IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ENDO PHARMACEUTICALS INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 2:17-CV-00558-JRG
	§	
LUPIN ATLANTIS HOLDINGS SA,	§	
	§	
Defendant.	§	
	§	

ORDER

Before the Court is Defendant Lupin Atlantis Holding, SA's Motion to Dismiss the Complaint Under Fed. R. Civ. P. 12(b)(2) and (3) or to Transfer Venue Under 28 U.S.C. §§ 1404 or 1406. (Dkt. No. 9.) On April 10, 2018, the Court ordered supplemental briefing specifically regarding the private and public interest factors and applicable facts that are relevant to the § 1404(a) analysis. (Dkt. No. 53.) Having considered the Parties' arguments and for the reasons set forth below, the Court finds that the Motion should be and hereby is **GRANTED-IN-PART** but **DENIED-IN-PART**, and as such, it is **ORDERED** that the above-captioned case is **TRANSFERRED** to the District of New Jersey.

I. BACKGROUND

On July 28, 2017, Plaintiff Endo Pharmaceuticals Inc. ("Plaintiff" or "Endo") filed suit against Defendant Lupin Atlantis Holding, SA ("Defendant" or "Lupin") under the Drug Price Competition and Patent Term Restoration Act of 1984 (the "Hatch-Waxman Act"), alleging patent infringement of U.S. Patent No. 7,229,636 ("the '636 patent"), U.S. Patent No. 7,404,489 ("the '489 patent"), U.S. Patent No. 7,879,349 ("the '349 patent"), U.S. Patent No. 8,003,353 ("the '353

patent"), U.S. Patent No. 8,940,714 ("the '714 patent"), and U.S. Patent No. 9,415,007 ("the '007 patent") (collectively, the "Patents-in-Suit"). (Dkt. No. 1 at 1.) Endo is Delaware corporation that has its principal place of business in Malvern, Pennsylvania. (*Id.*) Lupin is a Swiss company that has its principal place of business in Zug, Switzerland. (Dkt. No. 10 at 2.)

Lupin filed the instant Motion objecting to venue and seeking to either dismiss this case or transfer it to the District of New Jersey. More specifically, Lupin moves to dismiss or transfer this case for improper venue pursuant to Fed. R. Civ. P. 12(b)(3) and 28 U.S.C. § 1406, or to dismiss for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2). In the alternative, Lupin seeks to transfer this case to the District of New Jersey under 28 U.S.C. § 1404(a).

II. LEGAL STANDARD

A. Personal Jurisdiction

Personal jurisdiction in patent infringement actions is governed by Federal Circuit law. *See Silent Drive, Inc. v. Strong Indus.*, 326 F.3d 1194, 1200-01 (Fed. Cir. 2003). To determine whether personal jurisdiction exists over an out-of-state defendant, the Court must consider: "(1) whether a forum state's long-arm statute permits service of process, and (2) whether the assertion of personal jurisdiction would violate due process." *Autobytel, Inc. v. Insweb Corp.*, No. 2:07-CV-524, 2009 WL 901482, at *1 (E.D. Tex. Mar. 31, 2009) (citing *Genetic Implant Sys., Inc. v. Core–Vent Corp.*, 123 F.3d 1455, 1458 (Fed. Cir. 1997)). Since the Texas long-arm statute reaches "as far as the federal constitutional requirements of due process will allow," the two inquires collapse into a single inquiry of whether the exercise of personal jurisdiction comports with federal due process. *ATEN Int'l Co. v. Emine Tech. Co.*, 261 F.R.D. 112, 118 (E.D. Tex. 2009).

Due process is satisfied if the defendant has established minimum contacts with the forum state such that the exercise of jurisdiction over the defendant does not offend "traditional notions

of fair play and substantial justice." *Autobytel*, 2009 WL 901482, at *1 (citing *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945)). In the context of the Hatch-Waxman Act, the Federal Circuit has found that an ANDA filer's intent to sell its ANDA product throughout the United States is sufficient to meet this minimum contacts requirement. *See Acorda Therapeutics Inc. v. Mylan Pharms. Inc.*, 817 F.3d 755, 762–3 (Fed. Cir. 2016). The Federal Circuit noted that "ANDA filings are tightly tied, in purpose and planned effect, to the deliberate making of sales in [the forum state] and the suit is about whether that in-State activity will infringe valid patents." *Id.* at 760. Focusing on the future acts of the ANDA filer—which is in line with the purpose of the Hatch-Waxman Act—the Federal Circuit concluded that an ANDA filer's directing of sales into a forum state supported a finding of specific personal jurisdiction in that state. *Id.* at 763–4.

