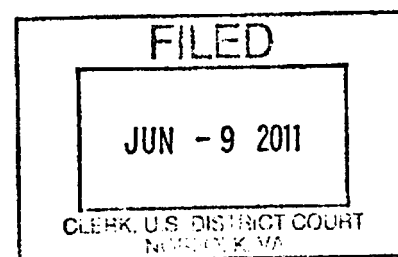


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



ADISCOV, LLC,

Plaintiff,

v.

CIVIL NO. 2:11cv201

AUTONOMY CORP., PLC, and
RECOMMIND, INC.,

Defendants.

MEMORANDUM ORDER

This case comes before the court on Autonomy Corp., PLC's ("Autonomy") and Recommind, Inc.'s ("Recommind") Motions to Transfer Venue to the United States District Court for the Northern District of California. For the reasons set forth herein, the motions are **GRANTED**.

I.

Adiscov, LLC ("Adiscov") is a Virginia limited liability company, with its principal place of business in Falls Church, Virginia. It is a non-practicing entity whose members, Albert and Julie Krachman, live in the Eastern District of Virginia. Albert Krachman is the inventor of the patent at issue in this case, United States Patent Number 6,738,760, entitled "Method and System for Providing Electronic Discovery on Computer Databases and Archives Using Artificial Intelligence to Recover

Legally Relevant Data" ("the '760 patent"). Jon Roberts, a senior partner at The Marbury Law Group in Reston, Virginia, was the prosecuting attorney of the '760 patent. Adiscov was formed in 2008 and has been located in the district since that time.

Autonomy is incorporated in the United Kingdom with dual headquarters in Cambridge, England, and San Francisco, California. Several Autonomy products were identified in the complaint as infringing the '760 patent, the documents concerning which are all located in the San Francisco headquarters. Additionally, Autonomy believes all witnesses with information about those products and their sales records are similarly located.

Recommind is a Delaware corporation with its headquarters in San Francisco, California. It has 188 employees worldwide, fifty-four (54) of which are located at its headquarters. The Recommind product identified as the infringing product in the complaint, Axcelerate, is based in San Francisco, as are all records of its sales and revenues. Technical information concerning Axcelerate is located in San Francisco and Bonn, Germany. Witnesses with knowledge concerning Axcelerate are located in San Francisco and Bonn.

Adiscov filed suit in this court on February 2, 2011, seeking declaratory relief and damages for patent infringement

by Autonomy, FTI Consulting Inc. ("FTI"),¹ and Recommind. In its complaint, Adiscov alleges that each of the defendants are infringing the '760 patent, by manufacturing, using, and selling products and services claimed by the '760 patent. The '760 patent claims a number of methods for conducting electronic discovery on computer systems through the use of algorithms to locate responsive documents and data.

Recommind filed its Motion to Transfer on April 25, 2011. Adiscov responded in opposition on May 9, 2011, and Recommind replied on May 16, 2011. Autonomy filed its Motion to Transfer on May 10, 2011,² Adiscov responded in opposition on May 23, 2011, and Autonomy replied on May 26, 2011. Both of these motions are now ripe for decision.

II.

"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

¹ FTI was dismissed with prejudice upon agreement of the parties on April 21, 2011.

² Autonomy simultaneously filed a Motion to Dismiss pursuant to the first filed rule. See Docket # 46. In its motion, Autonomy asked the court to dismiss the current suit in favor of Autonomy's previously filed suit in the Northern District of California. On June 2, 2011, the court in the Northern District of California dismissed that suit for lack of personal jurisdiction. See Autonomy v. Adiscov, No. C-11-0040-SBA (N.D. Ca. June 2, 2011). Therefore, as there is no other case pending, the court **DENIES** Autonomy's Motion to Dismiss as **MOOT**.

been brought." 28 U.S.C. § 1404(a). In deciding whether to grant a motion to transfer venue, this court must conduct the following two inquiries: "(1) whether the claims might have been brought in the transferee forum; and (2) whether the interest of justice and convenience of the parties and witnesses justify transfer to that forum.'" JTH Tax, Inc. v. Lee, 482 F. Supp. 2d 731, 735 (E.D. Va. 2007) (quoting Koh v. Microtek Int'l, Inc., 250 F. Supp. 2d 627, 630 (E.D. Va. 2003)).

Autonomy and Recomind have moved for transfer arguing that this action could have been brought in the Northern District of California, and because the witnesses, documents, and systems with information concerning alleged infringement are located in San Francisco, the case should be so transferred. Adiscov opposes the motions on the grounds that the suit was brought in its home forum and transferring it would inconvenience the parties it anticipates calling as witnesses.

A.

As an initial matter, it is clear that this case could have been brought in the Northern District of California. Pursuant to 28 U.S.C. § 1400(b), a civil action for patent infringement may be brought in any district where the defendant resides. When the defendant is a corporation, it 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). As both Recomind and Autonomy are headquartered in San Francisco, they are subject to general jurisdiction there because they engage in "continuous and systematic" actions in the state. Consulting Eng'rs Corp. v. Geometric Ltd., 561 F.3d 273, 276 n.3 (4th Cir. 2009) (citing ALS Scan, Inc. v. Digital Serv. Consultants, Inc., 293 F.3d 707, 712 (4th Cir.2002)) (internal quotation marks omitted). Thus, the Northern District of California is a proper venue.

B.

The court now turns to the question of whether "the interest of justice and convenience of the parties and witnesses justify transfer." JTH Tax, 482 F. Supp. 2d at 735. In determining this issue, the court considers three factors: (1) the plaintiff's choice of venue; (2) the convenience of the parties and witnesses; and (3) the interest of justice. See, e.g., Agilent Techs., Inc. v. Micromuse, Inc., 316 F. Supp. 2d 322, 326 (E.D. Va. 2004).

Beginning with the first factor, the plaintiff's choice of venue, the decision whether to grant a motion to transfer venue is within the sound discretion of the district court, see Beam Laser Sys., Inc. v. Cox Commc'ns, Inc., 117 F. Supp. 2d 515, 517 (E.D. Va. 2000), but there is a strong presumption that a case

should stay in the plaintiff's chosen forum. See, e.g., Samsung Elecs. Co., Ltd. v. Rambus, Inc., 386 F. Supp. 2d 708, 724 (E.D. Va. 2005). However, "the plaintiff's choice of forum is not entitled to substantial weight if the chosen forum is not the plaintiff's 'home forum,' and the cause of action bears little or no relation to the chosen forum." Lycos, Inc. v. TiVo, Inc., 499 F. Supp. 2d 685, 692 (E.D. Va. 2007) (citing Telepharmacy Solutions, Inc. v. Pickpoint Corp., 238 F. Supp. 2d 741, 743 (E.D. Va. 2003)). "[I]f there is little connection between the claims and [the chosen forum], that would militate against a plaintiff's chosen forum and weigh in favor of transfer to a venue with more substantial contacts." Koh, 250 F. Supp. 2d at 635 (citation and internal quotation marks omitted).

Autonomy and Reconnind argue that Adiscov's choice of forum is not entitled to substantial weight because Adiscov is a non-practicing entity, and the only connection to the forum in this case is that Adiscov is located in the district. Adiscov opposes this characterization of the facts, as it argues that because the district is its home forum where both its members and the prosecuting attorney of the patent reside, its choice is entitled to substantial weight.

The court is aware that of the strong presumption in favor of the plaintiff's chosen forum, but finds that several facts

here lessen its power. First, though the district is the plaintiff's home venue, the Eastern District as a forum has very little connection to the cause of action. An apt comparison is Pragmatus AV, LLC v. Facebook, Inc., ___ F. Supp. 2d ___, 2011 W.L. 320952 (E.D. Va. Jan. 27, 2011), as cited by the defendants. In that case, Pragmatus AV, LLC was a Virginia corporation located in the Eastern District which was a non-practicing entity formed to "enforce its intellectual property rights" concerning the patents it held. Id. at *3. The defendants moved to transfer, arguing that the plaintiff's and the cause of action's connection to the district were not significant enough to warrant the presumption. The court agreed, finding that contacts with the district were only "tenuous." Id. Similarly here, Adiscov is a non-practicing entity, formed only for the purpose of protecting the intellectual property rights of the '760 patent. Furthermore, though the members of Adiscov may live in the district, there is little connection between the forum and the cause of action. The center of the alleged infringement, rather, is in San Francisco where the infringing products are located and operated. Therefore, the court finds that the plaintiff's choice of forum does not warrant a strong presumption and instead counsels that transfer may well be proper.

As to the second factor, the convenience of the parties and witnesses, this court considers factors such as the "ease of access to sources of proof, the cost of obtaining the attendance of witnesses, and the availability of compulsory process." Samsung, 386 F. Supp. 2d at 717 n.13. As regards the inconvenience to witnesses specifically, "[t]he party asserting witness inconvenience has the burden to proffer, by affidavit or otherwise, sufficient details respecting the witnesses and their potential testimony to enable the court to assess the materiality of evidence and the degree of inconvenience." See Koh, 250 F. Supp. 2d at 636. The court particularly considers inconvenience to third-party witnesses. See Samsung, 386 F. Supp. 2d at 718.

Recommind and Autonomy argue that this factor strongly favors transfer because of the location of the witnesses and other sources of proof. Autonomy specifically identifies individuals who would be likely to be called as witnesses, all of whom are located in San Francisco or Bonn, Germany. Additionally, both defendants aver that information concerning the alleged infringing products, their technical specifications, and their sales are all located in San Francisco. Adiscov rebuts this charge by pointing to the fact that the likely witnesses for its case, its members and the prosecuting attorney

of the '760 patent, all reside in the Eastern District. It argues that to transfer the case would be merely to shift the inconvenience from the defendants to the plaintiff.

The court finds that this factor heavily favors transfer in this case. This court previously so held in Lycos, Inc. v. Tivo, Inc., 499 F. Supp. 2d 685 (E.D. Va. 2007). In that case, Lycos, Inc. sued Tivo, Inc., Netflix, Inc., and Blockbuster, Inc. in this district. The alleged infringing product was located in Massachusetts, the district to which transfer was sought. Noting that "there are no relevant documents or persons with knowledge relevant to this action located in Virginia," this court held that this factor favored transfer. Id. at 693. This case is somewhat different in that there are at least two witnesses in this district who will likely provide testimony in this case, the inventor of the '760 patent and the patent's prosecuting attorney, but the principle remains the same: the overwhelming majority of the sources of proof in this case, both documentary and testimonial, are in the Northern District of California. See Hunter Eng'g Co. v. ACCU Indus., Inc., 245 F. Supp. 2d 761, 775 (E.D. Va. 2002) ("Because patent infringement actions typically involve the testimony of those associated with the development and production of the allegedly infringing product, the preferred forum [in patent infringement actions] is

. . . the hub of activity centered around [the infringing product's] production." (citation and internal quotation marks omitted)). This court does note that the defendants did not affirmatively plead specific inconvenience to their witnesses other than their having to be away from work for the litigation, but the court considers the distance between the two forums to be indicia of the inconvenience that would occur. Therefore, the court finds that this factor strongly favors transfer as well.

As to the final factor, the interests of justice, the court finds that it is neutral with regard to transfer. The interest of justice factor "encompasses public interest factors aimed at systemic integrity and fairness." Byerson v. Equifax Info. Servs., LLC, 467 F. Supp. 2d 627, 635 (E.D. Va. 2006) (citation and internal quotation marks omitted). The most prominent elements of systemic integrity are "judicial economy and the avoidance of inconsistent judgments." Id. (citation omitted). In evaluating fairness, this court considers "docket congestion, interest in having local controversies decided at home, knowledge of applicable law, unfairness in burdening forum citizens with jury duty, and interest in avoiding unnecessary conflicts of law." Id.

Recommind and Autonomy concede that this factor is neutral as regards transfer, though they do point the court's attention to California's interest in having disputes concerning its resident companies settled at home. Adiscov argues that this factor weighs against transfer because of the difference in docket speeds between the two districts. The court believes that neither of these arguments is particularly compelling as regards transfer. The dispute is between companies of Virginia and California, and thus each forum has some interest in deciding the case. Further, there is no other pending litigation given that the other case in the Northern District of California and thus no concern about inconsistent decisions. Finally, while the court may consider the difference in docket speed between districts, such a consideration "is rarely, if ever, a primary or decisive factor." Convergence Techs. (USA), LLC v. Microloops Corp., 711 F. Supp. 2d 626, 644 (E.D. Va. 2010). Thus, the court finds that the interests of justice are neutral as to transfer.

Looking at all of the factors considered above, this court finds that the facts in this case strongly weigh in favor of transfer to the Northern District of California, and the court concludes such transfer is proper.

