

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

AERIELLE TECHNOLOGIES, INC.,	)	Case No.: 10-CV-01301-LHK
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S <i>EX</i>
v.	)	<i>PARTE</i> APPLICATION TO SHORTEN
	)	TIME FOR HEARING ON PLAINTIFF'S
BELKIN INTERNATIONAL, ET AL.,	)	MOTION TO SUBSTITUTE PLAINTIFF
	)	
Defendants.	)	(re: dkt. #145)
	)	
	)	

On October 25, 2011, Plaintiff and Counterclaim-Defendant Aerielle Technologies, Inc. ("Aerielle" or "Plaintiff") simultaneously filed a Motion to Substitute Party and an *Ex Parte* Application to Shorten Time for Hearing on that Motion. *See* ECF Nos. 145, 146. In its *Ex Parte* Application, Plaintiff asks this Court to deem Aerielle's Motion to Substitute Party filed as of October 25, 2011 and to set it for hearing on November 22, 2011, the same day as a further case management conference scheduled in this case, rather than on February 2, 2012, the next available hearing date as of the time Aerielle filed its *Ex Parte* Application.

Defendants and Counterclaim-Plaintiffs Belkin International, Inc., Best Buy Co., Inc., Best Buy.com, LLC, Best Buy Stores, L.P., and RadioShack Corporation (collectively "Defendants") filed a response on October 31, 2011, opposing Plaintiff's *Ex Parte* Application. Defendants oppose principally on grounds that Plaintiff's failure to timely produce documents relevant to the assignments of rights in the two patents-in-suit renders the proposed expedited briefing schedule on

1 Plaintiff's Motion to Substitute Party "unrealistic and prejudicial to Defendants." ECF No. 150.  
2 On September 21, 2011, after Plaintiff informed the Court that it had assigned its intellectual  
3 property rights in the two patents-in-suit to a creditor named "Great American Life" or "Great  
4 American Insurance," the Court ordered Plaintiff to produce all documents relevant to the  
5 assignment by September 28, 2011. *See* ECF No. 138. Defendants assert that Plaintiff produced  
6 over 1,200 pages of ownership-related documents on October 21, 2011, nearly a month after the  
7 Court-ordered deadline, and just shortly before filing its *Ex Parte* Application and Motion to  
8 Substitute Party. ECF No. 150 at 4. Furthermore, Defendants provide evidence that Plaintiff's  
9 production of relevant documents remained incomplete even at the time of filing its Motion. *Id.*  
10 Ex. A.

11 Had Plaintiff fully complied with the Court's September 21, 2011 Order, it could have  
12 moved to substitute plaintiff much sooner. Instead, it waited until October 25, 2011 to file its  
13 motion, and now asks the Court for an expedited hearing. The Court finds that Plaintiff has  
14 exhibited a pattern of not being forthcoming regarding the assignment of rights, a matter that is  
15 indispensable to determining Plaintiff's standing and the Court's subject matter jurisdiction over  
16 this action. Accordingly, the Court DENIES Plaintiff's *Ex Parte* Application. Pursuant to this  
17 Order, Plaintiff shall re-file its Motion to Substitute Party and notice it for the next available  
18 hearing date after consulting Ms. Martha Parker-Brown, the Courtroom Deputy.

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20 **IT IS SO ORDERED.**

21 Dated: November 17, 2011

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23 LUCY H. KOH  
24 United States District Judge  
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