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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Helferich Patent Licensing, LLC,
Plaintiff,
vs.
Suns Legacy Partners, LLC,
Defendant.

Lead No. CV-11-2304-PHX-NVW

CONSOLIDATED WITH

Helferich Patent Licensing, LLC,
Plaintiff,
vs.
Phoenix Newspapers, Inc.,
Defendant.

No. CV-11-2476-PHX-NVW

Helferich Patent Licensing, LLC,
Plaintiff,
vs.
NBA Properties, Inc., et al.,
Defendants.

No. CV-12-0100-PHX-NVW

Helferich Patent Licensing, LLC,
Plaintiff,
vs.
Nissan Motor Co., Ltd., et al.,
Defendants.

No. CV-12-0060-PHX-NVW

ORDER

1 Before the Court is Plaintiff Helferich Patent Licensing’s Motion to Transfer
2 Venue (Doc. 133), Defendants’ Response, and the Reply. For the following reasons, the
3 Court will deny the Motion.

4 Helferich Patent Licensing (“Helferich”) moves to transfer this action to the
5 Northern District of Illinois pursuant to 28 U.S.C. § 1404(a). Section 1404(a) provides
6 that “[f]or the convenience of the parties and witnesses, in the interest of justice, a district
7 court may transfer any civil action to any other district or division where it might have
8 been brought.” 28 U.S.C. § 1404(a). Because Helferich requested the transfer, it has the
9 burden of showing that the transfer is appropriate under § 1404(a). *See Jones v. GNC*
10 *Franchising, Inc.*, 211 F.3d 495, 499 (9th Cir. 2000).

11 To meet that burden, Helferich must show that that the Northern District of Illinois
12 is a district where the case “might have been brought.” A district where the action
13 “might have been brought” is one having subject matter jurisdiction over the controversy,
14 where the defendants are subject to personal jurisdiction, and where venue is proper.
15 *Hoffman v. Blaski*, 363 U.S. 335, 343–44 (1960). Most pertinent to this case is the
16 requirement that defendants be subject to personal jurisdiction in the district to which the
17 case is to be transferred. Defendants claim that the two remaining Arizona-based
18 Defendants—Phoenix Newspapers, Inc., and Midway Holdings, LLC (“the Arizona
19 Defendants”)—are not subject to personal jurisdiction in the Northern District of Illinois
20 such that it is not a district in which this action “might have been brought.” Defendants
21 do not dispute that the remaining defendants would be subject to personal jurisdiction in
22 Illinois.

23 In patent cases, Federal Circuit law applies to a determination of personal
24 jurisdiction “because the jurisdictional issue is intimately involved with the substance of
25 the patent laws.” *Avocent Huntsville Corp. v. Aten Int’l Co.*, 552 F.3d 1324, 1328 (Fed.
26 Cir. 2008). There is a two-step inquiry to determine whether personal jurisdiction is
27 proper over an out-of-state defendant: (1) whether a forum state’s long-arm statute
28 permits service of process; and (2) whether assertion of personal jurisdiction violates due

1 process. *Grober v. Mako Products, Inc.*, 686 F.3d 1335, 1345 (Fed. Cir. 2012). Illinois
2 and federal due process limitations are coextensive, *be2 LLC v. Ivanov*, 642 F.3d 555,
3 558 (7th Cir. 2011), so the inquiry collapses into whether the exercise of personal
4 jurisdiction comports with due process. *Grober*, 686 F.3d at 1345. The Due Process
5 Clause is satisfied if a defendant has minimum contacts with a forum state such that
6 requiring him to defend against a lawsuit in that state “does not offend traditional notions
7 of fair play and substantial justice.” *See International Shoe Co. v. Washington*, 326 U.S.
8 310, 316 (1945).

9 General jurisdiction is not at issue in this Motion, as Helferich asserts only that
10 Defendants are subject to specific personal jurisdiction in Illinois. “Specific jurisdiction
11 . . . must be based on activities that arise out of or relate to the cause of action, and can
12 exist even if the defendant's contacts are not continuous and systematic.” *Autogenomics,*
13 *Inc. v. Oxford Gene Tech. Ltd.*, 566 F.3d 1012, 1017 (Fed. Cir. 2009) (citation omitted).
14 The Federal Circuit applies a three-prong test to determine if specific jurisdiction exists:
15 (1) whether the defendant purposefully directed activities at residents of the forum; (2)
16 whether the claim arises out of or relates to those activities; and (3) whether assertion of
17 personal jurisdiction is reasonable and fair. *Nuance Commc’ns, Inc. v. Abby Software*
18 *House*, 626 F.3d 1222, 1231 (Fed. Cir. 2010).

19 The question of whether the Northern District of Illinois can exercise personal
20 jurisdiction over the Arizona Defendants will turn on the first prong of this test: whether
21 the Arizona Defendants purposefully directed activities at Illinois residents. Helferich
22 argues that the infringement allegations against all Defendants are based directly on
23 interactive communications over the internet that Defendants, including the Arizona
24 Defendants, caused to be sent to Illinois and every other state. Defendants’ electronic
25 communications to subscribers in Illinois via text messaging programs and social media
26 websites, according to Helferich, involve “intentional use of these electronic channels
27 that are national in scope, and which certainly reach Chicago.” (Doc. 148 at 6.)
28

1 Helferich contends that the reach of those electronic communications into Illinois is
2 sufficient to establish specific personal jurisdiction in that state.

3 Whether electronic communications sent to subscribers and followers in a forum
4 state represent activities purposefully directed at residents of that state depends on
5 whether the defendant deliberately targets those residents. *be2*, 642 F.3d at 559. “Courts
6 should be careful in resolving questions about personal jurisdiction involving online
7 contacts to ensure that a defendant is not haled into court simply because the defendant
8 owns or operates a website that is accessible in the forum state, even if that site is
9 ‘interactive.’” *Id.* at 558 (quoting *Illinois v. Hemi Group, LLC*, 622 F.3d 754, 760 (7th
10 Cir. 2010)). So to be subject to specific personal jurisdiction, a defendant must do more
11 than simply operate a website that is accessible from the forum state: “a defendant must
12 in some way *target* the forum state’s market.” *Id.* at 559.

13 Here, Helferich has not presented any evidence that the Arizona Defendants
14 deliberately target the Illinois market with the allegedly infringing electronic messages.
15 Rather, the evidence Defendants have presented suggests that the Arizona Defendants do
16 not use their online content or their social media activities to target the Illinois market.
17 The Arizona Defendants Facebook pages and Twitter accounts, while interactive, are all
18 informational in nature and function more like broad national advertising campaigns than
19 activities targeted at any particular state: such a campaign is not itself sufficient for
20 exercising personal jurisdiction. *See Sweetgreen, Inc. v. Sweet Leaf, Inc.*, No. 11-CV-
21 0859, 2012 WL 975415 (D.D.C. Mar. 23, 2012) (citing *Miller Yacht Sales, Inc. v. Smith*,
22 384 F.3d 93, 106 (3d. Cir. 2004)).

23 The Arizona Defendants have no reason to advertise or promote their businesses to
24 Illinois residents, and Helferich has presented no evidence that they do so any more than
25 to residents of any other state. The electronic communications in question are not
26 deliberately targeted at the residents of Illinois, so the Arizona Defendants “may not be
27 haled into court in that state without offending the Constitution.” *be2*, 642 F.3d at 559.
28 The fact that some residents of Illinois may sign up for and receive electronic

1 communications from the Arizona Defendants can represent only “attenuated contacts.”
2 *Id.* The Arizona Defendants do not deliberately target their online content at the Illinois
3 market, and so cannot be subject to personal jurisdiction there “without offending
4 traditional notions of fair play and substantial justice.” *Id.*

5 There would be obvious judicial economy and economy to the litigants if these
6 consolidated cases were processed and tried together with substantively identical claims
7 in the Northern District of Illinois, *Helperich Patent Licensing, LLC v. New York Times*
8 *Company*, No. 1:10-cv-04387. But without a showing that all of the Defendants are
9 subject to personal jurisdiction in the transferee forum, Helperich cannot establish that the
10 Northern District of Illinois is a district in which this action might have been brought. As
11 a result, Helperich has failed to meet its burden of showing that transfer is available under
12 § 1404(a), and the case cannot be transferred.


13 Nevertheless, this Court will manage these cases in a manner that minimizes the
14 inefficiency of conducting parallel proceedings. The related cases in the Northern
15 District of Illinois are advancing on a faster track and important stages of the litigation,
16 including claim construction, will be concluded there first. As a result, the case
17 management schedule for these cases will be modified to enable the Court to process this
18 litigation as quickly and efficiently as possible with the benefit of the rulings from the
19 related cases in the Northern District of Illinois. With the aid of those rulings, to which
20 this Court will give due consideration, the parties will avoid some of the duplicative
21 burden and expense of re-litigating claims in both forums.

22 IT IS THEREFORE ORDERED that Plaintiff’s Motion to Transfer Venue (Doc.
23 133) is DENIED.

24 IT IS FURTHER ORDERED that the parties file a joint proposed Revised Case
25 Management Schedule by February 20, 2012. The Revised Schedule shall include
26 deadlines for discovery that mirror and promptly trail similar deadlines set in the
27 proceedings in the Northern District of Illinois, *Helperich Patent Licensing, LLC v. New*
28 *York Times Company*, No. 1:10-CV-04387 and related cases.

1 IT IS FURTHER ORDERED that in the Revised Case Management Schedule, all
2 deadlines for briefing regarding claim construction shall be suspended until claim
3 construction is complete in the related cases in the Northern District of Illinois, with
4 briefing in light of that claim construction to follow the decision promptly.

5 Dated this 5th day of February, 2013.

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9 Neil V. Wake
10 United States District Judge
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