IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

VLSI TECHNOLOGY LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 18-966-CFC
	:	
INTEL CORPORATION	:	
	:	
	:	
Defendant.	:	

Brian E. Farnan, Michael J. Farnan, FARNAN LLP, Wilmington, Delaware; Morgan Chu, Ben Hattenbach, Amy E. Proctor, Dominik Slusarczyk, Charlotte J. Wen, IRELL & MANELLA LLP, Boston, Massachusetts

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MEMORANDUM OPINION

CONNOLLY, UNITED STATES DISTRICT JUDGE

OCTOBER 29, 2018

Defendant Intel Corporation has moved pursuant to 28 U.S.C. § 1404(a) to transfer this patent case to the Northern District of California. D.I. 8. For the reasons discussed below, I will deny Intel's motion.

Both Intel and the Plaintiff, VLSI Technology, Inc., are Delaware corporations. VLSI filed this action on June 28, 2018, alleging that Intel infringed five patents (the "Delaware patents"). VLSI has also sued Intel in the Northern District of California, alleging that Intel infringed eight other patents (the "California patents"). The parties dispute whether the subject matters of the Delaware patents and the California patents are the same. They also dispute the extent to which discovery, evidence, and legal arguments in the two actions will overlap.

Section 1404(a) provides that "[f]or the convenience of the parties and witnesses, in the interests of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). It is undisputed that this action could have been brought in the Northern District of California, where Intel has its headquarters and principal place of

business. Thus, the only issue before me is whether I should exercise my discretion under § 1404(a) to transfer the case to California.

As the movant, Intel has the burden "to establish that a balancing of proper interests weigh[s] in favor of the transfer." *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 25 (3d Cir. 1970). This burden is heavy. "[U]nless the balance of convenience of the parties is *strongly* in favor of [the] defendant, the plaintiff's choice of forum should prevail." *Id.* (emphasis in original) (internal quotation marks and citation omitted).

The proper interests to be weighed in deciding whether to transfer a case under § 1404(a) are not limited to the three factors recited in the statute (i.e., the convenience of the parties, the convenience of the witnesses, and the interests of justice). *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995). Although there is "no definitive formula or list of the factors to consider" in a transfer analysis, the court in *Jumara* identified 12 interests "protected by the language of § 1404(a)." *Id.* Six of those interests are private:

> [1] plaintiff's forum preference as manifested in the original choice; [2] the defendant's preference; [3] whether the claim arose elsewhere; [4] the convenience of the parties as indicated by their relative physical and financial condition; [5] the convenience of the witnesses—but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and [6] the location of books and records (similarly limited to the extent that the files could not be produced in the alternative forum).

Id. (citations omitted). The other six interests are public in nature:

> [7] the enforceability of the judgment; [8] practical considerations that could make the trial easy, expeditious, or inexpensive; [9] the relative administrative difficulty in the two fora resulting from court congestion; [10] the local interest in deciding local controversies at home; [11] the public policies of the fora; and [12] the familiarity of the trial judge with the applicable state law in diversity cases.

Id. at 879–80 (citations omitted). As the parties have not identified relevant factors beyond these 12 interests, I will balance the *Jumara* factors in deciding whether to exercise the discretion afforded me by § 1404(a).

I. PLAINTIFF'S FORUM PREFERENCE

This factor clearly weighs against transfer. The parties agree on that much. They disagree, however, about the amount of weight I should give this factor in conducting the balancing of interests called for by *Jumara*. Intel argues that VLSI's forum choice "deserves little weight," D.I. 9 at 11; VLSI contends that I should give its forum choice "paramount consideration." D.I. 23 at 3.

In *Shutte*, the Third Circuit held that "[i]t is black letter law that a plaintiff's choice of a proper forum is a paramount consideration in any determination of a transfer request" brought pursuant to § 1404(a), and that this choice "should not be lightly disturbed." 431 F.2d at 25 (internal quotation marks and citation omitted). The parties have not cited and I am not aware of any Third Circuit or United States Supreme Court case that overruled *Shutte*. *Jumara* cited *Shutte* favorably and

reiterated *Shutte*'s admonition that "the plaintiff's choice of venue should not be lightly disturbed." *Jumara*, 55 F.3d at 879 (internal quotation marks and citation omitted). Thus, I agree with VLSI that binding Third Circuit law compels me to treat its forum choice as "a paramount consideration" in the § 1404(a) balancing analysis.

Intel, however, asks me to ignore *Shutte*'s unambiguous language (and *Jumara*'s endorsement of *Shutte*), and instead give VLSI's forum choice "little weight" because (1) VLSI allegedly had an "improper forum shopping motive" in filing suit in this district; (2) VLSI has no facilities, operations, or employees in Delaware; and (3) the facts underlying the parties' dispute did not occur in Delaware. D.I. 9 at 11–13.

A. Improper Forum Shopping Motive

Intel cites a line of cases in which district court and magistrate judges in the Third Circuit looked to "the reasons behind" a plaintiff's forum choice and gave reduced or even no weight to a plaintiff's forum selection if the plaintiff had an "improper forum shopping motive." *See* D.I. 9 at 11–12 (citations omitted). I find, however, that these cases are not consistent with *Shutte, Jumara,* or Supreme Court precedent.

Neither *Shutte* nor *Jumara* hold or even intimate that a plaintiff's motive in selecting its forum choice is relevant for § 1404(a) purposes. Putting aside the

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