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**United States District Court**  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SPECS USA Corp.,  
Plaintiff,  
v.  
SPECS Surface Nano Analysis GmbH, et al.,  
Defendants.

NO. C 10-04250 JW  
NO. C 11-00393 JW

**ORDER VACATING CASE  
MANAGEMENT CONFERENCE;  
CONSOLIDATING CASES**

SPECS Surface Nano Analysis GmbH, et al.,  
Plaintiffs,  
v.  
Rickmer Kose, et al.,  
Defendants.

These two related cases are scheduled for a Case Management Conference on July 11, 2011.  
On July 1, 2011, the parties in both cases filed a Joint Case Management Statement.<sup>1</sup> In the  
Statement, SPECS USA Corp. and Rickmer Kose (who are Defendants in No. C 11-00393 JW)

<sup>1</sup> (See Docket Item No. 35 in No. C 10-04250 JW; Docket Item No. 20 in No. C 11-00393 JW.)

1 contend that the related cases should be “treated as a consolidated action with a single calendar.”<sup>2</sup>  
2 (Id. at 10-11.)

3 A district court has broad discretion to consolidate actions involving “common issues of law  
4 or fact.” Fed. R. Civ. P. 42(a); Investors Research Co. v. U.S. Dist. Ct. for Cent. Dist. of Cal., 877  
5 F.2d 777, 777 (9th Cir. 1989). In exercising its broad discretion to order consolidation, a district  
6 court “weighs the saving of time and effort consolidation would produce against any inconvenience,  
7 delay, or expense that it would cause.” Huene v. U.S., 743 F.2d 703, 704 (9th Cir. 1984).

8 Here, upon review of the related cases, the Court finds that each case presents similar factual  
9 and legal issues. Both cases involve disputed contractual agreements between SPECS GmbH, a  
10 German company, and SPECS USA, an American company which was authorized to sell SPECS  
11 GmbH’s products to American customers. Further, the cases are both at similarly early stages of  
12 litigation. Given these similarities and the lack of any apparent inconvenience, delay, or expense  
13 that would result from consolidating the cases, the Court finds that consolidation of the cases is  
14 appropriate.

15 Accordingly, the Court VACATES the July 11 Conference and orders as follows:

16 (1) The Court consolidates the related cases No. C 10-04250 JW and No. C 11-  
17 00393 JW into one action. The Clerk of Court shall consolidate these actions such  
18 that the earliest filed action, No. C 10-04250 JW, is the lead case. All future filings  
19 shall be in No. C 10-04250 JW and shall bear the caption: “In re SPECS.”

20 In the consolidated action, Plaintiffs shall be SPECS Surface Nano Analysis  
21 GmbH and SPECS Surface Nano Analysis, Inc. and Defendants shall be SPECS USA  
22 Corp. and Rickmer Kose. All pleadings filed in the consolidated action shall reflect  
23 this realignment. See, e.g., Plumtree Software, Inc. v. Datamize, LLC, No. C 02-

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24  
25 <sup>2</sup> The other parties in these related cases—SPECS GmbH and SPECS Nano—offer no  
26 contention, in the Joint Case Management Statement, as to whether the cases should be consolidated.  
27 However, on June 23, 2011, the Court informed all the parties in these related cases that it intended  
28 to consolidate the cases at the July 11 Case Management Conference. (See Order Denying  
Defendant’s Motion to Dismiss; Requiring Plaintiffs to Join SPECS USA as a Defendant at 5 n.7,  
Docket Item No. 19 in No. C 11-00393 JW.)

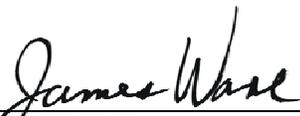
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5693 VRW, 2003 WL 25841157, at \*2-3 (N.D. Cal. Oct. 6, 2003) (explaining that a district court has discretion to realign the parties in a case “in accordance with the primary purpose of the litigation”).

Since the later action is now consumed in the first filed action, the Clerk shall administratively close No. C 11-00393 JW.

- (2) On or before **August 5, 2011**, Plaintiffs shall file an Amended Consolidated Complaint.
- (3) The Court sets **August 29, 2011 at 10 a.m.** for a Case Management Conference in this case. On or before **August 19, 2011**, the parties shall file a Joint Case Management Statement including, *inter alia*, a good faith proposed schedule on how this case should proceed.

Dated: July 5, 2011

  
\_\_\_\_\_  
JAMES WARE  
United States District Chief Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Garth Aaron Rosengren grosengren@kksrr.com  
3 James Harold Vorhis jvorhis@nossaman.com  
4 Kenneth E. Keller kkeller@kksrr.com  
5 Michael David Lisi mlisi@kksrr.com

6 **Dated: July 5, 2011**

**Richard W. Wieking, Clerk**

7 **By:           /s/ JW Chambers**  
8 **Susan Imbriani**  
9 **Courtroom Deputy**

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