IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RALINK TECHNOLOGY CORP.,

Plaintiff,

v.

LANTIQ DEUTSCHLAND GMBH,

Defendant.

OPINION AND ORDER

10-cv-688-bbc

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In this patent infringement case, defendant Lantiq Deutschland GMBH has moved under 28 U.S.C. § 1404(a) for a transfer of venue to the Northern District of California, asserting that it would be a more convenient forum in which to try the case. Plaintiff Ralink Technology Corp. opposes the motion, arguing that defendant has not shown that a transfer would be clearly more convenient in this instance. I conclude that the case should be transferred. It is a close question because neither party is incorporated or headquartered in the Northern District of California or the Western District of Wisconsin, but trying the case in Northern California would be more convenient for many of the probable witnesses, including potential third-party witnesses; at least one third-party witness has said he will not attend trial if it is held here; the time from filing to trial is only slightly longer in Northern

California than it is in this district; and the amount of business that plaintiff does in this district is too slight to justify the time and inconvenience to local jurors who would hear the case.

RELEVANT FACTS

Plaintiff Ralink Technology Corp. is a Taiwanese corporation with its primary place of business in Taiwan. Defendant Lantiq Deutschland GMBH is a German corporation with its operating headquarters in Germany.

Plaintiff is the owner by assignment of U.S. Patent No. 5,394,116 entitled "Fractional Phase Shift Ring Oscillator Arrangement." Plaintiff is accusing defendant of willful infringement of the '116 patent by making, selling and using semiconductor products that embody the patented invention, including DSL, chipsets, DSL controllers, Ethernet chipsets, Ethernet switches, Ethernet controllers and Ethernet physical layer components, router chipsets and other chipsets and components used in routers, switches and modems.

Plaintiff has an affiliate or subsidiary, Ralink Technology Corporation (California), that is headquartered in Northern California. Defendant's United States affiliate is also headquartered in Northern California. Employees of these affiliates may have information about damages and noninfringement. Documents related to defendant's activities in the United States are located at the headquarters of defendant's affiliate in Northern California.

Nearly 45% of defendant's sales into or from the United States were into or out of California; only 0.2% of its sales were in Wisconsin.

A number of airlines offer direct flights from Taiwan to San Francisco and from Germany to San Francisco. There are no such direct flights from Taiwan or Germany to Madison, Wisconsin.

The inventor of the '116 patent resides in the Northern District of California and has indicated that he will likely not travel to Wisconsin for a hearing or trial. Defendant alleges that his testimony is critical to such issues as conception, reduction to practice, level of ordinary skill in the art and problems encountered.

Two months after plaintiff filed this suit, defendant filed a suit in the Northern District of California seeking declarations of invalidity and non-infringement of the '116 patent and alleging that plaintiff and its California subsidiary infringe two patents held by defendant, U.S. Patents Nos. 6, 351,799 and 7,061,904. In its answer to this suit, plaintiff Ralink admitted that venue was proper in the Northern District.

This case is scheduled for trial in this court on August 13, 2012. The median time from filing to trial in the Northern District of California was 21.1 months in 2010. If this case remains in this district, it will probably go to trial sooner than it would if it were transferred to the Northern District of California.

OPINION

The parties agree that either district is a permissible venue for this case. Their dispute is limited to whether venue is so "clearly more convenient" in the Northern District of California that the case should be transferred there under 28 U.S.C. § 1404(a) ("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.").

As the movant, defendant has the burden of establishing that the transferee forum is clearly more convenient. Coffey v. Van Dorn Iron Works, 796 F.2d 217, 219-20 (7th Cir. 1986). Two categories of considerations guide the court's analysis in determining whether transfer is clearly more convenient. The first is the relative convenience to the parties and includes such things as availability of witnesses, access to witnesses and to documents, the location of material events and the relative ease of access to sources of proof. Research Automation, Inc. v. Schrader-Bridgeport International, Inc., 626 F.3d 973, 978 (7th Cir. 2010). The second category is the "interest of justice," which focuses on the efficient administration of the court system. Id. It includes factors such as likely time to trial, each court's familiarity with the applicable law, the respective desirable of resolving controversies in each locale; and the relationship of each community to the controversy. Id.

In arguing for transfer on convenience grounds, defendant relies in large part on the patent's inventor's residence in northern California and his unwillingness to travel to

Wisconsin for trial. As I have said in other cases, it is rarely the case that an inventor's testimony plays any major role in a patent trial. E-Pass Technologies, Inc. v. 3Com Corp., 343 F.3d 1364, 1370 n.5 (Fed. Cir. 2003) ("inventor evidence is of little probative value for purposes of claim construction") (citing Solomon v. Kimberly-Clark Corp, 216 F.3d 1372, 1380 (Fed. Cir. 2000)). See also Markman v. Westview Instruments, 52 Fed. 3d 967, 985 (Fed. Cir. 1995) (same). Defendant alleges that the testimony of the inventor is relevant to issues that go beyond claims construction, but the issues it cites seem of only marginal importance to a patent trial.

In addition, defendant points to the number of its employees who work in the Northern District of California. However, it does not identify any specific area of testimony that any particular employee would be called upon to give at a trial, much less show the materiality of such evidence. Ordinarily, the location of employees is not a significant factor in deciding a transfer motion because employees will attend trial at the direction of their employer, without the need for a subpoena.

The documentary evidence that defendant might need for trial is located in California, but computers have made documentation almost a moot issue, particularly when the parties are in computer-related businesses. It is hard to imagine that such businesses would have any difficulty transferring documents to another physical location if it was necessary. In this case, defendant says that certain source codes would be made available only for inspection

and then only at defendant's California headquarters, but this is not a major factor. It is not unusual for counsel and experts to travel to an out-of-district location to view particular types of non-documentary evidence.

As for flights to and from Taiwan and to and from Germany, that is a minimal consideration. It is unlikely that any employee or third-party witnesses will be coming to court in either Madison or San Francisco anytime other than for trial, which would entail one trip.

As in most patent cases, the considerations of convenience that defendant has marshaled in favor of transfer are not compelling. However, plaintiff has not pointed to any convenience factor in its favor. It has no employees or third party witnesses in Wisconsin or in neighboring states; it has not identified any documents or exhibits here; and it has no major facilities in this state. Instead, it invokes the "interest of justice" consideration, arguing that the relative speed to trial should be the deciding factor when the parties are competitors in a dynamic market and time is of the essence in protecting plaintiff's patent interest.

In this case, the likely speed to trial in this court is a factor weighing modestly in favor of keeping the case here. The fact that defendant filed a suit in the Northern District of California two months after this one was filed here is not a factor to which I give much significance, both because it was filed after this case was filed and may be a ploy to improve

the chances of transfer (although plaintiff has presented no evidence to that effect) and because it involves different patents. Although the new suit includes a defensive counterclaim for declaratory relief that relates to the patent at issue here, plaintiff has said it would dismiss that counterclaim if this case stays in this district.

I am persuaded, however, that this is one of the relatively rare cases in which the relationship of each community to the controversy factor tips the scales in favor of transfer, in light of the negligible sales of defendant's products in this district. It is not reasonable to ask Wisconsin residents to devote their energies to hearing a long and complex patent trial that has no connection to this district. Rembrandt Data Storage LP v. Western Digital Corporation, 10-cv-694-bbc, dkt. #44, at 6 ("it is fair to ask why jurors from the Western District of Wisconsin should be asked to give up their time to decide a dispute between two entities with no connection to this district. The answer is that they should not, unless another factor weighs in favor of keeping the case here"). In Rembrandt, another factor weighed in favor of keeping the case in this district, which was the pendency in this court of a second patent suit brought by Rembrandt relating to similar technology. Judicial economy would not have been served by transferring one of the cases and keeping the other one here, thereby requiring two to become familiar with the same technology and patent terms.

In this case, the interest of justice factor points in the opposite direction. Although the allegedly lower costs of bringing employee and third party witnesses to trial in California,

the alleged unavailability at trial of the patent's inventor and the need to view some materials in California might not make the strongest case for transfer, in the absence of any real connection between the dispute and the community, I conclude that defendant has shown that transfer is warranted.

The parties are briefing a motion by defendant to dismiss this case under Fed. R. Civ. P. 12(b)(6). That motion will have to await resolution by the court in the Northern District of California.

ORDER

IT IS ORDERED that the motion brought by defendant Lantiq Deutschland GMBH to transfer this case to the United States District Court for the Northern District of California, dkt. #13, is GRANTED. No action will be taken on defendant's motion to dismiss under Rule 12(b)(6), dkt. #47.

Entered this 29th day of March, 2011.

BY THE COURT:

/s/
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BARBARA B. CRABB
District Judge