

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FRONT ROW TECHNOLOGIES, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:12-CV-1639-K
	§	
MLB ADVANCED MEDIA, L.P., ET AL.,	§	
	§	
Defendants.	§	

ORDER

Before the court is Defendants’ Motion to Transfer Venue, filed October 12, 2012. The court has carefully considered the motion, response, reply, the record in this case, and the applicable law. For the reasons that follow, the motion to transfer is **granted**.

I. Factual and Procedural Background

This case is a patent infringement dispute related to certain wireless transmission of video data to handheld devices. Plaintiff Front Row Technologies, LLC (“Front Row”) has obtained several patents that flow from a patent application that was originally filed on November 8, 2000 (“the ‘776 Application”). The ‘776 Application was granted as U.S. Patent No. 7,149,549 (“the ‘549 Patent”), and Front Row subsequently filed several continuation applications related to the ‘776 Application. These additional applications were granted as the ‘388, ‘426, ‘877 and ‘321 Patents.

In May 2010, Front Row filed a patent infringement suit against Defendant MLB Advanced Media, L.P. (“MLBAM”) and Major League Baseball Properties, Inc. (“MLBP”) in the United States District Court for the District of New Mexico. (The “New Mexico case”). NBA Media Ventures, LLC (“NBA”) was later added as a defendant to the New Mexico case. That case asserts claims based on the ‘549, ‘388, ‘426, and ‘877 Patents. In the New Mexico case, the parties agreed that the District of New Mexico is an appropriate venue. The New Mexico case is currently stayed because the four patents sued on are in the process of *inter partes* reexaminations before the USPTO.

The ‘321 Patent is was granted in January 2012, and is the patent asserted in this case. The ‘321 Patent is part of the same patent family as the four patents asserted in the New Mexico case and is a continuation of the ‘766 Application. The specification and claims of all five patents are very similar and share several of the same claim terms. Front Row filed this suit against MLBAM, Mercury Radio Arts, Inc., and GBTV, LLC (“Mercury/GBTV”) on May 25, 2012. Front Row then added Premiere Radio Networks, Inc. (“PRN”) as a defendant on June 13, 2012. After Defendants moved to transfer this case to the District of New Mexico under 28 U.S.C. § 1404(a), and while briefing on the motion was underway, Front Row filed a notice of dismissal without prejudice in the New Mexico litigation in early November 2012, dropping MLBAM and MLBP as parties to that case.

A venue determination is a largely fact-dependent inquiry. Rather than set forth the remaining facts in detail here and then repeat them in its legal analysis, the court will, in the interest of efficiency and brevity, discuss and apply the pertinent facts presented by the parties in the context of the legal standards set forth below.

III. Motion to Transfer - 28 U.S.C. § 1404(a)

Defendants seek a discretionary transfer of venue under 28 U.S.C. § 1404(a), which permits a court to transfer a case upon a showing that the proposed transferee forum is more convenient, and that such a transfer is in the interest of justice.

A. Applicable Legal Standards

Section 1404(a) provides that “for 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). A motion to transfer venue may be granted upon a showing that the transferee venue is “clearly more convenient” than the venue chosen by the plaintiff. *In re Nintendo Co.*, 589 F.3d 1194,1197 (Fed. Cir. 2009); *In re Genentech, Inc.*, 566 F.3d 1338, 1342 (Fed. Cir. 2009); *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008); *In re Volkswagen of Am., Inc. (Volkswagen II)*, 545 F.3d 304, 315 (5th Cir. 2008) (en banc), *cert. denied*, 555 U.S. 1172 (2009).

The initial question in applying the provisions of section 1404(a) is whether the suit could have been brought in the proposed transferee district. *In re Volkswagen AG*

(*Volkswagen I*), 371 F.3d 201, 203 (5th Cir.2004). If the potential transferee district is a proper venue, then the court must weigh the relative public and private factors of the current venue against the transferee venue. *Id.* In making such a convenience determination, the court considers several “private” and “public” interest factors, none of which are given dispositive weight. *Id.* The “private” interest factors include: “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.” *Nintendo*, 589 F.3d at 1198; *Genentech*, 566 F.3d at 1342; *TS Tech.*, 551 F.3d at 1319; *Volkswagen II*, 545 F.3d at 315. 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 conflict of laws [in] the application of foreign law.” *Nintendo*, 589 F.3d at 1198; *Genentech*, 566 F.3d at 1342; *TS Tech.*, 551 F.3d at 1319; *Volkswagen II*, 545 F.3d at 315.

“Although the letter of section 1404(a) might suggest otherwise, it is well established that ‘the interest of justice’ is an important factor in the transfer analysis.” *DataTreasury Corp. v. First Data Corp.*, 243 F. Supp.2d 591, 593-94 (N.D. Tex. 2003), citing *In re Medrad, Inc.*, 1999 WL 507359, *2 (Fed. Cir. 1999). Transfer is particularly appropriate where related cases involving the same issues are pending in another court.

Id., citing *Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19, 80 S. Ct. 1470 (1960). Allowing two cases involving the same issues to proceed simultaneously in different district courts leads to the waste of time, energy, and money that section 1404(a) is intended to prevent. *Continental Grain*, 80 S. Ct. at 1474. The existence of related litigation in a transferee court is a factor that strongly supports transfer. *DataTreasury*, 243 F. Supp.2d at 594, citing *Jarvis Christian College v. Exxon Corp.*, 845 F.2d 523, 528-29 (5th Cir. 1988); *Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 221 (7th Cir. 1986).

“Piecemeal litigation in the complex and technical area of patent and trademark law is especially undesirable.” *Data Treasury*, 243 F. Supp.2d at 594, citing *Smiths Industries Medical Sys., Inc. v. Ballard Medical Products, Inc.*, 728 F. Supp. 6, 7 ((D.D.C. 1989). In these cases, judicial economy and the “interest of justice” may warrant transfer even if the convenience of the parties and witnesses indicates otherwise. *Id.* (Citations omitted).

B. Analysis

Before considering the private and public interest factors, as well as the question of whether a transfer is in the interest of justice, the court must determine whether this case could have originally been brought in the District of New Mexico. Front Row argues that this prerequisite has not been satisfied because Defendants have not proven that they are subject to personal jurisdiction in that district. In response, Defendants point out that Front Row has already sued MLBAM in that district, and that litigation

would be ongoing but for Front Row's unilateral dismissal of those claims against MLBAM. Further, Front Row asserts in its pleadings that all of the Defendants engage in business throughout the United States, an allegation that is uncontested by Defendants. Defendants have confirmed this jurisdictional allegation by submitting evidence that GBTV, Mercury, and PRN all broadcast and/or syndicate programs in New Mexico.

The court further notes that the plaintiff's choice of forum carries less weight when the plaintiff originally filed suit in another district. *DataTreasury*, 243 F. Supp.2d at 594. While the actions are not identical, Front Row has already sued MLBAM in another district regarding the purported infringement of related patents, a factor suggesting that this district may not be the best forum for this dispute. Therefore, the court finds that the threshold requirement of showing that the case could have been brought in the proposed transferee district has been satisfied, and it must consider and weigh each of the private and public interest factors. *Volkswagen I*, 371 F.3d at 203; *Volkswagen II*, 545 F.3d at 312.

1. Private Interest Factors

The first private interest factor is the relative ease of access to sources of proof. Neither side discusses in their briefing how documents and discovery will be exchanged in this case. The record does show that in the New Mexico litigation, electronic discovery was planned. Because the parties have not stated otherwise, the court

presumes that this now-common method of discovery would also be employed in this case. Although the technological convenience of e-discovery significantly diminishes concerns associated with the location of evidence, it does not fully eliminate consideration of this factor. *Volkswagen II*, 545 F.3d at 316; *see also BlueEarth Biofuels, LLC v. Hawaiian Electric Co., Inc.*, 2009 WL 918459, *5 (N.D. Tex. 2009) (electronic document production makes “the physical location of the documents of lesser consequence.”). However, based upon the mutual silence of the parties regarding the relative convenience or inconvenience of access to sources or proof in one district or the other, the court finds this factor to be neutral.

With respect to the ease of access to party witnesses, none are specifically identified other than the officers and owners of Front Row, who are in New Mexico. Beyond that, Front Row merely speculates that there will be party witnesses located in this district without saying who they are. These facts do not compel a conclusion that venue should remain in this district.

Next, the court considers the availability of compulsory process or subpoena power to secure the attendance of witnesses. *Volkswagen II*, 545 F.3d at 315. Front Row states that it currently does not know who its third-party witnesses will be, but speculates that there will be witnesses who work in this district at Rangers Ballpark in Arlington and the Studios in Las Colinas, who would be subject to this court’s subpoena power. In response, Defendants point out that they broadcast games from all baseball

teams and that those games are made available nationwide. Overall, the record on this factor is not well developed. Based on the scant information regarding the identities of potential witnesses that is currently available, the court determines that this factor is neutral.

The court must also consider the cost of attendance for willing witnesses. *Id.* It is clear that no matter where this case is venued, some witnesses will have to travel. The court sees no need to debate the minutia of exactly how far each witness may have to travel compared to other possible witnesses, or the relative merits of the flight schedules, travel time and layovers involved, or the airports serving this district and the District of New Mexico. No evidence has been presented persuading the court that travel to either district imposes an excessive burden on the parties or witnesses. Because traveling to either of the proposed venues is not particularly onerous, the court finds that this factor is neutral.

The final private interest factor is “all other practical problems that make trial of a case easy, expeditious and inexpensive.” *Volkswagen II*, 545 F.3d at 315. This factor is significant here. The court is concerned with the expense of duplicative litigation occurring both here and in the District of New Mexico, both in terms of actual expense to the parties and the effective use of judicial resources. The New Mexico litigation has been pending for over two years, involves the same family of patents, and will require interpretation of several identical or similar claim terms. In the court’s view, retaining

venue of this litigation(which involves one of five patents) while the other four patents continue to be litigated in the proposed transferee district imposes unnecessary expense on the parties and wastes the judicial resources of both courts, while also exposing all concerned to an unnecessary risk of inconsistent claim interpretations and overall case outcomes. Splitting the case into two venues and unnecessarily injecting a large degree of uncertainty into the proceedings will make the resolution of the parties' dispute more difficult, less efficient, more expensive, and may compromise the administration of justice. This factor strongly favors transfer.

2. Public Interest Factors

Having evaluated the private interest factors, the court must now apply the public interest factors to the relevant facts. The first public interest factor is administrative difficulties flowing from court congestion. *Id.* Front Row provides data showing that the average time for case disposition in the proposed transferee district is approximately two months longer than in this district and the average time to trial is approximately seven months longer.

On their face, these statistics might suggest that this factor weighs slightly against transfer. However, these numbers do not account for the fact that this case is related to a previously-filed case in the District of New Mexico that involves many of the same issues. Therefore, the efficiencies that would flow from having one court decide these issues must also be considered, as well as the administrative difficulties and inefficiencies

that could occur if the cases remain pending in separate courts. When all of the relevant administrative factors are considered, the court concludes that this factor favors transfer.

The court must next evaluate whether there is a local interest in deciding local disputes at home. *Volkswagen II*, 545 F.3d at 315. Neither party has addressed this factor in their briefing. Based upon the parties pleadings, it appears that the accused conduct by Defendants involves broadcasting throughout the United States, and would have little or no effect that is uniquely local to either this district or the District of New Mexico. Thus, this factor is neutral.

The last two components of the public interest analysis involve the respective court's familiarity with federal patent law, and whether there are any potential conflicts of law that would arise. The parties have not identified any potential conflicts of law between the two districts, and the court is aware of none. The parties acknowledge that both courts are familiar with federal patent law and are capable of adjudicating a federal patent dispute. However, Front Row states that this district is the better forum because it participates in the Patent Pilot Program, which the District of New Mexico does not. The court gives this argument little weight, given that Front Row has already entrusted the District of New Mexico with a closely related patent dispute involving the same family of patents. That court has already spent two years handling its case, and is much more likely to be familiar with the patents. Front Row does not explain with any specificity why this court is now more capable of handling this largely duplicative matter.

Accordingly, while the third public interest factor is neutral, the fourth factor supports a transfer.

3. Transfer in the Interest of Justice

As the court acknowledged in *DataTreasury*, it must also determine whether a transfer serves the interest of justice. 243 F. Supp.2d at 593-94. This factor is particularly significant because there is a related case involving related factual and legal issues already pending in another district. *Id.* Because four related patents are currently being litigated in the proposed transferee district, the court is concerned about the potential inefficiencies, inconsistencies, uncertainty and increased expense that could flow from the creation of piecemeal litigation. Therefore, the court finds that in addition to the various individual private and public interest factors favoring transfer, the overall interest of justice is best served by transferring this case to the District of New Mexico.

IV. Conclusion

For the foregoing reasons, Defendants' Motion to Transfer Venue is **granted**, and this case is hereby **transferred** to the United States District Court for the District of New Mexico.

SO ORDERED.

Signed December 17th, 2012.



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UNITED STATES DISTRICT JUDGE