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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PACE INTERNATIONAL, LLC, *et al.*,  
Plaintiffs,  
v.  
INDUSTRIAL VENTILATION, INC., *et al.*,  
Defendants.

Case No. C08-1822RSL  
  
ORDER DENYING MOTION TO  
TRANSFER

This matter comes before the Court on “Industrial Ventilation, Inc. and 1,4Group, Inc’s Motion to Transfer Pursuant to 28 U.S.C. § 1404(a).” Dkt. # 8. Having reviewed the memoranda, declarations, and exhibits submitted by the parties,<sup>1</sup> defendants’ motion to transfer is DENIED.

Plaintiffs allege that defendants have infringed a patent owned by plaintiff Xeda International, S.A., a French Corporation, by providing sprout-inhibiting products and services to potato growers and operators of potato storage facilities. Plaintiff Pace International, LLC, is based in Seattle and is the exclusive United States licensee of Xeda’s patent. Defendants Industrial Ventilation, Inc. (“IVI”) and 1,4Group, Inc. are Idaho corporations.

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<sup>1</sup> This matter may be decided on the papers submitted. Defendants’ request for oral argument is, therefore, DENIED.

ORDER DENYING MOTION TO TRANSFER

1 Section 1404(a) of Title 28 provides: “For the convenience of parties and  
2 witnesses, in the interest of justice, a district court may transfer any civil action to any other  
3 district or division where it might have been brought.” Section 1404(a) is the statutory  
4 equivalent of the common law doctrine of *forum non conveniens* where the alternative forum is  
5 within the territory of the United States. Ravelo Monegro v. Rosa, 211 F.3d 509, 512-13 (9th  
6 Cir. 2000). “[T]he central focus of the *forum non conveniens* inquiry is convenience . . . .”  
7 Piper Aircraft Co. v. Reyno, 454 U.S. 235, 248-49 (1981). Generally, “a plaintiff’s choice of  
8 forum should rarely be disturbed. However, when an alternative forum has jurisdiction to hear  
9 the case, and when trial in the chosen forum would ‘establish . . . oppressiveness and vexation to  
10 a defendant . . . out of all proportion to plaintiff’s convenience,’ or when the ‘chosen forum [is]  
11 inappropriate because of considerations affecting the court’s own administrative and legal  
12 problems,’ the court may, in the exercise of its sound discretion, dismiss the case.” Piper  
13 Aircraft, 454 U.S. at 241 (citations omitted). The moving parties have the burden of showing  
14 that the overall convenience of the parties and witnesses, in the interests of justice, weighs in  
15 favor of transferring the above-captioned case to a different forum. Decker Coal Co. v.  
16 Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986).

17 Under both the *forum non conveniens* and venue doctrines, the Court must make  
18 an individualized, case-by-case determination of convenience and fairness when considering a  
19 change in venue. Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988). Factors that may be  
20 considered include: “(1) the location where the relevant agreements were negotiated and  
21 executed, (2) the state that is most familiar with the governing law, (3) the plaintiff’s choice of  
22 forum, (4) the respective parties’ contacts with the forum, (5) the contacts relating to the  
23 plaintiff’s cause of action in the chosen forum, (6) the differences in the costs of litigation in the  
24 two forums, (7) the availability of compulsory process to compel attendance of unwilling non-  
25 party witnesses, and (8) the ease of access to sources of proof.” Jones v. GNC Franchising, Inc.,  
26 211 F.3d 495, 498-99 (9th Cir. 2000). Other relevant considerations drawn from the traditional

1 *forum non conveniens* analyses are (9) the pendency of related litigation in the transferee forum,  
2 (10) the relative congestion of the two courts, and (11) the public interest in local adjudication of  
3 local controversies. Decker Coal, 805 F.2d at 843.

4 Defendants request that this matter be transferred to the District of Idaho or, in the  
5 alternative, to the Eastern District of Washington. There is no real dispute regarding the  
6 availability of these forums: the moving parties acknowledge that they are subject to personal  
7 jurisdiction in those districts for purposes of 28 U.S.C. § 1391(a)(3). Thus, this issue turns on an  
8 individualized determination of convenience and fairness as it relates to these parties.

9 **1. Location of Relevant Events**

10 The initial distribution of 1,4Group’s allegedly infringing product, Sprout Torch,  
11 occurred in Idaho. IVI, a customer of 1,4Group, has offices in both Idaho and the Eastern  
12 District of Washington from which it has sold Sprout Torch. Defendants deny that they have  
13 ever sold products “that contain eugenol in Western Washington.” Motion at 2-3. Because the  
14 focus of this litigation is the allegedly infringing conduct of defendants, the “hub of activity” is  
15 where defendants performed the patented process. See Amazon.com v. Cendant Corp., 404 F.  
16 Supp.2d 1256, 1260 (W.D. Wash. 2005). In this case, both Idaho and the Eastern District of  
17 Washington saw accused activity, with a preponderance of the relevant events occurring in, or  
18 directed from, Idaho.

19 There are, however, other allegations and claims involved in this litigation which  
20 arose, at least in part, in the Western District of Washington. Plaintiffs allege that defendants’  
21 conduct was willful because they gave notice of the alleged infringement more than three years  
22 before this suit was filed. Defendants, for their part, have asserted that one or more of the claims  
23 of Xeda’s patent are invalid under 35 U.S.C. §§ 102, 103, and/or 112. Although the exact nature  
24 of this challenge is unclear, some of the statutory counterclaims, such as the § 103(b) “on-sale”  
25 bar, would likely involve events that occurred in the Western District of Washington.

26 Overall, the Court finds that this factor weighs in favor of a transfer to Idaho,

1 despite the fact that relevant events occurred in all three judicial districts under consideration.

2 **2. Familiarity with Governing Law**

3 Only federal claims are asserted in this litigation. This consideration is therefore  
4 neutral.

5 **3. Plaintiffs' Choice of Forum**

6 This factor is generally given great weight: there is a presumption that plaintiff's  
7 choice of forum will not be disturbed absent a strong showing that the convenience of the parties  
8 and/or the interests of justice warrant a transfer. Tuazon v. R.J. Reynolds Tobacco Co., 433 F.3d  
9 1163, 1180 (9th Cir. 2006). Plaintiff Pace International has its principal place of business in this  
10 forum and a significant interest in having this dispute resolved here. Plaintiffs' choice of forum  
11 is therefore entitled to significant weight and favors the Western District of Washington.

12 **4. Parties' Contacts with the Forum**

13 Plaintiff Pace International, the exclusive licensee of Xeda's patent in the United  
14 States, is based in Seattle. Xeda is a French corporation and defendants are Idaho corporations.  
15 Although defendants have no offices in the Western District of Washington, their carefully  
16 crafted declarations imply that they sell goods and services to customers here. On the whole, the  
17 balance of contacts is fairly even: this consideration is neutral.

18 **5. Contacts Relevant to this Dispute**

19 For the reasons set forth in section 1, this factor weighs in favor of a transfer to  
20 Idaho.

21 **6. Cost of Litigation**

22 The Court has no information regarding the comparative costs of litigation in  
23 Idaho, the Eastern District of Washington, and the Western District of Washington. Defendants  
24 have failed to show that this consideration favors transfer.  
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1 documents are stored. Because two of the named parties are headquartered in Idaho and the  
2 focus of this litigation is defendants' conduct, the Court assumes that more relevant documents  
3 will be found in the District of Idaho than in either of the Washington districts.

4 This consideration weighs in favor of a transfer to Idaho.

#### 5 **9. Related Litigation**

6 Neither party has identified pending litigation related to Xeda's patent. This  
7 consideration is neutral.

#### 8 **10. Relative Congestion**

9 According to the most recent reports regarding the Judicial Business of the United  
10 States Courts, during the twelve-month period ending September 30, 2008, the median time  
11 interval from filing a civil case to disposition was 7.1 months in the Western District of  
12 Washington, 8.1 months in the Eastern District of Washington, and 11.0 months in the District  
13 of Idaho. See <http://www.uscourts.gov/judbus2008/contents.cfm>, Table C-5. The Eastern  
14 District of Washington and the District of Idaho also have significantly higher percentages of  
15 cases pending for three years or more. See <http://www.uscourts.gov/judbus2008/contents.cfm>,  
16 Table C-6. To the extent that these statistics accurately measure congestion (which is  
17 debatable), this district has a clear advantage.

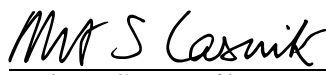
#### 18 **11. Public Interest in Local Adjudication**

19 Both the District of Idaho and the Western District of Washington have an interest  
20 in adjudicating the commercial rights and obligations of their corporate citizens. The Eastern  
21 District of Washington has very little interest in this dispute.

22  
23 Thus, as is often the case, the convenience of defendants and their witnesses is ill-  
24 served by plaintiffs' choice of forum. Because defendants may not rely on their ties to both  
25 Idaho and the Eastern District of Washington as a counterweight to plaintiffs' contacts with the  
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1 Western District, the Court has not considered defendants' presence in the Eastern District.<sup>2</sup>  
2 Although the weight of relevant contacts favors a transfer to the District of Idaho, plaintiffs'  
3 documents and witnesses are in this district and a transfer would simply shift, rather than  
4 eliminate, the inconvenience of litigation. Such a result would be inappropriate. See Decker  
5 Coal, 805 F.2d at 843. In addition, past performance suggests that this case will be resolved  
6 more quickly in this district. The motion to transfer is therefore DENIED.

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8 Dated this 13th day of April, 2009.

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10 Robert S. Lasnik  
11 United States District Judge  
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26 <sup>2</sup> The Court finds that a transfer to the Eastern District of Washington is not warranted by  
considerations of convenience, fairness, or the interests of justice.