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

HUNTS POINT VENTURES, INC.,

Plaintiff,

v.

EPSON AMERICA, INC.,

Defendant.

OPINION AND ORDER

11-cv-828-wmc

This is a patent infringement lawsuit between plaintiff Hunts Point Ventures, Inc. ("Hunts Point") and defendant Epson America, Inc. ("Epson") for patent infringement. Before the court is Epson's motion to transfer venue to the United States District Court for the Northern District of California. (Dkt. #20.) Because the court finds that the interests of justice weigh against transfer, the court will deny the motion.

BACKGROUND

In deciding whether the moving party has made the necessary showing in a transfer motion, the court may rely on the allegations of the complaint, as well as receive and weigh affidavits submitted by the parties. *Heller Fin., Inc. v. Midwhey Powder Co., Inc.*, 883 F.2d 1286, 1293-94 (7th Cir. 1989). From Hunts Point's complaint and the declarations submitted by the parties, the court draws the following facts.

Plaintiff Hunts Point is incorporated in the State of Washington with its principal place of business located in Seattle, Washington. Hunts Point owns United States Patent No. 7,574,272 (the "'272 patent"), which is entitled "System and Method for

Data Transfer Optimization in a Portable Audio Device" and is the subject of the present lawsuit. Hunts Point has no employees in Wisconsin, nor does it maintain any relevant books or records in Wisconsin. Hunts Point opposes transfer because (1) its counsel are familiar with the Western District of Wisconsin's procedures; (2) it prefers that matters be decided on the papers as this court generally does; (3) Epson waited over eight months before it requested a transfer; and (4) Epson requested a transfer only after the court denied its motion to stay.

Defendant Epson is incorporated in California with its principal place of business located in Long Beach, California. Epson manufactures and sells, among other things, portable media player products, including Multimedia Storage Viewers P-3000, P-4000, P-5000, P-6000, and P-7000, that Hunts Point alleges infringe its '272 patent. Many of Epson's documents are located in Long Beach, although some technical documents are located in Japan, including engineering, research, design and development documents. Epson also identifies (1) one employee witness from Long Beach having knowledge about the products in question and (2) four third-party inventors from California Epson also plans to call to testify on the issue of invalidity. Again, however, Epson plans to call other third-party inventors who reside in Japan, where many of its employees also reside.

Even without accounting for the eight months that have passed since the filing of this lawsuit, the Western District of Wisconsin has a materially faster patent docket than the Northern District of California. The following chart shows the median time from filing to trial for civil litigation measured in months from 2006 through 2011:[1]

[1] These statistics are available at:

	2006	2007	2008	2009	2010	2011
W.D. Wis.	13.4	10.4	12.3	15.0	15.1	14.4
N.D. Cal.	25.0	24.9	30.0	24.5	21.5	34.3

The present case has a trial date set for July 29, 2013, just over nineteen months after Hunts Point filed its complaint against Epson.

OPINION

Regional circuit law governs the transfer of patent actions. *Winner Int'l Royalty Corp. v. Wang*, 202 F.3d 1340, 1352 (Fed. Cir. 2000). In the Seventh Circuit, transfer is proper where the moving party demonstrates that: (1) venue is proper in the transferor district; (2) venue and jurisdiction are proper in the transferee district; and (3) the transfer will serve the convenience of the parties, the convenience of the witnesses, and the interests of justice. *Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 219-20 (7th Cir. 1986). The parties do not dispute that venue and jurisdiction are proper in both Wisconsin and California. As for convenience and the interests of justice, 28 U.S.C. § 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." *Research Automation, Inc. v. Schrader-Bridgeport Int'l, Inc.*, 626 F.3d 973, 978 (7th Cir. 2010) (quoting *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)). On balance, the factors militate against transfer here.

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http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics/DistrictCourtsSep2011.aspx.

A. Convenience to Parties and Witnesses

In determining whether transfer would make litigation more convenient, courts consider: (1) the plaintiff's choice of forum; (2) the convenience to parties; and (3) the convenience to witnesses. *Illumina, Inc. v. Affymetrix Inc.*, No. 09-cv-277-bbc, 2009 WL 3062786, at *2 (W.D. Wis. Sept. 21, 2009). Given plaintiff Hunts Point's complete lack of ties to Wisconsin, the court is inclined to give its choice of forum little weight beyond a plaintiff's understandable desire to avoid a substantial delay to trial. The court also finds that the Northern District of California is more convenient for the parties and witnesses than is this district.

i. Plaintiff's Choice of Forum

The court's convenience analysis generally begins from a posture of deference to the plaintiff's choice of forum. Two lines of reasoning underlie this deference. The first is a hesitance on the part of courts to deprive the plaintiff of its forum choice. *See In re Nat'l Presto Indus., Inc.*, 347 F.3d 662, 663-64 (7th Cir. 2003) ("[U]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508, 67 S. Ct. 839 (1947))). This consideration is found nowhere in 28 U.S.C. § 1404, but rather is inherited from common law *forum non conveniens* considerations. *Id.* Even so, deference due plaintiff's choice of forum is softened somewhat for purposes of transfer analysis. *See Norwood v. Kirkpatrick*, 349 U.S. 29, 32, 75 S. Ct. 544, 546 (1955) ("This is not to say . . . that the

plaintiff's choice of forum is not to be considered [in § 1404(a) transfer analysis], but only that the discretion to be exercised is broader.").

The second reason for deference converges with the court's convenience analysis in recognizing that the plaintiff has expressed its opinion about what forum is most convenient by filing suit there. Following this second line of reasoning, courts generally give less deference to the plaintiff when the selected forum is not its home or the situs of material events. *See U.S.O. Corp. v. Mizuho Holding Co.*, 547 F.3d 749, 752 (7th Cir. 2008) ("The more tenuous a party's relation to the forum, the weaker its case [is] for litigating there."); *see also Ledalite Architectural Prods v. Focal Point L.L.C.*, No. 09-cv-394-slc, 2008 WL 4615784, at *2 (W.D. Wis. Oct. 16, 2008) ("The idea behind such deference is that it is reasonable to assume that a plaintiff files suit in its home forum for its convenience; not so for a foreign plaintiff.").

Here, Hunts Point has no meaningful connection to the Western District of Wisconsin, nor even the Midwest. Similarly, while plaintiff's counsel are based in Seattle and have litigated in this court in the past (*see, e.g.*, *Spam Arrest LLC v. Sendio, Inc.*, No. 10-cv-00669-wmc), they do not have any Wisconsin offices that would make this forum a "litigation home" of sorts. Accordingly, the court will give relatively limited weight to Hunts Point's preference as a factor weighing against transfer.

ii. Convenience of the Parties

Often the home forum is more convenient for the plaintiff because documents and witnesses are located nearby or at least are more readily accessible from plaintiff's home forum than other likely venues. As just noted, however, none of those factors are present

in this case. Hunts Point and its principal officers are located in the State of Washington. Indeed, Hunts Point acknowledges filing in the Western District of Wisconsin because "its principals and witnesses find this forum convenient" and "because of its relative speed." (Pl.'s Opp'n (dkt. #24) 6.) Aside from litigation speed (which is generally considered among the "interests of justice" factors, rather than as an element of "convenience"), this conclusory statement provides *no* factual support as to how the Western District of Wisconsin is materially more convenient to Hunts Point than California or other possible forums. Indeed, there is scant evidence that transfer to California would be any *less* convenient for Hunts Point. While Hunts Point would have to travel to California if the court transfers this case, the inconvenience, time and expense of travel from Seattle to California is likely to be much less than that from Seattle to Madison.

