

SHARTSIS FRIESE LLP
ONE MARITIME PLAZA
EIGHTEENTH FLOOR
SAN FRANCISCO, CA 9 4111

1 SHARTSIS FRIESE LLP
ARTHUR J. SHARTSIS (Bar #51549)
2 ashartsis@sflaw.com
MARY JO SHARTSIS (Bar #55194)
3 mjshartsis@sflaw.com
ROBERT E. SCHABERG (Bar #81430)
4 rschaberg@sflaw.com
SIMONE M. KATZ-O'NEILL (Bar #246490)
5 skatz@sflaw.com
One Maritime Plaza, Eighteenth Floor
6 San Francisco, CA 94111
Telephone: (415) 421-6500
7 Facsimile: (415) 421-2922

8 Attorneys for Plaintiffs
SKYRIVER TECHNOLOGY SOLUTIONS, LLC
9 and INNOVATIVE INTERFACES, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

14 SKYRIVER TECHNOLOGY
SOLUTIONS, LLC, a California limited
15 liability company, and INNOVATIVE
INTERFACES, INC., a California
16 corporation,

17 Plaintiffs,

18 v.

19 OCLC ONLINE COMPUTER LIBRARY
CENTER, INC., an Ohio corporation,

20 Defendant.
21

Case No. C 10-03305 JSW

**[PROPOSED] ORDER REGARDING
DEFENDANTS' MOTION TO TRANSFER
VENUE TO THE SOUTHERN DISTRICT
OF OHIO**

Date: October 29, 2010
Time: 9:00 a.m.
Judge: Hon. Jeffrey S. White
Crtrm: 11, 19th Floor

Complaint Filed: July 28, 2010
Trial Date: None

1 The Court has considered the motion of Defendant OCLC Online Computer Library
2 Center, Inc. (hereafter “Defendant” or “OCLC”) requesting transfer of this case to the Southern
3 District of Ohio under 28 U.S.C. Section 1404(a). Both plaintiffs, SkyRiver Technology
4 Solutions, LLC (“SkyRiver”) and Innovative Interfaces, Inc. (“Innovative”) (collectively
5 “Plaintiffs”), are California companies and have their principal places of business in the Northern
6 District of California. Plaintiffs oppose transfer.

7 A district court has discretion to transfer an action under 28 U.S.C. section 1404(a) if it
8 finds: (1) that the transferee court is “one where the action might have been brought,” and
9 (2) “that the convenience of parties and witnesses in the interest of justice favor transfer.”
10 *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414 (9th Cir. 1985). Plaintiffs do not dispute that this
11 action could have been brought in the Southern District of Ohio. The first prong of the test
12 accordingly is not at issue.

13 The Court has considered the purpose of section 12 of the Clayton Act, 15 U.S.C.
14 section 22, and Congress’s intent to give antitrust plaintiffs a wide choice of forum so that a
15 plaintiff would “not be forced to follow the defendant into the defendant’s home district” but
16 could bring suit where the “defendant had committed violations of the Act and inflicted the
17 forbidden injuries.” Clayton Act, 15 U.S.C. § 22; *Pacific Car & Foundry Co. v. Pence*, 403 F.2d
18 949, 954 (9th Cir. 1968), quoting *United States v. National City Lines, Inc.*, 334 U.S. 573, 588
19 (1948). This Congressional mandate strongly favors an antitrust plaintiff’s choice of forum so
20 long as it does not exceed “reasonable limits.” *Id.*; *Ellis v. Costco Wholesale Corp.*, 372 F. Supp.
21 2d 530, 537 (N.D. Cal. 2005) (“where venue is governed by a more permissive standard, a
22 plaintiff’s choice is entitled to greater deference as a matter of law”).

23 To determine whether Defendant has met its burden of showing that the interests of justice
24 require transfer, the Court has generally considered the following factors: (1) deference to the
25 plaintiff’s choice of forum; (2) the convenience of the parties and witnesses; (3) the ease of access
26 to sources of proof; (4) the local interest in adjudicating the controversy; (5) the familiarity of
27 each forum with the applicable law; and (6) the relative congestion in each forum, particularly the
28 elapsed time from filing to disposition. *See Decker Coal Co.*, 805 F.2d at 843; *Invisible Stripes*,

1 *LLC*, 2009 U.S. Dist. LEXIS 57956 at *8, *10. Defendant has failed to carry its heavy burden of
2 demonstrating that any of these factors favor transfer to Ohio.

3 The plaintiff's choice of forum is given substantial deference unless the defendant can
4 show that other factors strongly outweigh the plaintiff's choice. *Decker Coal Co.*, 805 F.2d at
5 843; *Jonathan Browning, Inc.*, 2007 U.S. Dist. LEXIS 95440 at *17-*19. Where, as here,
6 Plaintiffs are citizens of the forum state, their choice of forum is given even greater weight.
7 *Jonathan Browning, Inc.*, 2007 U.S. Dist. LEXIS 95440 at *18-*19 (explaining that the plaintiff's
8 "choice of forum is favored" because plaintiff is located in San Francisco); *Invisible Stripes, LLC*,
9 2009 U.S. Dist. LEXIS 57956 at *8, *10 (giving great weight to the plaintiff's choice of forum
10 because plaintiff is a California citizen).

11 Many of the events giving rise to this action occurred in the Northern District and in other
12 districts in California, and the harm allegedly suffered by Plaintiffs occurred in the Northern
13 District. Numerous witnesses—both third-party and party—reside in the Northern District, and
14 many others reside elsewhere in California and are subject to the subpoena power of this Court.
15 Many other third-party witnesses whose testimony may be important to this case are located in
16 states close to California, and others are willing to testify in California even though they do not
17 reside here. In addition, Defendant has a substantial presence in the Northern District with two
18 offices in California and employees or agents who have knowledge of the issues raised by
19 Plaintiffs' claims.

20 California has a strong interest in protecting its citizens from violation of federal and
21 California state antitrust and unfair competition laws that exceed the interest of the Ohio courts.
22 OCLC has not shown that any of the factors relevant to the determination of its Motion weigh in
23 its favor. Accordingly, Defendant has failed to meet its heavy burden of showing that these
24 factors strongly outweigh Plaintiff's choice of forum. Defendant's Motion is denied.

25 DATED: _____, 2010

26 _____
THE HONORABLE JEFFREY S. WHITE
UNITED STATES DISTRICT COURT

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