

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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| ALLERGAN, INC. and ALLERGAN SALES, LLC, |) | |
| |) | |
| |) | |
| Plaintiffs, |) | |
| |) | C.A. No. 02-1682-GMS |
| v. |) | |
| |) | |
| ALCON LABORATORIES, INC., |) | |
| ALCON RESEARCH LTD., ALCON |) | |
| INC., and BAUSCH & LOMB, INC., |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER

I. INTRODUCTION

On December 16, 2002, the plaintiffs, Allergan, Inc. and Allergan Sales, LLC (collectively “Allergan”), filed the above-captioned action seeking a declaratory judgment against the defendants, Alcon Laboratories, Inc., Alcon Research, Ltd., Alcon, Inc., and Bausch & Lomb, Inc. (collectively “Alcon and B&L”). Specifically, Allergan asserts infringement of its U.S. Patent No. 6,465,464 B2 (“the ‘464 Patent”). The ‘464 Patent is based on a continuation application of two Allergan patents asserted in a prior California action.

Presently before the court is Alcon and B&L’s motion to transfer this action to the Central District of California, Southern Division. For the reasons that follow, the court will grant this motion.

II. BACKGROUND

Both of the plaintiffs are Delaware entities with their principle place of business in Irvine, California. The defendant Alcon Laboratories, Inc. is a Delaware corporation with its principal place of business in Forth Worth, Texas. Alcon Research, Ltd. is a limited partnership organized

under the laws of Texas, with Alcon Laboratories, Inc. as a general partner. Alcon, Inc. is the parent of Alcon Laboratories, and is a Swiss corporation headquartered in Hünenberg, Switzerland. Finally, Bausch and Lomb is a New York corporation, with its principle place of business in Rochester, New York.

On January 9, 2002, Allergan filed suit against Alcon and B&L in the Central District of California asserting infringement of United States Patent Nos. 6,199,415 B1 (“the ‘415 Patent”) and 6,248,741 B1 (“the ‘741 Patent”). Alcon moved for summary judgment of non-infringement, which the court granted on May 8, 2002. *See Allergan, Inc. v. Alcon Laboratories, Inc.*, 200 F. Supp. 2d 1219 (C.D. Cal. 2002). B&L subsequently filed a similar motion, which was also granted.

On October 15, 2002, Allergan obtained the ‘464 patent, which issued as a continuation of the application that led to the ‘741 patent, which, in turn, is a continuation of the application that led to the ‘415 patent. The ‘464 patent is the subject of the current action.

The defendants in the present case filed a “mirror image” declaratory judgment action against Allergan concerning the ‘464 patent in the Central District of California on December 23, 2002.

III. DISCUSSION

Alcon and B&L move to transfer this action to the District Court for the Central District of California, Southern Division pursuant to 28. U.S.C. § 1404(a). 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.” 28 U.S.C. § 1404(a). The parties do not dispute that this action could have been filed in the Central District of California, Southern Division. The court will, therefore, move on with the inquiry as directed by the Third Circuit. *See 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 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 not only the statutory criteria of convenience of the parties and the witnesses and the interests of justice, but all relevant factors, including certain private and public interests. *Id.* at 875, 879. These private interests include the plaintiff’s choice of forum; the defendants’ preference; whether the claim arose elsewhere; and the location of books and record, to the extent that they could not be produced in the alternative forum.¹ *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 the defendants have met their burden of demonstrating that transfer is appropriate. In reaching this conclusion, the court relied on the following considerations, among others: (1) while the plaintiffs and several of the defendants are Delaware entities, and should reasonably expect to litigate in the forum, there is little connection between Delaware and this action or the parties; (2) each party either maintains its principle place of business in California, or has facilities there, whereas no party maintains operations in Delaware; (3) the parties are large and international organizations with apparently substantial assets; (4)

¹ 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).

because the parties are already litigating essentially the same issues in California, travel time and convenience in the aggregate would be substantially increased with a transfer of forum; and (5) any disparity in court congestion is not so great as to weigh against transfer due to the defendants' "mirror image" action currently pending in the Central District of California, Southern Division. Thus, given the on-going relationship the Central District of California has with the same parties, and the same, or related, patents, the court concludes that the public and private interests are sufficient to tip the balance of convenience strongly in favor of the defendants.

III. CONCLUSION

For the aforementioned reasons, IT IS HEREBY ORDERED that:

1. The defendants' motion to transfer this case (D.I. 6) is GRANTED.
2. The above-captioned action is hereby TRANSFERRED to the United States District Court for the Central District of California, Southern Division.

Dated: February 25, 2003

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE