

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

B.E. TECHNOLOGY, LLC,)
)
 Plaintiff,)
)
 v.) No.: 2:12-cv-02767-JPM-cgc
)
 AMAZON DIGITAL SERVICES, INC.,)
)
 Defendant.)

ORDER DENYING DEFENDANT'S MOTION TO TRANSFER VENUE

Before the Court is Defendant Amazon Digital Services, Inc.'s ("Defendant" or "Amazon") Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a) and for Expedited Consideration, filed February 12, 2013. (ECF No. 43.) For the reasons that follow, the Motion is DENIED.

I. BACKGROUND

This case concerns Defendant Amazon's alleged infringement of United States Patent No. 6,771,290 (the "'290 patent"). (ECF No. 1.) Plaintiff B.E. Technology, LLC ("Plaintiff" or "B.E."), is the assignee of the '290 patent (ECF No. 46 at 2), currently owning "all right, title, and interest in the '290 patent, and has owned all right, title, and interest throughout the period" of the alleged infringement (ECF No. 1 ¶ 10).

B.E. alleges that Amazon infringed the '290 patent "by using, selling, and offering to sell in the United States tablet

computer products that directly infringe at least Claim 2 of the '290 patent either literally or under the doctrine of equivalents." (Id. ¶ 11.) The Amazon products alleged to infringe the '290 patent include "the Kindle, Kindle Touch, Kindle Touch 3G, Kindle Keyboard 3G, Kindle DX, and Kindle Fire products." (Id.)

B.E. filed a Complaint in this Court on September 7, 2012. (ECF No. 1.) Amazon filed a Motion to Dismiss on January 7, 2013. (ECF No. 32.) Amazon thereafter filed its Motion to Transfer Venue on February 12, 2013. (ECF No. 43.) B.E. filed its Memorandum in Opposition to Defendant's Motion to Transfer Venue on March 1, 2013. (ECF No. 46.) With leave of Court, Amazon filed a Reply Memorandum in Support of Its Motion to Transfer on March 18, 2013. (ECF No. 49.) On February 12, 2013, Amazon filed a Motion to Stay pending resolution of its Motion to Transfer Venue. (ECF No. 44.) The Court granted Amazon's Motion to Stay on February 12, 2013. (ECF No. 45.)

While Amazon is a Delaware corporation with its principal place of business in Seattle, Washington, it seeks to transfer this case to the Northern District of California because the Amazon facilities relevant to this case are located in Cupertino, California, located in the Northern District of California. (See ECF No. 43-1 at 1, 4; Dean Decl., ECF No. 43-2, ¶¶ 2, 4.) To support its Motion, Amazon contends that all

the accused products were developed at its Northern California headquarters. (ECF No. 43-1 at 1.) As a result, the "relevant engineering employees" and the "relevant technical documents and computer source code" are located in the transferee district. (Id.) Further, Amazon asserts that numerous third-party witnesses on whom it intends to rely are also located in or around the Northern District of California. (Id. at 5.)

B.E. opposes Amazon's Motion to Transfer. B.E. is a limited-liability company incorporated in Delaware. (ECF No. 1 ¶ 2.) B.E. was originally registered in Michigan, but formally registered to conduct business in Tennessee in September 2012. (ECF No. 46 at 2.) B.E. contends that Memphis, Tennessee, is its principal place of business. (ECF No. 1 ¶ 2.) Martin David Hoyle ("Hoyle"), B.E.'s founder and CEO, is the named-inventor of the '290 patent. (ECF No. 46 at 1, 2.) Hoyle has been a resident of Tennessee since April, 2006. (Id. at 1, 2.)

B.E. argues that transfer is inappropriate because it has substantial connections with this district. B.E. argues that Hoyle has been "present in this District since 2006," and B.E. "since at least 2008," and this district is B.E.'s principal place of business. (Id. at 5, 7.) B.E. also argues that none of its witnesses are located in the Northern District of California. (Id. at 9.) Further, B.E. argues that its corporate documents, including documents relating to the

"conception and reduction to practice" of the patent-in-suit, are located in this District. (Id. at 8.)

II. STANDARD

Amazon moves the Court to transfer this case to the Northern District of California pursuant to 28 U.S.C. § 1404(a). (ECF No. 43.) The statute provides that "[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). "As the permissive language of the transfer statute suggests, district courts have 'broad discretion' to determine when party 'convenience' or 'the interest of justice' make a transfer appropriate." Reese v. CNH Am. LLC, 574 F.3d 315, 320 (6th Cir. 2009).

In determining whether to transfer a case under § 1404(a), the court must first determine whether the claim could have been brought in the transferee district. 28 U.S.C. § 1404(a) (allowing transfer to any other district in which the claim "might have been brought"). Once the court has made this threshold determination, the court must then determine whether party and witness "convenience" and "the interest of justice" favor transfer to the proposed transferee district. Reese, 574 F.3d at 320; Esperson v. Trugreen Ltd., No. 2:10-cv-02130-STA-cgc, 2010 WL 4362794, at *5 (W.D. Tenn. Oct. 5, 2010), adopted

2010 WL 4337823 (W.D. Tenn. Oct. 27, 2010). In weighing these statutory factors, the court may still consider the private- and public-interest factors set forth in the pre-Section 1404(a) case, Gulf Oil v. Gilbert, 330 U.S. 501, 508-09 (1947), but courts are not burdened with "preconceived limitations derived from the forum non conveniens doctrine." Norwood v. Kirkpatrick, 349 U.S. 29, 31 (1955) (quoting All States Freight v. Modarelli, 196 F.2d 1010, 1011 (3d Cir. 1952)) (internal quotation marks omitted); Esperson, 2010 WL 4362794, at *5. The United States Court of Appeals for the Sixth Circuit has stated that when deciding "a motion to transfer under § 1404(a), a district court should consider the private interests of the parties, including their convenience and the convenience of potential witnesses, as well as other public-interest concerns, such as systemic integrity and fairness, which come under the rubric of 'interests of justice.'" Moore v. Rohm & Haas Co., 446 F.3d 643, 647 n.1 (6th Cir. 2006).

Additionally, the "interest of justice" factor has been interpreted broadly by courts, influenced by the individualized circumstances of each case. The United States Court of Appeals for the Federal Circuit has set forth a non-exhaustive list of pertinent public-interest factors:

The public interest factors include (1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized

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.