

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

APPLE INC., NeXT SOFTWARE, INC.,
f/k/a/ NeXT COMPUTER, INC.,

Plaintiffs,

v.

C.A. No. 10-166-RK

HIGH TECH COMPUTER CORP., a/k/a HTC
CORP., HTC (B.V.I.) CORP., HTC
AMERICA, INC., EXEDEA, INC.,

Defendants.

APPLE, INC.,

Plaintiff,

v.

C.A. No. 10-167-RK

HIGH TECH COMPUTER CORP., a/k/a HTC
CORP., HTC (B.V.I.) CORP., HTC
AMERICA, INC., and EXEDEA, INC.,

Defendants.

**DEFENDANTS' OPPOSITION TO APPLE INC. AND NeXT SOFTWARE, INC.'S
MOTION TO DEFER ORAL ARGUMENT ON PENDING MOTION TO TRANSFER**

HTC objects to Apple's request to defer oral argument on HTC's motion to transfer (D.I. 35 in C.A. No. 10-166-RK; D.I. 36 in C.A. No. 10-167-RK). There are very good reasons to hear Apple's motion to transfer on June 28, the date the Court and parties have already identified as convenient: the briefing is complete and it promotes efficiency to resolve transfer motions early in litigation. In contrast, there is *no* good reason to permit Apple to jump the line and thrust its motion to consolidate ahead of HTC's transfer motion. HTC filed its motion first. Apple cites no authority for its proposal to nonetheless demote HTC's completely-briefed transfer motion in favor of Apple's still-to-be-briefed consolidation motion.

It is axiomatic that “the deliberate conduct of a party favoring trial in an inconvenient forum” cannot defeat transfer to a more convenient federal forum. *See Van Dusen v. Barrack*, 376 U.S. 612, 624 (1964). Only after Apple concluded that it could mount no substantive opposition to HTC’s transfer motion absent consolidation did it move to consolidate, on the same day that it opposed Apple’s motion. This despite Apple’s failure to identify its previously-filed counterclaims against Nokia as “related cases” when it later filed its actions against HTC, or otherwise filing a motion to consolidate in the three months that the HTC cases have been pending.

Apple’s motion to defer oral argument is a last-ditch effort to distract the Court from the merits of HTC’s transfer motion. Just as Apple’s belated and tactical consolidation motion does not justify denying transfer, its line-jumping argument motion does not justify deferring oral argument. HTC respectfully requests that the Court hold oral argument on June 28, 2010.

DATED: June 21, 2010

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CERTIFICATE OF SERVICE

I, Karen L. Pascale, Esquire, hereby certify that on June 21, 2010, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification of such filing to the following counsel of record:

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I further certify that on June 21, 2010, I caused a copy of the foregoing document to be served by e-mail on the above-listed counsel and on the following non-registered participants in the manner indicated:

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