

United States District Court
For the Northern District of California

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

POWERTECH TECHNOLOGY INC.,
Plaintiff,
v.
TESSERA, INC.,
Defendant.

No. 10-00945 CW
ORDER DENYING
PLAINTIFF'S
MOTION TO ALTER
OR AMEND THE
COURT'S JUNE 1,
2010 ORDER
(Docket No. 64)

On June 1, 2010, the Court granted Defendant Tessera, Inc.'s, motion to dismiss, concluding that Plaintiff Powertech Technology Inc.'s (PTI) declaratory judgment action did not raise a justiciable controversy. Pursuant to Federal Rule of Civil Procedure 59(e), PTI now asks the Court to vacate its Order of June 1 and enter an order denying Tessera's motion to dismiss. Tessera opposes PTI's motion. The motion was taken under submission on the papers. Having considered the papers submitted by the parties, the Court DENIES PTI's motion.

BACKGROUND

Because PTI's allegations are described in sufficient detail in the Court's Order of June 1, they will not be repeated here. In sum, PTI sought declarations that its "wBGA packaging services have not and do not infringe" Tessera's United States Patent No.

1 5,663,106 ('106 patent) and that the patent is invalid. Compl.
2 ¶¶ 16 and 17.

3 As noted above, Tessera moved to dismiss PTI's action for lack
4 of subject matter jurisdiction. Tessera maintained that its
5 disclaimer, made in a complaint filed with the International Trade
6 Commission (ITC),¹ precluded a justiciable controversy. The
7 disclaimer provided,

8 To the extent that any Accused Product is found to be
9 properly licensed (through the Limited Tape Licenses or
10 otherwise) under Tessera's patents, Tessera does not
11 intend to bring -- nor should Tessera be construed to
12 have brought -- any such Accused Product(s) within the
13 scope of the present Investigation.

14 Weatherwax Decl. in Support of Tessera's Mot. to Dismiss, Ex. 4

15 ¶ 9. In open court during the hearing on the motion to dismiss,
16 Tessera's counsel made a similar disclaimer:

17 We are not accusing any product made by PTI under the
18 license agreement for infringement of the '106 patent or
19 any other patent that we have licensed to PTI on any of
20 the products that are licensed in the agreement.

21 Tr. of May 13, 2010 Hrg. at 5:22-25. Thus, Tessera argued, because
22 PTI produced its products pursuant to such a license, they fell
23 within the scope of the disclaimer, no controversy existed and
24 subject matter jurisdiction did not lie.

25 Notwithstanding Tessera's disclaimer, PTI asserted that its
26 products were at issue in Tessera's action before the ITC and the
27 patent infringement lawsuit filed in the United States District
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26 ¹ The ITC investigation is captioned, In re Certain
27 Semiconductor Chips With Minimized Package Size and Products
28 Containing Same, Inv. No. 337-TA-630.

1 Court for the Eastern District of Texas,² both of which were
2 brought against some of PTI's customers. Although PTI did not
3 offer any direct evidence that its products were at issue, it
4 pointed to Tessera's allegations against one of its customers,
5 Elpida. PTI argued that, because it was the sole supplier of µBGA
6 products to Elpida and µBGA products were at issue in the ITC
7 proceeding, one could reasonably infer that Tessera had in fact
8 accused some of PTI's products.

9 After considering all the circumstances, the Court concluded
10 that PTI's declaratory judgment action did not pose a justiciable
11 controversy. The Court agreed with Tessera that its disclaimer
12 precluded a justiciable controversy. The Court also rejected PTI's
13 assertion that, under the parties' licensing agreement, its
14 obligation to pay royalties to Tessera turned on whether its
15 products were covered by the '106 patent. Even if an actual
16 controversy existed, the Court concluded, it would exercise its
17 discretion to decline jurisdiction because judicial efficiency
18 favored hearing PTI's declaratory judgment action along with
19 Tessera's lawsuit.

20 LEGAL STANDARD

21 Rule 59(e) provides that a "motion to alter or amend a
22 judgment must be filed no later than 28 days after the entry of the
23 judgment." Fed. R. Civ. P. 59(e). Rule 59(e) motions are
24 interpreted as motions for reconsideration, and are appropriate if
25 the district court "(1) is presented with newly discovered

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27 ² The district court action is Tessera, Inc. v. A-DATA Tech.
28 Co., No. 2:07-cv-534 (E.D. Tex.).

1 evidence, (2) committed clear error or the initial decision was
2 manifestly unjust, or (3) if there is an intervening change in
3 controlling law." Sch. Dist. No. 1J, Multnomah County, Oregon v.
4 AcandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993), cert. denied, 512
5 U.S. 1236 (1994).

6 A motion for reconsideration shall not "repeat any oral or
7 written argument made by the applying party in support of or in
8 opposition to the . . . order which the party now seeks to have
9 reconsidered." Civil L.R. 7-9(c).

10 DISCUSSION

11 PTI asserts that documents Tessera filed in its appeal to the
12 Federal Circuit of the ITC's disposition constitute newly
13 discovered evidence that justifies vacating the Court's earlier
14 order. In particular, PTI points to Tessera's redacted opening
15 appellate brief, which contains citations to technical information
16 on PTI technology and references to PTI royalty reports in a
17 section on the failure by Elpida's suppliers to pay royalties. PTI
18 also cites "a list of exhibits" Tessera "sought to designate as
19 part of the Joint Appendix on Appeal," which reflected "87 exhibits
20 or documents containing either 'PTI' or 'Powertech' in the title."
21 Mot. at 5-6. These documents, according to PTI, "conclusively show
22 that both PTI's µBGA and wBGA products were at issue in the ITC
23 investigation." Id.

24 Although PTI arguably presents new material,³ it still does

25
26 ³ PTI's lead counsel represented Elpida in the ITC proceeding
27 and is apparently continuing to do so on appeal. Thus, he should
28 have known at the time PTI opposed Tessera's motion that documents
containing the terms "PTI" and "Powertech" were lodged in that

1 not satisfy its burden to demonstrate an actual controversy. That
2 Tessera's infringement expert cited technical information about
3 PTI's products does not establish that those products were accused
4 in the ITC proceeding. Tessera maintains that the information was
5 cited "for broad, generic points about the technology at issue."
6 Opp'n at 9. There is no reason to believe that Tessera is
7 misrepresenting the nature of its brief.

8 PTI also points to Tessera's short discussion in its opening
9 appellate brief about Elpida's failure to prove that its suppliers
10 provided licensed products. This discussion does not render the
11 action here justiciable. Tessera represented to this Court that
12 PTI, an Elpida supplier, failed to pay "royalties on 40 percent of
13 the products during" the period relevant to the ITC proceeding.
14 Tr. of May 13, 2010 Hrg. at 21:24-25. But this assertion does not
15 establish that any of the products accused in the ITC proceeding
16 originated from PTI. PTI failed to pay royalties on some of its
17 products; it does not follow that the products at issue before the
18 ITC were a part of this set.⁴

19 Finally, PTI claims that the Court committed clear error.
20 However, its argument largely restates what it argued in opposition
21 to Tessera's motion to dismiss.

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23 tribunal's record and could be designated for the record on appeal.

24 ⁴ As PTI's argument suggests, Elpida has a shared interest in
25 this declaratory judgment action going forward. Thus, if Elpida is
26 in fact facing litigation because of PTI's products, it is
27 reasonable to expect that PTI, who shares counsel with Elpida,
28 would offer more concrete evidence to establish declaratory
judgment jurisdiction, instead of merely referring to redacted
briefs from which inferences are to be made.

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CONCLUSION

For the foregoing reasons, the Court DENIES PTI's motion to alter or amend the Order of June 1. (Docket No. 64.)

IT IS SO ORDERED.

Dated: August 3, 2010



CLAUDIA WILKEN
United States District Judge