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)

Glen G. Reid, Jr. (#8184)
greid@wyattfirm.com
Mark Vorder-Bruegge, Jr. (#06389)
mvorder-bruegge@wyattfirm.com
WYATT, TARRANT & COMBS, LLP
The Renaissance Center
1715 Aaron Brenner Dr., Suite 800
Memphis, TN 38120-4367
(901) 537-1000

Counsel for Defendant
TWITTER, INC.

J. David Hadden
dhadden@fenwick.com
Darren F. Donnelly
ddonnelly@fenwick.com
Saina S. Shamilov
sshamilov@fenwick.com
Ryan J. Marton
rmarton@fenwick.com
Clifford Web
cweb@fenwick.com
Justin Hulse
jhulse@fenwick.com
FENWICK & WEST LLP
801 California Street, 6th Floor
Mountain View, CA 94041
(650) 988-8500

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(CONTINUED)

Pages(s)

RULES

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.*

DOCKET ALARM

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.