

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

WORD TO INFO, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:14-CV-4387-K
	§	
FACEBOOK, INC.,	§	
	§	
Defendant.	§	

ORDER

Before the Court is Defendant Facebook, Inc.’s Motion to Transfer Venue Pursuant to 28 U.S.C. § 1406 and § 1404 (Doc. No. 19). After careful consideration of the motion, the response, the reply, the supplemental memorandum and response, the applicable law, and the relevant record, the Court **GRANTS** the motion.

I. Factual and Procedural Background

Plaintiff Word to Info, Inc. (“WTI”) is a Texas corporation with its place of business in Richardson, Texas. Defendant Facebook, Inc. (“Facebook”) is a Delaware corporation with its principal place of business in Menlo Park, California. WTI sued Facebook in this Court for infringing on seven (7) patents to which it holds the exclusive rights, title and interests: United States Patent Nos. 5,715,468 (“’468 Patent”); 6,138,087 (“’087 Patent”); 6,609,091 (“’091 Patent”); 7,349,840

(“840 Patent”); 7,873,509 (“509 Patent”); 8,326,603 (“603 Patent”); and 8,688,436 (“436 Patent”)(collectively “patents-in-suit”). The patents-in-suit describe and claim inventions relating to memory systems for storing and retrieving experience and knowledge with natural language utilizing state representation data, word sense numbers, function codes and/or directed graphs. WTI contends that a Facebook product, Graph Search, infringes on the patents-in-suit. Facebook subsequently filed the instant motion to transfer.

II. Analysis

Facebook moves this Court to transfer this case to the United States District Court for the Northern District of California because (1) venue in this District is improper because there is neither general nor specific jurisdiction, and, alternatively, (2) it is clearly more convenient and fair. WTI argues that the Northern District of Texas is the proper venue for this case. WTI also argues that transferring the case to the Northern District of California would only burden WTI, not reduce any inconvenience. Under 28 U.S.C. § 1404(a), a court may 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. *In re Radmax, Ltd.*, 720 F.3d 285, 287-88 (5th Cir. 2013).

The Court first analyzes Facebook's argument that convenience and fairness dictate the case be transferred to the Northern District of California under § 1404(a).

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. *See 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 plaintiff's choice of venue is not a factor in this analysis, but it does contribute to the defendant's burden in proving that the transferee venue is clearly more convenient than the transferor venue. *Volkswagen II*, 545 F.3d at 314-15.

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; *see Genetech*, 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 the foreign law.” *Id.* 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) (Kaplan, M.J.) (citing *In re Medrad, Inc.*, 1999 WL 507359, *2 (Fed Cir. 1999)).

B. Application of the Law to the Facts

WTI is a Texas corporation, with its business address in Richardson, Texas. It is the assignee of the seven (7) patents-in-suit. The sole inventor of the seven (7)

patents-in-suit is Robert L. Budzinski, the President and sole Director of WTI, whose home address is the same as WTI's business address. The record establishes that Mr. Budzinski is the sole employee of WTI, and it also appears from the record that WTI conducts no business in Texas other than filing the instant lawsuit and a similar lawsuit against Google Inc., both in the Northern District of Texas for infringement of the patents-in-suit.

Facebook is a Delaware corporation with its principal place of business in Menlo Park, California, which is located within the Northern District of California. Facebook has two (2) offices Texas—a 271-person in Austin, which is located within the Western District of Texas, and a 22-person office in Dallas, which is located within this District. Facebook also made a recent public announcement that it has begun construction on a new data center in Ft. Worth, which is also located within this District.

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 the threshold issue of whether this case could have originally been brought in the Northern District of California. Any proposed transferee court must have subject matter jurisdiction and personal jurisdiction over the defendant. WTI concedes that this lawsuit could have been brought in the proposed transferee district. Therefore,

this threshold question is satisfied. The Court now turns to the private and public interest factors to determine whether a transfer is appropriate.

I. Private Interest Factors

The first private factor is the 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 favor of transfer to that location.” *Genetech*, 566 F.3d at 1345 (quoting *Neil Bros. Ltd. v. World Wide Lines, Inc.*, 425 F. Supp.2d 325, 330 (E.D.N.Y. 2006)).

Facebook has presented that “the bulk” of its relevant evidence is located at its headquarters in Menlo Park, California, which is in the Northern District of California. Facebook states that evidence on its general operations, marketing and financials, as well its “highly proprietary documentation, source code and physical systems operating Graph Search,” are located at its headquarters. Furthermore, almost every Facebook employees who developed, designed and currently work on the allegedly infringing program resides in the Northern District of California, with the exception of a few engineers in Seattle, Washington. Facebook also states that none of its relevant evidence is located in Texas.

Although the technological convenience of e-discovery may diminish concerns associated with the location of evidence, it does not negate the significance of or

eliminate consideration of this factor in a section 1404(a) transfer analysis. *Radmax*, 720 F.3d at 288; *see also Volkswagen II*, 545 F.3d at 316 (stating that the standard is “relative ease of access, not absolute ease of access” and finding this factor weighed in favor of transfer to a venue where documents were physically kept). WTI identifies “at least twelve handwritten lab notebooks, dating back to at least 1989” kept by Mr. Budzinski, as “all of WTI’s documents”, which originated and are located in the Northern District of Texas. (Emphasis in the original.) WTI argues these notebooks are fragile, not easily scanned and transferred electronically, and “should not be subject to be damaged or destroyed by being transported to California,” whereas Facebook’s documents can easily be electronically transported to this District. However, any convenience offered from e-discovery does not negate the significance or eliminate consideration of this factor in a section 1404(a) transfer analysis. *Radmax*, 720 F.3d at 288; *see Eight One Two, LLC v. Purdue Pharma L.P.*, Civ. No. 3:13-CV-2981-K, 2014 WL 7740476, *2 (N.D.Tex. May 16, 2014). Furthermore, assuming the notebooks are truly fragile as alleged, Mr. Budzinski’s lab notebooks risk damage in being transported during discovery or to this Court during a trial were the Court to deny transfer. There is no question that WTI’s documentary evidence, which consists of the handwritten lab notebooks and prosecution records and which is located in this District, will be vastly outnumbered by Facebook’s documentary

evidence related to Graph Search, which is all or almost all located in the transferee district. *See Genentech*, 566 F.3d at 1345 (“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 favor of transfer to that location.”). Because the majority of the relevant documentary evidence is located in the Northern District of California and more readily accessible there, the first factor of relative ease of access to sources of proof favors transfer.

Next, the Court considers the availability of compulsory process or subpoena power to secure the attendance of unwilling witnesses. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-09 (1947); *Volkswagen II*, 545 F.3d at 315. Under recently amended Federal Rule of Civil Procedure 45, federal courts may enforce subpoenas issued to any witness for trial, hearing or deposition within 100 miles of the place in which that witness resides, works, or regularly transacts business in person, or for a trial, anywhere within the state in which the witness works, resides, or regularly transacts business in person, provided that witness does not incur substantial expense. FED. R. CIV. P. 45(c)(1)(A)-(B).

A venue that has absolute subpoena power for both deposition and trial is favored over one that does not. *Thomas Swan & Co. Ltd. v. Finisar Corp.*, 2014 WL 47343, *3 (E.D.Tex. 2014) (quoting *Volkswagen II*, 545 F.3d at 316). The court gives

more weight to specifically identified witnesses, and less weight to vague assertions that witnesses are likely to be found in a particular forum. *U.S. Ethernet Innovations, LLC v. Samsung Electronics Co. Ltd.*, 2013 WL 1363613, *3 (E.D.Tex. 2013). Current employees of a party are considered to be willing witnesses whose testimony can be presented without reliance upon subpoena power, and their locations are not persuasive in the court's analysis for this factor. *Rosemond v. United Airlines, Inc.*, Civ. Action No. H-13-2190, 2014 WL 1338690, *3 (S.D.Tex. 2014); *Net Navigation Systems, LLC v. Cisco Systems, Inc.*, Cause No. 4:11-CV-660, 2012 WL 7827544, *4 (E.D.Tex. 2012).

In its Rule 26(a)(1) initial disclosures, Facebook identified three (3) non-party witnesses, in addition to six (6) party witnesses, all located within the absolute subpoena power of the proposed transferee court, the Northern District of California. WTI identified only one (1) witness—Mr. Budzinski, who resides in this District. Mr. Budzinski is the President and sole Director of WTI, so as a party witness, his location is not persuasive for purposes of this analysis. *See Rosemond*, Civ. Action No. H-13-2190, 2014 WL 1338690, at *3. WTI does not identify any non-party witnesses. After considering all of the pertinent evidence and the applicable law, the Court finds the availability of compulsory process favors transfer.

The Court must also consider the cost of attendance for willing witnesses, which is “probably the single most important factor in the transfer analysis.” *Genentech*, 566 F.3d at 1343. The Fifth Circuit established the “100 mile rule” that requires “[w]hen the distance between an existing venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled.” *Volkswagen II*, 545 F.3d at 317. This inconvenience factor includes additional travel time, meal, lodging expenses, and time away from their regular employment. *Volkswagen I*, 371 F.3d at 205. The court must also consider the personal costs associated with being away from work, family, and community. *In re Acer America Corp.*, 626 F.3d 1252, 1255 (Fed. Cir. 2010), *cert denied*, 131 S.Ct. 2447 (2011) (*citing Volkswagen II*, 545 F.3d at 317).

Facebook has identified nine (9) relevant party and non-party witnesses who are all located in or near the Northern District of California. *See also Genentech*, 566 F.3d at 1343 (defendant not required “to show that the potential witness has more than relevant and material information at this point in the litigation.”). Facebook states that Graph Search was designed and developed at its headquarters in the Northern District of California, and the Facebook employees knowledgeable about this allegedly infringing program reside primarily in the Northern District of

California, except for a few engineers in Seattle, Washington. These witnesses with relevant knowledge about the allegedly infringing program would each be burdened with travel of more than 1,500 miles each way to testify in this District. There would be significantly less travel for the witnesses by transferring this case to the Northern District of California. Further, Facebook has no employees or other witnesses with knowledge of the allegedly infringing products who are located in this District or even in the state of Texas. WTI identified only one witness, Mr. Budzinski, a party witness, who lives in this District. He would be burdened with travel of more than 1,500 miles each way to testify in the Northern District of California. WTI has not identified any non-party witnesses. Facebook argues the witnesses it has identified will have real and avoidable burdens, tangible and intangible, if they're required to travel to this Court, rather than the Northern District of California. WTI responds that Facebook is more capable of bearing the costs of litigation in this District than Mr. Budzinski, "a retired man of limited means," should the case be transferred to the Northern District of California. However, Mr. Budzinski's personal financial situation is not relevant to this analysis because he is not a party; WTI is the only named Plaintiff and it offers no evidence as to its financial situation or resources. Additionally, the Court takes into account not only the tangible burdens, such as out-of-pocket expenses which Mr. Budzinski focuses his argument on, but also the

intangible costs, such as time away from work and family. *See Acer America*, 626 F.3d at 1255. There are three (3) non-party witnesses, located in the Northern District of California, identified by Facebook and none by WTI; the inconvenience to non-party witnesses bears more weight in this analysis. *See Mohamed v. Mazda Motor Corp.*, 90 F.Supp.2d 757, 775 (E.D.Tex. 2000)(“[I]t is the convenience of non-party witnesses . . . that is the more important factor and is accorded greater weight in a transfer of venue analysis.”). In addition, there are six (6) relevant party witnesses identified by Facebook who all reside in the Northern District of California, compared with the one (1) party witness identified by WTI, who resides in this District. The Court finds that the factor of the convenience of the relevant witnesses favors transfer.

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. Facebook argues this factor is neutral because no “rare and special circumstances” exist in relation to this case. *See In re Horseshoe Entm’t*, 337 F.3d 429, 434 (5th Cir. 2003). WTI makes no argument in relation to this factor. The Court finds this factor is neutral.

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. *Nintendo*, 589 F.3d at 1198. Facebook and WTI agree that recent statistics indicate this District has 997 cases pending per judge, whereas the Northern District of California has 455 cases pending per judge. Facebook states that although both districts dispose of a case, on average, in less than three years, which meets the standards of the Administrative Office of the United States Courts, this District is “substantially more congested . . . with more than twice as many cases per judge.” Facebook argues this factor “slightly favors transfer” or is neutral. WTI notes that the actual disposition time for a civil case in this District is 23.8 months compared to 30.9 months in the Northern District of California, and argues this weighs against transfer. While it may, on average, take a shorter time for a case to reach trial in this District, the Court does not view this factor as a “race between the courts.” Each case is unique, and whether or not the case would progress more rapidly here or in the Northern District of California is largely a matter of speculation. Both courts have an average case disposition time of less than three years, meeting the standards of the Administrative Office of the United States Courts. Therefore, the Court cannot describe either District’s docket

as “congested” for purposes of a section 1404(a) venue transfer analysis. See *Genetech*, 566 F.3d at 1347. The Court finds this factor is neutral.

Next, the Court must evaluate whether there is a local interest in deciding local issues at home. *Volkswagen II*, 545 F.3d at 315. A local interest is demonstrated by a relevant factual connection between the events and the venue. *Leblanc v. C.R. England, Inc.*, 961 F.Supp.2d 819, 832 (N.D. Tex. 2013) (Boyle, J.). Facebook contends that this factor favors transfer because “the activity giving rise to WTI’s patent infringement allegations center in Northern California, the accused Graph Search system was designed and developed in Northern California, and employees in Northern California manage and work on Graph Search.” WTI counters that this District does have an local interest because Google receives “a portion of the value of the infringing product from Facebook users with desktop computers and handheld devices located in Texas,” that the relevancy of Facebook’s witnesses is speculative, and the patent rights of a resident of this District have allegedly been infringed.

There is a relevant factual connection between these events and the Northern District of California. Most, if not all, of the decisions regarding the accused infringing products were made at Facebook’s headquarters which is located in the Northern District of California. The Northern District of California is the venue where many of the witnesses and most of the evidence concerning the alleged

infringement are located. On the other hand, there is no legitimate local interest with respect to the alleged infringement in this District. The fact that Facebook users in Texas provide information which is then collected by the infringing products does not establish an actual local interest in this District because these allegedly infringing products almost certainly collect information from Facebook users across the nation; there is no allegation that the information of only Facebook users in Texas is collected. *Cf. Volkswagen II*, 545 F.3d at 318 (interests that could apply to virtually any district or division in the United States due to nationwide sale of infringing products are disregarded in favor of particularized local interests). Further, while Mr. Budzinski lives in this District, he is a witness, not a party, so his presence here does not impact the analysis of this factor. As for WTI, it was formed and incorporated in 2013 with the purpose, according to WTI, of protecting the rights to the patents-in-suit, including filing lawsuits against infringers. WTI's limited business presence in this District is not substantial enough for the Court to conclude that the citizens of this District would have a substantial interest in the outcome of this case. *See Eight One Two*, Civ. No. 3:13-CV-2981-K, 2014 WL 7740476, at *5. Therefore, the Court finds the local interest factor favors transfer.

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. Both parties agree that these two factors are neutral as courts in both districts are familiar with the law that will govern the case and there are no conflicts of law to avoid. Therefore, the Court finds both the third and fourth public interest factors are neutral.

In conclusion, the Court has considered the private factors, and finds that the relative ease of access to sources of proof, the availability of compulsory process for witnesses, and the costs of attendance for willing witnesses all favor transfer. The private interest factor “all other practical problems that make trial of a case easy, expeditious, and inexpensive,” is neutral. *Volkswagen II*, 545 F.3d at 315. In evaluating the public interest, the factors of administrative difficulty flowing from court congestion, the respective courts’ familiarity with applicable law, and potential conflicts of law are all neutral. The public interest factor of local interest in deciding local controversies at home favors transfer. Having considered all private and public interest factors and the relative convenience of the parties and witnesses, the Court has determined that, viewed in their totality, these factors favor transfer and further, and that such a transfer would be in the overall interest of justice.

Because the Court finds transfer is appropriate under § 1404(a), the Court need not address Facebook’s arguments based on § 1406.

III. Conclusion

The Court has analyzed the private and public interest factors and the relative convenience of the parties and witnesses and finds that they weigh in favor of transfer. Because the Court finds the proposed transferee forum is more convenient and a transfer is in the interest of justice, the Court **grants** Facebook's Motion to Transfer Venue under 28 U.S.C. § 1404. This case is hereby transferred to the United States District Court for the Northern District of California.

SO ORDERED.

Signed July 23rd, 2015.



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UNITED STATES DISTRICT JUDGE