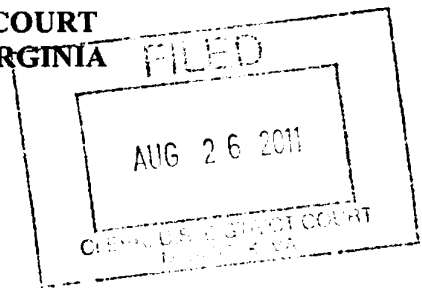


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



BEL IP LLC

Plaintiff,

v.

Civil Action No. 2:11cv188

**BOOMERANGIT INC.,
et al.**

Defendants.

ORDER

This matter is before the Court Defendant TRG Group, Inc.'s¹ ("TRG") Motion to Sever and Transfer.² Doc. 39. The motion has been fully briefed, docs. 40, 49, 54, and is ripe for disposition.

On March 31, 2011, Plaintiff Bel IP LLC ("Plaintiff" or "Bel IP") instituted this patent infringement action against Defendants TRG, BoomerangIt Inc., Qantas Airway Limited, Travelpro International Inc., Safe Skies, LLC, LoJack Corp., Vanguard Identification Systems, Inc., and High Sierra Sport Co. (collectively, "Defendants"),³ claiming that Defendants infringe Bel IP's patent, U.S. Patent No. 6,476,718 (the "718

¹ In the Complaint, Plaintiff Bel IP LLC refers to TRG as "TRG Group, Inc." Doc. 1 at ¶ 5. In its Answer, TRG states that its proper name is "TRG Accessories, LLC." Doc. 38 at 1 n. 1. For purposes of this Order, the Court will refer to the entity as "TRG."

² TRG titled the motion, "Motion to Sever or Transfer." Doc. 39. TRG, however, is requesting the Court to sever Bel IP's claims against it and then to transfer those claims to the Eastern District of Missouri. Doc. 40 at 17. TRG is not requesting that the above-captioned action be transferred. Therefore, to avoid confusion, the Court will refer to the motion as, "Motion to Sever and Transfer."

³ Bel IP also included UAL Corp., United Airlines, Inc., and Globalbagtag.com Ltd. as defendants when it filed suit. On July 5, 2011, however, Bel IP voluntarily dismissed Globalbagtag.com Ltd. without prejudice, doc. 59, and, on July 6, 2011, Bel IP voluntarily dismissed United Airlines, Inc. and UAL Corp. with prejudice, doc. 63.

Patent”), which was assigned to Bel IP.⁴ As of the date of this Order, no Federal Rule of Civil Procedure 16(b) scheduling conference has been held and no scheduling order has been entered. Also, there have been no filings or proceedings regarding claim construction. On May 31, 2011, TRG filed the Motion to Sever and Transfer, requesting the Court to sever Bel IP’s claims against TRG because the claims asserted against the other Defendants do not arise out of the same transaction or occurrence, and joinder of several unrelated defendants risks significant juror confusion and prejudice to TRG. Doc. 40 at 17.

A district court possesses broad discretion in ruling on a requested severance under Federal Rule of Civil Procedure 21 (“Rule 21”). Hanna v. Gravett, 262 F. Supp. 2d 643, 647 (E.D. Va. 2003) (citing Saval v. BL, Ltd., 710 F.2d 1027, 1031-32 (4th Cir. 1983)). In this case, TRG’s motion is premature. All of Defendants’ products are accused of infringing the same “traceable luggage and bag system,” doc. 40 at 10; doc. 49 at 9, discovery has just commenced, and the parties do not know the extent to which the accused products differ.⁵ Therefore, it is unclear whether Defendants will assume conflicting positions. The Court will not impede judicial economy and sever an action when it is uncertain whether a party will be prejudiced. See Hanna, 262 F. Supp. 2d at 647. TRG is not prejudiced by remaining a party to this action during discovery. Any prejudice TRG might suffer will occur at trial. If after discovery TRG determines that its accused products are distinct and that it would be prejudiced by participating in a trial

⁴ In its Answer, TRG challenges whether Bel IP is the owner of the '718 Patent. Doc. 38 at ¶ 26.

⁵ In support of its motion, TRG submitted exhibits with descriptions of one of its product lines accused of infringement and some of the other Defendants’ accused products. Doc. 40, Ex. B-F. This submission, however, is just a sampling of the accused products and their features and is no substitute for discovery. The exhibits do not warrant severance without further details regarding the accused products and how any differences will affect Defendants’ positions.

