

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

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BROADCOM CORPORATION,  
  
Plaintiff,

OPINION AND  
ORDER

04-C-066-C

v.

AGERE SYSTEMS, INC.,  
  
Defendant.

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Plaintiff Broadcom Corporation seeks injunctive and monetary relief against defendant Agere Systems, Inc. for infringing U.S. Patents Nos. 5,771,127, 5,926,490, 5,978,162, 5,991,107 and 6,594,716, which concern hard disk drive semiconductor chips and components. Now before the court is defendant's motion to dismiss the case for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2) or in the alternative, transfer venue under 28 U.S.C. § 1404(a). Subject matter jurisdiction is present under 28 U.S.C. §§ 1331 and 1338.

I conclude that the convenience of the parties and the interests of justice would be served best by transferring this case to the Eastern District of Pennsylvania because a related case between plaintiff and defendant is pending there. I will grant defendant's motion to

transfer venue to the Eastern District of Pennsylvania and deny defendant's motion to dismiss the case for lack of personal jurisdiction as moot.

From the facts alleged in the complaint, the exhibits attached to defendant's brief in support of its motion to dismiss or transfer venue and the facts averred in 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 Broadcom Corporation is a corporation organized and existing under the laws of California. Its principal place of business is 16215 Alton Parkway, Irvine, California. Irvine, California is in the area making up the Central District of California. Defendant Agere Systems, Inc. is a corporation organized under the laws of Delaware with its principal place of business at 1110 American Parkway NE, Allentown, Pennsylvania. Allentown, Pennsylvania is in the Eastern District of Pennsylvania. The parties are competitors in the semiconductor products industry.

Plaintiff purchased U.S. Patents Nos. 5,771,127, 5,926,490, 5,978,162, 5,991,107 and 6,594,716 from Cirrus Logic, Inc. During the prosecutions for patents nos. 5,771,127, 5,926,490, 5,978,162 and 5,991,107, Cirrus Logic, Inc. was located in Fremont, California. During the prosecution of patent no. 6,594,716, Cirrus Logic, Inc. was located in Austin,

Texas.

Sometime in 2003, plaintiff filed a lawsuit against defendant in the Northern District of California, alleging infringement of several patents not at issue in this action. One week later, defendant filed an action against plaintiff in the Eastern District of Pennsylvania relating to several patents not at issue in this litigation. Plaintiff asked the Pennsylvania court to transfer the Pennsylvania patents to the Northern District of California. The court denied the motion. The California court granted plaintiff's motion to dismiss its claims in California so that all of the parties' dispute could be litigated in the Eastern District of Pennsylvania. The California judge reasoned that the general technology is the same for all patents; hence, consolidating the parties' dispute in front of one judge would reduce the need for duplicative time-consuming tutorials, make discovery and trial more efficient and facilitate settlement. In the preliminary pretrial conference report for this case, defendant indicated that the pending case in Pennsylvania is related to this case.

Plaintiff does not advertise any sales offices in Wisconsin. Both its North American and southwestern United States sales offices are in California and its central and eastern United States sales offices are in Colorado and Pennsylvania, respectively. Defendant maintains offices and personnel in the Central District of California in both Thousand Oaks and Mission Viejo. In addition, it maintains a major business and technology center in Longmont, Colorado. None of the witnesses involved in this litigation resides in Wisconsin.

Five of the named inventors reside in California (or did at the time plaintiff's patents were issued). The remaining named inventors reside in the District of Colorado, with one exception.

## OPINION

Defendant asks this court to dismiss this case for lack of personal jurisdiction or in the alternative, transfer venue to a more convenient location for the parties, such as the Central District of California or the District of Colorado. A district court need not have personal jurisdiction over the defendants when transferring a case under 28 U.S.C. § 1404(a). Goldlawr, Inc. v. Heiman, 369 U.S. 463, 466 (1962); Cote v. Wadel, 796 F.2d 981, 985 (7th Cir. 1986). Because I will grant defendant's motion to transfer, it is unnecessary to decide defendant's motion to dismiss for lack of personal jurisdiction.

In a motion to transfer venue brought pursuant to 28 U.S.C. § 1404(a), the moving party bears 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). In weighing the motion, a court must decide whether the transfer serves the convenience of the parties and witnesses and will promote the interest of justice. See 28 U.S.C. 1404(a); Coffey, 796 F.2d at 219-20; Roberts & Schaefer Co. v. Merit Contracting, Inc., 99 F.3d 248, 254 (7th Cir. 1996) (question is whether plaintiff's interest in choosing forum is outweighed by either

convenience concerns of parties and witnesses or interest of justice). The court should view these factors as placeholders among a broader set of considerations and evaluate them in light of all the circumstances of the case. Coffey, 796 F.2d at 219 n.3. Such broader considerations include the situs of material events, ease of access to sources of proof and plaintiff's choice of forum. Harley-Davidson, Inc. v. Columbia Tristar Home Video, Inc., 851 F. Supp. 1265, 1269 (E.D. Wis. 1994); Kinney v. Anchorlock Corp., 736 F. Supp. 818, 829 (N.D. Ill. 1990). "Factors traditionally considered in an 'interest of justice' analysis relate to the efficient administration of the court system." Coffey, 796 F.2d at 221. Such considerations include whether a transfer would help the litigants receive a speedy trial and whether a transfer would facilitate consolidation of related cases. Id.

Plaintiff argues that the Western District of Wisconsin is a more convenient location to resolve this dispute than either one of defendant's proposed alternative venues. Plaintiff wants the case to remain in the Western District of Wisconsin because it is more convenient for the parties geographically and because of the court's speedy docket. Plt.'s Br., dkt. #19, at 29 and 35. Plaintiff argues that because Wisconsin is in between California, where plaintiff is located, and Pennsylvania, where defendant is located, it is more convenient for the parties to meet in the middle. Furthermore, the Western District of Wisconsin has a speedy docket when compared to the Central District of California, the District of Colorado and the Eastern District of Pennsylvania. The following table compares the number of case

filings and time between civil case filings and trial for 2003:

<b>District Court</b>	<b>Total Case Filings (2003)</b>	<b>Median No. Months from Filing to Trial (2003)</b>
W.D. Wis.	461	8.4
C.D. Calif.	526	21.2
Dist. Colorado	488	26
E.D. Penn.	553	19

Plaintiff notes that defendant does not seek to transfer this action to the Eastern District of Pennsylvania, where, according to defendant, a related action exists and where the case would be tried “swiftly.” Plt.’s Br., dkt. #19, at 28. In its reply brief, defendant states that the only reason it did not ask for a transfer to the Eastern District of Pennsylvania in its original motion “was because it believed such an argument would appear too self-serving.” Dft.’s Br., dkt. # 23, at 19. Defendant states it would not object to a transfer to the Eastern District of Pennsylvania.

Plaintiff has not shown any reason why this case should be tried here, other than the speed of the court’s docket. Even though defendant did not request it explicitly, I find that the convenience of the parties and the interests of justice would be served best by transferring this case to the Eastern District of Pennsylvania. Both parties acknowledge that a transfer to the Eastern District of Pennsylvania is more sensible than a transfer to either

the Central District of California or the District of Colorado. In addition to the Eastern District of Pennsylvania's familiarity with the general technology behind the patents at issue, both parties have offices in that district. Defendant admits that the case pending in the Eastern District of Pennsylvania is related to the case in this court. The Court of Appeals for the Seventh Circuit has stated that "related litigation should be transferred to a forum where consolidation is feasible." Coffey, 796 F.2d at 221. Finally, of the proposed transferee district courts, the Eastern District of Pennsylvania shows the fastest time from case filing to trial. I will grant defendant's motion to transfer venue to the Eastern District of Pennsylvania and deny defendant's motion to dismiss for lack of personal jurisdiction as moot.

#### ORDER

IT IS ORDERED that

1. Defendant Agere Systems, Inc.'s motion to transfer venue to the Eastern District of Pennsylvania is GRANTED;

2. Defendant's motion to dismiss for lack of personal jurisdiction is DENIED as moot.

Entered this 20th day of May, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge