IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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REMBRANDT DATA STORAGE, LP,

Plaintiff,

v.

WESTERN DIGITAL CORPORATION,

Defendant.

OPINION AND ORDER

10-cv-694-bbc

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In this patent infringement case, defendant Western Digital Corporation 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 Rembrandt Data Storage, LP, opposes the motion, arguing that defendant has not shown that a transfer would be clearly more convenient in this instance. I conclude that it is a close question, given the lack of any connection to this district by either party, but that the case should stay here because plaintiff has filed a suit against another defendant in this court that asserts infringement of the same patents. It would not further judicial efficiency to require another judge to become familiar with the same patents.

RELEVANT FACTS

Plaintiff Rembrandt Data Storage, LP, is a Virginia limited partnership located in Virginia. It conducts no research and makes no products. In this case, it is accusing defendant Western Digital Corporation of willful infringement of two patents: U.S. Patent No. 5,995,342 ("Thin Heads Having Solenoid Coils"), and U.S. Patent No. 6,195,232 ("Low-Noise Toroidal Thin Film Head with Solenoidal Coil"). At the same time that it filed this suit, it filed another suit in this court for willful infringement of the same two patents against a company known as Seagate Technology, LLC. That suit is pending.

Defendant is a Delaware corporation with its headquarters in Irvine, California, which is within the Central District of California. It has three facilities in the Northern District of California, with approximately 2200 employees. At present it designs, researches, tests, markets and sells its hard-disk drive magnetic read-write heads from these facilities.

Uri Cohen and Dennis Hollars are the named co-inventors of the '342 patent; Cohen is the sole inventor of the '232 patent. Both Cohen and Hollars live in northern California. Cohen has declared that he is willing to attend trial in this district. Hollars has not said tht he would. The lawyer who prosecuted the patents at issue practices in the Northern District of California. Other potential third-party witnesses include former employees of defendant who live in the Northern District of California. The bulk of defendant's relevant documentation is located at its facilities in the Northern District of California.

This case is scheduled for trial on June 4, 2012. The median time to trial in the Northern District of California was 24 months in 2009. If this case remains in this district, it will 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). In its effort to meet that burden, it notes that the patents' inventors live in northern California. This is not necessarily helpful; it is rarely the case that an inventor's testimony plays any 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). However, defendant alleges that the testimony of these inventors is relevant to issues that include reduction to practice, assignment and licencing of the patents and the negotiations that accompanied the efforts to assign and license the patents. Cohen has agreed to attend trial in Wisconsin if the case is tried here. Although Hollars has not made a similar commitment, defendant has not explained why Hollars's testimony would be necessary if Cohen appears.

Defendant has named some third-parties who worked with the named inventors at a company called Velocidata in the relevant time period in 1995 and 1996. It asserts that they worked on the patented invention with the named inventors but does not support its assertion with any specifics. It cites an article the two wrote in conjunction with five others, including the named inventors, but the article does not seem to relate to the patented inventions, which are directed to the design of a read-write head having a solenoid coil. Instead, the article discusses the media and not the head that reads and writes to the media.

Defendant's headquarters is in California, albeit not in the Northern District. It is possible that some of its financing and marketing employees who work at headquarters would have to testify at a trial. Defendant points to the number of its employees who work in the Northern District but 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. It merely says that its employees who work on the products that allegedly

infringe do so in the Northern District. 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.

Defendant argues that certain third party witnesses other than the named inventors have their offices or residences in the Northern District. These include the lawyer who prosecuted the patents in suit, some former employees who may have been involved with the design and development of the accused technology and employees of TDK/Headway, a competing manufacturer of disk drive heads. In its reply brief, however, defendant seems to have abandoned any attempt this argument, probably because it has nothing but conjecture to support its assertion that these witnesses would have anything to contribute at trial.

The documentary evidence that defendant might need for trial is located in California, but computers have made documentation a moot issue. It is hard to imagine that companies in the business of data storage would have any difficulty transferring documents to another physical location.

In addition to the considerations of convenience, the court must take into account the "interests of justice," which "is a separate element of the transfer analysis that relates to the efficient administration of the court system." Research Automation, Inc. v. Schrader-Bridgeport International, Inc., 626 F.3d 973, 978 (7th Cir. 2010) (citing Van Dusen v.

Barrack, 376 U.S. 612, 626-27 (1964))). These may include such matters as docket congestion, likely speed to trial in the transferee and transferor courts, the respective desirability of resolving disputes in one state or another, the relationship of each community to the controversy and each court's relative familiarity with the relevant law. Id.

The parties raise two arguments that fall into the interests of justice category. Defendant asserts that the Northern District of California has a strong localized interest in the litigation. This seems unlikely. This is not the kind of case in which the state has a strong interest: it does not concern a state law, the well-being of a state's citizens or a particularized state interest, such as the environment or its fisheries. Resolution of the case would not advance any particular state concern unless the protection of a corporation that has some part of its business facilities in the state is viewed as a legitimate concern. On the other hand, 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, which it does.

Concern for judicial efficiency is the determining factor in this case. Even if the suit against Seagate is not identical to this one and even if the claims in the suits are not identical, undoubtedly there will be claim terms from the two patents that will require construction in both cases. Keeping this case here will promote efficiency and avoid

inconsistent claim constructions. Kraft Foods Holdings, Inc. v. Procter & Gamble Co., 2008 WL 45559703 (W. D. Wis. Jan. 24, 2008). Given the amount of time required for one judge to become familiar with the kinds of patents at issue in these two cases, construe the claims in dispute, analyze the patents and the parties' claims at summary judgment and ultimately try the case, it makes no sense to require two judges to go through the same exercise. The judiciary cannot afford such duplicative efforts, particularly at a time when 12% of all federal judgeships are vacant and so many other litigants are waiting to have their cases heard.

All together, defendant has almost no support for its motion to transfer. At best, only the fact that certain employees, who *may* have testimony to provide and who are entirely within defendant's control, live and work in California. Nevertheless, it might be enough to tilt the balance in defendant's favor given plaintiff's lack of any business presence here and the absence of any prospective witnesses residing in the state or nearby, were it not for the fact that plaintiff has another suit pending in this district asserting the same patents that it asserts in this case.

In summary, I conclude that defendant has failed to show that a transfer to the Northern District of California is clearly more convenient than keeping the case in this district. It has not shown that it would be unable to secure the attendance of critical witnesses if the trial is held here or that it would be unable to obtain the documentation it

needs. It would be more convenient for defendant's officers and employees to attend trial in the Northern District of California but this convenience factor is offset by the concern for promoting the interests of justice. Keeping the case here will save time and effort for the judiciary, allowing it to hear the cases of other litigants.

ORDER

IT IS ORDERED that defendant Western Digital Corporation's motion to transfer this case to the Northern District of California under 28 U.S.C. § 1404(a) is DENIED.

Entered this 2d day of March, 2011.

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