

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WATSON INDUSTRIES, INC.,
Plaintiff,

ORDER
03-C-422-C

v.

CANON, INC. and
CANON U.S.A., INC.,

Defendants.

On October 17, 2003, defendants Canon, Inc. and Canon U.S.A., Inc. filed a motion for a stay of proceedings pending resolution of Watson Industries, Inc. v. Murata, case no. 02-C-524-C. Plaintiff Watson Industries, Inc. is suing defendants for infringing U.S. Patent No. 5,430,342, a “single bar type vibrating element angular rate sensor system” (a type of gyroscope). Plaintiff alleges that defendants are infringing the ‘342 patent by incorporating gyroscopes manufactured by Murata in their camera products and then importing those products into the United States.

In support of their motion to stay, defendants argue that because Murata is the manufacturer of the alleged infringing gyroscope, the Murata action will resolve all of the

issues except the question of damages against defendants Canon, Inc. and Canon U.S.A., Inc. If granted a stay, defendants agree to be bound by the liability determination in the Murata action, including the issues of infringement, invalidity and unenforceability, as well as any reasonable injunction imposed on Murata. Defendants point out that because the Murata trial is scheduled for February 23, 2004, a stay of the proceedings will not prejudice plaintiff. Should plaintiff prevail in Murata, defendants agree to move forward with discovery on the issue of damages in preparation for the trial in this action, which is currently set for November 1, 2004. Defendants ask the court to stay the action against them for purposes of judicial economy.

In actions filed by plaintiff against Sony Corporation, case no. 03-C-423-C, and Hitachi, Ltd., case no. 03-C-431-C, United States Magistrate Judge Stephen L. Crocker denied motions to stay filed by defendants on October 14 and 15, 2003, respectively. Defendants note that unlike the motions to stay filed by the Sony and Hitachi defendants, their motion contains language that binds them to the liability determination of the Murata action. Defendants cite Katz v. Lear Ziegler, Inc., 909 F.2d 1459, 1464 (Fed. Cir. 1990), for the proposition that courts uniformly stay patent infringement actions against customers of the allegedly infringing manufacturer pending the outcome of the suit against the manufacturer. However, the circumstances in Katz are distinguishable from those in the present action. First, in Katz, there were two actions filed in different states. The action

against the manufacturer was venued in the Western District of Massachusetts; the action against the customers was venued in the Western District of New York. The Massachusetts court enjoined the plaintiff from prosecuting the customers on the ground that the suit against them would be advanced if the plaintiff was successful in the manufacturer litigation and would be mooted if he was unsuccessful. The Federal Circuit upheld the injunction. Unlike Katz, plaintiff Watson filed all its actions against the manufacturer and the various customers in this court. Thus, it is easier for the court to assert control over the parties. Furthermore, in Katz, the manufacturers represented to the Massachusetts court that resolution of patent infringement and patent validity would resolve these issues as to their customers. Defendants have not shown that Murata has made such a representation in this case.

Plaintiff argues that granting a stay will prohibit it from moving forward with discovery to uncover what other Canon products contain the alleged infringing gyroscopes. Contrary to what defendants assert, such discovery is not duplicative of the discovery taken in Murata. Despite defendants' offer to be bound by any reasonable injunction imposed in Murata, granting a stay would delay plaintiff's ability to gather the information necessary to make an injunction reasonably applicable to defendants, assuming plaintiff is successful in Murata. This is a reasonable concern. Moreover, should plaintiff prevail in Murata, gathering additional information from defendants without delay may encourage quicker

resolution of the present case.

Defendants argue that plaintiff is unable to seek damages in the Murata action related to defendants' sales because plaintiff failed to plead inducement in that action and therefore, plaintiff's case against defendants is unfair and unnecessary. Defendants' argument is irrelevant for the purpose of deciding this motion. Moreover, in its complaint, plaintiff alleges that defendants directly infringed, contributorily infringed and induced the infringement of one or more claims of the '342 patent. Plt.'s Cpt., dkt. # 2. Plaintiff is within its right to sue defendants under these causes of action. See 35 U.S.C. § 271. Litigation strategy is a matter for the client and its counsel to consider, not the court. Because plaintiff has a reasonable desire to discover information that only defendants can provide, I will deny defendants' motion to stay the proceedings.

ORDER

IT IS ORDERED that the motion to stay the proceedings submitted by defendants Canon, Inc. and Canon U.S.A., Inc. is DENIED.

Entered this 24th day of November, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge