IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DAVIDSON & ASSOCIATES, INC., D.B.A. BLIZZARD ENTERTAINMENT, and VIVENDI UNIVERSAL GAMES, INC.,

Plaintiffs

v.

INTERNET GATEWAY, INC., TIM JUNG, ROSS COMBS, ROB CRITTENDEN, YI WANG and JOHN DOES 1-50,

Defendants.

Case No. 4:02CV498CAS

DEFENDANTS INTERNET GATEWAY, INC., TIM JUNG, ROSS COMBS AND ROB CRITTENDEN'S MOTION TO TRANSFER VENUE AND MEMORANDUM IN SUPPORT OF MOTION

24284

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MOTION TO TRANSFER VENUE

Pursuant to 28 U.S.C. § 1404(a), Defendants Internet Gateway, Inc., Tim Jung, Ross Combs, and Rob Crittenden move for an order transferring this action to the Central District of California for the convenience of the parties and witnesses, and in the interest of justice.

This motion is based on this Motion to Transfer Venue, the accompanying Memorandum in Support of Motion to Transfer Venue, the accompanying Declarations of Paul S. Grewal and Tim Jung and exhibits attached thereto, the pleadings and other documents on file in this action, and any further evidence and oral argument that the Court may request with respect to this motion.

MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER VENUE

This is a case about two Los Angeles-area entertainment companies, four contracts that require that this suit take place in Los Angeles, and a critical third-party witness whose testimony is subject to subpoena in the federal district comprising Los Angeles. This case should be transferred to that district – the Central District of California – because:

- Four of the five contracts that the plaintiffs seek to enforce against the defendants include a forum selection clause that requires that

  > "any claim asserted in any legal proceeding by one of the parties against the other shall be commenced and maintained in any state or federal court located in the State of California, County of Los Angeles, having subject matter jurisdiction with respect to the dispute between the parties."

- The proposed transferee district – the Central District of California – is the very forum required by these clauses;

- The proposed transferee district is the location of the plaintiffs' corporate headquarters and therefore the plaintiffs' "home district";

- A critical third-party fact witness is within the subpoena power of the Central District of California, but not the Eastern District of Missouri;

- Even if this critical third-party fact witness were willing to appear at trial in the Eastern District of Missouri, the Central District of California is far more convenient for him;

- The video game titles and online hosting and matchmaking services whose copyrights and trademarks are at issue in this suit were designed, marketed and sold by the plaintiffs in the Central District of California;

- All known witnesses employed by the plaintiffs are located in the Central District of California;

- All but one of the individual defendants work and reside outside of the Eastern District of Missouri;

- No known third-party fact witnesses are located in the Eastern District of Missouri.

Taken together, these facts demonstrate that the interests of justice would be served by a transfer to the Central District of California. These same facts also demonstrate that the plaintiffs and their witnesses have little cognizable interest in having this action litigated in the Eastern District of Missouri, and would in fact benefit from the convenience resulting from a transfer to the Central District of California.

Because the relevant factors weigh heavily in favor of transferring this action to the Central District of California, the Court should exercise its discretion under 28 U.S.C. §1404(a) to transfer the action to that forum.

I. PARTIES AND PROCEDURAL BACKGROUND

Plaintiff Blizzard Entertainment ("Blizzard") is an Irvine, California-based publisher of fantasy, wargaming and role-playing software.[1] Blizzard's headquarters, including its corporate offices, sales and marketing offices, and research and development facilities, are located in Irvine

[1] 5/27/03 Grewal Declaration ("Grewal Decl.") Ex. A.

– adjacent to Los Angeles County and squarely within the Central District of California.[2] Blizzard's parent company and co-plaintiff, Vivendi Universal Games, maintains its North American headquarters in Los Angeles.[3] All of the Blizzard employees involved in the design, development and management of Blizzard's computer games and online hosting and matchmaking services are located either in Irvine or elsewhere in California.[4] Likewise, all sales, marketing and licensing decisions are made in California by Blizzard employees who work and presumably live in California.[5] Blizzard does not appear to have any offices, facilities or employees in Missouri.[6]

