IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

KATHLEEN ADAMS and SNAP-SAVER, LLC,

Plaintiffs,

MEMORANDUM AND ORDER

v.

07-C-313-S

NEWELL RUBBERMAID INC.
and TARGET CORPORATION,

Defendants.

Plaintiffs Kathleen Adams ("Adams") and Snap-Saver, LLC ("Snap-Saver") commenced this patent infringement action alleging that Rubbermaid Premier container storage systems (hereinafter the Premier system) which are made, sold and marketed by defendant Newell Rubbermaid Inc. ("Newell") infringe on Adams' United States Patent number 5,692,617 (hereinafter the '617 patent) which Adams has exclusively licensed to Snap-Saver. Plaintiffs also allege that Target Corporation ("Target") is infringing on the '617 patent by selling the Premier system. Jurisdiction is based on 28 U.S.C. §§ 1331 and 1338(a). The matter is presently before the Court on defendants' motion to transfer venue to the United States District Court for the Western District of North Carolina pursuant to 28 U.S.C. § 1404(a). The following facts relevant to defendants' pending motion are undisputed.

BACKGROUND

Plaintiff Adams is a resident of California and plaintiff Snap-Saver is incorporated in Nevada with its principal place of

business in San Diego, California. On December 2, 1997 Adams was issued the '617 patent for her invention of a container storage system. In general the purpose of her system is to hold plastic containers and lids together for easy storage by using an interlocking stacking of the lids and containers. In March of 2004 Snap-Saver was formed and Adams exclusively licensed the '617 patent to Snap-Saver to bring the patented container storage system to market. Since 2004, plaintiffs have enjoyed some success in sales of the container storage system through direct TV, Boscov's, QVC, Sears, Costco and Meijers.

Defendant Newell is incorporated in Delaware with its principal place of business in Atlanta, Georgia and defendant Target is incorporated in Minnesota with its principal place of business in Minneapolis, Minnesota. In 2007 Newell introduced its Premier container storage system. In general it also is a container storage system that holds plastic containers and lids together by using an interlocking stacking of the lids and containers. The Premier system was developed through Newell's subsidiary, Rubbermaid Inc. ("Rubbermaid") by its Food Service Products Division which is located in Huntersville, North Carolina. Also, the Premier system is manufactured in Germantown, Wisconsin.

In May of 2007 after several discussions between plaintiffs and Target concerning the selling of plaintiffs' container storage system in Target's stores, Target told plaintiffs that it was no

longer interested in selling their container storage system in its stores. Furthermore, Target has begun selling Newell's Premier system in its stores, including its stores located in the Western District of Wisconsin.

After discovering Target selling Newell's Premier system, plaintiffs filed this action for patent infringement against defendants on June 11, 2007. On July 3, 2007 Newell filed its motion to transfer venue, and on July 26, 2007 Target joined Newell's motion to transfer venue.

MEMORANDUM

Defendants argue that transfer of venue to the United States District Court for the Western District of North Carolina is proper because evidence of and witnesses with knowledge of the designing, developing, marketing and selling of the allegedly infringing Premier system are located there. Conversely, plaintiffs argue that defendants have failed to provide adequate reasons in support of changing venues.

Change of venue is governed by 28 U.S.C. § 1404(a) which states that "[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."

Defendants state that they are subject to personal jurisdiction in the Western District of North Carolina and that venue would be proper in the Western District of North Carolina.

Plaintiffs do not contest these points. Accordingly, the Court's inquiry focuses solely on "the conveniences of parties and witnesses, in the interest of justice." 28 U.S.C. § 1404(a). In ruling on defendants' motion to transfer venue the Court must consider all circumstances of the case using the three statutory factors as place holders in its analysis. Coffey v. Van Dorn Iron Works, 796 F.2d 217, 219 (7th Cir. 1986) (citations omitted). Defendants bear the burden of establishing by reference to particular circumstances that the transferee forum is clearly more convenient. Id. at 219-220. Defendants have failed to meet this burden.

A. Convenience of the parties and witnesses

Defendants argue that the Western District of North Carolina is more convenient because material events related to the dispute (i.e., the research, development, design and marketing of the Premier system) happened there. However, patent infringement cases involve a comparison of the alleged infringing device with the language of the patent claims, and therefore "the material events of a patent infringement case do not revolve around any particular situs." Medi USA, L.P. v. Jobst Inst., Inc., 791 F. Supp. 208, 210 (N.D. Ill. 1992); see also IP Innovation L.L.C. v. Matshushita Elec. Indus. Co., No. 05-C-902, 2005 WL 1458232, at *2 (N.D. Ill. Jun. 13, 2005). Accordingly, the convenience of a specific

location of material events is a neutral factor in this patent infringement case.

Defendants further argue that transfer is more convenient because all its important documents and witnesses concerning this case are located in North Carolina. However, the traditional concerns related to ease of access to sources of proof and the cost of obtaining attendance of witnesses have been diminished by technological advancements. Milwaukee Elec. Tool Corp. v. Black & Decker (N.A.) Inc., 392 F. Supp. 2d 1062, 1064 (W.D. Wis. 2005). Although geographic location of sources of proof (e.g., drawings, data and other documents) remains a consideration, the Court recognizes that the ease with which documents and data may be transported (e.g., copying and shipping hard copies or scanning and sending electronic copies) causes the location of sources of proof to be a neutral factor in this case. See id. ; see also IP Innovation L.L.C., 2005 WL 1458232, at *2.

When considering the convenience of witnesses factor, the location of non-party witnesses is an important factor when such witnesses will not testify voluntarily (i.e., need to be compelled to testify by the forum court). Milwaukee Elec. Tool Corp., 392 F. Supp. 2d at 1064. However, when all a defendant's witnesses are its employees the location of those witnesses is not as important a factor, Abbott Laboratories v. Mylan Pharmaceuticals, Inc., No. 05-C-6561, 2006 WL 850916, at *7 (N.D. Ill. March 28, 2006) (citing

Hollyanne Corp. v. TFT, Inc., 199 F.3d 1304, 1307 n.2 (Fed. Cir. 1999)), because of the assumption that "witnesses within the control of the party calling them, such as employees, will appear voluntarily," FUL Inc. v. Unified School District No. 204, 839 F. Supp. 1307, 1311 (N.D. Ill. 1993) (citation omitted). In this case, the location of defendants' witnesses is not an important factor because the witnesses identified by defendants are defendants' employees, all of whom are under defendants' control and will presumptively testify voluntarily.

Furthermore, "in patent actions, depositions are customary and are satisfactory as a substitute for technical issues." Medi USA, L.P., 791 F. Supp. at 211. Defendants failed to address why it would be unsatisfactory to obtain the testimony of their witnesses through depositions. See Milwaukee Elec. Tool Corp., 392 F. Supp. 2d at 1064 (reasoning that failure to address why witness testimony could not be obtained through depositions harms defendant's argument that transfer was necessary to obtain witness testimony). Accordingly, the location of defendants' witnesses is also a neutral factor in this case.

Finally, defendants argue that plaintiffs' choice of forum should not be entitled to any deference because it is not plaintiffs' home forum or the forum where material events occurred. It is true that the Western District of Wisconsin is not plaintiffs' home forum and therefore their choice of forum is

placed on an equal footing with the other factors (i.e., receives no special deference). Doagle v. Bd. of Regents, 950 F. Supp. 258, 259 (N.D. Ill. 1997). However, none of the defendants to this suit can assert that the Western District of North Carolina is their home forum for convenience purposes.[1] Because neither forum is the home forum of the parties this factor is neutral when considering the convenience of the parties.

At best, defendants have shown only that the Western District of North Carolina might be as convenient, or as inconvenient depending on one's point of view, as the Western District of Wisconsin. The Seventh Circuit has reasoned that "when the inconvenience of the alternative forum venues is comparable there is no basis for a change of venue; the tie is awarded to the plaintiff . . . ." In re Nat'l Presto Indus., Inc., 347 F.3d 662, 665 (7th Cir. 2003). Accordingly, the convenience of the parties and witnesses does not clearly favor transfer.

B. Interests of Justice

The interests of justice analysis may prove to be the determinative consideration in a case. Coffey, 796 F.2d at 220. The interests of justice analysis involves the consideration of factors relating to "'the efficient administration of the court

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[1]Even Newell's subsidiary Rubbermaid, which is currently not a named party in this suit, cannot claim the Western District of North Carolina as its home forum because Rubbermaid is "in the process of completing the move of its principal place of business to Huntersville, North Carolina." (Defs.' Reply Br. 6.)

system' not to the merits of the underlying dispute." Milwaukee Elec. Tool Corp., 392 F. Supp. 2d at 1065 (quoting Coffey, 796 F.2d at 221). For example, when a trial is held in a district court where the litigants are most likely to receive a speedy trial the interests of justice are best served. Id. at 1065. Accordingly, an important consideration is the relative speed with which an action may be resolved. Id.

Moreover, even greater importance is placed on a speedy resolution when, as in this case, there is a patent infringement action "where rights are time sensitive and delay can often erode the value of the patent monopoly." Id. (quoting Broadcom Corp. v. Microtune, Inc., No. 03-C-0676-S, 2004 WL 503942, at *3 (W.D. Wis. Mar. 9, 2004)). In fact, "[t]he likelihood of delay, the resulting increase in litigation expenses to the parties, and harm to [the] patent monopoly weigh heavily in favor of the matter's prompt resolution in [the relatively speedier] district." Id.

In this case, plaintiffs admit that their sacrifice of geographic convenience was with the hope that the relative speed of this Court's docket would provide a swift resolution of the dispute and the harm to their patent monopoly would be as minimal as possible. Also, defendants concede that cases in the Western District of Wisconsin are resolved, whether by trial or some pre-trial disposition, in half the time cases in the Western District of North Carolina are resolved. (Defs.' Br. 7-8.)

Accordingly, the relative speed with which the action may be resolved in this district weighs against transfer.

Defendants have not produced sufficient evidence demonstrating the Western District of North Carolina would be a clearly more convenient forum. Accordingly, defendants' motion to transfer venue to that district must be denied.

ORDER

IT IS ORDERED that defendants' motion to transfer venue to the United States District Court for the Western District of North Carolina is DENIED.

Entered this 21st day of August, 2007.

BY THE COURT:

/s/

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JOHN C. SHABAZ
District Judge