

Exhibit B

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF GEORGIA
 ATLANTA DIVISION

IP CO., LLC,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
vs.	:	
	:	1:06-CV-0585-CC
TROPOS NETWORKS, INC.,	:	
	:	
Defendant.	:	

ORDER

This matter is before the Court on Plaintiff IP Co., LLC’s Motion to Transfer [Doc. No. 76] the above-styled action from this Court to the District Court for the Eastern District of Texas pursuant to 28 U.S.C. § 1404(a).¹ For the reasons stated below, the Court **DENIES** Plaintiff’s motion.

I. BACKGROUND

Plaintiff IP Co., LLC (“IPCO”) is a Georgia limited liability corporation headquartered in Atlanta, Georgia (Pl.’s Am. Compl. [Doc. No. 13] ¶ 1.) According to its Amended Complaint, IPCO is the assignee of all rights, title and interest in United States Patent No. 6,249,516 (the “ ‘516 Patent”) and United States Patent No. 6,044,062 (the “ ‘062 Patent”), entitled “Wireless Network Gateway and Method for Providing Same.” (Doc. No. 13 ¶¶ 7-8, 14-15.) Defendant Tropos Networks, Inc. (“Tropos”) is a Delaware corporation with its principal place of business in Sunnyvale, California. (Def.’s Answer [Doc. No. 24] ¶ 1.) Tropos designs, develops and provides metro-scale Wi-Fi mesh network products and services. (Doc. No. 24 ¶ 12.) On October 21, 2005, Tropos sued IPCO in the Northern District of California (the “California Court”) for a judgment declaring the ‘516 and ‘062 Patents invalid,

¹The Court **GRANTS** the Consent Motion for Extension of Time [Doc. No. 81] nunc

unenforceable and/or not infringed, among other things. (Def.'s Compl. [Doc. No. 6-3] ¶¶ 41-50.) On March 13, 2006, IPCO sued Tropos in this Court for patent infringement. (Pl.'s Compl. [Doc. No. 1] ¶¶ 6-12.) IPCO alleged that Tropos infringed on and continues to infringe on the '516 and '062 Patents by making, using, offering to sell, and/or selling its wireless mesh network system. (Doc. No. 13 ¶¶ 10, 17.)

On May 8, 2006, Tropos filed a Motion to Dismiss, Stay, or Transfer [Doc. No. 6] the case from this Court to the California Court. IPCO opposed Tropos's motion by arguing that principles of judicial economy, the convenience of the parties, and the availability of witnesses and evidence weighed in favor of litigating the case in Georgia. (Pl.'s Mem. in Opp'n to Def.'s Mot. to Dismiss, Stay, or Transfer [Doc. No. 9] at 11-15.) On July 13, 2006, the California Court transferred Tropos's action to this Court. (Order, Nov. 8, 2006 [Doc. No. 48] at 1.)

On October 6, 2006, Tropos moved this Court to stay the litigation pending the United States Patent and Trademark Office's reexamination of the '516 and '062 Patents. (Def.'s Mot. to Stay Litig. [Doc. No. 43] at 1.) The Court granted the stay on August 16, 2007. (Order [Doc. No. 72] at 1.) On September 8, 2011, the Court ordered the stay lifted. (Order Grant. Opp'd Mot. to Lift Stay [Doc. No. 75] at 1.) Then on October 3, 2011, IPCO moved the Court to transfer the case to the Eastern District of Texas. (Doc. No. 76.) IPCO argues that this action should be transferred because the Eastern District of Texas is the more convenient forum. (Doc. No. 76.)

II. STANDARD OF REVIEW

Section 1404(a) of Title 28 of the United States Code provides that “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district . . . where it might have been brought.” 28 U.S.C. § 1404(a) (2012). A party requesting a transfer of venue bears the burden of proving that the proposed transferee venue is more convenient than the venue selected by a plaintiff. *In re Ricoh Corp.*, 870 F.2d 570, 573 (11th Cir. 1989). This

reflects the rule that “[t]he plaintiff’s choice of forum should not be disturbed unless it is clearly outweighed by other considerations.” Robinson v. Giarmarco & Bill, P.C., 74 F.3d 253, 260 (11th Cir. 1996) (quoting Howell v. Tanner, 650 F.2d 610, 616 (5th Cir. Unit B July 1981)). While a court has broad discretion when determining whether to transfer a case to another district, “[a] court should not grant a transfer if the transfer would just shift inconvenience from one party to another.” Am. Gen. Life Ins. Co. v. Margolis Family I, LLC, No. 1:07-CV-0230-JEC, 2008 WL 857436, at *14 (N.D. Ga. Mar. 28, 2008).

III. ANALYSIS

A. Alternative Venue

Before assessing the convenience of the proposed transferee forum under a Section 1404(a) analysis, the Court must determine whether IPCO’s action for patent infringement could have initially been brought in that forum. Dial HD, Inc. v. Clearone Commc’ns, Inc., No. CV 109-100, 2010 WL 3732115, at *5 (S.D. Ga. Sept. 7, 2010) (“The question of whether to transfer venue is a two-pronged inquiry. First, the alternative venue must be one in which the action could originally have been brought by the plaintiff.”); see also Hoffman v. Blaski, 363 U.S. 335, 342-43, 80 S. Ct. 1084, 1088-89, 4 L. Ed. 2d 1254 (1960). “An action ‘might have been brought’ in a proposed transferee court if that court has jurisdiction over the subject matter of the action, if venue is proper there, and if the defendant is amenable to process issuing out of the transferee court.” Miot v. Kechijian, 830 F. Supp. 1460, 1465 (S.D. Fla. 1993) (quoting Windmere Corp. v. Remington Prods., 617 F. Supp. 8, 10 (S.D. Fla. 1985)). Proving “[v]enue in the transferee forum is essential to a transfer under [§] 1404(a) for that section confers none.” United States v. Casey, 420 F. Supp. 273, 275 (S.D. Ga. 1976).

In a patent infringement case, venue is governed by 28 U.S.C. § 1400(b). Hoffman, 363 U.S. at 342 n.10. The language in that section “is specific and unambiguous and the requirement of venue under th[e] statute ‘is not one of those

vague principles which, in the interest of some overriding policy, is to be given a 'liberal' construction.'" Kalvar Corp. v. Memorex Corp., 386 F. Supp. 273, 278 (E.D. La. 1974) (quoting Schnell v. Peter Eckrich & Sons, Inc., 365 U.S. 260, 264, 81 S. Ct. 557, 560, 5 L. Ed. 2d 546 (1961)). According to that section, a civil action for patent infringement 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) (2012). Therefore, IPCO must show that at the time of its Complaint, Tropos resided, or committed acts of infringement and had a regular and established place of business in the Eastern District of Texas. IPCO has made no such showing.

First, IPCO fails to show that Tropos resided in Texas. "[T]he residence of a corporation for purposes of [28 U.S.C. §] 1400(b) is its place of incorporation." Brunette Mach. Works, Ltd. v. Kockum Indus., Inc., 406 U.S. 706, 707 n.2, 92 S. Ct. 1936, 1937, 32 L. Ed. 2d 428 (1972). In its Complaint, IPCO alleged that Tropos is only a Delaware corporation. (Doc. No. 1 ¶ 1.) IPCO also contends that "Tropos ha[d] a national and international presence." (Doc. No. 76 at 9.) Those facts are insufficient to prove residence in Texas.

Second, IPCO fails to show that Tropos had a regular and established place of business in Texas. Instead, IPCO argues that Tropos has "customers all over the United States, and . . . solicits Texan customers through its website and holds conferences in Texas." (Doc. No. 76 at 9-10.) That argument is insufficient. "Mere solicitation of orders in a district is not sufficient by itself to establish that a defendant had a regular and established place of business in the district for purposes of establishing venue." Roblor Mktg. Grp., Inc. v. GPS Indus., Inc., 645 F. Supp. 2d 1130, 1145 (S.D. Fla. 2009). Indeed, "the 'regular and established place of business' requirement contemplates something more than minimum contacts or simply doing business in a particular district." HomeBingo Network, Inc. v. Chayevsky, 428 F. Supp. 2d 1232, 1249 (S.D. Ala. 2006) (quoting Kinetic Instruments v. Lares, 802 F.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.