appx0623-0624. Just as in *Apple III*, “this factor weighs in favor of transfer.” 979 F.3d at 1345.

Under clearly applicable legal principles and the unambiguous factual record, it was error not to weigh local interest strongly in favor of transfer.

***Familiarity With Governing Law.*** Both forums are equally familiar with patent law. But NDCA has superior experience with California contract law, which governs interpretation of the [REDACTED] Appx0637-0646 at § 1.1; Appx0649-0653 § 10.2. The district court avoided weighing this factor in favor of transfer by mistakenly

concluding that “most of the law governing this case will be federal law,” and that “the [REDACTED] provisions will [not] be necessary to resolve those issues.” Appx2499. That is incorrect. As explained above, *supra* § I, key issues in this case will be governed by the [REDACTED] and thus California law. As one example, whether the Limitation on Liability in Section 8.1 of the [REDACTED] applies to Sonos’s damages claims will be a key issue in the case, and the enforceability of that provision must be analyzed under California law. Appx0637-0646 at § 8.1 (limiting damages for [REDACTED] to \$10,000 except in limited circumstances). It was error not to weigh this factor in favor of transfer.

### CONCLUSION

This Court should grant Google’s petition, vacate the district court’s order, and remand with instructions to transfer this case to the Northern District of California.

Dated: August 5, 2021

Respectfully submitted,

David M. Cooper  
QUINN EMANUEL URQUHART &  
SULLIVAN LLP  
1300 I Street NW, Suite 900  
Washington, D.C. 20005  
Telephone: (202) 538 8000  
Facsimile: (202) 538 8100

/s Charles K. Verhoeven  
Charles K. Verhoeven  
charlesverhoeven@quinnemanuel.com  
Melissa Baily  
melissabaily@quinnemanuel.com  
Jordan Jaffe  
jordanjaffe@quinnemanuel.com  
Lindsay Cooper  
lindsaycooper@quinnemanuel.com  
QUINN EMANUEL URQUHART &  
SULLIVAN LLP  
50 California Street, 22nd Floor  
San Francisco, California 94111-4788  
Telephone: (415) 875 6600  
Facsimile: (415) 875 6700

*Counsel for Petitioner*

## CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limits of Fed. R. App. P. 21(d)(1) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and Fed. Cir. R. 32(b), this document contains 7,583 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman.

/s Charles K. Verhoeven  
Charles K. Verhoeven  
*Counsel for Petitioner*

FORM 31. Certificate of Confidential Material

Form 31  
July 2020

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

**CERTIFICATE OF CONFIDENTIAL MATERIAL**

**Case Number:** \_\_\_\_\_

**Short Case Caption:** IN RE GOOGLE LLC

**Instructions:** When computing a confidential word count, Fed. Cir. R. 25.1(d)(1)(C) applies the following exclusions:

- Only count each unique word or number once (repeated uses of the same word do not count more than once).
- For a responsive filing, do not count words marked confidential for the first time in the preceding filing.

The limitations of Fed. Cir. R. 25.1(d)(1) do not apply to appendices; attachments; exhibits; and addenda. *See* Fed. Cir. R. 25.1(d)(1)(D).

The foregoing document contains 45 number of unique words (including numbers) marked confidential.

- ☐ This number does not exceed the maximum of 15 words permitted by Fed. Cir. R. 25.1(d)(1)(A).
- ☐ This number does not exceed the maximum of 50 words permitted by Fed. Cir. R. 25.1(d)(1)(B) for cases under 19 U.S.C. § 1516a or 28 U.S.C. § 1491(b).
- ☒ This number exceeds the maximum permitted by Federal Circuit Rule 25.1(d)(1), and the filing is accompanied by a motion to waive the confidentiality requirements.

Date: 08/05/2021

Signature: s/ Charles K. Verhoeven

Name: Charles K. Verhoeven