



that directly infringe 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.) Twitter filed its Answer and Counterclaim on December 31, 2012. (ECF No. 19.) Twitter thereafter filed its Motion to Transfer Venue on January 28, 2013. (ECF No. 30.) B.E. filed its Memorandum in Opposition to Defendant's Motion to Transfer Venue on February 14, 2013. (ECF No. 33.) With leave of Court, Twitter filed a Reply Memorandum in Support of Its Motion to Transfer on March 4, 2013. (ECF No. 36.) On February 11, 2013, Twitter filed a Motion to Stay pending resolution of its Motion to Transfer Venue. (ECF No. 31.) The Court granted Twitter's Motion to Stay on February 11, 2013. (ECF No. 32.)

Twitter is a Delaware corporation with its principal place of business in San Francisco, California, located in the Northern District of California. (See Axelsen Decl., ECF No. 30-3, ¶ 4; ECF No. 30-1 at 1.) To support its Motion, Twitter contends that all its relevant employees and its "relevant technical documents and evidence" are located in the transferee district. (ECF No. 30-1 at 1.) Further, Twitter asserts that numerous third-party witnesses on whom it intends to rely are also located in or around the Northern District of California. (Id. at 5.)

B.E. opposes Twitter'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. 33 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. 33 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 5.) B.E. also argues that none of its witnesses are located in the Northern District of California. (Id. at 8.) 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 6.)

## **II. STANDARD**

Twitter moves the Court to transfer this case to the Northern District of California pursuant to 28 U.S.C. § 1404(a). (ECF No. 30.) 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 interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflicts of laws or in the application of foreign law.

In re Acer Am. Corp., 626 F.3d 1252, 1254 (Fed. Cir. 2010); see also In re Nintendo Co., Ltd., 589 F.3d 1194, 1198 (Fed. Cir. 2009) (finding the local-interest factor weighed heavily in favor of transfer); Cincinnati Ins. Co. v. O’Leary Paint Co., 676 F. Supp. 2d 623, 633 (W.D. Mich. 2009) (considering

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