

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

_____	)	
B.E. TECHNOLOGY, LLC,	)	
	)	
Plaintiff,	)	
	)	No.: 2:12-cv-02783-JPM-cgc
vs.	)	
	)	<b>JURY DEMAND</b>
TWITTER, INC.,	)	
	)	
Defendant.	)	
_____	)	

**UNOPPOSED MOTION AND MEMORANDUM FOR LEAVE TO FILE REPLY  
SUPPORTING MOTION TO TRANSFER OF DEFENDANT TWITTER INC.  
(INCLUDING CERTIFICATE OF CONSULTATION)**

Pursuant to this Court’s Local Rule 7.2(c), defendant Twitter, Inc. (“Twitter”) respectfully moves for entry of the accompanying proposed Order, granting leave to file a reply memorandum, not exceeding 10 pages in length, supporting Twitter’s pending motion to transfer venue of this action under 28 U.S.C. 1404. As set forth in the Certificate of Consultation below, plaintiff has advised that while it cannot consent to this motion, it will not oppose it. In further support of the relief sought herein, Twitter respectfully submits the following:

1. This action was commenced on September 7, 2012 (Dkt. 1). Twitter timely responded to the complaint on December 31, 2012 (Dkt. 19). On January 28, 2013, Twitter filed a motion and supporting documents seeking transfer of this action to the Northern District of California under 28 U.S.C. 1404 (Dkt. 30). On February 11, 2013, all proceedings in this case were stayed pending a determination of Twitter’s motion to transfer (Dkt. 32). Plaintiff filed a response opposing Twitter’s motion to transfer on February 14, 2013 (Dkt. 33).

2. The determination of which venue best serves the interests of justice and the convenience of parties and witnesses is among the most important matters the Court will decide in this action. It will determine which Court’s resources will be employed in managing and decid-

ing the case, whether and how the parties may procure relevant evidence, and a potentially extended series of travel and lodging arrangements for a large number of people. Indeed, given the existence of 18 other cases filed by the same plaintiff involving common U.S. patents (as detailed in the transfer motion), the filing of transfer motions in all of the cases, and the relationship of all the motions to the Court's consideration of each, the Court's decision will likely affect an *extremely* large number of people. The issue merits thorough consideration of all relevant facts, arguments, and authorities.

3. As the party moving for transfer, Twitter bears the burden on the underlying motion. Allowing Twitter an opportunity for rebuttal, through a reply memorandum, comports with fair application of that burden.

4. B.E.'s opposition to Twitter's transfer motion includes arguments whose self-contradictory character merits analysis. For example, plaintiff has suggested on the one hand that this action should be consolidated with 18 others, yet addresses the transfer motion as a contest between only two parties' circumstances. While Twitter believes the circumstances tilt strongly in favor of transfer, the Court should have the benefit of full argument on the implications of these matters in the venue transfer context.

5. This action is in an early stage. No Scheduling Order has been entered yet, and proceedings other than this transfer motion have been stayed pending its outcome. The proposed Order on this motion would require defendant to file its reply memorandum within just 7 days from the grant of leave. Allowing these few additional days before the motion is at issue for decision will not materially impede the progress of this action.

6. Like any Section 1404 motion in a case of this type, briefing must address a number of issues and circumstances. While Twitter is committed to its reply being as concise as possible, coverage of the issues meriting a reply appears likely to require more than the 5 pages

normally permitted by Local Rule 7.2(e). This motion respectfully requests authorization to use up to 10 pages for such purpose.

Respectfully submitted,

s/ Glen G. Reid, Jr.  
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Counsel for Defendant  
TWITTER, INC.

### **CERTIFICATE OF CONSULTATION**

The undersigned attorney hereby certifies that prior to the filing of the foregoing motion, multiple consultations were held with Richard Carter, attorney for plaintiff B.E. Technology, to determine whether plaintiff would agree to the relief sought. During that time, the Court granted motions similar to the foregoing in a number of related cases. On February 21, 2013, Mr. Carter informed the undersigned by electronic mail that plaintiff could not consent, but will not oppose this motion.

s/Mark Vorder-Bruegge, Jr.  
Mark Vorder-Bruegge, Jr.

### **CERTIFICATE OF SERVICE**

The foregoing document was filed under the Court's CM/ECF system, automatically effecting service on counsel of record for all other parties who have appeared in this action on the date of such service.

s/ Mark Vorder-Bruegge, Jr.  
Mark Vorder-Bruegge, Jr.

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