

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

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LEGGETT & PLATT, INC. and  
L&P PROPERTY MANAGEMENT  
COMPANY,

Plaintiffs,

v.

LOZIER, INC.,

Defendant..

ORDER

04-C-0932-C

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Plaintiffs Leggett & Platt, Inc. and L&P Property Management Company seek injunctive and monetary relief from defendant Lozier, Inc. for alleged infringement of U.S. Patent No. 5,119,945. Now before the court is defendant's motion to transfer venue pursuant to 28 U.S.C. §1404(a). The parties do not contest personal jurisdiction and subject matter jurisdiction is present under 28 U.S.C. §§ 1331 and 1338.

I conclude that the convenience of the parties and the interest of justice will not be best served by transferring this case to the District of Nebraska. Therefore, I will deny defendant's motion to transfer venue to the District of Nebraska.

From the facts alleged in the complaint and the affidavits submitted by the parties,

I find for the sole purpose of deciding this motion that the following facts are undisputed and material.

### FACTS

Plaintiff Leggett & Platt, Inc. is a corporation organized under the laws of Missouri. Plaintiff L&P Property Management Company is a corporation organized under the laws of Delaware. Each has its principal place of business at No. 1 Leggett Road, Carthage, Missouri. L&P Property Management Company is the assignee of United States Patent No. 5,119,945. Defendant Lozier, Inc. is a corporation organized under the laws of Nebraska, having its principal place of business at 6336 Pershing Drive, Omaha, Nebraska. Plaintiffs filed suit for infringement of United States Patent No. 5,119,945 in the United States District Court for the Western District of Wisconsin. Defendant admits that it does substantial business in the state of Wisconsin and is subject to personal jurisdiction in the Western District of Wisconsin.

### OPINION

Defendant asks this court to transfer this case to the District of Nebraska. 28 U.S.C. § 1404(a) provides “[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.” The parties agree that the Western District of Wisconsin is a proper venue for this case, that the District of Nebraska is a proper venue and that the case might have been brought there. In a motion to transfer pursuant to 28 U.S.C. §1404(a), the moving party bears the burden of establishing “by reference to particular circumstances that the transferee forum is clearly more convenient.” Coffey v. Van Dorn Iron Works, 796 F.2d 217, 219-220 (7th Cir. 1986). This court must consider “the plaintiff’s choice of forum, the convenience of the parties and the witnesses as well as the interest of justice.” Roberts & Schaefer Co. v. Merit Contracting, Inc., 99 F.3d 248, 254 (7th Cir. 1996); see also 28 U.S.C. § 1404(a). The court should view the statutory factors as placeholders among a broader set of considerations. Coffey, 796 F.2d at 219 n.3. Such broader considerations include the situs of material events, ease of access to sources of proof, location of documents and records likely to be involved and expense of the parties. Platt v. Minnesota Mining & Manufacturing, 376 U.S. 240, 244 (1964). The statute does not provide rigid rules for weighing these factors against each other. Instead, courts are to make an “individualized, case-by-case determination of convenience and fairness,” taking into account all of the relevant facts and circumstances of the case. Van Dusen v. Barrack, 376 U.S. 612, 622 (1964).

The ground for defendant’s motion to transfer is on the ease of access to sources of proof. Defendant provides an affidavit asserting that most of defendant’s employees who

“would be knowledgeable about the subject matter of this lawsuit” reside in Nebraska. Aff. of S. Andrews, dkt. #9, at 1. To the extent that this trial will involve testimony from defendant’s employees, the convenience of the parties and witnesses weighs in favor of transfer. However, it is possible that witnesses and evidence will come from elsewhere, calling into question the convenience of transferring the case to the District of Nebraska. Defendant alleges generally that the *majority* of the evidence and witnesses are in Nebraska. Dft.’s Br., dkt #8, at 3. Defendant fails to specify what physical evidence or witnesses are located in Nebraska. Without more specific information, this court cannot assume that this factor weighs heavily in favor of transfer. John Mezzalingua Associates, Inc. v. Arris International, No. 03-C-353-C, slip op. (W.D. Wis. July 21, 2003). Defendant has the burden to show that the District of Nebraska is clearly more convenient. Vague assertions about the location of the “majority of the evidence” do not meet this burden. Coffey 796 F.2d at 219 (moving party must show that the transferee forum is clearly more convenient “by reference to particular circumstances”).

Defendant argues that it will be difficult to compel unwilling witnesses to testify in the Western District of Wisconsin and therefore this difficulty weighs in favor of transfer. Dft.’s Br., dkt. #8, at 4. To support such a contention, defendant must be able to point to some specific witness or witnesses who may be unavailable to testify in this court and provide a general sense of why their testimony is material. Heller Financial Inc. v. Midwhey

Powder Co., 883 F.2d 1286, 1293 (7th Cir. 1989). Defendant does not indicate who these unwilling witnesses may be or what their testimony would likely concern. Without this information, defendant is not persuasive when it talks about having to use compulsory processes to obtain witness testimony, particularly when it appears that the witnesses are defendant's own employees.

Defendant argues that the citizens of Wisconsin would be unduly burdened if required to serve on a jury in this case. Although Wisconsin may have no more connections to this case than many other states, this alone does not entitle the defendant to a transfer of venue. Defendant admits it does substantial business in the state and is subject to personal jurisdiction. Furthermore, the complaint alleges that defendant sells products covered by plaintiffs' patent in the state of Wisconsin. Cpt., dkt #2, at 2. Defendant's unsubstantiated claim that jury duty in this case would be an unfair burden on this district's citizens does not weigh in favor of transfer.

Plaintiffs argue that the Western District of Wisconsin is more convenient primarily because of the speed of the docket. Plts.' Br., dkt #14, at 7. Generally, a court should give a plaintiff's choice of forum substantial weight. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255 (1981); see also Chicago, Rock Island & Pacific Railroad v. Igoe, 220 F.2d 299, 302 (7th Cir. 1955) (plaintiff may choose any proper forum and plaintiff's choice of forum should not be lightly set aside). Defendant does not contend that plaintiffs' choice of forum

was motivated by an intent to harass or influence the outcome of the case or any other improper motivation. Defendant is correct in noting that this district's speed alone would be insufficient to overcome a motion to transfer if other factors showed that another venue is clearly more convenient. John Mezzalingua Associates, Inc., No. 03-C-353-C, slip op. In this case, however, defendant has not shown that the District of Nebraska is clearly more convenient. The United States Supreme Court has recognized that the relative docket speed of the district court is an appropriate consideration as one of the interests of justice factors. Parsons v. Chesapeake & Ohio Railway Co., 375 U.S. 71 (1963). Relative docket speed in this case also weighs against transfer.

Defendant has failed to show that the District of Nebraska is a clearly more convenient forum for this case. Accordingly I will deny the motion to transfer.

ORDER

IT IS ORDERED that defendant Lozier, Inc.'s motion to transfer venue to the District of Nebraska under 28 U.S.C. § 1404(a) is DENIED.

Entered this 17th day of May, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge