

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

B.E. TECHNOLOGY, LLC,)	
)	
Plaintiff,)	Case No. 2:12-cv-02783-JPM-cgc
)	
v.)	JURY DEMAND
)	
TWITTER, INC.,)	
)	
Defendant.)	

**REPLY IN SUPPORT OF DEFENDANT TWITTER INC.'S
MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)**

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I. INTRODUCTION

B.E. does not dispute that Twitter, all of its witnesses, and all of its documents are located in the Northern District of California. B.E. also does not dispute that the majority of the other 18 defendants it sued in this district are located in the Northern District of California, and none of the defendants are located in Tennessee or have any evidence here. B.E. even admits that it registered to do business in Tennessee because it decided to file lawsuits here, and it has no offices or other business operations in the State. To establish an illusion of its presence in Tennessee, however, B.E. relies on the personal residence of the named inventor of the asserted patent. But the inventor's personal residence does not and cannot establish any required presence of B.E., the company, in this district. It would be grossly unfair to subject Twitter and all its witnesses, along with the 18 other defendants, to endure the significant inconvenience of litigating in this district simply because one witness resides here.

II. ARGUMENT

A. B.E.'s Choice of Forum Is Not Entitled to Deference.

B.E. contends that its choice of the Western District of Tennessee is entitled to "substantial weight" and that Twitter has the burden to show "that the balance of convenience strongly favors transfer." (Dkt. No. 33 ("Opp.") at 3-6.) This is no longer the applicable standard in the Sixth Circuit. In *Norwood v. Kirkpatrick*, the Supreme Court found that movants under Section 1404(a) should not to be held to the higher "strongly in favor" standard applicable to the *forum non conveniens* doctrine. 349 U.S. 29, 39-40 (1955). Following that decision, courts in the Sixth Circuit have recognized that the only appropriate inquiry is whether the movant's proposed forum is "more convenient *vis a vis* the plaintiff's initial choice." *See, e.g., Riley v. Cochrane Furniture Co.*, No. 94-cv-71016, No. 1994 U.S. Dist. LEXIS 12059, at *5 (E.D. Mich. July 7, 1994) (*following Norwood v. Kirkpatrick*, 349 U.S. 29 (1955)); *Morris v.*

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