UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

SANDBOX LOGISTICS LLC, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 3:16-CV-12
	§	
GRIT ENERGY SOLUTIONS LLC, *et al*,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Defendant Grit Energy Solutions, LLC ("Grit") has moved for an intra-district transfer of this patent infringement suit to the Houston Division of the Southern District of Texas, contending Houston is a more convenient venue (Dkt. 8). Plaintiffs, SandBox Logistics, LLC; SandBox Enterprises, LLC and Oren Technologies, LLC (collectively "SandBox") sued Grit for patent infringement, unfair competition by misappropriation, and fraud (Dkt. 1). Having reviewed the full record and the governing legal authorities, the Court **DENIES** Grit's Motion to Transfer Venue to the Houston Division pursuant to 28 U.S.C. § 1404(a) (Dkt. 8).

BACKGROUND

Sandbox was formed to commercialize and develop technology. Dkt. 1, Pl's Complaint, ¶ 24. Sandbox filed this suit alleging that Grit's services and products infringed on U.S. Patent No. 8,585,341 and U.S. Patent No. 8,827,118 arising under the patent laws of the United States, 35 U.S.C. § 1, et seq., and for unfair competition and fraud under Texas common law. *Id.* ¶ 6. In its Complaint, Sandbox alleges that venue is

proper in this Court because Grit regularly conducts business and a substantial part of the events or omissions giving rise to the claims occurred within the Southern District of Texas. *Id.* ¶ 12.

The Sandbox plaintiffs are Texas limited liability companies whose principal places of business are in Houston, Texas. *Id.* ¶¶ 3, 4. Grit is a Montana limited liability company with a principal place of business in Montana. *Id.* ¶ 5. Sandbox alleges Grit committed acts of patent infringement in this District by selling or offering to sell products and services that infringe on the asserted patents. *Id.* ¶¶ 3, 4. Grit has not filed an Answer, but instead filed a motion to dismiss the misappropriation and fraud claims and to transfer venue to the Houston Division of the Southern District of Texas. Dkt. 8.

Grit contends that transfer to Houston is warranted because the Houston Division would be a more convenient forum for the resolution of this litigation. *See id.* Based on the pleadings, applicable law, and for the reasons stated below, the motion for an intra-district transfer is **DENIED**.

STANDARD FOR CONVENIENCE TRANSFERS

Change of venue is governed by 28 U.S.C § 1404(a). The venue transfer statute provides: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." 28

U.S.C. § 1404(a). The § 1404(a) factors apply as much to transfers between divisions of the same district as to transfers from one district to another.[1]

This is a patent lawsuit, and the Federal Circuit applies the law of the Fifth Circuit to evaluate transfer of venue motions that arise in this Court. *See In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008). First, the Court must ask whether this suit might have been brought in the transferee venue of the Houston Division of the Southern District of Texas. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 312 (5th Cir. 2008) (en banc) (*In re Volkswagen II*). If the transferee venue is proper, it then is Grit's burden to demonstrate that the Houston Division of the Southern District of Texas is clearly more convenient than the venue chosen by the plaintiff, *i.e.*, the Galveston Division of the Southern District of Texas. *Id.* at 315.

To determine whether Grit has met this burden, the Court must analyze a set of private and public interest factors, none of which are given dispositive weight. *See id.* In other words, motion to transfer venue pursuant to § 1404(a) should be granted if "the movant demonstrates that the transferee venue is clearly more convenient," taking into consideration private and public interest factors. *Id.* The private-interest factors are: "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and

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[1] *See generally* 17 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 111.21[2], at 111-154 to 111-155 (3d ed. 2013) ("[A] transfer to another division in the same district will be granted if it is more convenient for the parties and witnesses and is in the interest of justice.") (*citing,* inter alia, *Weber v. Coney*, 642 F.2d 91, 93 (5th Cir. Unit A March 1981) (per curiam)).

inexpensive." *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) (*In re Volkswagen I*). The public-interest factors are: "(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 conflict of laws [or in] the application of foreign law." *Id.* The Court must "weigh the relevant factors and decide whether, on balance, a transfer would serve 'the convenience of parties and witnesses' and otherwise promote 'the interest of justice.'" *Atl. Marine Construction Co., Inc. v. United States Dist. Court for the Western Dist. of Texas*, — U.S. ——, ——, 134 S. Ct. 568, 581, 187 L. Ed. 2d 487 (2013).

The plaintiff's choice of venue is not a separate factor in this analysis. *In re Volkswagen II*, 545 F.3d at 314–15. Rather, the plaintiff's choice of forum contributes to the defendant's burden in showing good cause for the transfer. *Id.* at 315 (the party seeking the transfer 'must show good cause' for the transfer). To show good cause, the moving party must demonstrate that the transferee venue is "clearly more convenient" than the transferor venue. *Id.; see also In re Radmax, Ltd.*, 720 F.3d 285, 288 (5th Cir. 2013) ("A motion to transfer venue pursuant to § 1404(a) should be granted if 'the movant demonstrates that the transferee venue is clearly more convenient [.]'"). Ultimately, it is within the Court's "broad discretion" whether to order a transfer. *In re Volkswagen II*, 545 F.3d at 311. If the movant "demonstrates that the transferee venue is clearly more convenient" than the plaintiff's chosen venue, the district court should grant

the transfer. *Id.* at 315. [2] "Thus, when the transferee venue is not clearly more convenient than the venue chosen by the plaintiff, the plaintiff's choice should be respected." *See id.*

ANALYSIS

As an initial matter, it is undisputed that SandBox's claims could have originally been filed in the Houston Division. SandBox is a resident of the Houston Division (Dkt. 1 at ¶¶ 2-4), and Grit's alleged contacts with the Southern District of Texas are all alleged by SandBox to have occurred in the Houston Division (*Id.* at ¶¶ 9-10). Accordingly, this action could have been brought in the Houston Division. The venue statute, 28 U.S.C. § 1391, is based on districts, not divisions. If venue is proper in Galveston, it is also proper in Houston. *See* 28 U.S.C. §§ 1391(b)-(d), 1400(b).

The Court next turns to analyze the relevant private and public interest factors. While no single factor is dispositive, the Court is mindful that the Federal Circuit has given some guidance on the balancing of particular factors. *See, e.g., In re Nintendo Co.,*

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[2] The plaintiff's choice of venue is not a distinct factor in the § 1404(a) analysis, instead, the Fifth Circuit has stated that, "when the transferee venue is not clearly more convenient than the venue chosen by the plaintiff, the plaintiff's choice should be respected." *In re Volkswagen II*, 545 F.3d at 315. Thus, by requiring that a movant show the transferee venue is "clearly more convenient," "[a] plaintiff's choice of [venue] is given 'some'—significant but non-determinative—weight." *Weber v. PACPT XPP Technologies, AG*, 811 F.3d 758, 767 (5th Cir. 2016) (citing *Atl. Marine,* 134 S.Ct. at 581 n.6.). "In *Radmax*, the Fifth Circuit noted conflicting authority on whether a plaintiff's choice of forum is given more or less deference when an intra-district transfer is sought, but declined to 'announce a general standard governing intra-district transfers in all situations.' *Radmax*, 720 F.3d at 289 (noting Eastern District of Texas cases affording plaintiffs' choice greater deference for intra-district transfers but also citing a leading civil procedure treatise that concludes the deference should be less in this context (citations omitted)). Given *Radmax*'s general thrust that intra-district transfers are governed by the same standards that apply to inter-district transfers, this Court will apply the 'clearly more convenient' standard that *Volkswagen* announced for inter-district transfers. *Cf. id.* at 288 (noting that courts should consider the same factors considered for inter-district transfers when analyzing intra-district transfers)." *Hebert v. Wade*, No. 3:13-CV-00076, 2013 WL 5551037, at *2, n.2 (S.D. Tex. Oct. 7, 2013).

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