IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RICOH COMPANY, LTD.,

Plaintiff,

v.

ASUSTEK COMPUTER INC., ASUS COMPUTER INTERNATIONAL, QUANTA COMPUTER INC., QUANTA STORAGE INC., QUANTA COMPUTER USA, INC., NEW UNIVERSE TECHNOLOGY, INC., and NU TECHNOLOGY, INC.,

Defendants.

OPINION AND ORDER

06-C-0462-C

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Defendants Asustek Computer Inc., Asus Computer International Quanta Computer Inc., Quanta Storage Inc., Quanta Computer USA, Inc., New Universe Technology, Inc. and NU Technology, Inc. have filed joint motions to transfer this patent infringement suit to the Northern District of California, pursuant to 28 U.S.C. § 1404(a). Defendants contend that neither the deference given to plaintiff's choice of forum nor the possibility of a speedier resolution of the case outweighs the "clear convenience" to them of having the case tried in San Francisco.

Plaintiff, a Japanese corporation, is alleging infringement of four of its United States patents relating to optical storage capacity. Defendants Asustek Computer Inc. (which owns defendant ASUS International), Quanta Computer Inc. (which owns defendants Quanta Storage Inc. and Quanta USA) and New Universe Technology, Inc. (which owns NU Technology) are alleged to be Taiwanese companies. Defendants Quanta USA, ASUS International and NU Technology are alleged to be California corporations, with offices in Fremont, California, which is within the Northern District of California. 28 U.S.C. § 84.

It appears that the California companies are distribution and sales outlets for their parent companies. Defendants do not allege that the circumstances are otherwise or that the California companies do any manufacturing of the allegedly infringing devices or that any employees of those companies make decisions about manufacturing or about potential infringement or that they conduct any research in the development and production of the allegedly infringing devices.

Defendants concede that this court can exercise jurisdiction over them and that venue in this district is proper. They do not deny that an injury occurred here (the sale of allegedly infringing devices). Thus, the only question is one of convenience. On this question, defendants' only points are that some of the defendant companies are small ones with locations in northern California and that San Francisco is served by major international airports, whereas the closest international airport to Madison is O'Hare, two and one-half

hours away. Leaving aside the restaurant advantage, which defendants do not mention, but of which I can take judicial notice, I am not persuaded that defendants have shown that the interest of justice favors a transfer to San Francisco.

The "small defendant" assertion carries little weight. Each of the so-called "small" companies is alleged to a subsidiary of one of the large, global defendants. Defendants describe NU Technology, Inc. as "a small California company," Quanta Dfts' Br., dkt. #69, at 2, but this description does not jibe with the company's own description of itself. On its website, it describes itself as a spin-off of Quanta Storage Inc. and "a global company based in Taiwan with branches in the United States, The Netherlands, Australia and China." http://www.nu-global.com/1_english/1_company/01_about.php (last visited January 5, 2007). If, as appears likely, the small companies are mere subsidiaries of larger companies, it is highly unlikely that their employees will be needed as witnesses at a patent trial. As I have noted, defendants have shown no reason to believe otherwise. To the extent that relevant documents may be stored at any of the California companies and only at these companies, they can be readily transferred to this court or any other by electronic imaging and transmission eliminate or even by mail. It is far more likely that the relevant documents are in Japan and Taiwan.

As for transportation concerns, the likelihood is that any company witnesses needed for testimony at trial will be from Japan and Taiwan; the difference between traveling from

the far east to California and traveling from the far east to Wisconsin is relatively minimal. (The many hundreds of Japanese and Taiwanese citizens that visit Madison each year for business, education and pleasure do not seem to find the extra travel time an impediment.) The great bulk of the traveling will be by counsel traveling to Japan and Taiwan for discovery purposes. Any traveling to court will be minimal because this court relies heavily on telephonic conferences for discovery disputes. The only matters that will require counsel to be present in court are the claims construction hearing, the final pretrial conference (usually held four days before trial) and the trial itself.

That the parties are accustomed to litigating patent cases in Northern California carries no weight. Experienced patent counsel can practice in any federal court without difficulty.

Defendants assert that the existence of a third-party indemnity action filed by defendant Quanta Storage Inc. in this court is similar to one filed in a case pending in the Northern District of California and that this circumstance weighs in favor of transfer. Ordinarily, indemnification agreements are particular in nature to the risk that is indemnified. Defendants have given me no reason to think that these agreements are any different.

When there is no clear showing of convenience to the moving party, the filing party's choice of forum should prevail. In re National Presto Industries, Inc., 347 F.3d 662, 664

(7th Cir. 2003) ("'unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be distributed'") (citing Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947)). Defendants dispute the application of this principle in this case, citing Chicago, Rock Island & Pacific Railroad Co. v. Igoe, 220 F.2d 299, 304 (7th Cir. 1955) ("courts have held that if plaintiff's chosen forum is not the situs of material events, a plaintiff's choice has weight equal to the other factors and will not receive deference"). This holding does not govern in this case, in which the forum *is* the site of a material event: the sale of an infringing product. Beverly Hills Fan Co. v. Royal Sovereign Corp., 21 F.3d 1558, 1571 (Fed. Cir. 1994). Defendants cite Symbol Technology, Inc. v. Intermec Technology Corp., 2005 WL 1657091, *3 (W.D. Wis. 2005), for the same proposition, but in Symbol Tech, there was the added element that a business agreement common to the case filed in this district and to another in the District of Delaware would have to be interpreted in both cases. It made sense to transfer the case so that the interpretation of the business agreement would be the same in both cases.

Finally, there is the element of prompt resolution. Although I understand that the judges in the Northern District of California have developed great expertise in patent cases, the statistics show that cases are resolved more quickly in this court. For parties holding patents that diminish in value as they age, speed is an important consideration.

I conclude that defendants have not shown that any inconvenience to them in

defending this case in this district outweighs the deference owed to plaintiff's choice of forum and the relative speed with which this case is likely to be resolved if it stays here. Accordingly, defendants' motion to transfer will be denied.

One other matter needs to be addressed. After briefing on the motion to transfer was completed, plaintiff filed a supplemental memorandum in opposition to the motion. Defendants moved for strike. That motion will be granted. Plaintiff did not move for permission to file a supplemental memorandum or receive any and for that reason, I did not give the supplemental memorandum any consideration.

ORDER

IT IS ORDERED that the motion of defendants Asustek Computer Inc., Asus Computer International Quanta Computer Inc., Quanta Storage Inc., Quanta Computer USA, Inc., New Universe Technology, Inc. and NU Technology, Inc. for transfer to the Northern District of California pursuant to 28 U.S.C. § 1404(a) is DENIED. Defendants'

motion to strike plaintiff's supplemental memorandum is GRANTED.

Entered this 8th day of January, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge