

# EXHIBIT 6

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JUDICIAL PANEL ON  
MULTIDISTRICT  
LITIGATION

**BEFORE THE  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

IN RE ACACIA MEDIA TECHNOLOGIES )  
CORPORATION CABLE/SATELLITE )  
TELEVISION PATENT LITIGATION )

MDL Docket No. \_\_\_\_\_

**CLARIFICATION OF POSITION REGARDING ACACIA MEDIA TECHNOLOGIES  
CORPORATION'S MOTION TO TRANSFER PURSUANT TO 28 U.S.C. § 1407**

On Friday, November 19, 2004, Cathy Maida, Chief Deputy Clerk of the Judicial Panel on Multidistrict Litigation (the "Panel"), telephoned counsel for Acacia Media Technologies Corporation ("Acacia"), to request certain information and clarification.<sup>1</sup> Acacia wishes to clarify its position with respect to its transfer request.<sup>2</sup>

Acacia's transfer proposal is intended to achieve three goals: (1) to promote judicial economy by having one judge handle all these cases; (2) to assure that The Honorable James Ware, who is most knowledgeable about these cases and their subject matter, is the judge who handles all of the cases and is not logistically inconvenienced in doing; and (3) to assure the progress of the earlier-filed internet adult content cases in the Central District of California is not impeded.

In its Motion to Transfer, Acacia requests that the Panel transfer three patent infringement actions against various cable companies venued, respectively, in the Northern District of Ohio (Case No. 1:04-CV-1847), the District of Arizona (Case No. CV'04 1891 PHX JAT) and the District of Minnesota (Case No. 04-4069 DWF/JSM), to the Northern District of California for consolidation with the first-filed cable case pending there (Case No. C-04-02308 SD). The California Northern District Cable Litigation presently is assigned to The Honorable Susan Illston, but Acacia understands that the Cable Litigation will shortly be transferred to

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<sup>1</sup> This brief document responds to the Clerk's inquiry.

<sup>2</sup> In particular, Ms. Maida requested a revised Schedule of Pending Actions that more accurately reflected the consolidated or related nature of the various patent cases subject to transfer. She also asked Acacia to account for absence on the Schedule of Echostar Communications Corp. and the absence of Central Valley Cable TV on the Proof of Service. Acacia has submitted a revised Schedule and a revised Appendix summarizing the various actions and their current procedural posture concurrently herewith. In addition, Ms. Maida inquired why Acacia had not requested that all related patent actions, involving both online adult entertainment companies, on the one hand, and those involving the cable/satellite companies, on the other, be centralized in a single district.

Judge Ware.<sup>3</sup> The Ohio, Arizona and Minnesota Cable cases involve three of the five patents asserted in the California Northern District Cable Litigation, i.e., U.S. Patent Nos. 5,132,992 ("the '992 patent"), 6,144,702 ("the '702 patent") and 5,550,863 ("the '863 patent").

Over one year ago, Judge James Ware, also of the Northern District of California, agreed to sit by designation over a related group of patent cases by Acacia against adult online entertainment companies pending in the United States District Court for the Central District of California. Currently in the Central District there are a total of 18 cases, of which 13 are consolidated cases (only 10 of which are active) and five are related cases pending under New Destiny "Lead Case" No. SA CV-02-1040 JW (MLGx) (the "Central District Adult Content Internet Cases"). The Central District Adult Content Internet cases involve the '992 and '702 patents, but do not involve the '863 patent.

A transfer order from the Panel should issue that simultaneously assures that Judge Ware alone handles all these cases and that Judge Ware is not logistically inconvenienced in doing so. Judge Ware, helping out, was specially assigned to the Central District Adult Content Internet cases, although Judge Ware sits in the Northern District of California in San Jose. By transferring the Arizona, Minnesota and Ohio cases to the Northern District of California with the other cable cases, Judge Ware can preside over all the Acacia cable cases from his normal courthouse.

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<sup>3</sup> Judge Ware and Judge Illston together recently issued a joint OSC re: Relation with respect to the Northern District Cable cases and the Central District Adult Content Internet cases, which suggested to us that Judge Ware would likely be reassigned to preside over the Lead Cable case (No. C-04-02308 SI) presently supervised by Judge Illston in the Northern District of California. Judge Ware has more experience and familiarity with Acacia's patents-in-suit than any other Judge because he has presided over the internet cases for over one year, and has already conducted four *Markman* hearings, issued a *Markman* order regarding the '992 and '702 patents, and presently is considering expert declarations regarding summary judgment proceedings with respect to the '702 patent.

Leaving the Internet cases in the Central District of California to be supervised by Judge Ware will expedite the resolution of the Internet cases which already have been pending there for two years. A motion to certify a defendant "issues class" of online adult entertainment companies that do business in the Central District and that allegedly infringe Acacia's '992 and '702 patents (using technologies substantively different than the Cable companies do) has already been fully briefed, argued and submitted for ruling to Judge Ware.

If the Panel believes, however, that permitting the Cable and Internet cases to proceed concurrently in the Northern and Central Districts of California, respectively—albeit before the same Judge—would be inappropriate, Acacia alternatively proposes and requests in that circumstance that the Panel transfer all cases (i.e., Central District Internet cases in addition to the non-California Cable cases) to the Northern District of California, again for common management by Judge Ware. Our primary reason for not suggesting centralization of all cases in the *Central* District of California, if the Panel decides that both the Cable and Internet cases should be managed in a single district, is, again, to avoid additional inconvenience for Judge Ware.

DATED: November 22, 2004

Respectfully submitted,

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