

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

NETCRAFT CORP.,

Plaintiff,

v.

EBAY INC. and PAYPAL INC.,

Defendants.

OPINION AND ORDER

07-C-0254-C

Defendants EBay Inc. and PayPal Inc. have filed a motion to transfer this patent infringement suit to the Northern District of California, pursuant to 28 U.S.C. § 1404(a). In a motion to transfer venue, 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). Because defendants have not met that burden I will deny their motion to transfer.

Plaintiff Netcraft Corp. is alleging infringement of two of its United States patents regarding two methods of completing secure payment transactions over the Internet. Defendants EBay Inc. and PayPal Inc are both alleged to be Delaware corporations with their principal places of business in San Jose, California. Defendant Ebay Inc. is the parent

company of defendant PayPal Inc.

Under 28 U.S.C. § 1400(b) litigants are authorized to bring suits for patent infringement in the judicial district “where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.” “[F]or purposes of venue . . . a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced.” 28 U.S.C. § 1391. Defendants do not contend that venue is improper in this district; only that the Northern District of California is more convenient for themselves and their witnesses and more closely situated to documents that may be “potentially relevant” to this case.

Defendants are correct in pointing out that a court may transfer a case to another district if that transfer serves the convenience of the parties and witnesses. 28 U.S.C. 1404(a). However, in weighing a motion to transfer venue, a court often must look beyond the convenience of one party to determine whether transfer will promote the interest of justice. Coffey, 796 F.2d at 219-20; Roberts & Schaefer Co. v. Merit Contracting, Inc., 99 F.3d 248, 254 (7th Cir. 1996). The promotion of the interest of justice may be “determinative” and convenience alone may be insufficient to justify transfer. Coffey, 796 F.2d at 220. With this in mind, “factors traditionally considered in an ‘interest of justice’ analysis relate to the efficient administration of the court system,” such as whether a transfer

would help the litigants receive a speedy trial and whether a transfer would facilitate consolidation of related cases. Id. at 221.

Plaintiff makes no secret of the fact that its choice of venue is motivated by this court's history of swift case resolution. Statistics suggest that this case will be likely resolved more quickly in this court than if it were transferred to the Northern District of California. Thus, the analysis of this motion centers on the question whether defendants' inconvenience in defending this suit in Wisconsin is sufficient to overcome plaintiff's desire to receive a speedier trial. I am not convinced that it is.

Defendants offer a list of nine potential employee witnesses who could be called in defense of its case and could more conveniently testify in California, but defendants do not make clear the extent to which any of these witnesses will have to testify. Generally, the most important witnesses in patent cases are experts and defendants have provided little information about the expertise of any of these nine witnesses regarding the patents in question. The location of "potentially relevant" documentary evidence is even less persuasive. Moving documents from one place to another is exceedingly easy in the digital age. This burden alone is not sufficient to show that this case should be tried in California.

Defendants cite this court's opinion in Snyder v. Revlon, Inc., 2007 U.S. Dist. LEXIS 18477, at *26 (W.D. Wis. Mar. 12, 2007), for the proposition that plaintiff's delay in

bringing this suit undermines the argument that it is concerned with the speed of litigation. Delays in the litigation process may weaken a party's argument that docket speed is of importance, but such delay did not occur in this case. In Snyder, the plaintiff did not serve its complaint on the defendants until more than four months after the complaint was filed with the court. That type of delay suggested that the plaintiff was not overly concerned with the speed of litigation. Id.

In this case, plaintiff served its complaint on defendants immediately after filing it with the court. Although there is some evidence indicating that this lawsuit could have been filed earlier, "delay" in bringing a suit does not necessarily suggest that a party is unconcerned with the speed of litigation. There may be many reasons for waiting to file a lawsuit, none of which suggest that a party does not desire a speedy resolution of its case once that suit has been brought. Defendants' argument is unconvincing because they offer no credible evidence that plaintiff waited to bring this case because of a lack of interest in enforcing its patents or that it was otherwise "negligent."

Defendants have not demonstrated that the inconvenience of defending this suit in the Western District of Wisconsin outweighs plaintiffs desire for a speedy trial. Accordingly, I will deny defendants motion for transfer of venue to the Northern District of California.

ORDER

IT IS ORDERED that the motion of defendants EBay Inc. and PayPal Inc. for transfer to the Northern District of California pursuant to 28 U.S.C. § 1404(a) is DENIED.

Entered this 17th day of August, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge