

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

GUIDETECH, LLC,  
Plaintiff,  
v.  
BRILLIANT INSTRUMENTS, INC.; and  
SHALOM KATTAN,  
Defendants.

No. C 10-05669 CW  
ORDER GRANTING  
PLAINTIFF'S  
MOTION TO REMAND  
AND REQUEST FOR  
ATTORNEYS' FEES  
(Docket No. 4)

Plaintiff Guidetech, LLC, moves to remand this action to Santa Clara County Superior Court and for attorneys' fees for improper removal. Defendants Brilliant Instruments, Inc.; and Shalom Kattan oppose Plaintiff's motion. The motion was taken under submission on the papers. Having considered the papers submitted by the parties, the Court GRANTS Plaintiff's motion to remand and for attorneys' fees for improper removal.

BACKGROUND

Plaintiff Guidetech, LLC, is a California limited liability company, with a principal place of business in Mountain View, California. Defendant Brilliant Instruments, Inc., is a Delaware corporation, with a principal place of business in Campbell,

1 California. Defendant Kattan is a California resident.

2 Plaintiff and Brilliant are allegedly competitors in the  
3 market for "precision time and frequency measurement instruments."  
4 Am. Compl. ¶ 11. Kattan allegedly served as Plaintiff's chief  
5 technology officer. Plaintiff avers that, at the time he resigned  
6 from that position in February, 2004, Kattan signed a non-  
7 disclosure agreement, in which he covenanted not to disclose  
8 Plaintiff's confidential proprietary information.

9 Plaintiff pleads that Kattan, who allegedly founded and is now  
10 president of Brilliant, has since breached that non-disclosure  
11 agreement by disclosing confidential information to Plaintiff's  
12 customers. Plaintiff also alleges that Defendants have made  
13 slanderous statements about it.

14 Plaintiff filed its action in Santa Clara County Superior  
15 Court on November 12, 2010. Against both Defendants, Plaintiff  
16 brings claims for intentional and negligent interference with  
17 prospective economic advantage and slander. Against Kattan,  
18 Plaintiff pleads a claim for breach of contract.

19 On December 14, 2010, Defendants removed Plaintiff's action,  
20 asserting that the Court has original jurisdiction under 28 U.S.C.  
21 § 1367(a). Following removal, the Court related this action,  
22 pursuant to Civil L.R. 3-12, to Brilliant Instruments, Inc. v.  
23 Guidetech, LLC, Case No. C 09-5517 CW (N.D. Cal.). In that action,  
24 Brilliant seeks declarations that its products do not infringe  
25 Plaintiff's U.S. Patent Nos. 6,091,671 ('671 patent); 6,181,649  
26 ('649 patent); 6,226,231 ('231 patent); 6,456,959 ('959 patent);  
27 6,621,767 ('767 patent); 6,999,382 ('382 patent); and 7,203,610

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1 ('610 patent).

2 LEGAL STANDARD

3 A defendant may remove a civil action filed in state court to  
4 federal district court so long as the district court could have  
5 exercised original jurisdiction over the matter. 28 U.S.C.  
6 § 1441(a). Title 28 U.S.C. § 1447(c) provides that if, at any time  
7 before judgment, it appears that the district court lacks subject  
8 matter jurisdiction over a case previously removed from state  
9 court, the case must be remanded. On a motion to remand, the scope  
10 of the removal statute must be strictly construed. Gaus v. Miles,  
11 Inc., 980 F.2d 564, 566 (9th Cir. 1992). "The 'strong presumption'  
12 against removal jurisdiction means that the defendant always has  
13 the burden of establishing that removal is proper." Id. Courts  
14 should resolve doubts as to removability in favor of remanding the  
15 case to state court. Id.

16 DISCUSSION

17 Defendants do not dispute that this action is not subject to  
18 the Court's federal question or diversity jurisdiction. Instead,  
19 they assert that the Court "has original jurisdiction under 28  
20 U.S.C. § 1367(a)." Notice of Removal ¶ 4. This statute provides  
21 that, subject to some exceptions, "in any civil action of which the  
22 district courts have original jurisdiction, the district courts  
23 shall have supplemental jurisdiction over all other claims that are  
24 so related to claims in the action within such original  
25 jurisdiction that they form part of the same case or controversy  
26 under Article III of the United States Constitution." 28 U.S.C.  
27 § 1367(a). Section 1367(a) does not, however, provide the Court

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1 with original jurisdiction over an action and, thus, removal  
2 pursuant to it is improper.

3 This issue is not subject to reasonable dispute. In Patel v.  
4 Del Taco, Inc., the Ninth Circuit stated that § 1367, "which  
5 provides for supplemental jurisdiction, is not a basis for removal"  
6 and that the appellant's argument to the contrary was "frivolous."  
7 446 F.3d 996, 999 (9th Cir. 2006). The court thereby affirmed the  
8 district court's award of attorneys' fees to the appellee that had  
9 sought remand, concluding that there was "no objectively reasonable  
10 basis for removal." Id.

11 Defendants assert that, because this lawsuit relates to  
12 Brilliant's patent infringement action, "fairness and equity  
13 justify a reasonable exception" to Patel. Opp'n 3. This argument  
14 is frivolous. There is no authority that permits this Court to  
15 exercise original jurisdiction based on "fairness and equity."

16 Although there is no legal basis for removal, it would be more  
17 efficient for the parties' disputes to be litigated in one court.  
18 The parties may consider stipulating to allow Plaintiff to bring  
19 the claims in this action as counterclaims in Brilliant  
20 Instruments, Inc. v. Guidetech, LLC, Case No. C 09-5517 CW (N.D.  
21 Cal.). However, because fact discovery in that case closed on  
22 January 21, 2011 and trial is set for September 12, 2011, such a  
23 stipulation may also require an agreement concerning case  
24 management dates.

25 Irrespective of the parties' decision, the Court lacks subject  
26 matter jurisdiction over this action. However, the Court stays its  
27 order for three days to allow the parties to discuss a stipulation  
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1 permitting Plaintiff to bring its claims in this action as  
2 counterclaims in Case No. C 09-5517 CW. If the parties so  
3 stipulate, the Court will dismiss this action for lack of subject  
4 matter jurisdiction. If the parties cannot agree, this action will  
5 be remanded to Santa Clara County Superior Court. Because  
6 Defendants lacked an objectively reasonable basis to remove this  
7 action, Plaintiff is entitled to recover "just costs and any actual  
8 expenses, including attorney fees, incurred as a result of the  
9 removal." 28 U.S.C. § 1447(c). Plaintiff represents that, as a  
10 result of removal, it incurred \$3,375.00 in attorneys' fees. See  
11 Richert Decl. ¶ 4.

12 CONCLUSION

13 For the foregoing reasons, the Court GRANTS Plaintiff's motion  
14 to remand and for attorneys' fees for improper removal. (Docket  
15 No. 4.) Because Defendants lacked an objectively reasonable basis  
16 to remove this case, they shall remit to Plaintiff \$3,375.00 for  
17 attorneys' fees it incurred as a result of the removal.

18 The Court stays its order for three days to allow the parties  
19 to discuss whether Plaintiff may bring its claims in this action as  
20 counterclaims in Case No. C 09-5517 CW. If the parties can agree,  
21 they shall immediately file a stipulation with the Court. If a  
22 stipulation is entered, this case will be dismissed for lack of  
23 subject matter jurisdiction and a case management conference will  
24 be held in Case No. C 09-5517 CW on March 15, 2011 at 2:00 p.m. to  
25 discuss changes to the case management order based on any new  
26 counterclaims.

27 If the parties do not respond by March 11, 2011, the Court  
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1 will direct the Clerk to remand this action to Santa Clara County  
2 Superior Court.

3 IT IS SO ORDERED.

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5 Dated: March 8, 2011



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CLAUDIA WILKEN  
United States District Judge