

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

COMPRESSION LABS, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	C. A. No. 2:04-CV-159-DF
	§	
DELL INC., <i>et al.</i> ,	§	
	§	
Defendants.	§	

**PLAINTIFF’S RESPONSE TO THE TOSHIBA DEFENDANTS’ MOTION TO DISMISS
PURSUANT TO RULE 12(b)(1) OR, IN THE ALTERNATIVE, TO TRANSFER**

CLI files this response to the Toshiba Defendants’ motion to dismiss or, in the alternative, to transfer.

The Toshiba Defendants argue that CLI lacked standing to bring this lawsuit as of April 22, 2004 (the date of the Original Complaint), because GI was not joined as a plaintiff. They further argue that the Court should consider this case the second-filed action and should give first-filed preference to a declaratory judgment action filed by TACP in Delaware on July 2, 2004.¹

These arguments are identical to those previously asserted and briefed by other defendants in this and the other two ‘672 Patent infringement matters pending before this Court.² CLI has fully

¹ The declaratory judgment action in the District of Delaware was filed by a number of the defendants in this lawsuit as C.A. No. 04-818-SLR. However, with respect to the Toshiba Defendants, only TACP is named as a party in the Delaware action, and TAIS, TAEC, and TAI are not parties in Delaware even though they are named defendants in the instant lawsuit.

² As the Court is aware, the other two matters are C.A. No. 2:04-CV-159-DF and CA No. 2:04-CV-294-DF.

briefed its responses to these arguments and hereby incorporates by reference its responses as if fully set forth herein. *See, e.g.*, C. A. No. 2:04-CV-159-DF Docket Entry Nos. 25, 35, 54; C. A. No. 2:04-CV-158-DF Docket Entry Nos. 70, 72, 98, 102, 144; C. A. No. 2:04-CV-294-DF Docket Entry Nos. 59, 61, 62, 63, 64, 65, 78, 83, 84, 108, 109.

CLI asks the Court to deny the Toshiba Defendants' motion to dismiss or transfer for the reasons set forth in those previously filed pleadings.

Dated: December 2, 2004

Respectfully submitted,

GODWIN GRUBER, LLP

By: /s/ Eric W. Buether

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**ATTORNEYS FOR COMPRESSION
LABS, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by facsimile transmission and/or first class mail this 2nd day of December 2004.

/s/ Eric W. Buether

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