B. Dismissal or Transfer Under § 1406

If venue in the district in which the case is originally filed is improper, a defendant may move to dismiss the case or transfer it to a district in which the case could have been originally brought. Fed. R. Civ. P. 12(b)(3); 28 U.S.C. § 1406. For a domestic corporation, venue in a civil action for patent infringement is controlled by 28 U.S.C. § 1400(b), which provides that "[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400(b) (2012); *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1519 (2017). While it was previously unclear whether § 1400(b) was controlling for foreign defendants involved in patent infringement suits, the Federal Circuit recently reaffirmed the "long-established rule that suits against aliens are wholly outside the operation of all the federal venue laws, general and special." *In re HTC Corporation*, No. 2018-130, 2018 WL 2123357, at *3 (Fed. Cir. May 9, 2018). Thus, a foreign defendant may be sued in any judicial district under 28 U.S.C. § 1391(c)(3). *See*

id. at *6 ("[W]hile § 1400(b) governs venue in patent cases, it governs only to displace otherwise-applicable venue standards, not where there are no such standards due to the alien-venue rule.").

C. Transfer Under § 1404

If venue in the district in which the case is originally filed is proper, the court may nonetheless transfer a case based on "the convenience of parties and witnesses" to another district where the case could have been brought. 28 U.S.C. § 1404(a). The first inquiry when analyzing a case's eligibility for § 1404(a) transfer is "whether the judicial district to which transfer is sought would have been a district in which the claim could have been filed." *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) ("*Volkswagen I*"). "Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400(b) (2012); *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1519 (2017) ("§ 1400(b) 'is the sole and exclusive provision controlling venue in patent infringement actions.'" (quoting *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 229 (1957))). For purposes of § 1400(b), a domestic corporation resides only in its state of incorporation. *TC Heartland*, 137 S. Ct. at 1521.

Once the initial threshold of proving the proposed transferee district is one where the suit might have been brought is met, courts analyze both public and private factors relating to the convenience of parties and witnesses as well as the interests of particular venues in hearing the case. *See Humble Oil & Ref. Co. v. Bell Marine Serv., Inc.*, 321 F.2d 53, 56 (5th Cir. 1963); *In re Nintendo Co., Ltd.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009). The private factors are: (1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious, and inexpensive. *Volkswagen I*, 371 F.3d at 203 (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981)). The public factors are: (1)

the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws or in the application of foreign law. *Id.* These factors are to be decided based on "the situation which existed when suit was instituted." *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960). Though the private and public factors apply to most transfer cases, "they are not necessarily exhaustive or exclusive," and no single factor is dispositive. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 314–15 (5th Cir. 2008) ("*Volkswagen II*").

While a plaintiff's choice of venue is not an express factor in this analysis, the appropriate deference afforded to the plaintiff's choice is reflected by the defendant's elevated burden of proof. *Id.* at 315. In order to support its claim for a transfer under § 1404(a), the moving defendant must demonstrate that the transferee venue is "clearly more convenient" than the venue chosen by the plaintiff. *Id.* Absent such a showing, however, the plaintiff's choice is to be respected. *Id.* Additionally, when deciding a motion to transfer venue under § 1404(a), the court may consider undisputed facts outside of the pleadings such as affidavits or declarations, but it must draw all reasonable inferences and resolve factual conflicts in favor of the non-moving party. *See Sleepy Lagoon, Ltd. v. Tower Group, Inc.*, 809 F. Supp. 2d 1300, 1306 (N.D. Okla. 2011); *see also Cooper v. Farmers New Century Ins. Co.*, 593 F. Supp. 2d 14, 18–19 (D.D.C. 2008).

III. ANALYSIS

A. Venue is Proper in this District.

Lupin argues that the Court should not apply § 1391 because § 1400(b) "provides the exclusive residency-based hook for venue in patent cases." (Dkt. Nos. 9 at 16, 22 at 2.) However, the Federal Circuit recently rejected this argument in *In re HTC*, finding that § 1400(b) does not

apply to foreign defendants. 2018 WL 2123357 at *8; *see also* 28 U.S.C. § 1391(c)(3) ("[A] defendant not a resident in the United States may be sued *in any judicial district*.") (emphasis added).[1] As such, the Federal Circuit found that a foreign corporation is subject to suit in any judicial district under § 1391(c)(3). *See id.* at *3. Here, it is uncontested that the sole defendant in the case is a Swedish corporation. (Dkt. Nos. 9 at 7, 19 at 9.) In light of this recent Federal Circuit case, the Court finds that venue is proper over Lupin in this District.[2] Accordingly, Lupin's Motion to Dismiss or Transfer for improper venue under Fed. R. Civ. P. 12(b)(3) and 28 U.S.C. § 1406(a) is **DENIED**.

B. This District Has Personal Jurisdiction over Lupin.

Lupin next argues that personal jurisdiction is not proper over Lupin in this District because Lupin has no relevant minimum contacts with this distract related to this cause of action. (Dkt. No. 9 at 16–19.) However, Lupin admits that it "submitted the ANDA No. 210629 . . . to obtain approval to manufacture, use, import, market, offer for sale and/or sell Lupin's ANDA Product *in the United States*." (Dkt. No. 10 at 3 (emphasis added).) Lupin's intent to sell its ANDA Product here is sufficient to support a finding of specific personal jurisdiction. *See Acorda*, 817 F.3d at 763.[3] Accordingly, Lupin's Motion to Dismiss for lack of jurisdiction under Fed. R. Civ. P. 12(b)(2) is **DENIED**.

C. This Action Could Have Been Brought in the District of New Jersey.

Since a foreign defendant can be sued in any judicial district under § 1391(c)(3), the District

[1] Lupin acknowledged "that *HTC* is contrary authority to its motion to dismiss for improper venue under Fed. R. Civ. P. 12(b)(3)." (Dkt. No. 72 at 1.)

[2] Because venue over a foreign defendant is analyzed under § 1391, the Court need not consider Lupin's arguments to the extent they rely on § 1400(b). (*See* Dkt. No. 9 at 12–14.)

[3] Lupin argues that *Acorda* does not provide for jurisdiction over it because the defendant there had an agent for service of process and was registered to do business in the forum. (Dkt. No. 22 at 3.) Lupin's argument is unavailing. The focus of the Federal Circuit's reasoning was on the defendant's "directing of sales" into the forum state based on its ANDA filings—that it had an agent or was registered to do business there was tangential at best. *See Acorda*, 817 F.3d at 763.

of New Jersey is a proper transferee district. *See In re HTC*, 2018 WL 2123357, at *8. Having found that the threshold requirement for transfer under § 1404(a) has been met, the Court now turns to the public and private factors to determine if Lupin has established that the District of New Jersey is clearly more convenient.

D. Private Factors

i. Relative Ease of Access to Sources of Proof

In considering the relative ease of access to proof, a court looks to where documentary evidence, such as documents and physical evidence, are stored. *Volkswagen II*, 545 F.3d at 316. For this factor to weigh in favor of transfer, Lupin must show that transfer to the District of New Jersey will result in more convenient access to sources of proof. *See Diem LLC v. BigCommerce, Inc.*, No. 6:17-cv-186, 2017 WL 6729907, at *2 (E.D. Tex. Dec. 28, 2017).

Lupin argues that "no documents or other evidence relative to this action are stored anywhere near Texas." (Dkt. No. 9 at 25; Dkt. No. 9-1, Ex. 1, Affidavit of Karim Allam, at ¶ 17 ("Allam Affidavit").) Lupin contends that its registered U.S. FDA agent, Novel Laboratories, Inc. ("Novel"), which is also an indirectly wholly-owned subsidiary of Lupin, has undertaken all of the research and development related to the ANDA product at issue through Novel employees working in Somerset, New Jersey. (Allam Affidavit at ¶¶ 7–9.) Novel has also been responsible for all of the regulatory filings related to the ANDA product at issue, including submission of ANDA No. 210629 and associated correspondence with the FDA. (*Id.* at ¶ 10.) Accordingly, Lupin contends that:

> documents related to Lupin's research and development records; its laboratory notebooks; emails and other communications among those engaged in the activities related to the ANDA product; communications with the FDA; and samples of the cyanocolabamin nasal spray ***are housed*** in Novel's Somerset, New Jersey office, and, to a lesser extend may be located in Maryland, Switzerland, or India.

(*Id.* at ¶ 17.)

Endo counters that Lupin—not Novel—was the sole party to file the ANDA. (Dkt. No. 19-2, Ex. 1 at 2 ("[W]e advise you that the FDA has received an Abbreviated New Drug Application from [Lupin Atlantis Holdings SA] . . . that is the subject of NDA No. 021342.") ("Lupin Notice Letter").) Thus, Endo argues that Lupin "should not be permitted to selectively disregard the corporate veil only when it suits its purposes." (Dkt. No. 19 at 23.) However, Lupin submitted an affidavit from Sita Nuti, the Novel employee responsible for regulatory affairs, and the letter from Lupin to the FDA that authorizes Ms. Nuti as the representative of Lupin for ANDA No. 210629. (Dkt. No. 22-1, Ex. 1 at ¶¶ 5, 7 ("Nuti Affidavit"); Dkt. No. 23-1, Ex. 2 at 1.) Endo also points to several other locations containing relevant evidence including Austin, Texas; Malvern, Pennsylvania; Chestnut Ridge, New York; City of Industry, California; and Vero Beach, Florida. (Dkt. Nos. 59 at 6, 59-8, Ex. 8 at ¶ 3 ("Purcell Declaration").) However, Endo fails to point to any evidence located in this District. (*See generally* Dkt. Nos. 19, 59.)

Endo's attempt to downplay the significance of the relevant documents located in New Jersey is unavailing. While the Court notes that the location of documents and physical evidence outside of the transferee district factors into this analysis, the existence of some documents in the transferee district—when compared to the complete absence of documents or other relevant evidence in this District—tilts the scale in favor of transfer. Of particular importance is Endo's request for samples of Lupin's ANDA product, which are located and maintained in New Jersey. (Dkt. No. 61-13, Ex. L; Allam Affidavit at ¶ 17; Nuti Affidavit at ¶ 8.) Accordingly, this factor weighs slightly in favor of transfer.

ii. Availability of Compulsory Process

This factor instructs the Court to consider the availability of compulsory process to secure

the attendance of witnesses, particularly non-party witnesses whose attendance may need to be secured by a court order. *Volkswagen II*, 545 F.3d at 316. A district court's subpoena power is governed by Federal Rule of Civil Procedure 45. For purposes of § 1404(a), there are three important parts to Rule 45. *See VirtualAgility, Inc. v. Salesforce.com, Inc.*, No. 2:13-cv-00011-JRG, 2014 WL 459719, at *4 (E.D. Tex. Jan. 31, 2014) (explaining 2013 amendments to Rule 45). First, a district court has subpoena power over witnesses that live or work within 100 miles of the courthouse. Fed. R. Civ. P. 45(c)(1)(A). Second, a district court has subpoena power over residents of the state in which the district court sits—a party or a party's officer that lives or works in the state can be compelled to attend trial, and non-party residents can be similarly compelled as long as their attendance would not result in "substantial expense." Fed. R. Civ. P. 45(c)(1)(B)(i)–(ii). Third, a district court has nationwide subpoena power to compel a nonparty witness's attendance at a deposition within 100 miles of where the witness lives or works. Fed. R. Civ. P. 45(a)(2), 45(c)(1).

Lupin identifies three of the four named inventors—Anthony Sileno, Peter Aprile, Zenaida Go—and Sunil Vandse—who submitted a declaration on behalf of the patentee during prosecution of the '714 Patent—as non-party witnesses that would be subject to the subpoena power of the District of New Jersey. (Dkt. Nos. 9 at 23; 62 at 2–3; 61-3, Ex. B at 4–7.) Lupin also argues that Endo's five named ESI custodians would be subject to the subpoena power of the District of New Jersey. (Dkt. Nos. 62 at 8; 61-7, Ex. F at 2.) Lupin's evidence of these witnesses' residences and current employment is based on LinkedIn profiles. (Dkt. No. 62 at 5, Ex. G–K.) As these "non-party" witnesses are Endo's named ESI custodians (Dkt. No. 62-7, Ex. F), and the only evidence to support them being subject to the District of New Jersey's subpoena power is from Lupin, the Court hesitates to speculate as to whether these witnesses can be properly considered as "non-

party" witnesses subject to the District of New Jersey's subpoena power under this factor.

Endo identifies one non-party witness that would be subject to this Court's subpoena power—Dr. Hunt, who is the principal investigator of the clinical trial described in the Patents-in-Suit and works in Austin, Texas. (Dkt. Nos. 59 at 3; 64-3, Ex. 2 at 4.) Endo also identifies Dr. Quay—one of the named inventors—who resides in Washington, and thus would not be subject to either courts' subpoena power.[4] (Dkt. No. 59 at 8.) Endo also argues that "there are potential third-party witnesses that are located closer to the Eastern District of Texas, such as those in Austin, Texas; Seattle, Washington; City of Industry, California; and Vero Beach, Florida." (Dkt. No. 59 at 7–8.) Endo's argument reflects a misunderstanding of this factor. The focus of this factor is on the availability of the court's subpoena power to secure the attendance of non-party witnesses—not the distance of those witnesses relative to this District or the District of New Jersey. If anything, the number of potential non-party witnesses that are not subject to either courts' subpoena power would diminish the weight given to the few non-party witnesses who are supporting this factor's analysis towards transfer. However, Endo fails to specifically identify individuals from Nastech, QOL, or Par, other than as "potential non-party witnesses," or to address how these potential witnesses are specially relevant or material to this case. Accordingly, in light of the non-party witnesses that would be subject to the District of New Jersey's subpoena power balanced against Dr. Hunt—the only identified non-party witness that would be subject to this Court's subpoena power, this factor weighs slightly in favor of transfer.

iii. Cost of Attendance for Willing Witnesses

The third private interest factor focuses on the cost of attendance for willing witnesses.

[4] Endo also lists the attorneys involved in the prosecution of the patents-in-suit. Because patent prosecuting attorneys are rarely called to trial especially in a case such as this where there is no claim of inequitable conduct, the Court gives little weight to the availability of these potential witnesses. *See BMC Software, Inc. v. ServiceNow, Inc.*, No. 2:14-cv-903, Dkt. No. 77, at 9 (E.D. Tex. Apr. 30, 2015).

When considering this factor, the court should consider all potential material and relevant witnesses. *See Alacritech Inc. v. CenturyLink, Inc.*, No. 2:16-cv-693, 2017 WL 4155236, at *5 (E.D. Tex. Sept. 19, 2017). "When the distance between an existing venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be travelled." *Id.* at 1343 (citing *Volkswagen II*, 545 F.3d at 317). However, as other courts applying Fifth Circuit venue law have noted, the convenience of party witnesses is given little weight. *See ADS Sec. L.P. v. Advanced Detection Sec. Servs., Inc.*, No. A-09-CA-773-LY, 2010 WL 1170976, at *4 (W.D. Tex. Mar. 23, 2010), report and recommendation adopted in A-09-CA-773-LY (Dkt. No. 20) (Apr. 14, 2010) ("[I]t is unclear whether Defendant is contending that the transfer would be more convenient for non-party witnesses or merely for their own employee witnesses. If the Defendant is referring to employee witnesses, then their convenience would be entitled to little weight."); *see also Frederick v. Advanced Fin. Sols., Inc.*, 558 F. Supp. 699, 704 (E.D. Tex. 2007) ("The availability and convenience of party-witnesses is generally insignificant because a transfer based on this factor would only shift the inconvenience from movant to nonmovant.").

Lupin identifies two party witnesses, including Bala Nayar and Sita Nuti, who both work for Novel in Somerset, New Jersey. (Dkt. Nos. 61-3, Ex. B at 4; 62 at 2–3.) Although these two witnesses do not work for a named party, the Court considers them willing witnesses because: (1) they are named individuals having "knowledge of relevant facts" in Lupin's Initial Disclosures (61-3, Ex. B at 4); (2) Lupin notes that they can "only be contacted through counsel for Lupin Atlantis" (*Id.*); (3) Lupin also named these two witnesses as ESI custodians (Dkt. No. 61-5, Ex. D); and (4) Lupin admits that each of these witnesses "have (or had) some affiliation with the parties" and can be considered under either factor two or three. (Dkt. No. 62 at 8 n.22.) While the

Court will not infer willingness to any witness that is not a party witness, these circumstances are sufficient to establish these two witnesses are under the Lupin's control such that they are "willing witnesses." The cost of attendance for these witnesses would be obviously less were the trial to be held in the New Jersey as opposed to Texas.

Endo identifies its three technical experts who are located in Texas, Maryland, and Massachusetts as party witnesses. (Dkt. No. 59 at 13.) Endo fails to identify any willing witness within this District or within the reach of the 100-mile rule. Instead, Endo's main argument under this factor is that its "party witnesses are willing to travel to this District." (Dkt. No. 19 at 27.) Again, Endo misapplies this factor—the focus is on the ***cost*** of attendance. The willingness of a witness is relevant to whether the witness is considered under factor two or factor three. Since Lupin has identified two party witnesses that reside in the transferee district and neither party has identified a witness that resides in this district, this factor favors transfer. *See In re Genentech*, 566 F.3d 1338, 1344–45 (Fed. Cir. 2009).

iv. All Other Practical Problems

In the original briefing, both parties agreed that this factor is neutral. (Dkt. Nos. 9 at 27; 19 at 28 ("Endo agrees that this factor is neutral.").) Endo now argues that the interests of judicial economy should outweigh the convenience factors. (Dkt. No. 59 at 10–13.) However, unlike the judicial economy factors present in the case upon which Endo relies, which included the court's prior familiarity with the patent-in-suit and a co-pending case that involved the same patent-in-suit and similar technology, this Court has no such familiarity with the patents-in-suit. Endo fails to cite a case—and this Court is not aware of one—where transfer was denied because the mandatory thirty-month stay may be jeopardized despite the transferee district being more convenient. Indeed, "[m]otions to transfer venue are to be decided based on the 'situation which existed when suit was

instituted.'" *In re EMC Corp.*, 507 Fed. App'x 973, 976 (Fed. Cir. 2013). Accordingly, this factor is neutral.

E. Public Factors

i. Administrative Difficulties Flowing From Court Congestion

Lupin argues that despite the conflicting evidence as to the time to trial in either district, this factor should be neutral because both parties have an affirmative obligation under the Hatch-Waxman Act to advance this case expeditiously. (Dkt. No. 62 at 13.) Endo counters that the average time to trial is quicker in this District when compared to the District of New Jersey. (Dkt. No. 19 at 29.) The Court agrees with Lupin. While the average time to trial is generally several months faster in this district, the statutory safeguards of the Hatch-Waxman Act provide for a more expeditious and cooperative litigation schedule than are present in other circumstances. Accordingly, this factor is neutral.

ii. Local Interest in Having Localized Interests Decided at Home

Lupin argues that the District of New Jersey has a recognized local interest "because the research and development for Lupin Atlantis' ANDA product was conducted in New Jersey by New Jersey residents." (Dkt. No. 62 at 12.) Endo argues that there is no localized interest because (1) Lupin is a foreign entity; and (2) this will be bench trial. (Dkt. No. 19 at 29–30.) The Court agrees with Endo. Any localized interests are greatly diminished, if not completely overcome, in a bench trial involving a foreign defendant. *See COA Network, Inc. v. J2 Global Communs., Inc.*, No. 09-6505, 2010 U.S. Dist. LEXIS 60116, 2010 WL 2539692, at *5 (D.N.J. June 17, 2010) ("Patent infringement lawsuits are matters of national concern that are not 'local controversies,' nor do they implicate the public policies of any one forum."). Accordingly, this factor is neutral.

iii. Familiarity of the Forum with Governing Law

The Court agrees with the parties that this factor is neutral.

iv. Avoidance of Unnecessary Conflicts of Law

The Court agrees with the parties that there are no conflict-of-law issues apparent in this case. This factor is neutral.

IV. CONCLUSION

For the reasons set forth above, Defendant's Motion under 12(b)(2), 12(b)(3) and § 1406 is **DENIED**. However, based on this Court's balancing of the convenience factors, Defendant's Motion under § 1404(a) is **GRANTED**. (Dkt. No. 9.) Accordingly, it is hereby **ORDERED** that the above-captioned case is **TRANSFERRED** to the District of New Jersey. The Clerk of the Court shall forthwith take such steps as are needed to effectuate the transfer.

So ORDERED and SIGNED this 29th day of May, 2018.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE