

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

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E2INTERACTIVE, INC. and  
INTERACTIVE COMMUNICATIONS  
INTERNATIONAL, INC.,

OPINION AND ORDER

09-cv-629-slc

Plaintiffs,

v.

BLACKHAWK NETWORK, INC.,

Defendant.

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In this patent lawsuit, plaintiffs e2Interactice, Inc. and Interactive Communications International, Inc. (InComm) allege that defendant Blackhawk Network, Inc. is infringing plaintiffs' patent related to prepaid gift cards. On October 5, 2010, I denied Blackhawk's motion to transfer this case to the Northern District of California, finding that InComm's interest in the speedy resolution of a suit against a direct competitor outweighed transferring this case to a district that is relatively more convenient to Blackhawk. *See* *dk.* 104. Blackhawk has moved for reconsideration of that decision, arguing that InComm's recent filing of an amended complaint, in which it asserts a new patent infringement claim related to a significantly different patent, shifts the interests of justice in favor of transfer to California. *See* *dk.* 106. Having reconsidered the matter, I find no good reason to change the result, so the motion is denied.

ANALYSIS

The day after the court denied Blackhawk's motion to transfer, InComm amended its complaint to charge Blackhawk with infringement of its U.S. Patent No. 7,630,926 (the '926 patent), which relates to Blackhawk's "provision of real time reload services to wireless customers." The original complaint filed by InComm targeted Blackhawk's third-party gift cards. According to Blackhawk, because the '926 patent targets different Blackhawk products and

services, even more witnesses and evidence will be located in California where Blackhawk is headquartered. Blackhawk also contends that InComm can no longer claim a legitimate interest in resolving this patent dispute more quickly in this court because the addition of the new patent infringement claim will either unfairly force Blackhawk to rush to defend this lawsuit or delay the court's current schedule in this case. Given this, Blackhawk argues that the relative speed to trial in this district versus the Northern District of California no longer outweighs the convenience factors.

As discussed at length in the order denying transfer, the location of employee witnesses and documentary evidence is a neutral factor on which the court does not place significant weight because both can be produced easily in another forum. Although I understand Blackhawk to be alleging that six more prior art inventors with relevant information will be located in California, this case appears to involve numerous potential non-party witnesses who reside across the country. As InComm points out, at least 10 prior art inventors reside in Wisconsin. In short, the addition of a few more California-based non-party witnesses does not persuade me that transfer is warranted in this case.

The crux of Blackhawk's argument seems to be that InComm can no longer cite speed to trial as a legitimate factor weighing against transfer. Although it has not yet filed a formal request with the court, Blackhawk assumes that the court schedule will have to change to allow it sufficient time to respond to InComm's new claims. I agree that any schedule change may narrow the gap between the time to trial in this court versus the Northern District of California. However, this case is already well off the ground in this court: the parties have commenced discovery and there are deadlines set for claims construction, dispositive motions and trial, and the court is familiar with the case, the parties and the attorneys due to their active motions

practice. Even if this court's schedule were to be revised to allow the parties some breathing room, it still would be more efficient to keep the case in Wisconsin. If this case were transferred, the process would have to begin anew in California, setting the parties back at least several months on the calendar and bequeathing them on a new judge who would have to get up to speed on this case. Given all of the relevant factors, I remain convinced that it is in the interests of justice to keep this case in this court. Accordingly, Blackhawk's motion for reconsideration will be denied.

ORDER

IT IS ORDERED that defendant Blackhawk Network, Inc.'s motion for reconsideration of the order denying transfer, dkt. 106, is DENIED.

Entered this 23<sup>rd</sup> day of November, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge