

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

LOGANTREE LP,

Plaintiff,

vs.

GARMIN INTERNATIONAL, INC. and
GARMIN USA, INC.,

Defendants.

Case No. 6:17-cv-01217

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR
MOTION FOR INTRA-DISTRICT TRANSFER FOR TRIAL**

Wichita, Kansas has no connection to this case. None of the “key” witnesses previously identified by Plaintiff LoganTree are located in Wichita. And, in fact, not a single document or witness relevant to this case is in Wichita. Instead, the situs for all of Garmin’s witnesses and documents is at its headquarters in Olathe, Kansas, which is only 20 miles from the Kansas City, Kansas courthouse. Moreover, Plaintiff’s primary witness, Theodore Brann—the inventor and primary owner of LoganTree—is gravely ill and will be unable to travel to trial regardless of location.¹ As for the remainder of LoganTree’s “key” witnesses (identified in prior litigation) all live in Texas and would have easier direct air travel to Kansas City. And while LoganTree requested that trial be held in Wichita, this selection should be given no weight because of the absence of any connection with Wichita. As such, the forum for trial should be transferred to Kansas City.

¹ This is based on Plaintiff’s recent request to hold a preservation deposition based on Mr. Brann’s current medication condition. **Ex. A**, Email Correspondence.

LEGAL STANDARD

Local Rule 40.2 provides that “[t]he court is not bound by the requests for place of trial. It may determine the place of trial upon motion or in its discretion.” D. Kan. Rule 40.2(e). Upon such a motion, “the courts of this district generally look to the same factors relevant to motions for change of venue under 28 U.S.C. 1404(a).” *McDermed v. Marian Clinic, Inc.*, No. 14-2194-EFM-KMH, 2014 WL 6819407 at *1 (D. Kan. Dec. 2, 2014) (quoting *Twigg v. Hawker Beechcraft Corp.*, 2009 WL 1044924, at *1 (D. Kan. Apr. 20, 2009)).

ARGUMENT

Under 28 U.S.C. 1404(a), “the court considers the following factors: (1) plaintiff’s choice of forum, (2) the convenience of the witnesses, (3) the accessibility of witnesses and other sources of proof, (4) the possibility of obtaining a fair trial, and (5) all other practical considerations that make a trial easy, expeditious, and economic.” *McDermed*, at *1 (D. Kan. Dec. 2, 2014). Applying the § 1404 factors here where the case involves a nonresident plaintiff and no witnesses located in the current situs of trial—Wichita—warrants transfer to Kansas City. This is consistent with many other decisions where the case was transferred for trial under the same or very similar facts:

- *Callahan v. Bledsoe*, No. 16-cv-2310-JAR-GLR, 2017 WL 1303269 (D. Kan. Apr. 6, 2017) (Transferring the location for trial from Plaintiff’s choice of Kansas City to Wichita where Plaintiff was a resident of Denver, CO and Defendant was a Delaware LLC, and where the events in question and the relevant witnesses and documents were all generally located in Wichita, and there was no connection between the case and Kansas City).

- *LeTourneau v. Venture Corp.*, No. 15-2629-JAR, 2018 WL 489096 (D. Kan. Jan. 19, 2018) (Transferring the location for trial from Plaintiff's choice of Kansas City to Wichita because the Plaintiffs were not residents of their preferred forum, Defendant's witnesses were all in or near Wichita, Plaintiffs' witnesses would be required to travel to either forum, there were no witnesses or evidence in Kansas City, and there was no connection between the case and Kansas City).
- *Mann v. Sirajuddin*, No. 17-2434-JAR-GLR, 2018 WL 922354 (D. Kan. Feb. 15, 2018) (Transferring the location for trial from Plaintiff's choice of Kansas City to Wichita where Plaintiff was a resident of Wisconsin, Defendant resided in Wichita, the material events occurred in Wichita, the majority of witnesses and evidence were in Wichita, and there was no apparent connection between the case and Kansas City).
- *McDermed v. Marian Clinic, Inc.*, No. 14-2194-EFM-KMH, 2014 WL 6819407 (D. Kan. Dec. 2, 2014) (Transferring the location of trial from Plaintiff's choice of Kansas City to Topeka where Plaintiff resided in Topeka, one of the two defendants was in Topeka, the events material to the case occurred in Topeka, and where the witnesses and evidence were in Topeka).

1. The Plaintiff's Choice of Forum

Plaintiff's Complaint notes that Wichita should be the location for trial. *Complaint*, ECF Doc. 1, at 16. But neither Plaintiff, its managing members, or any witness it previously has identified reside in Wichita. In fact, none of LoganTree's witnesses even reside in the State of Kansas: LoganTree is a partnership organized under the laws of Nevada, while its managing members, Theodore and Ann Brann, reside in Boerne, Texas. **Ex. B**, *Corporate Articles*; **Ex. C**,

*Declaration of Theodore Brann*², at ¶ 4. Because LoganTree has no connection to Wichita, Plaintiff's choice of forum should be given little, if any, deference. *McDermed*, at *2. Additionally, because Wichita has no "material relation or significant connection" to the facts of this case, Plaintiff's choice should be given even less deference. *Id.* (quoting *Cook v. Atchison, Topeka & Santa Fe Ry. Co.*, 816 F. Supp. 667, 669 (D. Kan. 1993)). LoganTree does not reside in Wichita. Garmin also does not reside in Wichita, but in Olathe, which is within the Kansas City metropolitan area. *Cf. In re BigCommerce, Inc.*, 890 F.3d 978, 985-86 (Fed. Cir. 2018) (in state with multiple districts, holding that corporation resides in district where it maintains its principal place of business and where its registered office is located). Moreover, no significant events related to the alleged infringement of the asserted patent took place in Wichita. Accordingly, Plaintiff's choice of forum should be given no weight.

2. The Convenience of the Witnesses and Other Sources of Proof

The convenience of the witnesses is the most important factor under 1404(a). *McDermed*, at *2. And the most convenient venue for both LoganTree's and Garmin's witnesses is Kansas City. More importantly, the selected forum is "substantially inconvenient" to both parties and the witnesses, and thus merits a change in Plaintiff's chosen place of trial. *Bright v. BHCMC, LLC*, No. 17-2529-JWL-GEB, 2018 WL 398450, at *3 (D. Kan. Jan. 12, 2018) (citing *McIntosh v. City of Wichita, KS*, No. 14-2402-DDC-TJJ, 2015 WL 1646402, at *2 (D. Kan. Apr. 14, 2015)). A forum is "substantially inconvenient" at least when most witnesses must travel from a different forum, creating a substantial burden for those witnesses. *Id.*

² LoganTree provided this declaration to thwart transfer in an action against FitBit involving the same patent. *See LoganTree, LP v. Fitbit, Inc.*, No. 2:15-cv-1575, ECF. Doc. 42-1 (E.D. Tex. Apr. 21, 2016).

Here, LoganTree provided a detailed list of its possible witnesses in a prior action regarding the asserted patent. **Ex. C.** Significantly none of those witnesses are in Wichita. *Id.* at ¶¶ 6–14; 28–34. Instead, nearly all LoganTree’s witness reside near San Antonio, Texas. *Id.*

Witnesses Identified by LoganTree	Witness Information	Witness Location
Theodore Brann	Co-owner of entity that owns LoganTree and inventor of Asserted Patent	Boerne, TX (near San Antonio)
Anne Brann	Co-owner of entity that owns LoganTree	Boerne, TX (near San Antonio)
Gulfstream Ventures, LLC	Entity that manages LoganTree	Boerne, TX (near San Antonio)
LoganTree LP	Plaintiff, owner of Asserted Patent	Boerne, TX (near San Antonio)
Jeremy Brann	Son of Theodore Brann, assisted in invention of Asserted Patent	Humble, TX (near Houston)
Bio Kinetics Corporation (inactive)	Developed product that practiced the Asserted Patent	Boerne, TX (near San Antonio)
H.E.B. Supermarket	Entered into contract with Bio Kinetics for the product that practiced the Asserted Patent	San Antonio, TX
Kevin Holguin	Corporate Safety Officer and principal point of contact with Theodore Brann at H.E.B.	San Antonio, TX
Paradigm Manufacturing	Contracted to develop slightly over 2,000 of the Bio Kinetics product that practiced the Asserted Patent	San Antonio, TX

It is also significant that Mr. Brann, who is the asserted patent’s sole inventor and co-owner of LoganTree, will likely be unable to travel to Kansas City or Wichita for trial. **Ex. C.**, at ¶ 15; **Ex. D.**, *Declaration of Dr. Victor Vela*³, at ¶ 10–11. So the situs of trial, whether Wichita or Kansas City is irrelevant to Mr. Brann. Additionally, the remaining witnesses will be inconvenienced by travel regardless of whether trial is held in Wichita or Kansas City, though

³ LoganTree also provided this declaration to thwart transfer in an action against FitBit involving the same patent. *See LoganTree, LP v. Fitbit, Inc.*, No. 2:15-cv-1575, ECF. Doc. 42-2 (E.D. Tex. Apr. 21, 2016).

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