

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SPINELOGIK, INC.,

Plaintiff,

V.

GLOBUS MEDICAL, INC.

Defendant.

Case No. 2:23-cv-00529-JRG

DEFENDANT'S MOTION TO TRANSFER

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PRELIMINARY STATEMENT

This case has no connection to the Eastern District of Texas. Plaintiff Spinelogik, Inc. (“Spinelogik”) is a non-practicing entity incorporated under Oregon law and based in Eugene, Oregon. Defendant Globus Medical, Inc. (“Globus”) is a Delaware corporation based in Audubon, Pennsylvania, which is less than an hour by car to both Philadelphia, PA and Wilmington, DE.

The parties, the relevant documents, and all key fact witnesses are located at least 1,000 miles away from this District. Globus, as the party accused of patent infringement by a non-practicing entity, will bear a disproportionate burden during fact discovery, assuming this case is allowed to proceed beyond the Rule 12 stage.¹ Globus’s fact witnesses live and work in and around the Eastern District of Pennsylvania and the District of Delaware, both of which would be a far more convenient venue for the adjudication of this case.

Globus respectfully requests that the Court transfer this matter to the District of Delaware, or alternatively to the Eastern District of Pennsylvania, for the convenience of the parties and witnesses pursuant to 28 U.S.C. § 1404.

FACTUAL BACKGROUND

Spinelogik alleges that Globus infringes U.S. Patent Nos. 8,460,385 and 9,730,805 (collectively, the “asserted patents”). FAC ¶¶ 36-53. To establish venue in this District, Spinelogik points to several LinkedIn profiles belonging to “Customer Agents” and other employees of Globus who allegedly live and/or work in the Eastern District of Texas. *Id.* ¶¶ 8-15. Spinelogik alleges that these individuals “possess inventory” and “visit local customers to deliver or show the samples.” *Id.* ¶ 16. Beyond routine sales activities that take place in virtually every

¹ Globus moved to dismiss the Complaint under Rule 12(b)(6). D.I. 8. Rather than oppose the motion, Spinelogik filed a First Amended Complaint. D.I. 12 (“FAC”). Globus has since renewed its motion to dismiss after Spinelogik failed to address fatal deficiencies in its claims. D.I. 13.

federal district in the country, Spinelogik does not allege that any of the employees identified in the FAC have any knowledge or information relevant to the claims or defenses in this case.

None of the Globus employees identified by Spinelogik have relevant knowledge or information regarding the development and design of the accused products. Declaration of Mark Fromhold (“Fromhold Dec.”) ¶¶ 11-13. All relevant documents and fact witnesses for Globus are located in and around company’s headquarters in Audubon, Pennsylvania. *Id.* ¶¶ 8-10.

ARGUMENT

I. The Court Should Transfer Venue to the District of Delaware, or in the Alternative, to the Eastern District of Pennsylvania.

The Court should transfer venue to the District of Delaware, or in the alternative to the Eastern District of Pennsylvania, because the “claim could have been filed in [either district], and, on balance, private and public factors favor the transfer.” *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) (“*Volkswagen P*”); 28 U.S.C. § 1404(a) (“a district court may transfer any civil action to any other district or division where it might have been brought”).

Globus is a Delaware corporation and its global headquarters are located in the Eastern District of Pennsylvania, where Globus maintains a physical presence and a regular and established place of business. Thus, this action could have been filed in either the District of Delaware or the Eastern District of Pennsylvania. *See TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 262 (2017) (holding a domestic corporation “resides” only in its State of incorporation for purposes of the patent venue statute); *In re Cray, Inc.*, 871 F.3d 1355, 1360-63 (Fed. Cir. 2017) (setting forth the general statutory requirements for a “regular and established business” under 28 U.S.C. § 1400(b)).

Every private and public factor weighs in favor of transfer. The Fifth Circuit has identified four “private factors” and four “public factors” to determine whether transfer for convenience is

appropriate under 28 U.S.C. § 1404. See *Volkswagen I*, 371 F.3d at 203. Each of these factors is addressed in turn below. The Fifth Circuit has also recognized that “a district court abuses its discretion by denying transfer when not a single relevant factor favors the plaintiff’s chosen venue.” *In re TikTok, Inc.*, 85 F.4th 352, 359 (5th Cir. 2023). The only reason this case is in the Eastern District of Texas is because Spinelogik chose to file its lawsuit here. Neither Spinelogik nor Globus have any relevant ties to this District, as demonstrated by the private and public factors.

A. The Private Factors Favor Transfer.

The Fifth Circuit has held that the “determination of ‘convenience’ turns on a number of public and private interests, none of which can be said to be of dispositive weight.” *Action Indus. Inc. v. U.S. Fid. & Guar. Co.*, 358 F.3d 337, 340 (5th Cir. 2004); *In re TikTok*, 85 F.4th at 358. The private factors include: “(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious, and inexpensive.” *Volkswagen I*, 371 F.3d at 203.

1. Factor One: The Relative Ease of Access to Sources of Proof

The first factor—“relative ease of access to sources of proof”—weighs in favor of transfer. Although electronic filing and discovery processes have simplified delivery of electronic documents, courts must still consider where physical, documentary evidence is located and stored. *In re Volkswagen of Am. Inc.*, 545 F.3d 304, 216 (5th Cir. 2008) (“*Volkswagen II*”). In patent infringement cases like this, courts reasonably expect “the majority of evidence to come from the accused infringer.” *In re Genetech, Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009). Virtually all documents and witnesses for Globus are located at the company’s headquarters in Eastern Pennsylvania, which is less than 50 miles from the federal district courthouse in Wilmington, DE.

Documents related to the development and design of the accused products exist and are maintained at Globus's headquarters in Eastern Pennsylvania. Fromhold Decl. ¶ 9. The employees that developed and designed the accused products, as well as those that direct company-wide sales and marketing efforts for the accused products, are also located in and around Globus's headquarters in Eastern Pennsylvania. *Id.* ¶¶ 8, 10.

By contrast, Spinelogik appears to be a non-practicing entity that does not sell any products. And both patents-in-suit have a single named inventor, who, on information and belief, is located in Oregon. As such, Spinelogik's discovery burden will be minimal in relation to Globus. In any event, any evidence or witnesses from Spinelogik, an Oregon corporation, would be located thousands of miles away from the Eastern District of Texas, as they would be from Delaware or Pennsylvania.

2. Factor Two: The Availability of Compulsory Process

The second factor—"the availability of compulsory process to secure the attendance of witnesses"—also weighs in favor of transfer. *Volkswagen II*, 545 F.3d at 316. "Transfer is favored when a transferee district has absolute subpoena power over a greater number of non-party witnesses." *Adaptix, Inc. v. HTC Corp.*, 937 F. Supp. 3d 867, 847 (E.D. Tex. 2013). Subpoenaed witnesses can be required to attend a trial, hearing, or deposition within 100 miles of where they live or work, or within the state where they reside, provided they could attend a trial without substantial expense. FED. R. CIV. P. 45(c)(1). In all events, the relevant Globus witnesses would be within the subpoena power of the courts within the District of Delaware or the Eastern District of Pennsylvania. Fromhold Decl. ¶¶ 8, 10. At the same time, Globus is not aware of any relevant witnesses that would be subject to compulsory process in the Eastern District of Texas. *Id.*

3. Factor Three: Cost of Attendance for Willing Witnesses

The location of key witnesses supports transfer under the third private factor, which examines the burden on key fact witnesses. *See Frederick v. Advanced Financial Solutions, Inc.*, 558 F. Supp. 2d 699, 704 (E.D. Tex. 2007) (“Typically, the most important of the above factors is whether substantial inconvenience will be visited upon key fact witnesses should the court deny transfer.”) (citation omitted). When the distance between the existing venue for trial and the proposed venue is greater than 100 miles, it becomes even more important for the Court to consider the inconvenience of travel for key witnesses. *See Volkswagen I*, 371 F.3d at 205 (“When the distance between an existing venue for trial of a matter and a proposed venue . . . is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled.”).

All Globus employees that would serve as key fact witnesses in this case are located within driving distance of the federal courthouses in the District of Delaware and the Eastern District of Pennsylvania. Fromhold Decl. ¶¶ 8, 10. For example, Mark Fromhold, Director of Product Development, Thoracolumbar IBF at Globus, and the engineering team that developed the Accused Products reside in or around Audubon, Pennsylvania. *Id.* ¶8. Transfer to either district would eliminate the need for lengthy travel, costly flights, and extended hotel accommodations. Providing trial testimony in this District would impose a far greater burden on those witnesses than a trial based near their homes and place of work.

4. Factor Four: All Other Practical Problems that Make Trial of a Case Easy, Expeditious, and Inexpensive

The fourth private factor considers all “other practical problems that make trial of a case easy, expeditious, and inexpensive.” *Volkswagen I*, 371 F.3d at 203. This too weighs in favor of transfer. Simply put, there is nothing about holding a trial in this District that will make this case

easier or less expensive for *either* party. On the other hand, transfer would dramatically reduce expenses for Globus, for example, by eliminating the significant cost of a hotel block for company witnesses, in-house counsel, and local vendors.

After being informed about this motion on Monday, March 25, Spinelogik rushed to file a motion to consolidate this action with Case No. 2:23-cv-297, while dragging out the meet-and-confer process for this transfer motion. *See* D.I. 16. The Court should not give no weight to Spinelogik's gamesmanship. All but one of the other actions filed by Spinelogik in this District have settled. *Id.* at 2 n.1. The case against Choice Spine, LLC ("Choice Spine"), which includes just one of the two patents asserted against Globus, is all that remains.

Courts reviewing transfer rulings routinely reject "considerations of judicial economy arising after the filing of the lawsuit or the transfer motion as irrelevant to the analysis." *See, e.g., In re NetScout Sys., Inc.*, 2021 WL 4771756, *4 (Fed. Cir. Oct. 13, 2021) (applying Fifth Circuit law). Moreover, the Federal Circuit has also "rejected as a general proposition that the mere co-pendency of infringement suits in a particular district automatically tips the balance in the non-movant's favor." *Id.* at *5. This case involves different accused products and a patent that has not been asserted against Choice Spine. Any considerations of judicial economy would be far outweighed by the clear benefits of transfer based on the other private and public factors.

B. The Public Factors Favor Transfer.

The public factors identified by the Fifth Circuit include: (1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflicts of laws or in the application of foreign laws. *See Volkswagen I*, 371 F. 3d at 203. These public factors either weigh in favor of transfer, or are neutral in the analysis.

The first public factor—administrative difficulties flowing from court congestion—weighs slightly in favor of transfer. At worst, it is neutral. The median time from filing to disposition in civil cases is shorter in both the District of Delaware and the Eastern District of Pennsylvania than it is in this District.² The Eastern District of Texas also has a higher caseload than the District of Delaware; it was the most active venue for patent litigation in 2023.³ While the Eastern District of Pennsylvania has the most civil cases of the three venues, it also has more judges to handle them. The available statistics related to court congestion are inconclusive.

The second public factor—the local interest in having localized interests decided at home—weighs in favor of transfer. Neither party is at home in this District. But the Eastern District of Pennsylvania and/or the District of Delaware would have a strong local interest in deciding a case that impacts a local business and job creator like Globus. Indeed, Spinelogik’s allegations of patent infringement necessarily “calls into question the work and reputation of several individuals residing in or near th[ose] district[s] and who presumably conduct business in that community.” *In re Hoffmann-La Roche Inc.*, 587 F.3d 1333, 1336 (Fed. Cir. 2009) (applying Fifth Circuit law to grant transfer where, but for the litigation, there was “no connection” with the Eastern District of Texas).

The third public factor—the familiarity of the forum with the law that will govern the case—is neutral. Both the Eastern District of Texas and the District of Delaware have subject matter expertise in patent law. And the Eastern District of Pennsylvania is more than capable of overseeing a patent dispute under federal law. In fact, Globus went to trial in a patent case in the

² See Median Time Intervals From Filing to Disposition of Civil Cases Terminated, *available at* https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.uscourts.gov%2Fsites%2Fdefault%2Ffiles%2Fdata_tables%2Fstfj_c5_1231.2023.xlsx&wdOrigin=BROWSELINK.

³ See *id.*

Eastern District of Pennsylvania that concluded in December 2023. *See Moskowitz Family LLC v. Globus Medical Inc.*, No. 2:20-cv-3271 (E.D. Pa.).

Last, the fourth public factor—the avoidance of unnecessary problems of conflicts of laws or in the application of foreign laws—is a non-issue. This patent infringement dispute is a federal question. Globus does not anticipate any scenario in which a conflict of laws or the application of foreign laws would become an issue in this case. The fourth public factor is neutral.

CONCLUSION

The only connection between this case and the Eastern District of Texas is Spinelogik's decision to file in this District. Not one of the private or public factors weighs against transfer. Accordingly, this case should be transferred to the District of Delaware or, in the alternative, to the Eastern District of Pennsylvania under 28 U.S.C. § 1404.

Dated: April 2, 2024

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

The undersigned attorney hereby certifies that, pursuant to Local Rule CV-7(h), counsel for Globus, Colin Cabral, discussed this transfer motion with counsel for Spinelogik, Christopher Honea, on March 25, 2024. Counsel also met and conferred about this motion on March 29, 2024, April 1, 2024, and April 2, 2024. The parties agreed they were at an impasse, the meet and confer requirement was met, and that Plaintiff is opposed to the requested relief.

By: /s/ Shaun W. Hassett
Shaun W. Hassett