IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FRANCE TELECOM S.A., TELEDIFFUSION DE FRANCE S.A., AND U.S. PHILIPS CORP.,	)	
Plaintiffs,	)	C.A. No. 02-437-GMS
v.	)	
NOVELL, INC.,	)	
Defendant.	)	

MEMORANDUM AND ORDER

I. INTRODUCTION

On May 17, 2002, the plaintiffs, France Telecom S.A. ("France Telecom"), TéléDiffusion de France S.A. ("TDF"), and U.S. Philips Corp. ("Philips") (collectively "the plaintiffs") filed the instant action alleging patent infringement of a computer software system for accreditating message signatures. The defendant, Novell, Inc. ("Novell"), moves to transfer this case to the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1404(a) (D.I. 17). For the following reasons, the court will deny the defendant's motion.

II. DISCUSSION

Philips, the only U.S. plaintiff in this case, is a Delaware corporation with its principal place of business in New York. The other two plaintiffs, France Telecom and TDF, are French corporations, with headquarters in Paris, France. The defendant Novell is a Delaware corporation

with its principal place of business in Utah.

Novell moves to transfer this action to the District Court for the Northern District of California 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."[1] 28 U.S.C. § 1404(a). It is the movant's burden to establish the need for 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) (citations omitted).

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 defendant's 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.[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

---

[1] Although the parties do not expressly agree that this action could have been filed in the Northern District of California, this is clearly the case. The defendant Novell maintains a development facility and sales office in San Jose and a sales office in San Francisco. See 28 U.S.C. § 1400(b) ("Any civil action for patent infringement may be brought in the judicial district where the defendant resides . . . .").

[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).

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 Novell has not met its burden of demonstrating that transfer is appropriate. In reaching this conclusion the court relied on the following considerations, among others: (1) the defendant Novell and the plaintiff Philips are Delaware corporations and should reasonably expect to litigate in the forum; (2) no party maintains a principal place of business or is incorporated in California; (3) all of the parties are large national and international organizations with apparently substantial assets; (4) because the parties maintain geographically diverse headquarters, travel time and convenience in the aggregate would be neither increased nor decreased substantially with a transfer of forum; (5) any disparity in court congestion is not so great as to justify a transfer of venue; (6) the patent dispute and technology at issue is not "local" in nature or otherwise unique to the Northern District of California. *See Affymetrix*, 28 F.Supp. 2d at 207. Regarding the interpretation of any contracts that may be governed by state law, the court is amply qualified to do so should the need arise. Finally, although the defendant has identified three potential witnesses who reside in California, the court is not convinced that the nature and circumstances of their potential testimony, along with the other public and private interests considered, is sufficient to tip "the balance of convenience...*strongly* in favor of [the] defendant." *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 25 (3d Cir. 1970) (emphasis in original).

III. CONCLUSION

For the aforementioned reasons, IT IS HEREBY ORDERED that:

1. The defendant's motion to transfer the case to the United States District Court for the Northern District of California (D.I. 17) is DENIED.

Gregory M. Sleet

Dated: October 17, 2002 UNITED STATES DISTRICT JUDGE