The defendants in this case are individual computer hobbyists spread throughout the United States who have volunteered time and resources on an Internet community software project known as "bnetd."[7] Bnetd's mission is to allow individuals to connect to and communicate with one another for the purpose of playing video games, including those purchased from Blizzard. Defendant Tim Jung is a resident of St. Louis, Missouri.[8] Along with his wife, Mr. Jung is the proprietor of Internet Gateway, Inc., an Internet Service Provider that has been separately named as a defendant in this case.[9] Defendant Ross Combs lives and works in Austin, Texas.[10] Defendant Rob Crittenden is a resident of Linthicum, Maryland.[11] Because of the non-commercial and educational character of the "bnetd" project and the issues of

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[2] Grewal Decl. Ex. A.
[3] Grewal Decl. Ex. H.
[4] Grewal Decl. Ex. A.
[5] Grewal Decl. Ex. A.
[6] Grewal Decl. Ex. A.
[7] Pronounced "BEE NET DEE."
[8] Defendants' Amended Answer and Counterclaims to Plaintiffs' Second Amended Complaint ("Defendants' Amended Answer") ¶ 6.
[9] Defendants' Amended Answer ¶ 6.
[10] Defendants' Amended Answer ¶ 7.
[11] Defendants' Amended Answer ¶ 8.

personal expression and association surrounding this case, the defendants are represented in this action by counsel acting *pro bono*.[12]

A fourth named individual defendant, Yi Wang, resides at an unknown address and was never served by the plaintiffs.[13]

Blizzard filed this suit on April 5, 2002. On December 4, 2002, the defendants filed their Answer and Counterclaims to plaintiffs' Second Amended Complaint. The defendants' Answer and Counterclaims denies Blizzard's claims of copyright infringement, circumvention and trafficking in violation of the Digital Millenium Copyright Act, trademark infringement, trade dress infringement, trademark dilution and breach of contract and seeks a declaratory judgment regarding non-infringement, non-circumvention, the unconstitutionality of 17 U.S.C. §1201(a) and the unenforceability of the contracts asserted.[14]

The parties appeared before the Court on December 6, 2002 for a case management conference, and the Court issued its case management order on December 11, 2002. The parties exchanged Rule 26(a) initial disclosures and commenced discovery shortly thereafter. Having taken limited discovery under the jurisdiction of this Court, the defendants have uncovered strong evidence to confirm what they initially suspected: that this case never belonged in the Eastern District of Missouri, and should be immediately transferred to the Central District of California.

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[12] Grewal Decl. ¶ 3.
[13] Plaintiffs' Second Amended Complaint ¶ 9; Defendants' Amended Answer ¶ 9.
[14] Defendants' Amended Answer ¶¶ 141-148.

II. ARGUMENT

A. MOTIONS TO TRANSFER UNDER SECTION 1404(A): A TWO-PART TEST

Motions to transfer venue under 28 U.S.C. § 1404(a)[15] require that courts apply a two-part test. First, the Court must determine whether this action "might have been brought" in the district to which transfer is requested, which requires that personal jurisdiction and venue are proper in the transferee court.[16] Second, the Court must determine in its discretion whether the action should be transferred "[f]or the convenience of the parties and witnesses, in the interest of justice."[17] The facts of this case easily satisfy both of these criteria.

B. BECAUSE PERSONAL JURISDICTION AND VENUE ARE PROPER IN THE CENTRAL DISTRICT OF CALIFORNIA, THIS ACTION "MIGHT HAVE BEEN BROUGHT" IN THE TRANSFERREE DISTRICT.

To determine whether personal jurisdiction can be exercised by a transferee court over an out-of-state defendant, a transferor court must first apply the long-arm statute of the state in which the transferee court is located.[18] California's long-arm statute is co-extensive with the limits of due process.[19] The Central District of California can therefore exercise personal jurisdiction over each defendant if he "'purposefully directed' [his] activities at residents of the forum, and the litigation results from alleged injuries that 'arise out of or relate to' those

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[15] Section 1404(a) reads: "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."

[16] *Biometics, LLC v. New Womyn, Inc.*, 112 F. Supp. 2d 869, 875 (E.D. Mo. 2000) (Shaw, J.).

[17] *Id.*

[18] *May Department Stores Co. v. Wilansky*, 900 F. Supp. 1154, 1159 (E.D. Mo. 1995) (Shaw, J.) (citing *Dakota Indus., Inc. v. Ever Best Ltd.*, 28 F.3d 910, 915 (8th Cir. 1994)).

[19] *See* Cal. Civ. Code Proc. § 410.10 ("A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.").

activities."[20] A party is held to have purposefully directed its activities at a particular forum "by consenting to personal jurisdiction in a forum selection clause."[21]

Here, there is no dispute that four of the five contracts alleged to have been breached by the defendants include forum selection clauses that establish personal jurisdiction in the Central District of California.[22] The contracts state that "any claim asserted in any legal proceeding by one of the parties against the other shall be commenced and maintained in ***any state or federal court located in the State of California, County of Los Angeles***, having subject matter jurisdiction with respect to the dispute between the parties."[23] The Central District of California includes the "federal court located in the State of California, County of Los Angeles."[24] Accordingly, the claims arising from the defendants' alleged breach of these contracts may – and in fact must – be litigated against the defendants in the Central District of California.[25]

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[20] *May Department Stores*, 900 F. Supp. at 1159-60 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)).

[21] *Inso Corp. v. Dekotec Handelsges*, 999 F. Supp. 165,166 (D. Mass. 1998) (citing *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 11 (1972)); *see also Microfibres, Inc. v. McDevitt-Askew*, 20 F. Supp. 2d 316, 322 (D. R.I. 1998) (holding that an agreement to litigate contractual disputes in Rhode Island was sufficient to establish personal jurisdiction there).

[22] The fifth contract asserted by the plaintiffs is silent on the issue of forum. *See* Plaintiffs' Second Amended Complaint, Ex. E. By pointing to the forum selection clauses that are present in the purported contracts asserted by Blizzard, the defendants do not concede that the contracts are otherwise enforceable. Moreover, by inquiring into the enforceability of the forum selection clauses in the contracts asserted by Blizzard, this Court does not undertake the separate question of the enforceability of the remaining provisions of the contract. *See Marra v. Papandreou*, 216 F.3d 1119, 1123 (D.C. Cir 2000) ("[W]hen a court determines that a forum-selection clause is enforceable, it is not making 'an assumption of law-declaring power' vis-à-vis other provisions of the contract.").

[23] Plaintiffs' Second Amended Complaint Ex. E (emphasis added).

[24] 28 U.S.C. § 84(c)(2).

[25] Rather than challenging venue under 28 U.S.C. § 1406 or Fed. R. Civ. P. 12(b)(3), the defendants elected to file an answer and counterclaims, so that the parties could proceed with discovery and work to resolve this dispute quickly. By waiving their objections to venue in this District, however, the defendants do not waive their right to seek transfer of venue pursuant to section 1404(a). *See* 15 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice &* Procedure, § 3844 (1986) ("A party who has waived his objection to venue by failure

Moreover, because these clauses refer to "any claim asserted in any legal proceeding by one of the parties" and are not limited in any way to claims arising from each particular contract, the clauses confer personal jurisdiction over all of the claims and counterclaims asserted by the plaintiffs and the defendants.[26]

Nor is there any legitimate dispute about venue for this case in the transferee court. Venue for suits arising under the Copyright Act are governed by 28 U.S.C. § 1400(a), which provides that " [c]ivil actions, suits, proceedings, arising under any Act of Congress relating to copyrights or exclusive rights in mask works or designs may be instituted in any district in which the defendant or his agent resides or ***may be found***." [27] A copyright defendant "may be found" in any district in which he is subject to personal jurisdiction.[28] As established above, each of the defendants is subject to personal jurisdiction in the transferee district. Therefore, each of the defendants "may be found" in the transferee district, so that venue in the proposed transferee district over Blizzard's copyright claims is proper as well. Furthermore, because the claims and counterclaims in this case are all part of a single "action," venue in the transferee district is also proper over all of the other claims and counterclaims at issue in this case.[29]

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to assert it at the proper time is not for that reason precluded from moving for a change of venue.") (citing *Montgomery Ward & Co. v. Anderson Motor Serv., Inc.*, 339 F. Supp. 713 (W.D. Mo. 1971)).

[26] *See Terra Int'l, Inc. v. Mississippi Chem. Corp.*, 119 F.3d 688, 693 (8th Cir. 1997) (holding that whether particular claims fall within the scope of a forum selection clause "depends upon the intention of the parties reflected in the wording of the particular clauses and facts of each case") (citation omitted).

[27] *See* 28 U.S.C. § 1400(a) (emphasis added).

[28] *Milwaukee Concrete Studios, Ltd. v. Fjeld Mfg. Co.*, 8 F.3d 441, 445 (7th Cir. 1993) (holding that copyright defendant "may be found" in any district in which it is subject to personal jurisdiction).

[29] *See Hurn v. Oursler*, 289 U.S. 238, 245-46 (1933) (holding that copyright claims and factually interrelated unfair competition claims were single "action"); *Bredberg v. Long*, 778 F.2d 1285, 1288 (8th Cir. 1985) (holding that if venue of the original federal claim is established, then proof

C. BOTH CONVENIENCE AND JUSTICE WOULD BE SERVED BY TRANSFERRING THIS ACTION TO THE CENTRAL DISTRICT OF CALIFORNIA.

Because this case "might have been brought" in the Central District of California, this Court can exercise its discretion to transfer the case "for the convenience of parties and witnesses, in the interest of justice."[30] "The statutory language reveals three general categories of factors that courts must consider when deciding whether to transfer venue: (1) the convenience of the parties, (2) the convenience of the witnesses, and (3) the interests of justice."[31] Together with the forum selection clauses in the contracts asserted by Blizzard, each of these factors demonstrates that the Court should exercise the discretion afforded it under Section 1404 and transfer the case.

1. The forum selection clauses requiring transfer to the Central District of California should are "significant factor[s]" that should "figure[] centrally" in this Court's calculus.

The Eighth Circuit Court of Appeals has explained that "[a]lthough there is no exhaustive list of specific factors to consider, courts have determined that a valid and applicable forum selection clause in a contract is 'a significant factor that figures centrally in the district court's calculus.'"[32] As discussed above, the very contracts that Blizzard asserts against the defendant require that this dispute, including all claims and counterclaims, be transferred to the Central District of California. By agreeing to the forum selection clause, "the plaintiff has already contractually chosen the venue via a forum selection clause."[33] Because "the plaintiff has

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of venue for any subsequent pendent jurisdiction claims, crossclaims, counterclaims, or interpleader claims is unnecessary).

[30] 28 U.S.C. §1404(a).

[31] *Terra Int'l,* 119 F.3d at 691.

[32] *Id.* (quoting *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)).

[33] *ABC Rental Sys., Inc. v. Colortyme, Inc.*, 893 F. Supp. 636, 638-39 (E.D. Tex. 1995).

already contractually chosen an appropriate forum," this Court need not pay any deference otherwise owed to a plaintiff's choice of forum in filing its suit.[34]

2. Blizzard's residence in the transferee district make the Central District of California the most convenient district for the parties.

The first of the traditional factors – convenience of the parties – strongly supports transferring this case to the Central District of California.

The plaintiff, Blizzard, is headquartered in Irvine, California – in the heart of the Central District of California. Most of Blizzard's employees are located in the Central District of California, and the remainder are located elsewhere throughout California. These employees include those responsible for the design, development and marketing of the videogames and server software whose copyrights, trademarks, licenses, and protection schemes have allegedly been violated by the defendants.[35] The primary plaintiff – Davidson & Associates, Inc., d.b.a. Blizzard Entertainment – is incorporated in the State of California (the other entity, Vivendi Universal Games, is incorporated in the State of Delaware, but maintains its North American Headquarters in Los Angeles).[36]

For the purposes of venue, a corporate plaintiff is deemed to reside at its principal place of business or, alternatively, its state of incorporation.[37] Accordingly, the Central District is nothing less than Blizzard's home district.

Under these circumstances, in which the plaintiffs have elected to file suit far from their home district, the Court should not presume that the chosen forum is particularly convenient to

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[34] *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 880 (3d Cir. 1995).
[35] *See* Grewal Decl. Ex. B at 2-5.
[36] Plaintiffs' Second Amended Complaint ¶ 4; 5/22/03 Grewal Decl. Ex. H.
[37] *See, e.g., Waste Distillation Tech., Inc. v. Pan American Resources, Inc.*, 775 F. Supp. 759, 764 (D. Del. 1991); *S-Fer Int'l, Inc. v. Paladion Partners, Ltd.*, 906 F. Supp. 211, 214 (S.D.N.Y. 1995).

the plaintiffs. "The plaintiff's choice of forum is accorded less weight . . . where it is not the plaintiff's residence."[38] Moreover, when a defendant seeks transfer to the district that is the plaintiff's home district, any claim by the plaintiff that this district is inconvenient should be disregarded.[39]

Finally, when evaluating a plaintiff's convenience, "the convenience of the plaintiff's counsel is not entitled to any weight in the analysis."[40] In any event, while Blizzard's counsel has a local office in St. Louis, it also has an office in Los Angeles.[41]

For the defendants, the Central District of California would be at least as convenient as the Eastern District of Missouri. Only one of the individual defendants, Mr. Jung, is a resident of the Eastern District of Missouri, and Mr. Jung's personal residence in this District need not preclude a transfer when other factors support a transfer.[42] This is especially appropriate given that Mr. Jung, who is also the only likely witness on behalf of Internet Gateway, is more than willing to travel to the Central District of California to litigate this dispute.[43] The other two individual defendants, Mr. Combs and Mr. Crittenden, reside in Texas and Maryland respectively, so that substantial travel would be required to either forum.[44]

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[38] *Biometics, LLC v. New Womyn, Inc.*, 112 F. Supp.2d 869, 877 (E.D. Mo. 2000 (Shaw, J.) (citations omitted); *see also New Image, Inc. v. Travelers Indem. Co.*, 536 F. Supp. 58, 59 (E.D. Pa. 1981) (holding that where plaintiff has commenced the action in a forum that is not its residence, plaintiff's choice of forum is given much little weight in ruling on a discretionary transfer motion).

[39] *See Morales v. Navieres de Puerto Rico*, 713 F. Supp. 711, 713 (S.D.N.Y. 1989).

[40] *Biometics*, 112 F. Supp. 2d at 876; *see also Nelson v. Soo Line R. Co.*, 58 F. Supp. 2d 1023, 1027 (D. Minn. 1999) ("[I]t is axiomatic that convenience to plaintiff's counsel is not a factor to be considered in deciding the propriety of transfer.").

[41] Grewal Decl. Ex. C, D.

[42] *See, e.g., Brown v. Woodring*, 174 F. Supp. 640 (M.D. Pa. 1959).

[43] Jung Decl. ¶ 2.

[44] *See Verosol B.V. v. Hunter Douglas, Inc.*, 806 F. Supp. 582, 593 (E.D. Va. 1992) (finding relative convenience of party not affected by travel when travel required to either transferor or transferee district).

3. The proximity of the key party and third-party witnesses to the transferee district make the Central District of California the most convenient district for the witnesses.

The second traditional factor – convenience of the witnesses – strongly supports transferring this case to the Central District of California.

"Convenience of the witnesses is a primary, if not the most important, factor in considering a motion under § 1404(a)."[45] All of the plaintiffs' own potential witnesses identified in their discovery responses thus far – Mike Morhaime, Brian Fitzgerald, Matthew Versluys, Robert Bridenbecker, Tony Tribelli, James Anhalt, Neal Hubbard, Stuart Weiss, and Paul Sams – work either in the Central District of California or elsewhere in California.[46] The same is true for Rod Rigole and Eric Roeder, Blizzard's in-house counsel who first contacted the defendants with a cease-and-desist letter and subsequent negotiated with the defendants before the plaintiffs filed suit.[47] These witnesses were directly responsible for the design, development, marketing and policing of the Blizzard games and services at issue in this case. They are therefore the key Blizzard party witnesses in this case, and their convenience is an especially important consideration.[48]

In addition, by transferring the case to the Central District of California, the parties would also gain access to Mark Baysinger – perhaps the most critical non-party witness. While a student at the University of California San Diego, Mr. Baysinger originated the bnetd open

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[45] *Biometics,* 112 F. Supp.2d at 876 (citations omitted).
[46] *See* Grewal Decl. Ex. B at 2-5.
[47] Grewal Decl. Exs. E, I.
[48] *See Terra Int'l, Inc. v. Mississippi. Chem. Corp.*,922 F.Supp. 1334,1360 (N.D. Iowa 1996), *aff'd* 119 F.3d 688 (8th Cir. 1997) (noting that significance of witnesses is as important a consideration as "sheer number of witnesses"); *Brandon Apparel Group, Inc. v. Quitman Mfg. Co.,* 42 F. Supp. 2d 821, 834 (N.D. Ill. 1999) (noting that "nature and quality" of witnesses must be considered in addition to numbers when considering motion to transfer).

source software project that stands at the heart of this case.[49] Upon information and belief, Mr. Baysinger was involved in critical negotiations with Blizzard in 1998 regarding permission to develop and use the bnetd software and, since 1998, contributed to development discussions about the bnetd code. Accordingly, his testimony at trial will be critical to the defendants' case. Upon further information and belief, Mr. Baysinger is a resident of San Diego County, California, less than 100 miles from the Central District of California. He could therefore be subpoenaed to testify in the Central District of California.[50]

In contrast, if this case were to remain in this District, there would be no assurance or even likelihood that Mr. Baysinger would testify at trial, because the subpoena power of this Court does not extend anywhere near San Diego County. Because the court may assume that Mr. Baysinger will not voluntarily appear in this District, a transfer to the Central District of California would make his testimony far more likely. [51]

Even if the Court were to assume that Mr. Baysinger were willing to appear before this Court, a transfer to the Central District of California would certainly prove more convenient for Mr. Baysinger. As a third-party witness, Mr. Baysinger and his convenience must be given particular weight.[52]

Finally, a transfer to the Central District of California would not prejudice other third-party witnesses. No known third-party witnesses reside in the Eastern District of Missouri.

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[49] Grewal Decl. Ex. G.
[50] *See* Fed. R. Civ. P. 45(b)(2).
[51] *See Biometics, L.L.C. v. New Womyn, Inc.*, 112 F. Supp.2d 869, 876 (E.D. Mo. 2000) (Shaw, J.) (holding that "[t]he Court will assume the three identified non-party witnesses would not voluntarily appear at trial" in the absence of compulsory process).
[52] *See State Street Capital Corp. v. Dente*, 855 F. Supp. 192, 197 (S.D. Tex. 1994) ("[I]t is the convenience of non-party witnesses, rather than that of party witnesses, that is the more important factor and is accorded greater weight in a transfer of venue analysis.").

4. Transferring the case to the Central District of California would serve the interests of justice.

The third traditional factor – the interest of justice – also supports a transfer to the Central District of California.

The plaintiffs would not be disadvantaged by a transfer of this case to Central District of California. Because their copyright, Digital Millenium Copyright Act, and trademark claims all raise issues of federal law, no one federal district court is presumed to any more or less familiar with the legal standards applicable to those claims.[53] Moreover, the plaintiffs' breach of contract claims are based on licenses that require that "any dispute arising hereunder shall be resolved in accordance with the State of California."[54] The transferee court, sitting in California, may be presumed to have greater familiarity with the California law underlying these claims.[55]

By transferring the claims to the Central District of California, Blizzard would also suffer no appreciable delay in the resolution of this case, and in fact may see a faster resolution. Because the initial disclosures and discovery in this case were not served until January 2003, this case is still is in its beginning stages.[56] Statistics compiled by the Federal Judiciary Center show that for 2001-2002 in the Eastern District of Missouri, the median time from the filing of a civil case to its disposition was 10.1 months for all cases and 18.9 months that went to trial.[57] In the Central District of California, the median time from the filing of a civil case to its disposition was 7.1 months for all cases and 18.7 months for all cases that went to trial.[58]

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[53] *See, e.g., Gen 17, Inc. v. Sun Microsystems, Inc.*, 953 F. Supp. 240, 243 (N.D. Ill. 1997); *Cargill, Inc. v. Prudential Ins. Co. of Am.*, 920 F. Supp. 144, 148 (D. Colo. 1996).
[54] Plaintiffs' Second Amended Complaint Ex. E.
[55] *See Van Dusen v. Barrack*, 376 U.S. 612, 646 (1964).
[56] *See* Case Management Order at 2; Grewal Decl. ¶ 4. In fact, this is the first substantive filing in the case since Blizzard's reply to Defendants' Answer and Counterclaims.
[57] Grewal Decl. Ex. F.
[58] Grewal Decl. Ex. F.

III. CONCLUSION

This case does not belong in the Eastern District of Missouri. It belongs in the Central District of California – the forum required by the contracts that Blizzard seeks to enforce against the defendants. Those same contracts require that ***any claim*** asserted by either party to the purported contract must be litigated in courts located in Los Angeles, California – Blizzard's "home district" – and also require an interpretation of California law. A transfer to the Central District of California would square with both common sense and fundamental fairness, particularly when the key third-party witnesses in this case, Mark Baysinger, is within the subpoena power of that Court (in contrast to this Court). All of Blizzard's current employees identified to date that could provide critical testimony on Blizzard's claims work in the Central District of California. Finally, no known third-party witnesses reside in this District.

For all these reasons, the Court should exercise its discretion and transfer this case to the Central District of California.

Dated: May 27, 2003

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Defendants' Motion to Transfer Venue, Memorandum in Support, Declaration of Paul Grewal and Declaration of Tim Jung were served upon the following via facsimile and first-class mail, postage prepaid this 28th day of May, 2003:

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