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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEY SOURCE INTERNATIONAL, a California Corporation,

Plaintiff,

v.

CEECOLOR INDUSTRIES, LLC, a Delaware Limited Liability Company; ALAN KIPUST, an individual; SITKA SPRUCE SECURITY, LLC, a Delaware Limited Liability Company, and DOES 1-1000,

Defendants.

No. C 12-01776 WHA

**ORDER REGARDING
MOTION TO TRANSFER**

In this declaratory relief patent action, defendants move to dismiss or, in the alternative, transfer.

Plaintiff Key Source International (“KSI”) is a California corporation with its principal place of business in Oakland. Defendant CeeColor Industries, LLC, is a Delaware limited liability company with its principal place of business in Delaware. CeeColor was formed in the past thirty days (approximately) and does not manufacture any products and it is evidently in the business of suing others on patents.

On March 22, 2012, CeeColor filed a patent infringement suit against “Key Source International, Inc.” in the United States District Court of Delaware, alleging that “Key Source International, Inc.’s” keyboards infringed Patent No. US 6,570,610 B1 (“Kipust patent”).

1 *CeeColor Indus. v. Key Source International, Inc.*, No. 12CV00369 2012 WL 1189788 (D. Del.,
2 Mar. 22, 2012).

3 CeeColor alleged that “Key Source International, Inc.” *was a Delaware corporation* with
4 its principal place of business at 7711 Oakport Street in Oakland. CeeColor then allegedly sent
5 a demand letter to 7711 Oakport Street in Oakland on March 23, 2012 (Compl. [in the present
6 action herein] Exh. 3).

7 Our plaintiff, KSI (Key Source International), received the letter. The letter discussed
8 CeeColor’s suit in Delaware and demanded payment.

9 CeeColor filed an amended complaint in Delaware on April 5, 2012, which added “Key
10 Source Systems, Inc.” as a defendant and pled that “Key Source Systems, Inc.” was a California
11 corporation with a principal place of business at 7711 Oakport Street in Oakland (RJN Exh. B at
12 1). On April 9, 2012, CeeColor attempted to serve the amended complaint and summons on KSI
13 through the Delaware Secretary of State pursuant to 8 Delaware Code § 382, which provides a
14 procedure for serving out-of-state corporations. The Secretary of State was directed to deliver
15 the summons and amended complaint to each of “Key Source International, Inc.” and “Key
16 Source Systems, Inc.” at 7711 Oakport Street in Oakland (*id.* Exh. C). Our plaintiff
17 acknowledged that such a delivery of complaint and summons arrived in Oakland at the
18 7711 Oakport address but claims to have endorsed and returned the papers as served on the
19 wrong party.

20 Our plaintiff, KSI, filed this present declaratory action herein seeking invalidity and
21 non-infringement of the Kipust patent on April 10, 2012. In its complaint, KSI alleges that it
22 was (and is) a California corporation with its principal place of business in Oakland. KSI argues
23 that it has nothing to do with the company being sued in the Delaware action, “Key Source
24 International, Inc.,” despite having a similar name.

25 CeeColor argues our plaintiff *is* the same as “Key Source International, Inc.” and “Key
26 Source Systems, Inc.,” both allegedly properly sued and served in the Delaware court before
27 the commencement of our instant action. KSI admitted that its 1700 series and 1450 series of
28 Security keyboards are at issue in the Delaware action.

1 As stated, defendant CeeColor Industries moves to dismiss or, in the alternative, transfer
2 to the District of Delaware.


3 Where this controversy should be litigated should be decided by the Delaware district
4 judge, the Honorable Richard Andrews. Out of comity, it is best for him to determine whether
5 the first-filed action was properly prosecuted and served, and whether our plaintiff here is a
6 proper defendant there. The undersigned judge would like to give Judge Andrews the first
7 opportunity to make this determination, which could occur in a variety of ways, such as via
8 possible default judgment, a possible motion to dismiss for lack of personal jurisdiction, or other
9 possible Rule 12 motion. In any event, the proper course of action is to hold this instant motion
10 on abeyance until a determination has been made on the first-filed action.

11 In the meantime, the parties are each allowed limited discovery on the issues of service
12 of process, personal jurisdiction (Delaware or here), and the multitude of allegations made at
13 the hearing on June 6. Each side will be allowed two three-hour depositions and ten
14 narrowly-framed document requests for the issues discussed. The parties will have until July 27
15 to finish this limited discovery. Supplementary submissions on the pending motion will be due
16 at noon on July 27.

17 This judge wishes to make clear for his colleague in Delaware that he will follow his
18 lead, and if he decides that a transfer to California is best, then the undersigned judge will
19 conform to this decision. If he decides that the action is properly situated in Delaware, then the
20 instant action will be transferred there. CeeColor is ordered to promptly provide a copy of this
21 order to the Honorable Richard Andrews.

22
23 **IT IS SO ORDERED.**

24
25 Dated: June 6, 2012.

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27 _____
28 WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE