

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

B.E. TECHNOLOGY, LLC,

Plaintiff,

V.

TWITTER, INC.,

Defendant.

Case No. 2:12-cv-02783-JPM-cgc

## JURY DEMAND

**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, 6<sup>th</sup> Floor  
Mountain View, CA 94041  
(650) 988-8500

**TABLE OF CONTENTS**

	<b>Page</b>
I. INTRODUCTION .....	1
II. ARGUMENT .....	1
A. B.E.'s Choice of Forum Is Not Entitled to Deference. ....	1
B. The Private Interest Factors Favor Transfer to the Northern District of California.....	3
1. Nearly All of the Documents Relevant to This Case Are Located in the Northern District of California.....	3
2. The Vast Majority of Witnesses Are Located in the Northern District of California. ....	5
3. The Availability of Compulsory Process to Secure the Attendance of Third Party Witnesses Favors Transfer.....	7
4. There Are No Practical Problems that Outweigh the Significant Benefits of Transfer. ....	8
C. The Public Interest Factors Favor Transfer.....	9
III. CONCLUSION.....	10

**TABLE OF AUTHORITIES****Page(s)****CASES**

<i>Adoma v. Univ. of Phoenix, Inc.</i> , 711 F. Supp. 2d 1142 (E.D. Cal. 2010).....	7
<i>Cover v. Albany Law School of Union Univ.</i> , No. 04 Civ. 0643, 2005 U.S. Dist. LEXIS 13669 (S.D.N.Y. July 8, 2005) .....	6
<i>Droplets, Inc. v. Amazon.com, Inc.</i> , No. 2:11-CV-392, 2012 WL 3578605 (E.D. Tex. June 27, 2012) .....	8
<i>Esperson v. TruGreen Ltd. P'ship</i> , No. 2:10-cv-02130, 2010 WL 4362794 (W.D. Tenn. Oct. 5, 2010).....	2
<i>Functional Pathways of Tenn., LLC v. Wilson Senior Care, Inc.</i> , 866 F. Supp. 2d 918 (E.D. Tenn. 2012).....	2
<i>Hunter Fan Co. v. Minka Lighting, Inc.</i> , No. 06-2108, 2006 WL 1627746 (W.D. Tenn. June 12, 2006) .....	2
<i>In re Acer Am. Corp.</i> , 626 F.3d 1252 (Fed. Cir. 2010).....	4
<i>In re Genentech, Inc.</i> , 566 F.3d 1338 (Fed. Cir. 2009).....	5
<i>In re Hoffman-La Roche, Inc.</i> , 587 F.3d 1333 (Fed. Cir. 2009).....	10
<i>In re Link A Media Devices Corporation</i> , 662 F.3d 1221 (Fed. Cir. 2011).....	5
<i>In re Microsoft Corp.</i> , 630 F.3d 1361 (Fed. Cir. 2011).....	7
<i>In re Volkswagen of Am., Inc.</i> , 545 F.3d 304 (Fed. Cir. 2008) ( <i>en banc</i> ) .....	5
<i>MBCP Peerlogic LLC v. Critical Path, Inc.</i> , No. 02 Civ. 3310, 2002 U.S. Dist. LEXIS 23268 (S.D.N.Y. Dec. 5, 2002).....	6

**TABLE OF AUTHORITIES**  
**(CONTINUED)**

	<b>Pages(s)</b>
<i>Morris v. Mid-Century Ins. Co.</i> , No. 4:11-cv-1836, 2012 U.S. Dist. LEXIS 60246 (N.D. Ohio Apr. 30, 2012) .....	1
<i>Nationwide Life Ins. Co. v. Koresko</i> , No. 2:05CV1066, 2007 WL 2713783 (S.D. Ohio Sep. 14, 2007) .....	5
<i>Nilssen v. Everbrite, Inc.</i> , No. Civ.A. 00-189-JJF, 2001 WL 34368396 (D. Del. Feb. 16, 2001) .....	5
<i>Norwood v. Kirkpatrick</i> , 349 U.S. 29 (1955) .....	1, 2
<i>Precision Franchising, LLC v. Coombs</i> , No. 1:06-cv-1148, 2006 WL 3840334 (E.D. Va. Dec. 27 2006) .....	4
<i>Riley v. Cochrane Furniture Co.</i> , No. 94-cv-71016, No. 1994 U.S. Dist. LEXIS 12059 (E.D. Mich. July 7, 1994) .....	1
<i>Rinks v. Hocking</i> , No. 1:10-cv-1102, 2011 WL 691242 (W.D. Mich. Feb 16, 2011) .....	5
<i>Tuna Processors, Inc. v. Hawaii Int'l Seafood, Inc.</i> , 408 F. Supp. 2d 358 (E.D. Mich. 2005) .....	2
<i>U.S. Ethernet Innovations, LLC v. Acer, Inc.</i> , No. 6:09-cv-448-JDL, 2010 WL 2771842 (E.D. Tex. July 13, 2010) .....	8
<i>Union Planters Bank N.A. v. EMC Mort. Corp.</i> , 67 F. Supp. 2d 915 (W.D. Tenn. 1999) .....	2
<i>United States ex rel. Kairos Scientia, Inc. v. Zinsser Co.</i> , No. 5:10-CV-383, 2011 WL 127852 (N.D. Ohio Jan. 14, 2011) .....	9
 <b>RULES</b>	
Local Patent Rule 3.2(b) .....	4

## 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.*

# 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.