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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PLASBRO GMBH, )  
 )  
 ) Plaintiff, )  
 ) v. )  
 ) CHEMACOUSTIC TECHNOLOGIES, )  
 ) INC., TIMOTHY GENS, et al., )  
 ) Defendants. )  
\_\_\_\_\_ )

Case No.: C 09-4302 PVT  
**ORDER DENYING DEFENDANTS’  
MOTION TO TRANSFER FOR  
CONVENIENCE PURSUANT TO 28  
USC § 1404(a)**  
**[Docket No. 62]**

Defendants Timothy Gens and Chemaoustic Technologies, Inc. move to transfer for convenience pursuant to 28 U.S.C. §1404(a). (collectively “defendants”). Plaintiff Plaspro GMBH opposes the motion. (“Plaspro”). Pursuant to Civ. L.R. 7-1(b), the motion is taken under submission and the hearing scheduled to be held on October 26, 2010 is vacated. Having reviewed the papers and considered the arguments of counsel,

IT IS HEREBY ORDERED that defendants’ motion to transfer is denied.<sup>1</sup>

Defendants move to change venue on the grounds that the Eastern District of Wisconsin is a more convenient for the parties and witnesses in the action, and that the action might have been brought in that district. Defendants argue that Chemaoustic is a Nevada corporation and its principal place of business is located in Milwaukee, Wisconsin. In addition, the books, records,

<sup>1</sup> The holding of this court is limited to the facts and particular circumstances underlying the present motion.

1 equipment, and research and manufacturing facilities of the company are maintained there. Finally,  
2 individual defendant Gens, who contends that he is a principal witness in the action, resides in Lake  
3 Geneva, Wisconsin, and is admitted as a member of the bar there. He states that he and  
4 Chemacoustic conduct no business in California and that company employees/consultants are based  
5 in or travel to Wisconsin.

6 Because defendants previously moved to dismiss, *inter alia*, for lack of personal jurisdiction,  
7 plaintiff Plasbro states that the parties undertook discovery limited to issues of personal jurisdiction  
8 pursuant to an order dated April 12, 2010. (“April 12, 2010 Order”). To that end, plaintiff deposed  
9 individual defendant Gens in his individual capacity, and as the person most knowledgeable  
10 regarding the personal jurisdiction of Chemacoustic. The parties provided further briefing and the  
11 court later denied the motion to dismiss, *inter alia*, for lack of personal jurisdiction. *See* Order  
12 Denying Motion to Dismiss filed on July 28, 2010. (“July 28, 2010 Order”). Plaintiff Plasbro  
13 further notes that this motion should have been brought earlier as part of an initial responsive  
14 pleading and that this action could never have been brought in the Eastern District of Wisconsin  
15 because Chemacoustic is located in Nevada and Gens resides in Illinois. Moreover, a substantial  
16 part of the events in the action occurred in this district, including the following:

- 17 ● The only employee who was employed by Chemacoustic during the time period  
18 relevant to this dispute, Mr. Jay Ratra, worked in California, either out of his home in  
19 Campbell, CA, at the home of Timothy and Laura Gens at 4141 Old Trace Road in  
20 Palo Alto, CA, or at the office and demo site located at 1745 Dell Avenue in  
21 Campbell, CA, a location where Chemacoustic shared office space with Pro Sys, Inc.
- 22 ● When Mr. Maurice Ford, the principal at Plaspro, was involved in meeting with and  
23 negotiating the subject transaction, Mr. Gens and Mr. Ratra provided Mr. Maurice  
24 Ford of Plaspro with business cards that listed the Silicon Valley Research Center in  
25 Los Altos, CA.
- 26 ● All of Mr. Gens’ emails to Plaspro included this same address in his signature block.
- 27 ● Every meeting that took place in the United States between Plaspro and  
28 Chemacoustic took place in California, first at Chemacoustic’s office and demo site

1 in Campbell, CA, and later at the Semicon West convention in San Francisco.

- 2 ● Mr. Gens and Mr. Ratra met with Mr. Peter Kember, a representative from  
3 PlasticLogic, the end-user company that was purchasing the tool from Plaspro in San  
4 Francisco, CA.
- 5 ● All design work that was done for the tool took place within this judicial district in  
6 California.
- 7 ● The tool was to be manufactured by Mr. Ratra in California.
- 8 ● Mr. Gens confirmed in email correspondence between himself, Plaspro and  
9 PlasticLogic, that the tool was being designed in California and Mr. Gens was going  
10 to arrange for clients to see the tool in action at Chemacoustic's demo site in  
11 California.
- 12 ● All of Plaspro's calls and emails with representatives from Chemacoustic were  
13 directed to California, including Mr. Ford's telephone calls to the telephone number  
14 with the 650 area code (an area code in this judicial district).
- 15 ● Other than sending the initial 50 percent down payment to Chemacoustic's bank in  
16 Incline Village, NV and participating in the meeting that took place in Germany in  
17 March 2008, Plaspro is unaware of any activities, contacts or interactions that took  
18 place anywhere other than in or directed at the forum state of California.
- 19 ● There were no communications, interactions or contacts that were directed at the state  
20 of Wisconsin and no part of this transaction or any of the underlying facts related to  
21 this dispute involve the state of Wisconsin.

22 28 U.S.C. § 1404(a) states that “[f]or the convenience of the parties and witnesses, in the  
23 interest of justice, a district court may transfer any civil action to any other district or division where  
24 it might have been brought.”

25 As noted in the July 28, 2010 Order, “[t]his is a case about an industrial dryer.” July 28,  
26 2010 Order at 1. In sum, the court made the following findings: (1) “defendants at least partly  
27 negotiated, executed, and performed the contract in connection with the Plaspro purchase order in  
28 California”; (2) “according to Ratra, the employee closest to the transaction, all communications

1 regarding the Plaspro order took place in California, as did all of the design work that was done for  
2 the cleaner/dryer: Gens and Ratra met with Ford in Campbell, California to discuss CTI products”;  
3 (3) “Gens and Ratra met with Kember in San Francisco to review conceptual designs for the  
4 cleaner/dryer”; (4) “Gens discussed with Ford the possibility of demonstrating the product in  
5 California”; and (5) “Gens ultimately informed Ford that [Chemacoustic] would be unable to deliver  
6 the cleaner/dryer while the two were at the Semicon West convention in San Francisco.” July 28,  
7 2010 Order at 7-8. Finally, the court noted that: “[a]s to CTI’s documents, defendants bring forward  
8 no explanation as to why [] documents relating to the alleged Plaspro agreement could not easily be  
9 transported to California” and “the fact that Gens spends significant time outside of California is not  
10 dispositive, particularly given that his wife has a residence in Palo Alto, where he has stayed as  
11 recently as February 2010, and given that he is a plaintiff in two pending lawsuits in California state  
12 courts where he has alleged residence in Santa Clara.” April 28, 2010 Order at 9. Additionally, Mr.  
13 Gens is plaintiff in an action currently pending before this court entitled, *Timothy Gens v. Vello*  
14 *Corporation, et al.*, Case No. 10-3220.<sup>2</sup> On the docket for that action, he lists a Palo Alto, CA  
15 address.

16 As an initial matter, it is not appear that the action could have been brought in the state of  
17 Wisconsin. While Mr. Gens states that Chemacoustic is incorporated in Nevada and its principal  
18 place of business is now located in Wisconsin, the company and its employees, or at least Mr. Ratra  
19 and Mr. Gens, were located in this judicial district previously. One of the principal witnesses, Mr.  
20 Ratra, currently resides in Campbell, CA, which is located in this judicial district. *See* Declaration  
21 of Jagjit S. Ratra, ¶ 2. (“Ratra Decl.”). And Mr. Gens himself appears to have certain ties to this  
22 judicial district too, including an ex-wife in Palo Alto (who executes his proofs of service in this  
23 action), and his prosecution of another case currently pending in this district.<sup>3</sup> Moreover, based on  
24 the findings made in the July 28, 2010 Order, a substantial part of the events giving rise to the claims  
25 in this action occurred here. Therefore, the considerations of convenience and interests of justice

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27 <sup>2</sup> Mr. Gens was a plaintiff in another action entitled, *Timothy Gens v. Sez America, Inc.*,  
Case No. 05-1009. He listed a Palo Alto, CA address on the docket in that action.

28 <sup>3</sup> In the caption of the pleadings, Mr. Gens “specially appearing *in pro per*” lists an address  
in Chicago, Illinois.

1 militate against a transfer of this action. Accordingly, defendants' motion to change venue is  
2 denied.

3 Dated: October 25, 2010

*Patricia V. Trumbull*

PATRICIA V. TRUMBULL  
United States Magistrate Judge

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