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

B.E. TECHNOLOGY, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.: 2:12-cv-02782-JPM-cgc
	)	
PANDORA MEDIA, INC.,	)	
	)	
Defendant.	)	

ORDER DENYING DEFENDANT'S MOTION TO TRANSFER VENUE

Before the Court is Defendant Pandora Media, Inc.'s ("Defendant" or "Pandora") Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a), filed December 26, 2012. (ECF No. 19.) For the reasons that follow, the Motion is DENIED.

I. BACKGROUND

This case concerns Defendant Pandora's alleged infringement of United States Patent No. 6,628,314 (the "'314 patent"). (ECF No. 1.) Plaintiff B.E. Technology, LLC ("Plaintiff or "B.E."), is the assignee of the '314 patent (ECF No. 27 at 2), currently owning "all right, title, and interest in the '314 patent, and has owned all right, title, and interest throughout the period" of the alleged infringement (ECF No. 1 ¶ 10).

B.E. alleges that Pandora infringed the '314 patent "by using a method of providing demographically targeted advertising that directly infringes at least Claim 11 of the '314 patent

either literally or under the doctrine of equivalents." (Id. ¶ 11.)

B.E. filed a Complaint in this Court on September 10, 2012. (ECF No. 1.) Pandora filed its Motion to Transfer Venue on December 26, 2012 (ECF No. 19), and filed its Answer to the Complaint on December 31, 2012 (ECF No. 20). B.E. filed its Response in Opposition to Defendant's Motion to Transfer Venue on January 14, 2013. (ECF No. 27.) With leave of Court, Pandora filed a Reply Memorandum in Support of Its Motion to Transfer on February 1, 2013. (ECF No. 33.) On February 8, 2013, Pandora filed a Motion to Stay pending resolution of its Motion to Transfer Venue. (ECF No. 35.) The Court granted Pandora's Motion to Stay on February 8, 2013. (ECF No. 36.)

Pandora seeks to transfer this case to the Northern District of California, where its headquarters are located. (ECF No. 19-1 at 1.) To support its Motion, Pandora contends that all products and services of which it is alleged to have infringed were developed and have been operated from the Northern District of California. (Id.) Pandora states that its "management, along with it primary research, development, and engineering facilities, are located in the Northern District of California," and that "the vast majority of Pandora's potentially relevant defense witnesses and evidence related to the research, design, and development of the accused

applications, including those whom Pandora anticipates including in its initial disclosure, are located within" the transferee district, as well. (Id. at 3-4.) Further, Pandora asserts that a majority of third-party witnesses on whom it intends to rely are also located in the Northern District of California. (Id. at 1.)

B.E. opposes Pandora'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. 27 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 '314 patent. (ECF No. 27 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 4-5.) B.E. also argues that none of its witnesses are located in the Northern District of California. (Id. at 7.) 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 4, 5, 7.)

II. STANDARD

Pandora moves the Court to transfer this case to the Northern District of California pursuant to 28 U.S.C. § 1404(a). (ECF No. 19-1 at 1.) 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

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