

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

GOOGLE INC.,

Plaintiff,

v.

ROCKSTAR CONSORTIUM U.S. LP,
MOBILESTAR TECHNOLOGIES, LLC,

Defendants.

No. C 13-5933 CW

ORDER DENYING
MOTION FOR
INTERLOCUTORY
APPEAL

(Docket No. 66)

In this patent infringement case, Defendants Rockstar Consortium U.S. LP (Rockstar) and MobileStar Technologies, LLC (MobileStar) previously moved to dismiss for lack of personal jurisdiction or, in the alternative, to transfer to the Eastern District of Texas. The Court denied Defendants' motion. Defendants now seek to certify the Court's Order for interlocutory review by the Federal Circuit. Plaintiff Google, Inc. opposes. Having considered the papers, the Court DENIES the motion.

BACKGROUND

The Court's prior order denying Defendants' motion to dismiss or, in the alternative, to transfer lays out the underlying factual background in great detail, and so the Court provides only the procedural history relevant to the present motion.

On January 23, 2014, Defendants moved to dismiss this action for lack of personal jurisdiction and improper venue and to

1 decline jurisdiction under the Declaratory Judgment Act. Docket
2 No. 20. The Court held a hearing on March 13, 2014. The Court
3 denied Defendants' motion, holding it had specific jurisdiction
4 because, "with conflicts in the allegations and evidence resolved
5 in [Google's] favor, Google has shown that it is likely that
6 Defendants have created continuing obligations with a forum
7 resident to marshal the asserted patents such that it would not be
8 unreasonable to require Defendants to submit to the burdens of
9 litigation in this forum." Docket No. 58 (Order) at 19-20. The
10 Court further found that there was no reason to decline
11 declaratory judgment jurisdiction or transfer the case to the
12 Eastern District of Texas because the § 1404 convenience factors
13 either favored this forum or were neutral. See, generally, Order
14 at 20-28.
15

16 Defendants now move for certification of the Court's Order
17 for interlocutory review under 28 U.S.C. § 1292(b). Specifically,
18 they seek to certify the following question:
19

20 Whether Rockstar US LP, a Delaware limited partnership
21 resident in the Eastern District of Texas is subject to
22 personal jurisdiction in the Northern District of
23 California, due to its alleged "continuing obligations"
24 to Apple, one of its five limited partners, without (a)
25 piercing the corporate veil or establishing that
26 Rockstar is the "alter ego" of Apple; or (b) proving
27 that any "continuing obligation" Rockstar is alleged to
28 owe Apple (or another forum resident) relates to
enforcing the patents-in-suit in the Northern District
of California, not other forums.

Docket No. 66 at 6.

LEGAL STANDARDS

1
2 Under 28 U.S.C. § 1292(b), the Court may certify an otherwise
3 non-final order if: (1) it involves a controlling question of law,
4 (2) as to which there is substantial ground for difference of
5 opinion, and (3) an immediate appeal may "materially advance the
6 ultimate termination of the litigation." The party seeking
7 interlocutory review bears the burden of showing that all of these
8 factors are met. Couch v. Telescope Inc., 611 F.3d 629, 633 (9th
9 Cir. 2010).

11 Certification under § 1292(b) "is a departure from the normal
12 rule that only final judgments are appealable, and therefore must
13 be construed narrowly." Mendez v. R+L Carriers, Inc., 2013 WL
14 1004293, at *1 (N.D. Cal.) (quoting James v. Price Stern Sloan,
15 Inc., 283 F.3d 1064, 1068 n.6 (9th Cir. 2002)). The moving party
16 bears the burden of establishing "exceptional circumstances
17 justify[ing] a departure from the basic policy of postponing
18 appellate review until after the entry of a final judgment."
19 Coopers & Lybrand v. Livesay, 437 U.S. 463, 475 (1978). The
20 district court has discretion to determine whether an
21 interlocutory appeal would advance or delay the resolution of the
22 litigation. See Swint v. Chambers Cnty. Comm'n, 514 U.S. 35, 47
23 (1995).
24

DISCUSSION

26
27 Defendants argue that the Court's Order involves a
28 controlling question of jurisdictional law as to which there is a

1 substantial ground of difference of opinion. As described
2 previously, Defendants argue that the Court erred in finding them
3 subject to personal jurisdiction in this district due to their
4 continuing obligations to Apple, even though the Court did not
5 (1) pierce the corporate veil between Rockstar and Apple, such as
6 by finding that Rockstar is the alter ego of Apple, and (2) find
7 that the continuing obligation relates to enforcement of the
8 patents-in-suit in this forum.
9

10 Federal Circuit precedent is clear on both points. As
11 explained in this Court's order, Defendants misunderstand both
12 Google's theory of jurisdiction as well as Federal Circuit
13 precedent. Order at 17 n.6. Google did not argue that Rockstar
14 was Apple's alter ego, nor was it required to do so in order to
15 establish jurisdiction. Rather, Google argued that Rockstar
16 entered into a relationship with Apple, exceeding the kind
17 existing between a company and its passive stakeholder, which
18 obliged Rockstar to marshal the patents-in-suit against Google and
19 its Android platform. To support this allegation, Google
20 presented articles stating that the CEO of Rockstar, John Veschi,
21 maintains frequent contact with the intellectual property
22 departments of its investors such as Google; the fact that Apple
23 appeared to be a majority shareholder based on the size of its
24 investment; Apple's history of expressing an intention to
25 interfere with Google's business; and the suspicious circumstances
26 of Defendants specifically suing Google's customers, but not
27
28

1 Google, based on their use of the Android platform, which is
2 consistent with motivations arising from the historical Google-
3 Apple rivalry. Defendants had the opportunity to present their
4 own contrary evidence, but chose not to challenge the factual
5 allegations and evidence underlying Google's arguments. For the
6 most part, Defendants instead maintained that there was "no reason
7 to entertain futile jurisdictional discovery." Defendants' Reply
8 to Motion to Dismiss at 12. Defendants said the same at the
9 hearing. The Court accordingly accepted Google's evidence and
10 allegations and found that Defendants indeed entered into an
11 undertaking with Apple that obliged Defendants to enforce the
12 patents-in-suit against Google, its cross-town rival, in a way
13 that interfered with Google's business.
14

15 Defendants state that their Motion for Interlocutory Review
16 "accept[s] Google's pleaded allegations that the Court's factual
17 findings rest on as true." Defendants' Motion for Interlocutory
18 Review at 2. Yet Defendants elsewhere attempt indirectly to
19 challenge the Court's factual findings. See id. at 2 n.2 ("Google
20 asserted that Apple is Rockstar's 'majority shareholder,' but that
21 assertion is incorrect."); Defendants' Reply to Motion for
22 Interlocutory Review at 6 ("As explained in Defendants' Motion
23 [for Interlocutory Review], Defendants do not owe any enforcement
24 obligation to Apple, or any other limited partner, in any forum").
25
26 If Defendants now wish to challenge the Court's decision on a
27 factual basis, then they must follow the protocol for moving for
28

1 reconsideration and explain why they did not previously present
2 certain material facts in their argument. See Civ. L.R. 7-9(b)
3 ("the moving party must specifically show reasonable diligence in
4 bringing the motion," along with the "emergence of new material
5 facts"). Otherwise, Defendants have waived those factual
6 arguments and cannot present them now. See Ins. Corp. of Ireland,
7 Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 704 (1982)
8 ("the requirement of personal jurisdiction may be intentionally
9 waived, or for various reasons a defendant may be estopped from
10 raising the issue").¹

12 The uncontroverted facts presented by Google and recognized
13 by the Court are sufficient to find specific jurisdiction over
14 Defendants under established Federal Circuit case law. While
15 infringement letters are "purposefully directed at the forum and
16 the declaratory judgment action 'arises out of' the letters," the
17 Federal Circuit additionally requires, in the interests of fair
18 play and justice, that the defendant have engaged in "'other
19 activities' directed at the forum and related to the cause of
20 action." Avocent Huntsville Corp. v. Aten Int'l Co., Ltd., 552
21 F.3d 1324, 1333 (2008) (emphasis omitted). "Examples of those
22 'other activities' include initiating judicial or extra-judicial
23 patent enforcement within the forum, or entering into an exclusive
24
25

26
27 ¹ In any event, the Court's decision regarding jurisdiction
28 did not depend solely on the facts that Defendants challenge now,
such as the size of Apple's stake in Rockstar. See Order at 18.

1 license agreement or other undertaking which imposes enforcement
2 obligations with a party residing or regularly doing business in
3 the forum." Id. at 1334.²

4 Because Google successfully demonstrated that Defendants
5 entered into an "undertaking which imposes enforcement obligations
6 with a party residing or regularly doing business in the forum"
7 (Apple), Google did not need to prove further that Defendants
8 engaged in "judicial or extra-judicial patent enforcement within
9 the forum." Finding that the defendant engaged in enforcement
10 activities inside the forum is an alternative ground for
11 exercising jurisdiction, not the exclusive one. See Avocent
12 Huntsville Corp., 552 F.3d at 1334 (describing two grounds for
13 finding the exercise of jurisdiction would be fair and just:
14 "initiating judicial or extra-judicial patent enforcement within
15
16

17 ² See also Campbell Pet Co. v. Miale, 542 F.3d 879, 886 (Fed.
18 Cir. 2008) (finding jurisdiction over a patentee who conducted
19 extra-judicial patent enforcement by enlisting a third party in
20 the forum to remove defendant's products from a trade show);
21 Genetic Implant Sys., Inc. v. Core-Vent Corp., 123 F.3d 1455, 1458
22 (Fed. Cir. 1997) (holding that specific jurisdiction existed over
23 patentee because it had appointed an in-state distributor to sell
24 a product covered by the asserted patent, which was a business
25 relationship "analogous to a grant of a patent license" and
26 created obligations to sue third-party infringers); Akro Corp. v.
27 Luker, 45 F.3d 1541, 1548-49 (Fed. Cir. 1995) (because defendant
28 had entered into an exclusive licensing agreement with one of the
alleged infringer's competitors, which meant that defendant had
"obligations . . . to defend and pursue any infringement" of the
patent, specific jurisdiction was proper); SRAM Corp. v. Sunrace
Roots Enter. Co., Ltd., 390 F. Supp. 2d 781, 787 (N.D. Ill. 2005)
(specific jurisdiction was proper where defendant had
"purposefully directed its activities" at residents of the forum
by marketing a product that directly competed with the alleged
infringer).

1 the forum, or entering into an exclusive license agreement or
2 other undertaking which imposes enforcement obligations with a
3 party residing or regularly doing business in the forum");
4 Autogenomics, Inc. v. Oxford Gene Tech. Ltd., 566 F.3d 1012, 1020
5 (Fed. Cir. 2009) (explaining that "enforcement efforts in the
6 forum" can create specific jurisdiction, as opposed to an
7 obligation with a forum resident). Defendants' Texas suit against
8 Google's customers merely serves as supporting evidence for the
9 inference that Defendants undertook an obligation to Apple to
10 disrupt Google's business. It is the relationship to a forum
11 resident itself,³ which allegedly obliged Defendants to take
12 actions expressly aimed at causing harm to another forum resident,
13 that connects the case to this district. See Avocent Huntsville
14 Corp., 552 F.3d at 1331 ("The Supreme Court has also instructed
15 that personal jurisdiction may be proper because of a defendant's
16 intentional conduct in another State calculated to cause injury to
17 the plaintiff in the forum State.") (quoting Calder v. Jones, 465
18
19
20
21
22
23
24

25 ³ See Breckenridge Pharm., Inc. v. Metabolite Labs., Inc.,
26 444 F.3d 1356, 1365 (Fed. Cir. 2006) (explaining that "the
27 plaintiff need not be the forum resident toward whom any, much
28 less all, of the defendant's relevant activities were purposefully
directed.").

1 U.S. 783, 791 (1984)) (internal brackets and quotation marks
2 omitted).⁴

3 Because case law is settled on both of Defendants' points,
4 Defendants have not established that the Court's order involves a
5 controlling question of law upon which there is substantial ground
6 for difference of opinion.

7 Further, immediate appeal of the order will not materially
8 advance the ultimate termination of the litigation. While
9 Defendants are correct that personal jurisdiction is essential to
10 the Court's authority, not every jurisdictional question over
11 which the parties disagree must be certified for interlocutory
12 review. See Things Remembered v. Petrarca, 516 U.S. 124, 132 n.1
13 (1995) (Ginsburg, J., concurring). Defendants contend that review
14 will materially advance the litigation because jurisdiction is
15 case-dispositive, but this argument is unpersuasive because it can
16 be made any time a case-dispositive motion is denied, which is not
17
18

19 _____
20 ⁴ See Calder, 465 U.S. at 789 (finding jurisdiction over
21 defendants because "their intentional, and allegedly tortious,
22 actions were expressly aimed at California"); 4 Charles A. Wright,
23 et al., Federal Practice and Procedure § 1067.1 (3d ed. Westlaw
24 2014) ("Thus, the 'effects test' continues to have viability, but
25 only when the defendant's conduct both has an effect in the forum
26 state and was directed at the forum state by the defendant");
27 Silent Drive, Inc. v. Strong Indus., Inc., 326 F.3d 1194, 1204
28 (Fed. Cir. 2003) (finding jurisdiction over Texas corporate
defendant because its activities enforcing a Texas injunction
"were all 'expressly aimed' at the Iowa corporate plaintiff," and
defendant "knew the activities would have the potentially
devastating effects of inhibiting [the Iowa corporate plaintiff]
from producing the MAXLE and its customers from buying it")
(internal brackets omitted).

1 in of itself extraordinary. Getz v. Boeing Co., 2009 WL 3765506,
2 at *2 (N.D. Cal.). If the appeal were to fail, the Court of
3 Appeal would be "burdened with a second appeal" involving issues
4 that could have been considered together. Id. at *2. Moreover,
5 regardless of the outcome of the appeal, the parties would
6 continue to litigate this action, albeit in a different forum,
7 without the benefit of any simplification of the issues or
8 narrowing of the scope of discovery. Fed. Hous. Fin. Agency v.
9 UBS Americas, Inc. 858 F. Supp. 2d 306, 338 (S.D.N.Y. 2012).

10
11 Because Defendants have failed to show that an immediate appeal
12 would be likely materially to advance or narrow the proceedings at
13 hand, there is no reason to certify Defendants' proposed question
14 for interlocutory review.

15 IT IS SO ORDERED.

16 Dated: 8/20/2014

17 
18 CLAUDIA WILKEN
United States District Judge