IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

B.E. TECHNOLOGY, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.: 2:12-cv-02829-JPM-tmp
	)	
MICROSOFT CORPORATION,	)	
	)	
Defendant.	)	

ORDER DENYING MOTION TO TRANSFER VENUE

Before the Court is Defendant Microsoft Corporation's ("Defendant" or "Microsoft") Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a), filed January 18, 2013. (ECF No. 30.) For the reasons that follow, the Motion is DENIED.

I. BACKGROUND

This case concerns Defendant Microsoft's alleged infringement of United States Patent No. 6,628,314 (the "'314 patent") and United States Patent No. 6,771,290 (the "'290 patent"). (ECF No. 1.) Plaintiff B.E. Technology, LLC ("Plaintiff or "B.E.") is the assignee of both the '314 and '290 patents (ECF No. 38 at 2), currently owning "all right, title, and interest throughout the period of the infringement" in the respective patents (ECF No. 1 ¶¶ 13, 16).

B.E. alleges that Microsoft infringed the '314 patent "by using a method of providing demographically targeted advertising

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that directly infringes at least Claim 11 of the '314 patent either literally or under the doctrine of equivalents." (Id. ¶ 14.) Further, B.E. alleges that Microsoft infringed the '290 patent "by using, selling, and offering to sell in the United States tablet computer products that directly infringe at least Claim 2 of the '290 patent either literally or under the doctrine of equivalents." (Id. ¶ 17.)

B.E. filed a Complaint in this Court on September 21, 2012. (ECF No. 1.) Microsoft filed its Answer to the Complaint on December 31, 2012 (ECF No. 27), and its Motion to Transfer Venue on January 18, 2013 (ECF No. 30). B.E. filed its Memorandum in Opposition to Defendant's Motion to Transfer Venue on February 4, 2013. (ECF No. 38.) With leave of Court, Microsoft filed a Reply Memorandum in Support of Its Motion to Transfer on February 21, 2013. (ECF No. 45.) On February 8, 2013, Microsoft filed a Motion to Stay pending resolution of its Motion to Transfer Venue. (ECF No. 40.) The Court granted Microsoft's Motion to Stay on February 11, 2013. (ECF No. 41.)

Microsoft seeks to transfer this case to the Western District of Washington, or, in the alternative, to the Northern District of California. (ECF No. 30 at 1.) To support its Motion, Microsoft contends that "the vast majority of witnesses, documents, and other physical evidence are expected to be located in the Western District of Washington and the Northern

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District of California, where Microsoft has operations relevant to the accused products." (ECF No. 30-1 at 1.) Further, Microsoft asserts that "various third-party prior art witnesses will be located in Northern California," and "a number of the engineers that worked on" Microsoft's MSN Services and are potential witnesses, but are no longer employed by Microsoft, "may reside in the Western District of Washington." (Id. at 10 n.5.)

B.E. opposes Microsoft'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. 38 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. 38 at 1, 2.) Hoyle asserts he has been a resident of Tennessee since April, 2006. (Id.)

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 that this district is B.E.'s principal place of business. (Id. at 5.) B.E. also argues that its corporate documents, including documents relating to the

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"conception and reduction to practice" of the patent-in-suit, are located in this District. (Id. at 5.)

II. STANDARD

Microsoft moves the Court to transfer this case to the Western District of Washington, or, alternatively, to the Northern District of California, pursuant to 28 U.S.C. § 1404(a). (ECF No. 30 at 1.) 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-

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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:

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