

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

ATLANTIC CONSTRUCTION)	
FABRICS, INC., et al.,)	
)	
Plaintiffs,)	Civ. Action No. 5:03cv00034
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
METROCHEM, INC.,)	By: Samuel G. Wilson,
)	Chief United States District Judge
Defendant.)	

Atlantic Construction Fabrics, Inc. (“ACF”) filed this action in the United States District Court for the Western District of Virginia alleging patent infringement and breach of a prior settlement agreement. This action is now before the court on ACF’s Motion to Transfer Venue.¹ For the reasons stated below, this court grants ACF’s motion and transfers the action to the United States District Court for the Western District of Washington, Tacoma Division.

I.

This action arises out of a prior settlement agreement between ACF and MetroChem. In 1999, ACF sued MetroChem, a Washington based corporation, for patent infringement in the Western District of Virginia, alleging that MetroChem’s product, “Drian Diaper,” infringed a patent exclusively licensed to ACF. As part of a settlement agreement, MetroChem agreed not to manufacture or sell any product that infringed on ACF’s patent, and it dismissed a prior suit challenging the validity of the

¹ACF also moved this court to amend their complaint. This court does not judge the merits of that motion, but simply transfers this action to the Western District of Washington, Tacoma Division. ACF is free to move to amend its complaint in the Western District of Washington. ACF’s Motion to Amend Complaint is, therefore, denied.

patent. After the settlement, however, ACF allegedly discovered that MetroChem breached its settlement agreement and continued to manufacture a very similar product, “Drain Web.” ACF filed a new complaint, claiming that MetroChem breached its settlement agreement and continued to infringe ACF’s patent by promoting and selling Drain Web. MetroChem, in its answer, denied any knowledge of Drain Web or that it was involved in the manufacture or sale of the product.

After instituting its current action, ACF allegedly learned that Spider Environmental, Inc. (“Spider”), a Washington based corporation, not MetroChem, manufactured Drain Web. As alleged by ACF, shortly after the settlement agreement, Roni Sasaki, the President of MetroChem, Derek Sasaki, a MetroChem shareholder, and other MetroChem associates established Spider. Spider, although ostensibly a distinct corporation, is wholly owned and managed by MetroChem associates. In addition, Spider and MetroChem allegedly engage in joint marketing efforts and share office and warehouse space, employees, and telephone numbers.

After ACF instituted its current action, Spider sued ACF in the Western District of Washington, seeking a declaratory judgment that ACF’s patent is unenforceable or invalid. ACF filed a motion to dismiss Spider’s suit or, in the alternative, consolidate the action with this already-pending action. Spider opposed both motions and the district court in Washington withheld judgment on the motions and ordered the parties to engage in initial discovery. Spider then voluntarily withdrew its complaint.

II.

ACF now moves this court to transfer venue to the Western District of Washington, Tacoma Division. Pursuant to 28 U.S.C. § 1404(a), a district court may transfer a case at the plaintiff’s request

to any district where the case could have been brought. Farmer Bros. Co. v. Coca-Cola Co., 366 F.Supp. 725, 726 (S.D. Tex. 1973). Once it is established that the transferee forum may exercise personal jurisdiction, the court's decision is guided by the convenience to the parties and witnesses and the interests of justice. Brown Manufacturing Corp. v. Alpha Lawn & Garden Equip., 219 F.Supp. 2d 705, 709 (E.D.Va. 2002). The interests of justice factor incorporates a wide variety of considerations, including the pendency of related actions, judicial economy, the location of operative events, and the ability to join other parties. GTE Wireless v. Qualcomm, 71 F.Supp. 2d 517, 518 (E.D.Va. 1999). In a patent infringement action, moreover, the preferred forum is generally "the hub of activity centered around [the infringing product's] production." Id. at 519.

In this case, it is undisputed that the Western District of Washington may exercise personal jurisdiction over MetroChem, and the court finds that transferring venue to the Western District of Washington both advances the interests of justice and increases the convenience to the witnesses and parties. Although there is no pending action in the Western District of Washington, that court has shown its familiarity with this litigation. At least two related proceedings have occurred in the Western District of Washington: Spider sought declaratory judgment against ACF, which Spider voluntarily withdrew; and ACF filed a motion to compel Spider to produce certain evidence. Furthermore, ACF has indicated its desire to join Spider, Roni Sasaki, and Derek Sasaki as parties to the present suit. While personal jurisdiction over the three prospective parties in the Western District of Virginia is uncertain, all three are citizens and residents of Washington and within the jurisdiction of the Western District of Washington. With venue resting in Washington, ACF will be able to join all interested parties and resolve its patent dispute in one action. Also, since the Drain Web is manufactured and

marketed in Washington, the location of events and the hub of activity support transferring venue to the Western District of Washington. Finally, the convenience to both the parties and witnesses is furthered by transferring venue to the Western District of Washington. All present and prospective defendants are located in Washington and witnesses, such as MetroChem and Spider employees, live in Washington. Therefore, the court finds that the interests of justice and convenience of witnesses is furthered by transferring this action to the Western District of Washington, Tacoma Division.

III.

For the reasons stated, this court grants ACF's Motion to Transfer Venue to the Western District of Washington, Tacoma Division.

ENTER: This ____ day of November, 2003.

Chief United States District Judge

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In accordance with the written Memorandum Opinion entered this day, it is hereby **ORDERED** and **ADJUDGED** that: (1) ACF's Motion to Transfer Venue is **GRANTED**; and (2) ACF's Motion to Amend Complaint is **DENIED**. The case is transferred to the Western District of Washington, Tacoma Division.

The Clerk of the Court is directed to send certified copies of this Order and the accompanying Memorandum Opinion to the counsel of record for the plaintiff and the defendants.

ENTER: This ____ day of November, 2003.

Chief United States District Judge