BEFORE THE
UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

IN RE BRANDYWINE COMMUNICATIONS TECHNOLOGIES, LLC PATENT LITIGATION	§	**MDL No. 2462**

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

BRANDYWINE COMMUNICATIONS TECHNOLOGIES, LLC, Plaintiff	§	**Civil Action No. 12-cv-11008 GW (AJWx)**
v.	§	
CORPORATE WEST COMPUTER SYSTEMS, INC., Defendant	§	

CORPORATE WEST COMPUTER SYSTEMS, INC.'S OPPOSITION TO BRANDYWINE COMMUNICATIONS TECHNOLOGIES, LLC'S MOTION TO TRANSFER TO THE MIDDLE DISTRICT OF FLORIDA

This is a troll case. The troll plaintiff, Brandywine Communications Technologies, LLC ("Brandywine") first sued AT&T, and other major DSL suppliers more than a year ago in Florida. When the defendants were slow to settle, Brandywine decided to sue AT&T resellers, like Corporate West Computer Systems, Inc. ("Corporate West"). There is, of course, no good reason to sue Corporate West, which simply resells AT&T services. A stay of this customer suit pending resolution of the litigation against the supplier would be the most logical and most efficient way to proceed. But that is not the way trolls operate.

Instead, as Chief Judge Randall Rader recently observed, courts need to be alert to the abuse of the judicial process in extracting settlements from small defendants unable to bear the cost of litigation.

> [J]udges must look more closely for signs that a patent lawsuit was pursued primarily to take improper advantage of a defendant — that is, using the threat of litigation cost, rather than the merits of a claim, to bully a defendant into settling.
>
> One sign of potential abuse is when a single patent holder sues hundreds or thousands of users of a technology (who know little about the patent) rather than those who make it — or when a patent holder sues a slew of companies with a demand for a quick settlement at a fraction of the cost of defense, or refuses to stop pursuing settlements from product users even after a court has ruled against the patentee.

Randall V. Rader, et al., Opinion, *Make Patent Trolls Pay in Court*, N.Y. Times, June 5, 2013, at A21 (Exh. A) (hereinafter "Rader Op-Ed"). This is just such a case.

Brandywine moves to drag Corporate West and forty other entities across the country to "centralize" these matters in the Middle District of Florida. The motion should be denied. First, it would not promote the just conduct of this matter to transfer and centralize it with these forty other matters in the Middle District of Florida. A much more appropriate solution is a stay pending the outcome of Brandywine's suit against AT&T. Second, it would not be efficient to transfer these matters to a single district court, as the cases are too far apart procedurally and

geographically, and the burden placed in untangling that thicket would far outweigh any efficiency that could possibly be gained. Third, even if a transfer is necessary, a transfer to the Middle District of Florida would not be convenient or efficient. Most of the cases in this matter are in Western states, with a plurality in California, literally a continent away from Plaintiff's proposed site. Brandywine's motion to transfer should be denied.

I. Background and Context

Corporate West is a small telecommunications company operating in Campbell, California. Brandywine is a "Non Practicing Entity" or "Patent Troll" who has filed a large volume of patent suits against various parties. Brandywine has sued Corporate West (and perhaps others) for infringement of the subject patents simply because they buy and resell DSL service from AT&T. *See* Complaint ¶14 (Docket No. 1-21) (identifying DSL service, which Corporate West buys from AT&T).

"Patent trolls", such as Brandywine, are the subject of a great deal of current debate. On June 5, 2013, both the President of the United States and Judge Randall R. Rader, et al, in separate articles in The New York Times, discuss the problems with Patent Trolls and such frivolous patent lawsuits. Edward Wyatt, *Obama Orders Regulators to Root Out 'Patent Trolls,'* N.Y. Times June 5, 2013, at B1 (Exh. B); Rader Op-Ed (Exh. A). As stated therein, "trolls … make money by threatening companies with expensive lawsuits and then using that cudgel, rather than the merits of a case, to extract a financial settlement." Rader Op-Ed (Exh. A).

Brandywine is the classic patent troll, suing 40 different entities in various U.S. District Courts around the United States. It now seeks to unfairly transfer all cases to the Middle District of Florida. Brandywine seeks to "centralize":

8 cases pending in the Central District of California;
4 cases pending in the District of Delaware;

> 4 cases pending in the District of Oregon;
> 3 cases pending in the District of Arizona;
> 2 cases pending in each of the Western District of Arkansas, Idaho, Maine, and the Eastern District of Texas; and,
> 1 case pending in each of Colorado, the Eastern District of California, the Northern District of California, the Northern District of Illinois, Massachusetts, Minnesota, New Hampshire, Southern District of Ohio, Northern District of Oklahoma, Middle District of Tennessee, Southern District of Texas, Utah, the Eastern District of Wisconsin, and the Middle District of Florida. (Emphasis added.)

The cases involve different defendants, with various products, and are at greatly different procedural stages. For example, the court in *Brandywine v. Centurylink, Inc., et al.*, No. 6:12-cv-286 (M.D. Fla. 2012), has already issued a claim construction order. (Document 1-1, at 3). Meanwhile, in this matter, the Complaint had not yet been served when that order issued, and Corporate West has not yet responded to the Complaint. Many of the remaining cases are at various stages in between. For example, *Brandywine v. AT&T*, Case No. 12-cv-02494 (N.D. Cal. 2012) is in claim construction briefing.

II. Legal Standards

Under 28 U.S.C. § 1407(a):

> (a) When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. …

The burden is on the moving party to demonstrate that centralization of proceedings will promote the "just and efficient conduct" of such actions and "will be for the convenience and parties and witnesses." *See, e.g.*, *In re Louisiana-Pacific Corp.*, 867 F. Supp. 2d 1346, 1346 (J.P.M.L. 2012) ("Where there is such a significant procedural disparity among the subject actions, the Panel will take a close look at whether movants have met their burden of demonstrating that centralization will still serve the purposes of Section 1407.").

III. Discussion

A. Transfer Would Not Promote Just Conduct of This Action

Brandywine bears the burden of demonstrating the transfer will "promote the just … conduct" of these matters. Brandywine's brief, however, fails to cite any reason why the proposed transfers would promote just conduct. For that reason alone, Brandywine has failed to meet its burden and the motion should be denied.

Moreover, the proposed transfer and centralization would not promote the just conduct of this action. Corporate West is accused of infringement solely because it resold DSL service that it bought from AT&T. Corporate West's DSL sales are tiny. Corporate West is a small telecommunications company and DSL is a tiny percentage of its total sales. Brandywine is likely not seeking to go to trial with Corporate West over such an amount. Instead, Brandywine is doing exactly what Judge Rader's article warns against, "using the threat of litigation cost, rather than the merits of a claim, to bully a defendant into settling." Rader Op-Ed (Exh. A).

The proposed centralization and transfer would only serve to compound this problem. If the litigation is transferred to the Middle District of Florida, litigation costs will vastly increase for Corporate West, as it will have to either fly current counsel to Florida for hearings or hire additional local counsel at additional cost. A single court appearance would likely be more expensive than the settlement value of the case. Such an increase in litigation costs will not promote the just conduct of this matter. All it will serve to do is strengthen Brandywine's bullying tactics in attempting to force Corporate West into an unjust settlement.

A more sane approach would be for the case against Corporate West to be stayed pending the outcome of Brandywine's case against AT&T. Corporate West plans to seek such a stay at the district court level after responding to Brandywine's complaint. Brandywine's proposed

transfer and centralization would not promote the just conduct of this matter, and should be denied.

B. Transfer Would Not Promote Efficient Conduct of These Actions

"Where there is such a significant procedural disparity among the subject actions, the Panel will take a close look at whether movants have met their burden of demonstrating that centralization will still serve the purposes of Section 1407." *See, e.g., In re Louisiana-Pacific Corp.*, 867 F. Supp. 2d 1346, 1346 (J.P.M.L. 2012). Here, there is a significant procedural disparity between matters. For example, the *Centurylink* matter has been pending for well over a year and has had a claim construction ruling. Meanwhile in this matter, Corporate West has yet to answer the Complaint. Many of the remaining cases are at various stages in between. For example, *Brandywine v. AT&T,* Case No. 12-cv-02494 (N.D. Cal. 2012) is in claim construction briefing.

As such, were transfer granted, the transferee court would have quite a procedural task to undertake before it could even begin to coordinate matters between these cases. It would be no more efficient to ask a single judge to untangle this procedural thicket of cases than it would be to simply leave them in their current districts. Brandywine has failed to demonstrate transfer to a single district will "promote the … efficient conduct" of these matters.

C. Transfer to the Middle District of Florida Would not be Convenient for the Parties and Witnesses, and Would Not be Efficient

As set forth above, Corporate West opposes any transfer as it would not promote the just and efficient conduct of these matters. In the alternative, should a transfer be deemed proper, Brandywine's proposed Middle District of Florida is not an appropriate or convenient forum.

Corporate West is headquartered in Campbell, California, and all of its likely witnesses are located in California, literally a continent away from the Middle District of Florida.

Accordingly, being dragged to court in the Middle District of Florida would be decidedly inconvenient for Corporate West.

Moreover, the Middle District of Florida is likely to be inconvenient for the majority of defendants. As set forth above, most of the cases (21) are currently located in the Western states of California, Oregon, Arizona, Colorado, Idaho, and Utah, with the rest scattered across New England, the Southeast, the Midwest, and Texas.

As such, geographically speaking, the most convenient forum would likely be one in a Western state. *See, e.g., In re Papst Licensing Digital Camera Patent Litig.*, 528 F. Supp. 2d 1357, 1357 (J.P.M.L. 2007) (transferring case to the "geographically convenient" forum). Because the most cases are presently in California, Corporate West proposes that state, and specifically the Northern District of California, where the AT&T case is pending, should centralization deemed appropriate. The Northern District of California has adopted Patent Local Rules, and the judges there have expertise in patent matters. Moreover, the Middle District of Florida has already found the Northern District of California to be a more convenient forum in its ruling transferring Brandywine's case against AT&T. Order, Docket No. 1-12.

CONCLUSION

Brandywine's motion to transfer is little more than an attempt to unfairly force numerous defendants into a far-away forum by conveniently choosing one court out of forty-one that Brandywine likes best. The proposed transfer would not promote the just, efficient conduct of these matters and would not be convenient to the parties and witnesses. As such, the motion should be denied.

Dated: June 6, 2013

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