

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SYNTHES USA, LLC (f/k/a SYNTHES)
(U.S.A.); SYNTHES USA SALES, LLC)
and SYNTHES, INC.,)
)
Plaintiffs,)
)
v.) Civ. No. 08-838-SLR
)
SPINAL KINETICS, INC.,)
)
Defendant.)

MEMORANDUM ORDER

At Wilmington this 24th day of February, 2009, having reviewed defendant's motion to transfer venue, as well as the papers filed in connection therewith;

IT IS ORDERED that said motion (D.I. 6) is granted, for the reasons that follow:

1. Defendant's motion for transfer is filed pursuant to 28 U.S.C. § 1404(a), which provides, in relevant part, that:

(a) 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.

(Emphasis added) Defendant requests transfer of the instant litigation to the Northern District of California, where it has filed a declaratory judgment action which is a mirror image of the case at bar.

2. Although defendant is incorporated in the State of Delaware and plaintiffs

may have facilities located in nearby Pennsylvania,¹ I conclude that transfer is warranted. Defendant is a privately-held, medical device company founded in 2003, which focuses on partnering with spine surgeons to develop motion preservation systems for treating degenerative diseases of the spine. Defendant's only product development activity to date involves a device called the M6 intervertebral implant, which has achieved acceptance in Europe but, as of this date, is not yet available in the United States. Defendant's only offices are located in Sunnyvale, California, and its only connection to the State of Delaware is its incorporation here.

3. Generally, I do not grant transfer motions unless there is a first-filed case in another district (not present here) or the defendant is truly a regional enterprise. Under the circumstances at bar, I find that defendant, at this point in time, is more akin to a regional enterprise than a national player. Therefore, I find it is appropriate to transfer the above captioned case to the Northern District of California, for the convenience of parties and witnesses and in the interest of justice.


United States District Judge

¹"Synthes" is a Swiss company that, through its various subsidiaries, employs thousands of people world-wide.