

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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STEUBEN FOODS, INC.,

Plaintiff,

v.

SHIBUYA HOPPMANN CORP., SHIBUYA  
KOGYO CO. LTD, and HP HOOD LLC,

Defendants.

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**DECISION AND ORDER**

1:10-CV-00781 EAW

**INTRODUCTION AND BACKGROUND**

Plaintiff Steuben Foods, Inc. (“Plaintiff”) has sued Defendants Shibuya Hoppmann Corp., Shibuya Kogyo Co. Ltd., and HP Hood LLC (collectively “Defendants”) for patent infringement under 35 U.S.C. §§ 100 *et seq.* (Dkt. 1). On April 15, 2013, this matter was referred to Magistrate Judge Jeremiah J. McCarthy for hearing and disposition of all non-dispositive motions or applications, supervision of discovery, and to hear and report upon dispositive motions for consideration by the district judge. (Dkt. 112).

On July 13, 2017, Defendants filed a motion asking the Court to dismiss the complaint based on improper venue or, in the alternative, to transfer the matter to the United States District Court for the District of Delaware. (Dkt. 340). On January 16, 2018, Judge McCarthy entered a report and recommendation in which he recommended that the Court deny Defendants’ motion without prejudice to renewal upon completion of claim

construction. (Dkt. 371). Defendants filed objections to the R&R (Dkt. 372), which the Court overruled on March 16, 2018 (Dkt. 380). Defendants thereafter sought a writ of mandamus from the Court of Appeals for the Federal Circuit, which denied the request on May 1, 2018. (*See* Dkt. 397). However, the Federal Circuit noted that it “expect[ed] that the district court will promptly resolve the venue issues. . . .” (*Id.* at 4).

On February 28, 2019, Defendants filed a second motion to dismiss or transfer (Dkt. 448), on the same grounds as raised in their first motion. On August 20, 2019, Judge McCarthy entered a report and recommendation (Dkt. 464) (the “R&R”) in which he recommended denying the motion “without prejudice to renewal once [the undersigned] has ruled on the pending objections to [Judge McCarthy’s] October 1, 2018 Report and Recommendation [Dkt. 246]” (*id.* at 2). No party filed objections to the R&R.

## **DISCUSSION**

### **I. Standard of Review**

Pursuant to 28 U.S.C. § 636(b)(1)(C), where a party makes specific objections to a magistrate judge’s report and recommendation, the district judge must “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C). “The Court reviews unobjected-to findings for clear error.” *Am. Ins. Co. v. City of Jamestown*, 914 F. Supp. 2d 377, 384 (W.D.N.Y. 2012). After conducting its review, the Court may “accept,

reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

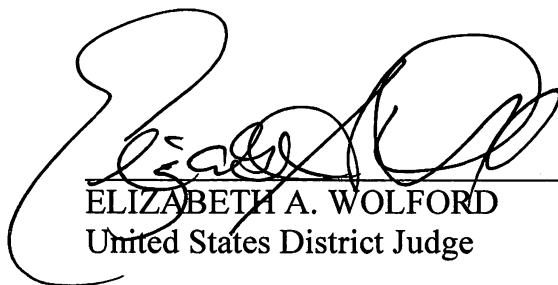
## **II. The Court Adopts the R&R**

As noted above, no party has objected to the R&R. Accordingly, the Court has reviewed it for clear error and, having found none, adopts the R&R in its entirety and denies Defendants’ pending motion to dismiss or transfer without prejudice. The Court notes that it has now resolved the outstanding objections to Judge McCarthy’s October 1, 2018 Report and Recommendation. (*See* Dkt. 465). Moreover, given the Court’s resolution of those objections, and in light of the Federal Circuit’s stated expectation that the venue issue will be resolved promptly, it strikes the Court that it may no longer be appropriate to complete claim construction prior to resolving Defendants’ venue arguments. Instead, it appears that this would be an appropriate point in the proceedings for Defendants to file a renewed motion for consideration on the merits.

## **CONCLUSION**

For the reasons set forth above, the Court accepts and adopts the R&R (Dkt. 464) and the findings and recommendations set forth therein. Defendants’ motion to dismiss or, in the alternative, transfer venue (Dkt. 448) is denied without prejudice to renewal.

SO ORDERED.



ELIZABETH A. WOLFORD  
United States District Judge

Dated: September 16, 2019  
Rochester, New York