If this case proceeds to trial, the Northern District of California would obviously also be more convenient for Epson than would the Western District of Wisconsin. Epson's principal offices in Long Beach, however, are located in the *Central* not the Northern District of California. What is more, although Epson employees and many of its documents are located in Long Beach, Epson also has many employees and documents with potentially relevant information located in Japan. While a transfer would not resolve all of the parties' travel burdens, it would be more convenient for Epson (and likely even Hunts Point) if the case is transferred to the Northern District of California.

iii. Convenience of Non-Party Witnesses

Convenience to third-party witnesses is yet another factor to consider. Certainly, traditional concerns surrounding the cost of obtaining the attendance of witnesses have been diminished by technological advancements, but the location of non-party witnesses remains an important factor for witnesses who may not testify at trial without being compelled by a subpoena from the forum court. *See Milwaukee Elec. Tool Corp. v. Black & Decker (N.A.) Inc.*, 392 F. Supp. 2d 1062, 1064 (W.D. Wis. 2005). Epson identified four third-party inventors from California that it plans to call to testify on the invalidity issue, although Epson also plans to call other third-party inventors who reside in Japan and one third-party witness who resides in Dallas, Texas.

Here, there is no indication that the non-party witnesses in California will refuse to testify unless compelled by the court. Even if they will, the witnesses identified in Japan and Texas are outside the subpoena power of both this court and of the district court in California.

Even if the non-party witnesses would be burdened by traveling to Wisconsin for trial, interrogatories can be answered and depositions can be taken at their location. Even at trial, video depositions or remote, live testimony tend to be satisfactory for all but key witnesses, especially when addressing technical patent issues. *Medi USA, L.P. v. Jobst Inst., Inc.*, 791 F. Supp. 208, 211 (N.D. Ill. 1992). While a transfer to California would be more convenient for the inventors residing in California, such a transfer would not necessarily be more convenient for non-party witnesses located in Japan and Texas. Accordingly, this factor tips slightly in favor of transfer.

B. Interests of Justice

"The 'interests of justice' is a separate component of a § 1404(a) transfer analysis," which may (as here) be determinative and demand a decision contrary to the analysis of the convenience factors. *Coffey*, 796 F.2d at 220. Traditionally, this analysis relates to the "efficient administration of the court system," requiring consideration of such factors as: (1) the district in which the litigants would receive a speedier trial; (2) related litigation that may allow consolidation; and (3) the court's familiarity with the applicable state law of a diversity action. *Id.* at 221; *Illumina*, 2009 WL 3062786 at *5. The third factor plays no role in this decision. Given that neither party points to other litigation related to this matter, the second appears to be a non-factor as well.

This leaves litigation speed as the lone, articulated "interests of justice" factor relevant to this case. As shown above, in 2011 the median time from filing to trial was 14.4 months in this court and 34.3 months in the Northern District of California. The present case has a trial date set for July 29, 2013, just over nineteen months after Hunts Point filed its complaint *and* (most significantly in the court's view) less than nine months from now. In addition, Epson waited over eight months to file its motion to transfer. In the interim, the court denied Epson's motion to stay. Finally, instead of requesting transfer to the Central District of California, which is where Epson is located and which has a much faster docket than the Northern District, Epson now seeks a transfer there.

The difference in docket speed between this court and the Northern District of California is substantial, particularly in light of Epson's apparently deliberate and inexplicable delay in bringing the present motion (other than obviously the improper goal of delaying the orderly resolution of this dispute). Epson claims that it no longer manufactures the accused products and that Hunts Point does not sell products using the '272 patent. (Def.'s Opening Br. (dkt. #21) 4.) If true, this arguably lessens the need for a speedy resolution of the parties' dispute, but the relative docket speed -- especially where the time to trial of the proposed transferee court is more than *twice* as long as this court -- still remains an important factor.

In light of this, the court concludes that Epson has not met its burden of demonstrating that a transfer to the Northern District of California is in the interest of justice. To the contrary, Epson's unjustified delay in bringing this motion combined with the transparent request for a transfer to a district with a materially slower docket to trial, far outweighs the plaintiff's otherwise questionable forum choice.

ORDER

IT IS ORDERED that Epson America, Inc.'s motion to transfer to the Northern District of California (dkt. #20) is DENIED.

Entered this 27th day of November, 2012.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge