IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GODO KAISHA IP BRIDGE 1	§	
	§	
v.	§	Case No. 2:16-CV-0134-JRG-RSP
	§	
BROADCOM LIMITED, ET AL.	§	

MEMORANDUM ORDER

Before the Court is Defendants Broadcom Ltd., Broadcom Corp., Avago Technologies Ltd., Avago Technologies U.S. Inc., and LSI Corporation ("Defendants")'s Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a) (Dkt. No. 64), specifically to the Northern District of California, to which Plaintiff Godo Kaisha IP Bridge 1 ("GK") filed a Response in Opposition (Dkt. No. 97), Defendants filed a Reply (Dkt. No. 101) and GK filed a Sur-Reply (Dkt. No. 104).

I. BACKGROUND

Plaintiff GK is a Japanese company with its principal place of business located in Tokyo. (Dkt. No. 42 at 2, para. 2). Defendants Broadcom Ltd., Avago Ltd., and Avago U.S. all have principal places of business in San Jose, California, Defendant LTI has its principal place of business in Milpitas, California, and Defendant Broadcom Corp. has its principal place of business in Irvine, California. *Id.* at 2-3, paras. 3-7.

In its Amended Complaint (Dkt. No. 42), GK accuses Defendants of infringing six patents: U.S. Patent Nos. 6,538,324 ("the '324 patent"), 6,197,696 ("the '696 patent"), RE41,980 ("the '980 patent"), 7,126,174 ("the '174 patent"), 8,354,726 ("the '726 patent"), RE43,729 ("the '729 patent") ("the Asserted Patents").

Five of these patents – the '324 patent, '696 patent, the '980 patent, the '174 patent, and the '726 patent ("the Fabrication Patents") – are directed to semiconductor structures and

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manufacturing processes. (Dkt. No. 42 at FAC at 12-30, paras. 42, 52, 62, 72, 82.) The sixth patent – the '729 patent ("the Processor Patent") – is directed to processor instruction sets. *Id.* at 32-33, para. 92. All of the Asserted Patents were originally assigned to either Panasonic Corp. or NEC Corp., which are both Japanese companies with headquarters in Japan. (Dkt. No. 64 at 2-3). GK now owns the Asserted Patents. (Dkt. No. 42 at 2, para. 2).

II. RELEVANT LAW

28 U.S.C. § 1404(a) provides that "[f]or the convenience of 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) (2006). The first inquiry when analyzing a case's eligibility for § 1404(a) transfer is "whether the judicial district to which transfer is sought would have been a district in which the claim could have been filed." *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) ("*Volkswagen I*").

Once that threshold is met, courts analyze both public and private factors relating to the convenience of parties and witnesses as well as the interests of particular venues in hearing the case. *See Humble Oil & Ref. Co. v. Bell Marine Serv., Inc.*, 321 F.2d 53, 56 (5th Cir. 1963); *In re Nintendo Co., Ltd.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009); *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2009).

The private factors are: (1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious, and inexpensive. *Volkswagen I*, 371 F.3d at 203; *Nintendo*, 589 F.3d at 1198; *TS Tech*, 551 F.3d at 1319. The public factors are: (1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the

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familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws or in the application of foreign law. *Volkswagen I*, 371 F.3d at 203; *Nintendo*, 589 F.3d at 1198; *TS Tech*, 551 F.3d at 1319.

The plaintiff's choice of venue is not a factor in this analysis. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 314-15 (5th Cir. 2008) ("*Volkswagen II*"). Rather, the plaintiff's choice of venue contributes to the defendant's burden of proving that the transferee venue is "clearly more convenient" than the transferor venue. *Volkswagen II*, 545 F.3d at 315; *Nintendo*, 589 F.3d at 1200; *TS Tech*, 551 F.3d at 1319. Furthermore, though the private and public factors apply to most transfer cases, "they are not necessarily exhaustive or exclusive," and no single factor is dispositive. *Volkswagen II*, 545 F.3d at 314-15. Timely motions to transfer venue should be "should [be given] a top priority in the handling of [a case]," and "are to be decided based on 'the situation which existed when suit was instituted.'" *In re Horseshoe Entm't*, 337 F.3d 429, 433 (5th Cir. 2003); *In re EMC Corp.*, Dkt. No. 2013-M142, 2013 WL 324154 (Fed. Cir. Jan. 29, 2013) (quoting *Hoffman v. Blaski*, 363 U.S. 335, 443 (1960)).

III. ANALYSIS

A threshold issue in the §1404(a) analysis is "whether the judicial district to which transfer is sought would have been a district in which the claim could have been filed." *Volkswagen I*, 371 F.3d at 203. In a patent infringement action, venue is proper in "the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400(b).

Defendants argue that there is no question that this case could have been brought in the Northern District of California because each of the Defendants is subject to personal jurisdiction in that venue: specifically, four of the Defendants – Broadcom Ltd., Avago Ltd., Avago U.S.,

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and LSI – have headquarters in or near San Jose, which is within the Northern District of California – and Defendant Broadcom Corp. is a California corporation with its headquarters also in California, specifically Irvine, California, such that a civil action under 28 U.S.C. § 1391(b)(1) can be brought in the Northern District of California, "a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located." (Dkt. No. 64 at 5-6).

GK contends that transfer is not warranted here because Defendants "substantially and inexcusably delayed filing their motion more than six months after this case was filed, a week after the close of claim construction discovery, and just one week before the deadline for the substantial completion of document production and submission of opening claim construction briefs." (Dkt. No. 97 at 1). However, because this issue involves the timing of motion practice within the overall schedule of a case, the Court will address the date when Defendants filed their present Motion to Transfer (Dkt. No. 64) when it reaches analysis of the fourth private factor ("all other practical problems that make trial of a case easy, expeditious, and inexpensive.").

In addition, GK asserts that Defendant's Motion to Transfer (Dkt. No. 64) must be denied because Defendants have failed to carry their significant burden of demonstrating that the Northern District of California is the "clearly more convenient" forum. (Dkt. No. 97 at 1, 4-5).

As a threshold matter, the Court finds that the suit could have been filed in the Northern District of California. Thus, the Court will now turn to weighing the private and public interest factors in order to ascertain if transfer to the Northern District of California is warranted here.

A. Private Interest Factors

1. Relative Ease of Access to Sources of Proof

"In patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer. Consequently, the place where the defendant's documents are kept weighs in

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favor of transfer to that location." *In re Genentech, Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009) (citation omitted). This factor is still to be weighed, regardless of whether the documents are in electronic form and can be easily transported. *See Kroy IP Holdings, LLC v. Starbucks Corp., Inc.*, No. 2:13-cv-936-JRG, 2014 WL 5343168, at *2 (E.D. Tex. Sept. 30, 2014) ("Despite technological advances in transportation of electronic documents, physical accessibility to sources of proof continues to be weighed as a private interest factor… Indeed, the Federal Circuit has indicated that access to an alleged infringer's proof is important to venue transfer analyses in patent infringement cases."). However, this factor may be accorded less weight if the documents are in easily-transportable electronic form. *See Rembrandt Patent Innovations, LLC v. Apple, Inc.*, No. 2:14-cv-0015-JRG, 2014 WL 3835421, at *2 (E.D. Tex. Aug. 1, 2014) ("[G]iven the ease in the modern era of transferring electronic data from one place to another, this factor weighs only slightly in [The Court]'s decision.").

Defendants contend that a significant portion of the relevant documents and things necessary to resolve this case (e.g. relevant documents and evidence regarding the structure, operation, function, marketing and sales – including financials – of the accused products) are located in the Northern District of California, where four of the Defendants maintain their corporate headquarters. (Dkt. No. 64 at 10). Defendants also argue that the Northern District of California provides easier access to such documents and evidence for Defendant Broadcom Corp., which is located in Irvine, California. *Id.*

Defendants state that they do not manufacture any of the accused devices, but rather purchase them from third-party "foundries" which manufacture them outside the U.S. and which include GlobalFoundries Inc., Taiwan Semiconductor Manufacturing Company Ltd. ("TSMC"), Semiconductor Manufacturing International Corp. ("SMIC") and United Microelectronics

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