

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TRUTH HARDWARE CORPORATION,)
)
 Plaintiff,)
)
 v.) C.A. No. 02-1541 GMS
)
 ASHLAND PRODUCTS, INC.,)
)
 Defendant.)

MEMORANDUM AND ORDER

I. INTRODUCTION

On October 15, 2002, the plaintiff, Truth Hardware Corporation (“Truth”) filed the instant action alleging patent infringement of its “Advent” window operator. The defendant, Ashland Products, Inc. (“Ashland”) now moves to transfer this case to the United States District Court for the Northern District of Illinois, Eastern Division, because litigation concerning a related patent is currently pending between the parties in that venue. For the following reasons, the court will deny Ashland’s motion.

II. DISCUSSION

Section 1404(a) provides that “[f]or convenience of [the] parties and witnesses, in the interest of justice,” the court may transfer a civil action “to any other district . . . where it might have been brought.”¹ 28 U.S.C. § 1404(a). It is the movant’s burden to establish the need to transfer, and “the plaintiff’s choice of venue [will] not be lightly disturbed.” *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995).

When considering a motion to transfer, the court must determine “whether on balance the

¹The parties do not dispute that this action could have been filed in the Northern District of Illinois.

litigation would more conveniently proceed and the interest of justice be better served by transfer to a different forum.” *Id.* This inquiry requires “a multi-factor balancing test” embracing certain private and public interests. *Id.* at 875, 879. These private interests include the plaintiff’s choice of forum; the defendant’s preference; whether the claim arose elsewhere; and the location of books and records, to the extent that they could not be produced in the alternative forum.² *Id.* at 879. Among the relevant public interests are: “[t]he enforceability of the judgment; practical considerations that could make the trial easy, expeditious, or inexpensive; the relative administrative difficulty in the two fora resulting from court congestion; the local interest in deciding local controversies at home; [and] the public policies of the fora.” *Id.* at 879-80 (citations omitted).

Upon consideration of these factors, the court finds that Ashland has not met its burden of demonstrating that transfer is appropriate. In reaching this conclusion, the court relied on the following considerations, among others. First, Truth and Ashland are Delaware corporations and should reasonably expect to litigate in the forum. Additionally, the patent dispute and technology at issue is not “local” in nature or otherwise unique to the Northern District of Illinois.

Moreover, while it is true that litigation concerning a related patent is currently pending in the Northern District of Illinois, the court concludes that this is not as significant as Ashland suggests. Of critical importance in this regard is the fact that the Illinois action is several years old, has already proceeded through the dispositive motion phase, and is now set to begin trial on March 3, 2003. Thus, the advanced procedural posture of the Illinois action militates against a transfer.

² The first three of these private interest collapse into other portions of the *Jumara* analysis. The court, therefore, will consider them in the context of the entire inquiry only. *See Affymetrix, Inc. v. Synteni, Inc. and Incite Pharmaceuticals, Inc.*, 28 F. Supp. 2d 192 (D. Del. 1998).

Ashland further argues that, because the presiding judge in Illinois is familiar with the parties and the technology, judicial economy would be served by a transfer. While the court does not doubt that the Illinois court may be more familiar with the technology at this juncture, the present court is amply qualified to likewise familiarize itself. To the extent collateral estoppel issues may arise from the Illinois litigation, such issues will ultimately have to be decided by a court, regardless of whether that court sits in Illinois or Delaware. Thus, Ashton's arguments on this point are of little avail.

Finally, Ashton contends that non-party witness convenience weighs in favor of a transfer. The court must again disagree. In support of its contention, Ashton has identified three "critical" non-party witnesses that it claims would be inconvenienced by a trial in Delaware. Truth points out in its answer brief, however, that none of these witnesses resides in Illinois either, although it is unclear where they do reside. Nevertheless, it appears that these witnesses will have to travel regardless of where this action proceeds. Furthermore, the court does not find the possibility of a three-hour flight to be an onerous task warranting transfer.

III. CONCLUSION

For these reasons, IT IS HEREBY ORDERED that:

1. Ashton's motion to transfer the case to the United States District Court for the Northern District of Illinois, Eastern Division, (D.I. 9) is DENIED.

Dated: January 13, 2003

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE