

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

SOMERO ENTERPRISES, INC.,)
)
 Plaintiff,)
)
 vs.) No. 1:20-cv-02356-JMS-MJD
)
 LIGCHINE INTERNATIONAL CORPORATION,)
)
 Defendant.)

ORDER

Plaintiff Somero Enterprises, Inc. (“Somero”) brings this action against Defendant Ligchine International Corporation (“Ligchine”) for patent infringement. Presently before the Court is Ligchine’s Motion for Intra-District Transfer of Venue to the New Albany Division, [[Filing No. 30](#)],¹ which Somero opposes, [[Filing No. 35](#)]. The motion is now ripe for the Court’s decision.

**I.
BACKGROUND**

In its Complaint, Somero alleges that it pioneered the design, development, manufacture, and use of a laser-guided "Wheeled Concrete Screeding Device." [[Filing No. 18 at 3](#).] Somero alleges that it protects its investments with a portfolio of 63 patents and pending patent applications, including its '366 Patent. [[Filing No. 18 at 3](#).] According to Somero, which is incorporated in Delaware, headquartered in Ft. Myers, Florida, and also conducts design, engineering, and manufacturing at a facility in Houghton, Michigan, Ligchine has directly

¹ Ligchine has filed two Motions for Intra-District Transfer of Venue to New Albany Division, [[Filing No. 28](#); [Filing No. 30](#)], and two supporting briefs, [[Filing No. 28-1](#); [Filing No. 31](#)]. The motions and briefs appear to be duplicative and, accordingly, the Court **DENIES** the first Motion for Intra-District Transfer, [[Filing No. 28](#)], **AS MOOT**, and considers only the second motion, [[Filing No. 30](#)].

infringed its '366 Patent. [[Filing No. 18 at 1](#); [Filing No. 18 at 5](#).] More specifically, Somero alleges that Ligchine committed patent infringement by utilizing technology protected by the '366 Patent to manufacture its “SpiderScreed” product. [[Filing No. 18 at 5](#).]

Somero initiated this action on September 10, 2020, [[Filing No. 1](#)], and filed the operative Second Amended Complaint on October 2, 2020, [[Filing No. 18](#)]. [[Filing No. 35 at 5](#).] Ligchine, which is an Indiana corporation headquartered in Floyds Knobs, Indiana, responded by filing a Motion for Intra-District Transfer to the New Albany Division. [[Filing No. 18 at 1](#); [Filing No. 30](#).]

II. LEGAL STANDARD

The change of venue statute, [28 U.S.C. § 1404\(a\)](#), permits the Court "to transfer an action filed in a proper, though not necessarily convenient, venue to a more convenient district." [Research Automation, Inc. v. Schrader-Bridgeport Int'l, Inc.](#), 626 F.3d 973, 977 (7th Cir. 2010). Section 1404(a) 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 Court typically considers four factors in deciding whether to transfer an action: (1) the convenience of the parties; (2) the convenience of the witnesses; (3) the situs of material events and access to proof; and (4) the interest of justice. [No Baloney Mktg., LLC v. Ryan](#), 2010 WL 1286720, at *10-11 (S.D. Ind. 2010).

Section 1404(a) places the decision to transfer a case within the district court's sound discretion, based upon an "individualized, case-by-case consideration of convenience and fairness." [Stewart Org., Inc. v. Ricoh Corp.](#), 487 U.S. 22, 29 (1988) (quoting [Van Dusen v. Barrack](#), 376 U.S. 612, 622 (1964)). This flexible inquiry "affords district courts the opportunity to look beyond a narrow or rigid set of considerations in their determinations." [Research](#)

Automation, Inc., 626 F.3d at 978. The movant has the burden of establishing "by reference to particular circumstances, that the transferee forum is clearly more convenient." *Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 219-20 (7th Cir. 1986) (citations omitted).

III. DISCUSSION

In support of its motion, Ligchine argues that all of its offices and operations are located in Floyds Knobs, Indiana, which is in the New Albany Division. [[Filing No. 31 at 1.](#)] It further asserts that Somero does not reside in any division in the Southern District of Indiana. [[Filing No. 31 at 2.](#)] Ligchine argues that transfer is appropriate because the convenience of the parties and witnesses is best served in the New Albany Division. [[Filing No. 31 at 4.](#)] Specifically, Ligchine argues that the New Albany Division would be more convenient because Ligchine's evidentiary files are located in Floyds Knobs, and its witnesses—including Ligchine's Vice President of Operations and sales division employees—would only need to travel four to five miles to the New Albany courthouse. [[Filing No. 31 at 4.](#)] Ligchine also argues that the situs of material events weighs in favor of transfer because its "SpiderScreed" product is developed and manufactured in Floyds Knobs and, according to Ligchine, no material events occurred in the Indianapolis Division. [[Filing No. 31 at 5.](#)] Lastly, Ligchine claims that the interest of justice factors weigh slightly in favor of transfer because Ligchine has an interest in drawing a venire from its home district, and because there is no significant difference between the Indianapolis Division and the New Albany Division. [[Filing No. 31 at 6.](#)]

Somero responds that the convenience of the parties and witnesses does not clearly warrant transfer. [[Filing No. 35 at 6.](#)] Specifically, Somero argues that its preference for the Indianapolis Division should be given substantial deference, and that Ligchine's motion does not seek to balance the convenience of the parties, but rather, seeks to force Somero's counsel to take

unnecessary risks associated with the COVID-19 pandemic. [\[Filing No. 35 at 7.\]](#) Somero argues that if the case is transferred to the New Albany Division, counsel will need to drive approximately two hours more each way for in-person Court appearances, which would effectively require counsel to fly and/or stay overnight at a hotel, and thereby increase his exposure to COVID-19. [\[Filing No. 35 at 7.\]](#) In addition, Somero argues that Ligchine fails to demonstrate that New Albany is more convenient than Indianapolis. [\[Filing No. 35 at 8.\]](#) According to Somero, Ligchine has not specified who its witnesses are, the nature of their testimony, or the importance of their testimony. [\[Filing No. 35 at 8-9.\]](#) Somero asserts that, by failing to specifically identify its witnesses, Ligchine has not shown that any specific witness would benefit from transfer to New Albany. [\[Filing No. 35 at 8-9.\]](#) Furthermore, Somero argues that New Albany would only be slightly more convenient for Ligchine, and that transfer would merely shift convenience from Somero to Ligchine, which does not warrant transfer where the balance of convenience is a “close call.” [\[Filing No. 35 at 9.\]](#) Somero also contends that Ligchine’s argument that a significant portion of its evidentiary files are in New Albany is unavailing, and therefore the situs of material events does not warrant transfer. [\[Filing No. 35 at 10.\]](#) In particular, Somero points out that, given the electronic nature of document discovery and the fact that files can be transferred from one division to another by electronic means, this factor should be assigned little if any weight. [\[Filing No. 35 at 10-11.\]](#) Lastly, Somero argues that the interest of justice factors do not warrant transfer because transfer would likely result in delay, the factors carry “less weight” with respect to intra-district transfers, and Ligchine’s position that it may have an interest in drawing a venire from its home division is not relevant in a patent infringement case. [\[Filing No. 35 at 12.\]](#)

In its reply, Ligchine states that Somero misrepresented the legal standard for intra-district transfer by claiming that plaintiffs are entitled to substantial deference with respect to their choice

of forum “without qualification.” [\[Filing No. 39 at 1.\]](#) Ligchine points out that a plaintiff’s choice of forum has diminishing importance when the selected forum is not the plaintiff’s home forum. [\[Filing No. 39 at 2.\]](#) Because the Indianapolis Division is not Somero’s home forum, Ligchine argues that Somero’s initial choice is less significant. [\[Filing No. 39 at 2.\]](#) Ligchine argues that, when deciding whether to grant or deny transfer, the court must weigh the convenience of the parties and witnesses—not the convenience of counsel, as Somero suggests. [\[Filing No. 39 at 2.\]](#) Even if courts could consider the convenience of counsel, Ligchine argues that Somero has ignored this Court’s previous orders regarding COVID-19, which recommend against inter-state travel and allow counsel to appear by telephone or video for any appearances, other than jury trials. [\[Filing No. 39 at 3.\]](#) But given the fact that a trial date has not been set, in addition to the recent rollout of the COVID-19 vaccine, Ligchine argues that the risks posed to Somero’s lead counsel will likely dissipate over the next few months. [\[Filing No. 39 at 3.\]](#) Ligchine claims that Somero incorrectly asserted that Ligchine failed to identify specific witnesses. [\[Filing No. 39 at 4.\]](#) Ligchine claims that David Ring, Ligchine’s Chief Executive Officer, stated in his Declaration that Ligchine’s Vice President of Operations and its sales divisions employees all possess highly relevant information, will be called as witnesses in this matter, and all live in or near Floyds Knobs, Indiana. [\[Filing No. 39 at 4.\]](#) Ligchine argues that it is not merely shifting inconvenience onto Somero, but that Somero’s witnesses (who all must travel from the upper peninsula of Michigan, which is an approximately 9.5-hour drive to Indianapolis and an 11-hour drive to New Albany) are burdened with a lengthy drive regardless of the division ultimately selected, and its request for transfer is asking this Court to prevent unnecessary inconvenience for *both* parties. [\[Filing No. 39 at 5.\]](#) Ligchine also argues that the situs of material events warrants transfer, and that although the electronic nature of discovery renders the location of files largely meaningless, courts have

expressly recognized that significant weight should be given to the location of evidence in patent cases. [\[Filing No. 39 at 6.\]](#) Finally, Ligchine asserts that the interest of justice factors weigh in favor of transfer, arguing that transfer would not be prejudicial, and that Somero has relied upon distinguishable cases from outside the Seventh Circuit to support its arguments. [\[Filing No. 39 at 7-8.\]](#)

A. Plaintiff's Choice of Forum

As a general proposition, a plaintiff's choice of forum is usually entitled to deference. *In re National Presto Indus., Inc.*, 347 F.3d 662, 663-64 (7th Cir. 2003). The amount of deference a particular choice of forum warrants, however, depends on the forum's connection to relevant events. *See, e.g., Dunlap v. Switchboard Apparatus, Inc.*, 2012 WL 1712554, at *6 (S.D. Ind. 2012) (citing *In re National Presto*, 347 F.3d at 663-64; *Chicago, R.I. & Pac. R.R. Co. v. Igoe*, 220 F.2d 299, 304 (7th Cir. 1955) (plaintiff's choice of forum "has minimal value where none of the conduct complained of occurred in the forum selected by the plaintiff")); *Valbruna Stainless, Inc. v. ADT Sec. Servs., Inc.*, 2010 WL 2772324, at *2 (N.D. Ind. 2010) ("Where the chosen forum is not the situs of material events, however, or if another forum has a stronger relationship to the dispute, plaintiff's selection is entitled to less deference.").

Here, Somero is incorporated in Delaware, maintains its principal place of business in Florida, and designs, engineers, and manufactures its products in Michigan. Somero has not demonstrated how the Indianapolis Division has a stronger relationship to this dispute. Because the Indianapolis Division is not Somero's home forum and because a substantial number of events giving rise to this lawsuit occurred in the New Albany Division, the Court concludes that Somero's choice of forum is not entitled to deference. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255

(1981) (noting that "a plaintiff's choice of forum is entitled to greater deference when the plaintiff has chosen the[ir] home forum") (citation omitted).

B. Convenience Factors

A district court considering a motion to transfer "must evaluate both the convenience of the parties and various public-interest considerations . . . and decide whether, on balance, a transfer would serve 'the convenience of parties and witnesses' and otherwise promote 'the interest of justice.'" *Atlantic Marine Const. Co., Inc. v. U.S. Dist. Court for W. Dist. of Texas*, 571 U.S. 49, 62-63 (2013) (citing 28 U.S.C. § 1404(a)). With respect to the convenience of the parties, courts consider various factors including the availability of and access to witnesses, each party's access to and distance from resources in each forum, the location of material events, and the relative ease of access to sources of proof. *Research Automation, Inc.*, 626 F.3d at 978. In evaluating these factors, the Court is mindful that transfer is not warranted where it would merely shift the inconvenience among parties. *Coffey*, 796 F.2d at 219-20; *see also Research Automation, Inc.*, 626 F.3d at 978 ("Where the balance of convenience is a close call, merely shifting inconvenience from one party to another is not a sufficient basis for transfer.").

1. Location of Material Events

As noted above, Ligchine is located within the New Albany Division and was located there when the alleged patent infringement underlying this lawsuit occurred. Furthermore, a significant portion of the events giving rise to this action, including the development, manufacture, and sale of Ligchine's "SpiderScreed" product, allegedly occurred at Ligchine's facility in Floyds Knobs, Indiana, which is within the New Albany Division. None of the material events related to this lawsuit occurred within the Indianapolis Division. Accordingly, this factor weighs in favor of transfer.

2. Convenience of the Witnesses

The convenience of the witnesses factor is "often deemed the most important factor in the transfer balance" and is "primarily concerned with the availability of non-party witnesses." *Wabash Valley Feed & Grain, LLC v. Hust*, 2011 WL 3902780, at *10 (S.D. Ind. 2011) (internal quotation omitted). Because courts are generally limited to subpoenaing witnesses for trial "within 100 miles of where the person resides, is employed, or regularly transacts business in person," *Fed. R. Civ. P. 45(c)(1)(A)*, the aim of this factor "is to minimize the risk of 'trial by deposition,'" *Aearo Co. v. Bacou-Dalloz USA Safety, Inc.*, 2004 WL 1629566, at *2 (S.D. Ind. 2004). "Courts ordinarily can assume that the parties will be sufficiently motivated to have their own employees or other allies appear for trial wherever it might take place." *Id.* at *3.

Here, Somero has a manufacturing facility in Houghton, Michigan, and states that some of its witnesses live in Michigan. [[Filing No. 34 at 2](#); [Filing No. 35 at 5](#).] Assuming that Somero's Michigan witnesses work at the Houghton facility, and therefore live in or near Houghton, they will have a 9.5 to 11-hour drive, depending on the division. Either way, this is a substantial driving distance. Rather than demonstrating the burden that transfer would have on these witnesses—other than noting the 1.5-hour drive time difference—Somero argues that transfer to the New Albany Division would negatively impact counsel. [*See* [Filing No. 35 at 5](#).] However, this Court may only consider the convenience of the parties and witnesses—not the convenience of counsel. *See* 28 U.S.C. § 1404(a); *see also Chicago, R.I. & P.R. Co.*, 220 F.2d at 304 (providing that "the convenience of counsel" is not a factor to be considered in connection with a motion to transfer). Ligchine's witnesses, on the other hand, would only need to travel four to five miles to the New Albany Division courthouse, but would need to travel approximately 115 to 120 miles to the Indianapolis Division courthouse. [[Filing No. 31 at 4](#).] Given that Somero's out-of-state witnesses

must travel several hours and incur associated costs regardless of the selected division, and that Ligchine has demonstrated that its witnesses would benefit from transfer, this factor weighs slightly in favor of transfer.

3. *Access to Sources of Proof*

"When documents are easily transferable, access to proof is a neutral factor." *First Nat. Bank v. El Camino Res., Ltd.*, 447 F. Supp. 2d 902, 912 (N.D. Ill. 2006) (citation omitted). Although Ligchine states that its evidentiary files are located at its New Albany office location, [\[Filing No. 31 at 4\]](#), it makes no argument that these records could not be transferred to this District. Given the relative ease with which information and records can be shared and transferred in the modern era, the Court concludes that this factor weighs neither for nor against transfer in this case.

4. *Parties' Convenience*

This factor requires the Court to determine the parties' "respective residences and abilities to bear the expense of trial in a particular forum." *Preston v. American Honda Motor Co., Inc.*, 2017 WL 5001447, at *3 (N.D. Ill. 2017) (quoting *Von Holdt v. Husky Inj. Molding Sys., Ltd.*, 887 F. Supp. 185, 188 (N.D. Ill. 1995)). The Seventh Circuit regards convenience concerns based purely on travel as diminished in the modern age. *See In re Hudson*, 710 F.3d 716, 719 (7th Cir. 2013) ("In our age of advanced electronic communication, including high-quality videoconferencing, changes of venue motivated by concerns with travel inconvenience should be fewer than in the past. Today documents can be scanned and transmitted by email; witnesses can be deposed, examined, and cross-examined remotely and their videotaped testimony shown at trial.").

Both parties in this case are corporations that are able to bear the expenses of trial. The Court finds that neither party is in a better position to pay for the inconvenience, and that this factor weighs neither for nor against transfer in this case.

C. Interest of Justice Factors

"The 'interest of justice' is a separate element of the transfer analysis that relates to the efficient administration of the court system." *Research Automation, Inc.*, 626 F.3d at 978. Courts look to factors such as docket congestion and the likely speed to trial in the transferor and transferee forums, each court's familiarity with relevant law, the desirability of resolving controversies in each locale, and the relationship of each community to the controversy. *Id.* (citations omitted). "The interest of justice may be determinative, warranting transfer or its denial even where the convenience of the parties and witnesses points toward the opposite result." *Id.* (citing *Coffey*, 796 F.2d at 220-21).

1. Docket Congestion

Ligchine does not make any specific arguments regarding docket congestion or likely speed to trial, nor does it submit any evidence or reference any statistics concerning these issues. Regardless of the division, this case will be presided over by one of the District Judges for the Southern District of Indiana, all of whom have comparable caseloads, and will potentially remain pending with the undersigned presiding. Therefore, this factor weighs neither for nor against transfer in this case.

2. Familiarity with Relevant Law

The applicable law in this case is 35 U.S.C. § 271, *et seq.*, a federal statute. Ligchine does not argue—and the Court has no reason to conclude—that this Court is less familiar with the applicable law than another District Judge who may be assigned this case if it is transferred to the

New Albany Division, or vice versa. *See Deputy v. City of Seymour* 2013 WL 2474235, at *4 (S.D. Ind. 2013) (noting that “there is no significant difference between the Indianapolis Division and the New Albany Division with regard to ensuring a speedy trial or having a judge familiar with the applicable law try the case.”). Thus, the Court finds that this factor weighs neither for nor against transfer in this case.

3. *Interests of the Communities*


Ligchine argues that it may have an interest in drawing a venire from its home division of New Albany. However, Ligchine will draw a jury from its home district, the Southern District of Indiana, regardless of whether this case is tried in the Indianapolis Division or the New Albany Division. A jury from the New Albany Division may best apply community standards in this case because Ligchine is located, and the alleged events occurred, in that division. Nevertheless, a vast majority of cases are resolved in the pretrial stages and do not actually proceed to trial. Should this case proceed to trial, however, this factor weighs in favor of transferring this action to the New Albany Division so that a venire from that division may be chosen.

In sum, after considering the relevant convenience and interest of justice factors, the Court finds that, on balance, these factors weigh in favor of transferring this case to the New Albany Division. While several of the factors are neutral, the Court finds significant the fact that none of the events giving rise to this lawsuit occurred within the Indianapolis District, that Somero's witnesses will have to travel 9.5 hours to the Indianapolis Division in any event and only an additional 1.5 hours to the New Albany Division, and that Ligchine's witnesses are located within the New Albany Division. Accordingly, the Court **GRANTS** Ligchine's Motion for Intra-District Transfer of Venue to the New Albany Division. [[Filing No. 30.](#)]

**IV.
CONCLUSION**

For the foregoing reasons, Ligchine's initial Motion for Intra-District Transfer of Venue to the New Albany Division, [28], is **DENIED AS MOOT**, and its operative Motion for Intra-District Transfer of Venue to the New Albany Division, [30], is **GRANTED**. The Clerk is **DIRECTED** to reassign this case for disposition in the New Albany Division, maintaining the current District Judge and reassigning to Magistrate Judge Lynch, and to update the docket accordingly. The parties are instructed to use the updated docket information in the caption of all future filings in this case.

Date: 2/10/2021


Hon. Jane Magnus-Stinson, Chief Judge
United States District Court
Southern District of Indiana

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