IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

VIZIO, INC.,

Plaintiff,

v. Civil Action No. 2:09cv236

FUNAI ELECTRIC COMPANY, LTD.,

and

FUNAI CORPORATION, INC.,

Defendants.

ORDER

The above-styled case comes before this Court upon Defendant Funai Corporation's Motion to Transfer pursuant to 28 U.S.C. § 1404(a), filed on June 5, 2009.[1] Plaintiff Vizio, Inc. ("Plaintiff") filed a Response on June 16, 2009. Defendant filed a Reply on June 19, 2009. The Motion is therefore ripe for review by this Court. For the reasons stated herein and at the hearing held on August 3, 2009, the Court hereby **FINDS** that it is in the interest of justice to transfer the case from this Court to the United States District Court for the Central District of California.

[1] The Motion to Transfer was filed by defendant Funai Corporation only. However, the Memorandum in Support of the Motion states that Funai Corporation has been authorized to represent the interests of the second defendant in this action, Funai Electric Company. Thus, transfer appears to be desired by both Funai Corporation and Funai Electric Company (collectively, "Defendants"), and the Court will treat the Motion as having been filed by both Defendants.

Therefore, the Court hereby **GRANTS** the Motion and **TRANSFERS** jurisdiction to the Central District of California pursuant to 28 U.S.C. § 1404(a).

I. FACTUAL BACKGROUND

This case concerns whether Defendants have infringed seven (7) patents owned by Plaintiff. These patents appear to relate to the technology used in digital televisions. Plaintiff is a leading seller of liquid crystal display ("LCD") display televisions in the United States. (Compl. ¶ 1.) Defendants manufacture LCD and plasma display televisions. (Compl. ¶ 2.) This action, which was instituted on May 20, 2009, sprouts from a broader dispute that has arisen between these and other parties, and which is reflected in litigation that has been instituted throughout the country. (See Mem. in Supp. of Mot. at 3-5; Resp. at 2-5.)

II. ANALYSIS

Section 1404(a) 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." 28 U.S.C. § 1404(a). When applying § 1404(a), the Court must determine whether (1) the claims could have been brought originally in the transferee forum, and (2) whether the interest of justice and the convenience of parties and witnesses justify transfer of the case. JTH Tax, Inc. v. Lee, 482 F.Supp.2d 731, 735 (E.D. Va. 2007) (Smith, J.). Factors pertinent to the Court's interest of justice analysis include: (1) ease of access to sources of proof; (2) the convenience of the parties and witnesses; (3) the cost of obtaining the attendance of witnesses; (4) the availability of compulsory process; (5) the interest in having local

controversies decided at home; and (6) in diversity cases, the court's familiarity with the applicable law. BHP Int'l Inv., Inc. v. Online Exch., Inc., 105 F.Supp.2d 493, 498 (E.D. Va. 2000) (Smith, J.).

A. The Interest of Justice Warrants Transfer to California

The Court is persuaded that transfer of this case to the state of California would be in the interest of justice. Plaintiff is correct that this action lacks a substantial connection to Virginia. Neither Plaintiff nor Defendant are Virginia citizens.[2] At the hearing, Plaintiff admitted that no known witnesses as to liability exist in Virginia. None of the products at issue is alleged to have been developed in Virginia. Indeed, the only link between the instant controversy and this forum appears to be the fact that some of the televisions containing the allegedly offending technology are sold in this district. Merely one percent of the nationwide sale of these products, however, occurs in Virginia. (See Reply at 1-2.)

In contrast, the state of California has a strong connection to this case. Eleven percent of the allegedly offending products are sold in California, as compared to the relatively small percentage of products sold in Virginia. All of Defendants' third party chip manufacturers, entities who may be called upon to give evidence or testimony in this case, are located in California. Plaintiff is located in California, and Defendants' main American facility is located in California. Employees who possess knowledge of the overall design and operation of the allegedly infringing televisions are based either in Japan or California. A key investor of the

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[2] Plaintiff is a corporation organized under California law with its principal place of business in Irvine, California. (See Compl. ¶ 1.) Defendant Funai Electric Co., Ltd. is a Japanese corporation with its principal place of business in Osaka, Japan. (See Compl. ¶ 2.) Defendant Funai Corporation is a corporation organized under New Jersey law with its principal place of business in Rutherford, New Jersey. (See Compl. ¶ 3.)

asserted patents is located in California. Two of the inventors of two of the patents at issue reside in California. (Resp. at 5-6.) Funai Corporation's chief financial officer is located in California. Thus, although Plaintiff is undoubtedly correct that much of the case will also involve witnesses and evidence from many locations throughout the country, the state of California clearly has a meaningful tie to this case.

Plaintiff argues that its desire for an expeditious resolution of this matter should be considered by the Court as a factor that weighs against transfer. Specifically, Plaintiff's argument is based upon this district's reputation for handling matters quickly as the so-called "rocket docket." Thus, the question becomes whether this Court may consider the speed of a district court's docket as a factor in its § 1404(a) analysis. It does appear that, in passing on a motion to transfer, the Court may consider as relevant the docket conditions of the transferor and transferee districts. See Samsung Elecs. Co. v. Rambus, Inc., 386 F.Supp.2d 708, 723-24 (E.D. Va. 2005) (Payne, J.) (discussing the fact that, although relative docket conditions are considered in weighing the interest of justice, they "are not given great force"); Alabama Great Southern R. Co. v. Allied Chemical Co., 312 F. Supp. 3, 10 (E.D. Va. 1970) (stating that "docket congestion would appear to be a relevant factor in reference to its effect on the speed in which the cause can be heard"). However, the Court need not consider this factor to be controlling if all other considerations weigh heavily in favor of transfer. See Samsung Elec. Co., 386 F.Supp.2d at 723-24 (stating that "[i]f all other factors weigh in favor of transferring venue, the fact that plaintiff might obtain a trial and judgment in a shorter period would not be sufficient to avoid transfer," and deriding the use of the "rocket docket" as the primary motivation for laying venue). See also Securities and Exchange Commission v. Savoy Indus., 587 F.2d 1149, 1156 (D.C. Cir. 1978)

(commenting that docket congestion alone is not a sufficient reason for transfer of a case, although relative docket congestion and potential speed of resolution can be considered in a motion to transfer); In re Genentech, Inc., 566 F.3d 1338 (Fed. Cir. 2009) (noting that "when . . . several relevant factors weigh in favor of transfer and others are neutral, then the speed of the transferee district court should not alone outweigh all of those other factors"). Accordingly, although it may be true that Plaintiff will experience a speedier resolution of its action in this district, the Court cannot ignore the fact that the interest of justice remains on the side of transfer to California. Furthermore, if the Court were to give such a consideration commanding weight, all cases filed in this district would be effectively immune from transfer. See GTE Wireless, Inc. v. Qualcomm, Inc., 71 F.Supp.2d 517, 520 (E.D. Va. 1999) (stating that "[d]ocket conditions, although relevant, are a minor consideration when all other reasonable and logistical factors would result in a transfer of venue. If the rule were otherwise, every company with a national market and a patent infringement claim would be entitled to venue in this District").

The existence of related litigation in California also persuades the Court that transfer is appropriate. Defendants cite to a number of cases pending in both the Southern and the Central District of California that are related to this case (Mem. in Supp. of Mot. at 1-3; Reply at 4), and the Court may consider the pendency of related litigation in another forum when resolving a question of *forum non conveniens*. See JTH Tax, Inc. v. Lee, 482 F.Supp.2d 731, 738 (E.D. Va. 2007) (Smith, J.) (stating that the pendency of a related action is an appropriate factor for a court to consider in determining the "interest of justice" for purposes of a motion to transfer); Coors Brewing Co. v. Oak Beverage, Inc., 549 F.Supp.2d 764, 769 (E.D. Va. 2008) (same). The Court is particularly interested in the fact that Plaintiff filed an antitrust suit against Funai Electric

Company in the Central District of California earlier this year. (See Reply at 4.) See also Vizio Press Release (Feb. 13, 2009), http://www.vizio.com/about.aspx?cid=32788&id=2892. The Court realizes that as an action between two of the same parties concerning the licensing of particular digital television technology, the antitrust suit in the Central District of California is fertile ground for joinder of the claims made in this case. This is especially true where Plaintiff would have an absolute right to amend its complaint to include the claims brought here, because an answer has not yet been filed in that case. See Fed. R. Civ. P. 15(a)(1)(A) (allowing a party to amend its pleading once as a matter of course before being served with a responsive pleading). Consolidation with the action in the Central District of California would also further the interest of judicial economy, as claims arising between the same parties and involving similar technological issues would be litigated in the same court.

Plaintiff is correct to point out that, normally, a plaintiff's choice of forum is given significant weight. See Koh v. Microtek Int'l, 250 F.Supp.2d at 633. However, it is also true that "[w]hen a plaintiff selects a forum in which neither it nor the defendant(s) resides and where few or none of the events giving rise to the causes of action occurred, that plaintiff's choice loses its place status in the court's consideration and is not entitled substantial weight." High Point Sarl v. Sprint Nextel Corp., No. 2:08cv625, at 9 (E.D. Va. May 18, 2009) (order granting motion to transfer) (Friedman, J.) (quoting Ion Beam S.A. v. Titan Corp., 156 F.Supp.2d 552, 563 (E.D. Va. 2000)) (internal quotation marks omitted). This forum lacks any substantive tie to the controversy at bar. Thus, the Court finds that the interest of justice clearly outweighs Plaintiff's choice of forum in this case.

B. The Case Might Have Been Brought in the Central District of California

Having determined that transfer to the state of California would serve the interest of justice, the Court is also bound to determine whether this action "might have been brought" in a district court in California. 28 U.S.C. § 1404(a). Under the transfer statute, the Court is required to establish that both venue and jurisdiction are proper in the transferee district with respect to each defendant. See Koh v. Microtek Int'l, Inc., 250 F.Supp.2d 627, 630 (E.D. Va. 2003). The venue provision for patent infringement states that such an action "may be brought 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." 28 U.S.C. § 1400(b). A corporate defendant "resides" in "any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." 28 U.S.C. § 1391(c).[3] A corporation may be subject to personal jurisdiction in a district if it has sufficient minimum contacts with the forum, International Shoe Co. v. Washington, 326 U.S. 310, 318-20 (1945), and the litigation relates to activity purposely directed at the forum, Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985). California's broad long-arm statute comports with these principles. See Cal. Civ. Pro. Code § 410.10 (1970) (authorizing personal jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States").

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[3] Furthermore, if a state has more than one judicial district, a corporation:

> shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.

28 U.S.C. § 1391(c).

As earlier described, Defendants each carry on substantial business activity in California, and based upon the pleadings, the Court concludes that both Defendants are located in the Central District of California for purposes of jurisdiction. Defendant Funai Corporation's main research and development center is in Torrance, California, a city which is located in the county of Los Angeles and therefore is within the jurisdiction of the Central District of California. See Central District of California map on official website for United States Attorney's Office, http://www.usdoj.gov/usao/cac/ (demonstrating that the county of Los Angeles is within the Central District of California). This facility also serves as the primary distribution and logistics center for Funai Corporation's digital television products sold within the United States. (Mem. in Supp. of Mot. at 6.)[4] Funai Corporation is wholly owned by its parent Funai Electric Company (Resp. at 3), and thus Funai Electric Company is similarly bound by its American subsidiary's jurisdictional contacts. See Mylan Labs., Inc. v. Akzo, N.V., 2 F.3d 56, 61 (4th Cir. 1993) (permitting a subsidiary's contacts with a forum to be imputed to its parent for jurisdictional purposes when the relationship is that of principal to agent); Doe v. Unocal Corp., 248 F.3d 915, 928-29 (9th Cir. 2001) (explaining that courts may impute the contacts of a subsidiary to a parent corporation where the subsidiary was either established for, or was engaged in, activities that the parent would have undertaken itself) (citing Chan v. Society Expeditions, Inc., 39 F.3d 1398 (9th Cir. 1994)). Because both Defendants "reside" in the Central District

[4] Although not a factor in determining where the case "might have been brought," it is worthwhile to note that Plaintiff's principal place of business is in Irvine, California, which is in the county of Orange and therefore is also in the Central District of California. See Central District of California map on official website for United States Attorney's Office for the Central District of California, http://www.usdoj.gov/usao/cac/ (demonstrating that the county of Orange is within the Central District of California).

California, the action "might have been brought" there, and this Court may transfer the action to that district. See 28 U.S.C. § 1404(a).[5]

III. CONCLUSION

For the aforementioned reasons and for the reasons stated at the hearing held on August 3, 2009, the Court hereby **FINDS** that it is in the interest of justice to transfer the case from this Court to the United States District Court for the Central District of California. Therefore, the Court hereby **GRANTS** the Motion and **TRANSFERS** jurisdiction to the Central District of California pursuant to 28 U.S.C. § 1404(a).

The Clerk is hereby **ORDERED** to **TRANSFER** this case to the United States District Court for the Central District of California. The Clerk is further **ORDERED** to forward a copy of this Order to all counsel of record in this case.

IT IS SO ORDERED.

/s/
Robert G. Doumar
Senior United States District Judge

August 7, 2009
Norfolk, Virginia

[5] Defendants desire this case to be transferred to the Southern District of California. However, Defendants failed to demonstrate the existence of jurisdictional contacts between themselves and the Southern District. The Court is bound by the text of § 1404, and therefore cannot transfer this case to the Southern District absent a showing that the case "might have been brought" there.