

Farnan, District Judge

Presently before the Court is the Motion to Dismiss (D.I. 9-1) or in the Alternative, to Transfer to the District of Colorado (D.I. 9-2) or to Stay (D.I. 9-3) of Advanced Energy Industries Inc. ("Advanced"). For the reasons discussed, the Court will deny Advanced's motions.

Advanced and MKS Instruments, Inc. and Applied Science and Technology (collectively "MKS") manufacture components used in semiconductor processing equipment. In 2000, MKS sued Advanced for infringement of U.S. Patent No. 6,150,628 ("'628 patent") in this Court. After the jury returned a verdict in favor of MKS, Advanced made motions attempting to set aside the jury's decision. While these motions were pending, Advanced and MKS agreed on a settlement whereupon MKS licensed Advanced the right to use the '628 patent as to the products at issue in the lawsuit.

Although MKS won the lawsuit, it did not agree with the Court's claim construction. MKS appealed the claim construction to the Court of Appeals for the Federal Circuit. After the settlement between MKS and Advanced was reached, the Federal Circuit dismissed the appeal as moot.

Subsequently, Advanced developed products designed not to infringe MKS's patents. One such product is the Xstream. As the Xstream was beginning to be marketed and tested, MKS's lawyers

sent a letter to Advanced requesting information about the Xstream and an explanation, without legal argument, of why the Xstream did not infringe MKS's patents.

In response, Advanced filed a lawsuit for a declaratory judgment in the District of Colorado, in which it has its principal place of business. MKS then filed the instant lawsuit alleging patent infringement against Advanced and moved in Colorado to have that lawsuit dismissed or transferred to Delaware. In response, Advanced filed the instant motions and sought to dismiss, transfer, or stay this action in favor of the lawsuit in Colorado.

On December 23, 2003, the district court in Colorado, transferred Advanced's lawsuit to the District of Delaware. While acknowledging the deference due to a plaintiff's choice of forum, the Colorado district court found that this Court's familiarity with the patented technology made transfer the most efficient course of action.

DISCUSSION

Under Jumara v. State Farm Ins. Co., when determining whether transfer is warranted, district courts must balance all of the relevant factors and respect that a plaintiff's choice of forum is entitled to substantial deference and should not be lightly disturbed when it is due to legitimate, rational concerns. 55 F.3d 873, 883 (3d Cir. 1995). The burden is upon

the movant to establish that the balance of the interests strongly weighs in favor of transfer, and a transfer will be denied if the factors are evenly balanced or weigh only slightly in favor of the transfer. See Continental Cas. Co. v. American Home Assurance Co., 61 F. Supp.2d 128, 131 (D. Del. 1999).

While the transfer of the action in Colorado to Delaware has rendered much of Advanced's argument for transfer moot, Advanced has still made a case for transfer which must be addressed. Advanced contends that its convenience will be served by transfer of this case to Colorado, its home state. Advanced also contends that the action has little connection to Delaware and, therefore, neither party will be burdened by transferring forum.

The Court finds that this lawsuit should remain in Delaware. The Court recognizes that it might be more convenient for Advanced to have trial in Colorado. However, the Court concludes that the convenience gained by moving the case to Colorado will not be substantial when viewed with reference to both parties. Further, the Court finds that its familiarity with the patent technology will make trial in Delaware more efficient and expeditious.

With both actions now pending in the District of Delaware, the decision of which nearly identical action to stay or dismiss is largely unimportant. However, because the action originating in Delaware has progressed further than the action originating in

Colorado, the Court will proceed with this action and not consolidate the actions at this time; however, the parties may agree to a joint discovery schedule.

An appropriate order will be entered.

