

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

B.E. TECHNOLOGY, L.L.C.,)
)
 Plaintiff/Counter-Defendant,)
)
 v.)
)
 PEOPLE MEDIA, INC.,)
)
 Defendant/Counterclaimant.)
)
 _____)

Case No. 2:12-cv-02833-JPM tmp
JURY DEMAND
REQUEST HEARING ON MOTION

**PLAINTIFF’S MEMORANDUM IN OPPOSITION TO DEFENDANT’S
MOTION TO TRANSFER VENUE**

Dated: February 22, 2013

Richard M. Carter (TN B.P.R. #7285)
Adam C. Simpson (TN B.P.R. #24705)
MARTIN, TATE, MORROW & MARSTON, P.C.
6410 Poplar Avenue, Suite 1000
Memphis, TN 38119-4839
Telephone: (901) 522-9000

Robert E. Freitas (CA Bar No. 80948)
Craig R. Kaufman (CA Bar No. 159458)
Daniel J. Weinberg (CA Bar No. 227159)
James Lin (CA Bar No. 241472)
Qudus B. Olaniran (CA Bar No. 267838)
FREITAS TSENG & KAUFMAN LLP
100 Marine Parkway, Suite 200
Redwood Shores, CA 94065
Telephone: (650) 593-6300

Attorneys for Plaintiff
B.E. Technology, L.L.C.

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. STATEMENT OF FACTS	2
A. B.E. Technology, L.L.C.....	2
B. B.E. v. People Media	3
III. THE LAW GOVERNING MOTIONS TO TRANSFER.....	3
IV. TRANSFER IS NOT APPROPRIATE	4
A. B.E.’s Choice of Forum is Entitled to Substantial Weight	4
B. Private Factors Favor B.E.’s Choice of Forum.....	8
1. Convenience of the Parties Weighs Against Transfer	8
2. Convenience of the Witnesses Weighs Against Transfer	9
a. Party Witnesses.....	10
b. Non-Party Witnesses.....	12
3. Location of Sources of Proof	14
4. People Media Would Not Be Materially Burdened Bearing The Expense of Litigating in the Western District of Tennessee.....	16
C. Public Factors Favor B.E.’s Choice of Forum.....	16
1. Transfer to the Northern District of California and the Northern District of Texas Would Delay Trial	16
2. The Western District of Tennessee Has a Substantial Local Interest in the Vindication of B.E.’s Patent Rights.....	17
V. REQUEST FOR ORAL ARGUMENT	18
VI. CONCLUSION.....	20

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Adoma v. Univ. of Phoenix, Inc.,
711 F. Supp. 2d 1142 (E.D. Cal. 2010).....10

American S.S. Owners Mut. Prot. & Indem. Ass’n, Inc. v. Lafarge North Am., Inc.,
474 F. Supp. 2d 474 (S.D.N.Y. 2002).....15

Board of Trs. v. Baylor Heading & Air Conditioning, Inc.,
702 F. Supp. 1253 (E.D. Va. 1988)10

Cincinnati Ins. Co. v. O’Leary Paint Co.,
676 F. Supp. 2d 623 (W.D. Mich. 2009)15

E2Interactive, Inc. v. Blackhawk Network, Inc.,
2010 WL 3937911 (W.D. Wis. Oct. 6, 2010).....17

Ellipsis, Inc. v. Colorworks, Inc.,
329 F. Supp. 2d 962 (W.D. Tenn. 2004).....16

Esperson v. Trugreen Ltd. P’ship,
2010 WL 4362794 (W.D. Tenn. Oct. 5, 2010).....11, 13, 16, 17

Hanning v. New England Mut. Life Ins. Co.,
710 F. Supp. 213 (S.D. Ohio 1989)5

In re Hoffman-La Roche, Inc.,
587 F.3d 1333 (Fed. Cir. 2009).....7, 8

Hunter Fan Co. v. Minka Lighting, Inc.,
2006 WL 1627746 (W.D. Tenn. June 12, 2006) (McCalla, J.) *passim*

Imagepoint, Inc. v. Keyser Indus., Inc.,
2005 WL 1242067 (E.D. Tenn. May 25, 2005).....4, 5

Innogenetics, N.V. v. Abbott Labs,
512 F.3d 1363 (Fed. Cir. 2008).....12

Kerobo v. Southwestern Clean Fuels Corp.,
285 F.3d 531 (6th Cir. 2002)3

Koh v. Microtek Int’l, Inc.,
250 F. Supp. 2d 627 (E.D. Va. 2003)10

TABLE OF AUTHORITIES
(CONT.)

	Page(s)
Federal Cases	
<i>In re Link_A_Media Devices Corp.</i> , 662 F.3d 1221 (Fed. Cir. 2011).....	15
<i>Lucent Techs., Inc. v. Aspect Telecomms. Corp.</i> , 1997 WL 476356 (E.D. Pa. Aug. 20, 1997)	8, 9
<i>Max Rack, Inc. v. Hoist Fitness Sys., Inc.</i> , 2006 WL 640497 (S.D. Ohio March 10, 2006)	14, 15
<i>MCNIC Oil & Gas Co. v. IBEX Resources Co., L.L.C.</i> , 23 F. Supp. 2d 729 (E.D. Mich. 1998).....	4
<i>In re Microsoft Corp.</i> , 630 F.3d 1361 (Fed. Cir. 2011).....	6, 7
<i>Moses v. Business Card Express, Inc.</i> , 929 F.2d 1131 (6th Cir. 1991)	4
<i>Nationwide Mut. Life Ins. v. Koresko</i> , 2007 WL 2713783 (S.D. Ohio Sept. 14, 2007)	3, 15
<i>Parsons v. Chesapeake & Ohio Ry. Co.</i> , 375 U.S. 71 (1963).....	17
<i>Plough, Inc. v. Allergan, Inc.</i> , 741 F. Supp. 144 (W.D. Tenn. 1990).....	3, 4
<i>Returns Distribution Spec., LLC v. Playtex Prods., Inc.</i> , 2003 WL 21244142 (W.D. Tenn. May 28, 2003)	4
<i>Rinks v. Hocking</i> , 2011 WL 691242 (W.D. Mich. Feb. 16, 2011).....	<i>passim</i>
<i>Roberts Metals, Inc. v. Florida Props. Mktg. Grp., Inc.</i> , 138 F.R.D. 89 (N.D. Ohio 1991)	11, 13
<i>Samsung Elecs. Co. v. Rambus, Inc.</i> , 386 F. Supp. 2d 708 (E.D. Va. 2005)	10

TABLE OF AUTHORITIES
(CONT.)

Page(s)

Federal Cases

<i>Siteworks Solutions, LLC v. Oracle Corp.</i> , 2008 WL 4415075 (W.D. Tenn. Sept. 22, 2008).....	16
<i>Stewart Organization, Inc. v. Ricoh Corp.</i> , 487 U.S. 22 (1988).....	4
<i>Tuna Processors, Inc. v. Hawaii Int’l Seafood</i> , 408 F. Supp. 2d 358 (E.D. Mich. 2005).....	4
<i>Van Dusen v. Barrack</i> , 376 U.S. 612 (1964).....	4
<i>Viron Int’l Corp. v. David Boland, Inc.</i> , 237 F. Supp. 2d 812 (W.D. Mich. 2002)	10, 11
<i>In re Zimmer Holdings</i> , 609 F.3d 1378 (Fed. Cir. 2010).....	8

Federal Statutes

28 U.S.C. § 1404.....	2
28 U.S.C. § 1404(a)	3

Rules

Fed. R. Civ. P. 45(b)(2).....	13
-------------------------------	----

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.