

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

HILL-ROM SERVICES, INC.,
HILL-ROM COMPANY, INC., and
HILL-ROM MANUFACTURING, INC.,

Plaintiffs,

OPINION AND ORDER

11-cv-251

v.

STRYKER CORPORATION d/b/a STRYKER MEDICAL,
and STRYKER SALES CORPORATION,

Defendants.

Defendants Stryker Corporation and Stryker Sales Corporation have filed a motion to transfer pursuant to 28 U.S.C. § 1404(a), asking the court to transfer this patent infringement suit to the Southern District of Indiana, where another patent infringement suit between the same parties is pending. Defendants argue that plaintiffs Hill-Rom Services Inc., Hill-Rom Company, Inc., and Hill-Rom Manufacturing, Inc. have no connection to the Western District of Wisconsin and have chosen this district solely for the speed of its docket. Because defendants have shown that the interest of justice factor favors transfer, I will grant defendants' motion to transfer this case under 28 U.S.C. § 1404. Plaintiffs have

also moved to file a reply to defendants' "corrected declaration of Kevin Conway." Dkt.#46. The motion will be granted.

In deciding whether the moving party has made the necessary showing for a transfer, a court may rely on the allegations of the complaint and may receive and weigh affidavits submitted by the parties. Heller Financial, Inc., 883 F.2d at 1293-94.

From plaintiffs' complaint and the declarations submitted by the parties regarding defendants' motion to transfer venue, I find the following facts to be material and undisputed.

UNDISPUTED FACTS

A. Parties

Plaintiffs Hill-Rom Services, Inc., Hill-Rom Company, Inc., and Hill-Rom Manufacturing, Inc. are Indiana corporations that have their headquarters and principal places of business in the Southern District of Indiana, specifically in Batesville, Indiana. Plaintiffs have seven locations in the United States, two of which are in Batesville, and none of which are in the Western District of Wisconsin.

Defendants Stryker Corporation and Stryker Sales Corporations are Michigan corporations that have their headquarters and principal places of business in Kalamazoo, Michigan.

B. Lawsuit

On April 4, 2011, plaintiffs filed this lawsuit, alleging infringement of nine patents by defendants. The fundamental technology at issue relates to electronic communication circuits used to transmit information between various hospital bed components or from the bed to a remote location. Plaintiffs' U.S. Patents Nos. 5,699,038, 6,147,592, and 7,538,659 relate to systems that communicate information about the status of a hospital bed to a remote location. Plaintiffs' U.S. Patents Nos. 5,771,511, 7,237,287 and 7,568,246 relate to electronic communication networks on hospital beds. Plaintiffs' U.S. Patents Nos. 7,506,390, 7,520,006 and 7,669,263 relate to controller area communication networks on hospital beds.

Plaintiffs are asserting infringement claims against defendants for the electronic communication circuits used in defendants' *InTouch*, *Secure 3*, and *GoBed II* hospital beds and for defendants' products that contain the connectivity functionality found in the *InTouch*, *Secure 3*, and *Epic II* beds, which are equipped with features such as *iBed Wireless*.

Plaintiffs' evidence and witnesses are expected to be located primarily in the Southern District of Indiana, the site of plaintiffs' principal places of business and the location from which plaintiffs' counsel prosecuted the patents-in-suit. Two third-party witnesses, both former employees of plaintiffs, reside in Ohio, within the subpoena power of the Southern

District of Indiana and outside the subpoena power of this court.

Defendants' evidence and witnesses are expected to be located primarily in Kalamazoo, Michigan. All of defendants' employees with knowledge of the relevant facts of this litigation are located in either Michigan or Quebec. It is 61 miles closer to Indianapolis from Kalamazoo than from Kalamazoo to Madison.

Defendants intend to introduce new infringing connectivity products that compete directly with plaintiffs' products and that plaintiffs believe will infringe plaintiffs' three patents-at-suit that expire in July 2013. The average time to trial in this court has been 11 months.

C. Related Indiana Lawsuit

On the same day this lawsuit was filed, plaintiffs filed a lawsuit in the Southern District of Indiana, accusing defendants of infringing ten other patents. The ten patents-in-suit in the Southern District of Indiana are: U.S. Patents Nos. 6,993,799; 7,644,458; 6,588,523; 7,011,172; 7,284,626; 7,090,041; 7,273,115; 7,407,024 and 7,828,092. These patents relate to a motorized fifth wheel on a hospital bed or stretcher that makes it easier to move the bed or stretcher around the hospital.

In the Indiana lawsuit, plaintiffs identify defendants' beds and stretchers equipped with defendants' Zoom Motorized Drive System (Zoom Drive) as the basis for their

infringement suit. Zoom Drive is available on the *inTouch*, Secure 3, and Epic II. The Zoom Drive is also available on the Prime Series Stretcher, which is not at issue in this case.

The average time to trial in the Southern District of Indiana has been 23 months.

OPINION

In support of their motion to transfer this case under 28 U.S.C. § 1404(a), defendants assert that the Southern District of Indiana is a more convenient forum and transfer will advance the interests of justice. A district court may “transfer any civil action to any other district or division where it might have been brought” if the transfer is “[f]or the convenience of the parties and witnesses [and] in the interest of justice.” 28 U.S.C. § 1404 (a). Decisions regarding transfer of patent actions are governed by the law of the regional circuit. Winner International Royalty Corp v. Wang, 202 F.2d 1340, 1352 (Fed. Cir. 2000). In the Seventh Circuit, the movant 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) (discussing factors relevant to a § 1404 transfer analysis). In a recent decision, Research Automotion, Inc. v. Schrader-Bridgeport International, Inc., 626 F.2d 973 (7th Cir. 2010), the Court of Appeals for the Seventh Circuit explained that 1404(a) “permits a ‘flexible and individualized analysis’ and affords district courts the opportunity to look beyond a narrow or rigid set of considerations in their determinations.”

Id. at 978 (quoting Stewart Organizations, Inc. v. Ricoh Corp., 487 U.S. 22, 20 (1988)).

The court summarized the most salient factors:

With respect to the convenience evaluation, courts generally consider the availability of and access to witnesses, and each party's access to and distance from resources in each forum. Other related factors include the location of material events and the relative ease of access to sources of proof.

The "interest of justice" is a separate element of the transfer analysis that relates to the efficient administration of the court system. For this element, courts look to factors including docket congestion and likely speed to trial in the transferor and potential transferee forums; each court's relative familiarity with the relevant law; and the relationship of each community to the controversy. The interests of justice may be determinative, warranting transfer or its denial even where the convenience of the parties and witnesses points towards the opposite result.

Id. (Internal quotations and citations omitted).

The parties do not deny that venue is proper in both the Southern District of Indiana and the Western District of Wisconsin and that the suit could have been brought against defendants in the Southern District of Indiana. Thus, I need determine only whether transfer would serve the convenience of the parties and witnesses and promote the interests of justice.

When evaluating the convenience of the parties and witnesses, appropriate factors to consider include the plaintiff's choice of forum, the situs of material events and ease of access to sources of proof. Harley-Davidson, Inc. v. Columbia Tristar Home Video, 851 F. Supp. 1265, 1269 (E.D. Wis. 1994); Kinney v. Anchorlock Corp., 736 F.Supp. 818, 829 (N.D.

Ill. 1990). However, an interest of justice inquiry focuses on “the efficient administration of the court system,” such as whether a transfer would help the litigants receive a speedier trial or facilitate consolidation of related cases. Coffey, 796 F.2d at 221.

The moving party bears the burden of showing that the proposed forum is “clearly more convenient” and that transfer is proper. Coffey, 796 F.2d at 219-20. In this case, defendants have moved to transfer to the Southern District of Indiana because that district is its home forum and the district in which plaintiffs have filed a substantially related case. Plaintiffs make no secret of the fact that their choice of venue is motivated by this court’s history of swift case resolution. Statistics suggest that this case likely will be resolved more quickly in this court than if it were transferred to the Southern District of Indiana, which has the highest civil case load per judge of any district court in this circuit. Thus, the analysis centers on whether defendants’ inconvenience in defending this suit in Wisconsin is sufficient to overcome plaintiffs’ desire to receive a speedier trial in their choice of forum.

A. Convenience

Generally, a plaintiff’s choice of forum is given deference when the plaintiff is litigating in its home forum. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255-6 (1981). This deference is premised on the reasonable assumption that a plaintiff would choose its home forum because it is convenient. Id. As already noted, however, Wisconsin is not plaintiffs’

home forum; plaintiffs are incorporated under Indiana law. Plaintiffs chose the Southern District of Indiana as a forum for a similar dispute with defendants over hospital bed patents, which suggests they have no reluctance to sue in that court.

As for the convenience of the parties factor, the Southern District of Indiana is more convenient for defendants because it is closer to their home forum, headquarters and principal place of business. Furthermore, neither party has a substantial connection to Wisconsin. Plaintiffs have noted that individuals at a Wisconsin corporation, Plexus Corporation, performed work on unidentified “accused products” for an undisclosed period of time. Without more explanation, this is a flimsy reason on which to retain the case here. Even if it were to turn out that material facts or witnesses are located in Wisconsin, “technological advancements have diminished traditional concerns related to ease of access to sources of proof and the cost of obtaining attendance of witnesses.” Milwaukee Elec. Tool Corp. v. Black & Decker (N.A.) Inc., 392 F. Supp. 2d 1062, 1064 (W.D. Wis. 2005). At the least, if these persons turn out to be potential witnesses, their depositions can be taken for use at trial. Certainly, the location of plaintiffs’ or defendants’ employee witnesses is not a heavily weighted factor because “employees will attend trial at the direction of their employer, without the need for a subpoena.” Ralink Technology Corp. v. Lantiq Deutschland GMBH, 10-cv-688-bbc, dkt. #58, at 5.

Defendants have identified two of its third-party witnesses, who are named inventors

on the patents-at-suit and who are located outside this court's subpoena power. Defendants contend that this case should be transferred to a venue in which these third-party witnesses will be available. When evaluating the availability of compulsory process in transferring venue, a court should look first to see whether the third-party witnesses reside within the subpoena power of either the transferor or transferee court. Illumina v. Affymetrix, 09-cv-277-bbc, dkt. #44, at 7-8. Second, courts should look to the materiality of the testimony to be provided by these witnesses, not merely the number of them. Id.

In this case, defendants' argument that two of its potential third-party witnesses are subject to the Southern District of Indiana's subpoena power and not to the subpoena power of this court is only mildly compelling. Defendants have not shown that compulsory process would be necessary to secure the appearance of these third-party witnesses at trial or at a deposition. Furthermore, defendants have not shown reason why they cannot obtain their testimony by deposition, when "in patent actions, depositions are customary and are satisfactory as a substitute for technical issues." Amtran Technology Co., Ltd. v. Funai Elec. Co., Ltd., 2009 WL 2341555, *5 (W.D. Wis. 2009). Thus, the convenience to these third-party witnesses does not weigh heavily for or against transferring this action to the Southern District of Indiana.

Additionally, defendants contend that the Southern District of Indiana is a more convenient forum for both parties because of the pendency of the related action involving

accused products of the defendants. It is irrelevant to this analysis whether defendants believe that Indiana would be more convenient for the *plaintiffs*; plaintiffs have chosen their forum elsewhere.

Although plaintiffs should be given minimal deference for their choice of forum, because neither party has a substantial connection to Wisconsin and the Southern District of Indiana is more convenient for defendants, the convenience factor weighs slightly in favor of transfer.

B. Interest of Justice

The determinative factor in this case is the interest of justice, in particular the existence of the related cases in the Southern District of Indiana. Research Automation, 626 F.3d at 978 (“The interest of justice may be determinative, warranting transfer or its denial even where the convenience of the parties and witnesses points toward the opposite result.”). See also Heller Financial, Inc., 883 F.2d at 1293 (“interest of justice” includes “trying related litigation together, and having a judge who is familiar with the applicable law try the case”); Coffey, 796 F.2d at 221 (relevant factor is whether “whether a transfer would facilitate consolidation of related cases”). The existence of a related case is among the most persuasive reasons I have found for transferring a patent case in the past. E.g., Therma-Stor LLC v. Abatement Technologies, Inc., 2010 WL 446024, *2 (W.D. Wis. 2010) (transferring patent

case with related case in another district); Amtran Technology Co., Ltd., 2009 WL 2341555, *5 (W.D. Wis. 2009) (same); Rudich v. Metro Goldwyn Mayer Studio, Inc., 2008 WL 4691837, *6 (W.D. Wis. 2008) (same); Carson v. Flexible Foam Products, Inc., 2008 WL 1901727, *2 -3 (W.D. Wis. 2008) (same); Broadcom Corp. v. Agere Systems, Inc., 2004 WL 1176168, *1 (W.D. Wis. 2004) (same). Because of the complexity of many patent cases, judicial economy is best served when the court presiding over the case is already familiar with the technology of the patent or the relevant facts and law.

Defendants contend that the Southern District of Indiana is a more convenient forum for both parties because of the pendency of the related lawsuit. Although the patents in each case are distinct, there is substantial overlap between the accused products at issue, with each case including the same three lines of hospital beds. Only one line of beds appears in one case but not the other. If the parties' disputes regarding these nine patents are transferred to Indiana, there is a good chance that the parties could coordinate discovery and reduce the travel requirements and duplicative testimony of witnesses who will be testifying about the same hospital beds. Moreover, the possibility of consolidation with the related cases promotes the interests of justice by reducing the potential for duplicative litigation or inconsistent rulings regarding the nature of the overlapping products. Coffey, 796 F.2d at 219-20 (interest of justice factor includes question whether transfer would facilitate consolidation of related cases). Transfer may increase judicial inefficiency by requiring only

one judge to become knowledgeable about the products at issue.

Another consideration in the interest of justice factor is the likely speed to trial. Plaintiff points to the fact that its choice of venue is motivated by this court's history of swift case resolution. The information submitted by plaintiff shows that if this case is tried here, it could be resolved as much as 12 months more quickly than if it were transferred to the Southern District of Indiana. However, in a recent decision, I found that these statistics from 2009 are not necessarily decisive. Castleberg v. Davidson, Case No. 10-cv-647-bbc, dkt. #27 (W.D. Wis. Dec. 30, 2010). It may very well be that in 2012, the Southern District of Indiana will have a shorter disposition time than this court, or at least the difference in disposition time may be shrinking.

In Castleberg, I concluded that a difference of 12 months in average time to trial was not a dispositive factor when determining whether speed to trial should weigh in favor of transfer. However, plaintiffs assert that this 12-month difference should be viewed with more importance in this case because defendants are in the process of launching new, infringing products that are in competition with plaintiffs' products. This assertion would carry more weight if plaintiffs had not postponed filing this case for four or five months after the accused products came onto the market. I have previously found that a delay between four and five months constitutes a significant delay that undermines the "need for speed" argument. Snyder v. Revlon, 2007 U.S. Dist. LEXIS 18477, at *26 (W.D. Wis. Mar. 12,

2007).

Plaintiffs are hard pressed to show that the speed of this court's docket is a singularly sufficient reason for retaining this lawsuit when another forum would be efficient and convenient. Given the slight deference to be given their choice of a forum other than their home forum, the possibility for coordinating discovery in the two cases if they are both tried in one district and plaintiffs' weak showing of their need for speed, I conclude that defendants have met their burden to show that the Southern District of Indiana is "clearly more convenient." Therefore, their motion to transfer will be granted.

ORDER

IT IS ORDERED that the motion of plaintiffs Hill-Rom Services, Inc., Hill-Rom Company, Inc. and Hill-Rom Manufacturing, Inc. to file a reply to defendants' "corrected declaration of Kevin Conway," dkt.#46, is GRANTED. The motion to transfer this case to the Southern District of Indiana filed by defendants Stryker Corporation and Stryker Sales Corporation, dkt. #19, is GRANTED as well. The clerk of court is directed to transmit the

file to the United States District Court for the Southern District of Indiana.

Entered this 12th day of August, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge