

1 UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 3 OAKLAND DIVISION
 4

5 TOPOWER COMPUTER INDUSTRIAL CO.,
 6 LTD.,

7 Plaintiff,

8 vs.

9 XION, INC. aka AXPERTEC, INC; et al.,

10 Defendants.

Case No: C 08-3584 SBA

**ORDER DENYING DEFENDANTS'
 MOTION TO CONSOLIDATE
 RELATED CASES WITH LEAVE TO
 FILE AMENDED COUNTERCLAIMS**

Docket 68

11 SUPER FLOWER COMPUTER, INC.; TSUNG-
 12 YEN TSAI,

13 Plaintiffs,

14 vs.

15 TOPOWER COMPUTER INDUSTRIAL CO.,
 16 LTD., et al.,

17 Defendants.

Case No: C 09-3129 SBA

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 19 The parties are presently before the Court on Defendants Super Flower Computer Inc. and
 20 Tsung-Yen Tsai's Motion to Consolidate Related Cases. Having read and considered the papers
 21 filed in connection with this matter and being fully informed, the Court hereby DENIES the motion
 22 for the reasons set forth below. The Court, in its discretion, finds this matter suitable for resolution
 23 without oral argument. See Fed.R.Civ.P. 78(b).

24 **I. BACKGROUND**

25 **A. THE FIRST ACTION – C 08-3584 SBA**

26 On July 25, 2008, Plaintiff Topower Computer Industrial Company, Ltd. ("Topower") filed
 27 the instant action ("the First Action") accusing Super Flower Computer Inc. ("Super Flower") and
 28 various other parties of infringing Patent No. 7,063,549 ("549 patent"). On November 3, 2008,

1 Super Flower filed its answer along with a counterclaim alleging that the ‘549 patent is invalid and
2 not infringed. Super Flower also alleged separate counterclaims for infringement of two patents
3 owned by Super Flower, Patent Nos. 7,364,459 (“‘459 patent”) and 7,187,544 (“‘544 patent”). The
4 case was initially assigned to Magistrate Judge Wayne D. Brazil, but was reassigned to this Court
5 on June 30, 2009. No trial or pretrial dates have been scheduled in the First Action.

6 **B. THE SECOND ACTION – C 09-3129 SBA**

7 On July 10, 2009, Super Flower, now joined by co-plaintiff Tsung Yen Tsai (“Tsai”), filed
8 a new patent infringement action (“the Second Action”) against Topower and related entities. See
9 Super Flower Computer, Inc., et al. v. Topower Computer Industrial Co., Ltd., C 09-3129 SBA. In
10 the Second Action, Super Flower realleges infringement of the same patents (i.e., the ‘459 and ‘544
11 patents) against the same parties as the counterclaims in the First Action, except that Tsai (the
12 assignor of the patents) also is named as a co-plaintiff with Super Flower.

13 On August 19, 2009, the Court related the Second Action to the First Action, pursuant to
14 Civil Local Rule 3-12, and the case was reassigned from Judge Claudia Wilken to this Court.
15 Shortly thereafter, Super Flower filed the instant motion to consolidate both cases, to which
16 Topower has filed an opposition. No dates have been scheduled in the Second Action.

17 **II. DISCUSSION**

18 Federal Rule of Civil Procedure 42(a) provides that: “If actions before the court involve a
19 common question of law or fact, the court may: [¶] (1) join for hearing or trial any or all matters
20 at issue in the actions; [¶] (2) consolidate the actions; or [¶] (3) issue any other orders to avoid
21 unnecessary cost or delay.” “The district court has broad discretion under this rule[.]” See
22 Investors Research Co. v. United States Dist. Ct. for Cent. Dist. of California, 877 F.2d 777, 777
23 (9th Cir. 1989).

24 There is substantial overlap with respect to the factual and legal issues presented in the First
25 and Second Actions, which essentially are mirror images of each other. Nonetheless, the Court is
26 not persuaded that consolidation of the actions under Rule 42(a)(2) is proper in this instance.
27 Super Flower’s patent infringement claims in the Second Action involve the *same patents* and are
28 alleged against the *same parties* as its counterclaims in the First Action—the only difference being

1 that Tsai is named as a plaintiff in the Second Action along with Super Flower. As such, the more
2 appropriate and efficient course of action would have been for Super Flower to have sought a
3 stipulation or leave of Court to join Tsai as a party-counterclaimant in the First Action. See
4 Fed.R.Civ.P. 13(h) (permitting joinder of additional parties to a counterclaim “in accordance with
5 the provisions of Rules 19 and 20”). Such a course of action would have obviated the need for
6 Super Flower to file an entirely new action with Tsai joined as a plaintiff, and avoided burdening
7 Topower and the Court with unnecessary motions to relate and consolidate the two cases.

8 Certainly, given the procedural posture of the First and Second Actions and the claims
9 alleged therein, the Court *could* order the cases consolidated, since they share common questions of
10 law and/or fact. However, consolidation would then necessitate Topower having to file a
11 consolidated amended complaint. In turn, Super Flower would then have to file an answer and
12 counterclaims to the consolidated amended complaint. The same result could be achieved, with
13 less cost and delay, by allowing Super Flower to join Tsai as a party-counterclaimant in its
14 counterclaims filed in the First Action, coupled with the dismissal of the Second Action. Topower
15 contends that before Tsai may be joined in the counterclaims alleged in the First Action, Super
16 Flower should be required to file a motion for compulsory joinder under Rule 19 or permissive
17 joinder under Rule 20. However, Super Flower has provided the Court with no reason why his
18 joinder would be improper under either rule. In addition, based on the allegations presented, it is at
19 least facially apparent that his joinder is permitted under Rule 20.¹

20 As noted, the Court has broad discretion under Rule 42, which includes the discretion to
21 issue “orders to avoid unnecessary cost or delay.” Fed.R.Civ.P. 42(a)(3). Pursuant to that
22 authority, the Court directs Super Flower to amend its counterclaims to join Tsai as an additional

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24 ¹ Rule 20(a), which governs the permissive joinder of parties, states that persons may be
25 joined in one action as plaintiffs if (1) a right to relief is asserted by each plaintiff relating to or
26 arising out of the same transaction, occurrence or series of transactions or occurrences and
27 (2) some question of law or fact common to the parties will arise in the action. Fed.R.Civ.P. 20(a).
28 Generally, this rule “is to be construed liberally in order to promote trial convenience and to
expedite the final determination of disputes, thereby preventing multiple lawsuits.” League to Save
Lake Tahoe v. Tahoe Reg’l Planning Agency, 558 F.2d 914, 917 (9th Cir. 1977). The
requirements of Rule 20 appear to be satisfied, as both Super Flower and Tsai’s patent
infringement claims in the Second Action are based on the same transactions and occurrences, and
will involve commons questions of fact and/or law.

1 counterclaimant in the First Action. Since that course of action will render consolidation
2 unnecessary and the Second Action superfluous, the Court will dismiss the Second Action.² To the
3 extent that Topower desires to challenge the propriety of Tsai's joinder in Super Flower's amended
4 counterclaims, Topower may, after first meeting and conferring with opposing counsel, file an
5 appropriate noticed motion seeking relief from the Court.

6 **III. CONCLUSION**

7 For the reasons set forth above,

8 IT IS HEREBY ORDERED THAT:

9 1. Defendants Super Flower Computer Inc. and Tsung-Yen Tsai's Motion to
10 Consolidate Related Cases (Docket 68) is DENIED. The hearing scheduled for December 15,
11 2009, on said motion is VACATED.

12 2. By no later than December 9, 2009, Super Flower shall file amended counterclaims
13 in the First Action, with leave to join Tsai as a party-counterclaimant. Any response to the
14 amended counterclaims shall be filed by no later than December 18, 2009.

15 3. The action styled as Super Flower Computer, Inc., et al. v. Topower Computer
16 Industrial Co., Ltd., C 09-3129 SBA is DISMISSED without prejudice. The Clerk shall close the
17 file and terminate any pending matters in that docket.

18 4. The Case Management Conference currently scheduled for December 15, 2009,
19 shall be CONTINUED to **January 28, 2010 at 3:30 p.m.** The parties shall **meet and confer** prior
20 to the conference and shall prepare a joint Case Management Conference Statement which shall be
21 filed no later than ten (10) days prior to the Case Management Conference that complies with the
22 Standing Order for All Judges of the Northern District of California and the Standing Order of this
23 Court. Plaintiff shall be responsible for filing the statement as well as for arranging the conference
24 call. All parties shall be on the line and shall call (510) 637-3559 at the above indicated date and
25 time.

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27 _____
28 ² If the cases were consolidated, the Second Action would be closed and all further filings
and activity would take place in the First Action. Consequently, the dismissal of the Second
Action will not result in any prejudice to any of the parties.

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5. This Order shall be filed in both C 08-3584 SBA and C 09-3129 SBA.

IT IS SO ORDERED.

Dated: December 4, 2009


SAUNDRA BROWN ARMSTRONG
United States District Judge