

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

B.E. Technology, L.L.C.,

Plaintiff,

v.

**Sony Computer Entertainment America,
LLC,**

Defendant.

Civil Action No. 12-cv-02826-JPM-tmp

B.E. Technology, L.L.C.,

Plaintiff,

v.

Sony Mobile Communications (U.S.A.) Inc.,

Defendant.

Civil Action No. 12-cv-02827-JPM-tmp

B.E. TECHNOLOGY, L.L.C.,

Plaintiff,

v.

Sony Electronics Inc.

Defendant.

Civil Action No. 12-cv-02828-JPM-tmp

**REPLY IN SUPPORT OF DEFENDANTS SONY COMPUTER ENTERTAINMENT
AMERICA LLC, SONY MOBILE COMMUNICATIONS (U.S.A.) INC., AND SONY
ELECTRONICS INC.'S MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. §
1404(A) TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA**

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I. INTRODUCTION

Sony files this Reply in response to Plaintiff B.E. Technology, L.L.C.'s ("BET") Memorandum in Opposition ("BET's Opposition") to Defendants Sony Computer Entertainment America LLC's ("SCEA"), Sony Mobile Communications (U.S.A.) Inc.'s ("SoMC"), and Sony Electronics Inc.'s ("SEL") (collectively "Sony") Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a) ("Motion to Transfer") because BET's Opposition (1) argues for the application of the incorrect legal standards for determining whether to grant a motion to transfer and contravenes Federal Circuit precedent, (2) presents facts that are contradicted by BET's own Federal and State filings, and (3) does not dispute facts that favor transfer, including that important non-party witnesses are subject to compulsory process only in the Northern District of California.

BET ignores established case law from this District holding that a plaintiff's choice of forum is not entitled to deference where, as here, there is little or no connection to the chosen forum. In addition, BET outright contravenes Federal Circuit case law holding that the location of documentary evidence is an important factor in determining motions to transfer.

Moreover, BET's Opposition is based on its uncorroborated claim that this District is the location of BET and Mr. Hoyle, its CEO. This claim is contradicted by BET's own representations in recent government filings. First, in BET's application to conduct business in the State of Tennessee, BET stated that it had not done any business in the state prior to September 2012. Second, in a December 2011 patent application filed with the U.S. Patent and Trademark Office, BET listed its contact address as being in Michigan, and listed Mr. Hoyle as a resident of New Orleans, Louisiana. Even if Mr. Hoyle is in Tennessee, he is not the plaintiff; BET is.

Regardless, the balance of the private and public interests still weighs strongly in favor of transfer to the Northern District of California. BET does not seriously dispute that companies likely to be sources of prior art are located in or near the Northern District of California and that many non-party witnesses would be subject to compulsory process only in the Northern District of California. BET also does not dispute (1) that most of the Sony witnesses with relevant knowledge of the accused products are located in or near the Northern District of California or overseas, (2) that SCEA is headquartered in the Northern District of California and does not have any offices or other facilities in the Western District of Tennessee, (3) that SEL and SoMC have significant presences and maintain large facilities in the Northern District of California and do not have any offices or other facilities in the Western District of Tennessee, (4) that Sony maintains the vast majority of documents relating to the accused products in or near the Northern District of California or overseas, and (5) that the headquarters of most of the defendants in related actions are in or near the Northern District of California.

Because nearly all relevant information in the present cases is in the Northern District of California, and not Tennessee, Sony respectfully requests that the Court grant Sony's Motion to Transfer Venue to the Northern District of California.

II. BET'S CHOICE OF FORUM IS NOT ENTITLED TO DEFERENCE

A. BET Argues The Wrong Legal Standard for Transfer

While BET argues that "plaintiff's choice of forum is entitled to substantial weight," *see* BET Opposition at 5 (citing *Hunter Fan Co. v. Minka Lighting, Inc.*, No. 06-2108 M1/P, 2006 WL 1627746, at *2 (W.D. Tenn. June 12, 2006)), BET ignores another principle from the same case that states that "Plaintiff's choice of forum is not entitled to the ordinary degree of deference [where] plaintiff maintains little connection to [its chosen forum]." *Hunter Fan Co.*, 2006 WL 1627746, at *2. In fact, more recent case law has followed that very principle. *Esperson v.*

Truegreen Ltd. P'ship, No. 2:10-cv-02130, 2010 WL 4362794, at *4 (W.D. Tenn. Oct. 5, 2010) (“courts in this circuit do not assign plaintiff’s choice [of forum] paramount importance.” (internal quotation omitted)), *adopted* 2010 WL 4337823 (W.D. Tenn. Oct. 27, 2010) (granting motion to transfer). As discussed below, BET has little or no connection to this forum, and accordingly, their choice of forum should not be given substantial weight. *Infra*, II.B.

B. The Western District of Tennessee Is Not BET’s Home Forum

The Western District of Tennessee is not BET’s home forum, as evidenced by BET’s own filings with the State of Tennessee, and the United States Patent and Trademark Office. While BET’s Opposition argues that this District is BET’s home forum as purportedly evidenced by the residential history of Mr. Hoyle, BET’s September, 2012 filing with the Tennessee Department of State indicates that Mr. Hoyle is but one of 74 members of BET. *See* Ex. A. , Furthermore, Mr. Hoyle is not himself the plaintiff in this action. Moreover, contrary to Mr. Hoyle’s claim that “[s]ince being appointed Chief Executive Officer, [he has] been the only member of [BET] with management responsibilities,” *see* BET’s Opposition, Ex. 2 (“Hoyle Decl.”) at ¶ 6, in 2009, an individual named Mark McKinley signed a BET Annual Statement, and identified his position as “Managing Member.” *See* Ex. B. Mark McKinley does not reside in Tennessee. *See* Ex. C. In addition, BET admits that it first applied to conduct business in the State of Tennessee in September 2012, and does not claim to have any customers, facilities, or employees other than Mr. Hoyle in this District.

<p>6. The number of members at the date of filing if more than six (6): <u>74</u> BET’s September 9, 2012 Application with the Tennessee Department of State. Ex. A.</p>
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Throughout BET’s Opposition, BET argues that it has been located in the Western District of Tennessee since at least 2008. *See, e.g.*, BET’s Opposition at 1, 5, 6, 7, 8. However, BET’s argument is plainly contradicted by its September 2012 application to conduct business in

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