



<i>Defendants.</i>	)	
	)	
<b>WIRELESS RECOGNITION TECHNOLOGIES LLC,</b>	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	<b>C.A. No. 2:10-cv-00578-TJW-CE</b>
	)	
<b>NOKIA CORPORATION, and RICOH COMPANY, LTD</b>	)	
	)	<b>JURY TRIAL DEMANDED</b>
	)	
<i>Defendants.</i>	)	
	)	

**REPLY OF PLAINTIFF WIRELESS RECOGNITION TECHNOLOGIES LLC IN  
SUPPORT OF ITS MOTION TO CONSOLIDATE PURSUANT TO FEDERAL RULE  
OF CIVIL PROCEDURE 42(a) AND LOCAL RULE CV-42(b)**

## **I. Contrary to Defendants' Opposition, the Cases Should be Fully Consolidated Through Trial**

Defendants oppose Plaintiff Wireless Recognition Technologies LLC's ("WRT") motion to consolidate the four related cases in this matter. To reiterate, the cases are as follows: (i) *Wireless Recognition Technologies LLC v. A9, Inc., et al.*, No. 2:10-cv-00364-TJW-CE (" '287 Patent Domestic Action '364 Case' " or " '287PDA '364 Case' "); (ii) *Wireless Recognition Technologies LLC v. Nokia Corporation, et al.*, No. 2:10-cv-00365-TJW (" '287 Patent International Action '365 Case' " or " '287PIA '365 Case' "); (iii) *Wireless Recognition Technologies LLC v. A9, Inc., et al.*, No. 2:10-cv-00577-TJW-CE (" '474 Patent Domestic Action '577 Case' " or " '474PDA '577 Case' "); and (iv) *Wireless Recognition Technologies LLC v. Nokia Corporation, et al.*, No. 2:10-cv-00578-TJW (" '474 Patent International Action '578 Case' " or " '474PIA '578 Case' ").

Accordingly, WRT presently asserts two patents – U.S. Patent No. 7,392,287 (" '287 Patent") and U.S. Patent No. 7,856,474 (" '474 Patent") – in four actions against Defendants A9, Amazon, Google, Nokia and RII, and additional parent entity Defendants of Nokia and RII.

Contrary to their assertions, Defendants cannot fairly ignore the key commonalities of the cases. The '474 Patent is related to the '287 Patent in all relevant aspects, including having common ownership, common inventorship, common specification and even claiming priority to the same parent application.<sup>1</sup> As between the '287 patent and the '474 patent actions, the actions even allege infringement of the same products by the same Defendants.<sup>2</sup>

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<sup>1</sup> 287PIA ("365 Case") Dkt. No. 4-1 at 1.

<sup>2</sup> For A9, *compare* 287PDA ("364 Case") Dkt. No. 1, ¶ 14 to 474PDA ("577 Case") Dkt. No 1, ¶ 14. For Amazon, *compare* 287PDA ("364 Case") Dkt. No. 1, ¶ 20 to 474PDA ("577 Case") Dkt. No 1, ¶ 20. For Google, *compare* 287PDA ("364 Case") Dkt. No. 1, ¶ 26 to 474PDA ("577 Case") Dkt. No 1, ¶ 26. For Nokia, *compare* 287PDA ("364 Case") Dkt. No. 1, ¶ 32 to 474PDA

Defendants distinguish consolidation through discovery and claim construction, which they favor, from consolidation through trial, which they disfavor, notwithstanding the key above noted commonalities. First, contrary to Defendants' position, WRT has no issue with consolidation through discovery and claim construction for all four cases. However, it views such consolidation as a floor, not a ceiling, meaning that the much preferred alternative would be to consolidate the cases through trial. The latter would avoid unnecessary delays, costs and promote the administration of justice pursuant to Fed. R. Civ. P. 42(a)(1). *Gentry v. Smith*, 487 F.2d 571, 581 (5th Cir. 1973). The Fifth Circuit has placed high value on expedition of trials and avoiding undue repetition and confusion. *Gentry*, 487 F.2d at 581 (citing *Dupont v. S. Pac. Co.*, 366 F.2d 193, 195 (5th Cir. 1966), *cert. denied*, 386 U. S. 958 (1967)).

Defendants argue that the status of the various cases makes consolidation unworkable. For support, they state that WRT has not served infringement contentions on the '474 patent when it served them for the '287 patent, and the first case<sup>3</sup> is now far ahead of the others.<sup>4</sup>

The issue is a red herring for a number of reasons. First, the Court has set October 21, 2011 as the due date for infringement contentions for the remaining three cases.<sup>5</sup> Consequently Defendants can hardly maintain being prejudiced by not having yet received infringement contentions when they will receive the contentions within days of the present reply motion.

Moreover, a mere glance at the docket control order for the first case reveals the hollowness of their arguments.<sup>6</sup> While service under P. R. 3-1 through 3-4 have been effected,

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("577 Case") Dkt. No 1, ¶ 32. For RII, *compare* 287PDA ("364 Case") Dkt. No. 1, ¶ 38 to 474PDA ("577 Case") Dkt. No 1, ¶ 38.

<sup>3</sup> 287PDA ("364 Case").

<sup>4</sup> 287PIA ("365 Case"); 474PDA ("577 Case"); 474PIA ("578 Case").

<sup>5</sup> 287PIA ("365 Case") Dkt. No. 28; 474PDA ("577 Case") Dkt. No. 43; 474PIA ("578 Case") Dkt. No. 30.

<sup>6</sup> 287PDA ("364 Case") Dkt. No. 64, at 1-3.

the vast majority of deadlines are in the far future, beginning with joinder of additional parties on May 19, 2011,<sup>7</sup> through a claim construction hearing on August 22, 2012,<sup>8</sup> and jury selection set for December 2, 2013.<sup>9</sup> If Defendants are willing to work with rather than hinder WRT's attempt to move the consolidated case forward, it would be a simple matter for WRT and Defendants to set dates for effecting the requirements of P. R. 3-1 through 3-4, and to keep the vast majority of the remaining dates beginning with the May 19, 2011 date for joinder of additional parties<sup>10</sup>, or the February 17, 2012 date for exchanging privilege logs.<sup>11</sup> With jury selection set for the end of 2013, Defendants can hardly feign having difficulty working under the schedule of the first case.

Defendants would also have the Court decide their pending motions to transfer venue<sup>12</sup> before the present motion so that the Court hearing the cases can structure them for discovery, claim construction dispositive motions and trial. However, contrary to Defendants' assertion, were the Court to transfer to the Northern District of California, it would be easier for the latter court's administration of justice to attend to a single, consolidated case rather than four, and the new court would have the benefit of this Court's knowledge and ruling after having reviewed the present issues respecting consolidation. Furthermore, were the cases to be transferred as one, the new court would have opportunity, if it so chose, to sever the cases pursuant to the arguments Defendants present in their cross-motions under Fed. R. Civ. Proc. 20 and 21.<sup>13</sup>

To convince the Court to procrastinate the decision regarding consolidation through trial,

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<sup>7</sup> *Id.*, at 3.

<sup>8</sup> *Id.*, at 2.

<sup>9</sup> *Id.*, at 1.

<sup>10</sup> *Id.*, at 3.

<sup>11</sup> *Id.*, at 3.

<sup>12</sup> 287PDA ("364 Case") Dkt. Nos. 62, 68, 73 and 78; 287PIA ("365 Case") Dkt. No. 21, 22; 474PDA ("577 Case") Dkt. No. 36, 37; 474PIA ("578 Case") Dkt. No. 22, 24.

<sup>13</sup> 287PDA ("364 Case") Dkt. No. 104; 287PIA ("365 Case") Dkt. No. 33; 474PDA ("577 Case") Dkt. No. 48; 474PIA ("578 Case") Dkt. No. 35.

Defendants throw up additional red herrings. Defendants argue that some of the '474 patent claims are in reexamination, notwithstanding that the same issues would be before the Court were the cases involving the '474 patent to remain in separate actions or in the same action. Defendants argue that some parties may settle between now and trial, notwithstanding that a settlement in a single consolidated action would soak up fewer party and judicial resources than in four cases.

Defendants even feign their reasonableness, urging the Court to set a date by which parties should bring motions on how best to structure the trials rather than engage in motion practice on the subject presently. In the first case alone, where only obligations under P. R. 3-1 through 3-4 have been met, Defendants have to-date engaged in motions practice to transfer venue,<sup>14</sup> have fought with WRT on edits to their protective order leading to a joint motion,<sup>15</sup> and are now refusing to consolidate four cases through trial with commonality respecting the patents, products and defendants. It remains to be seen how many additional hurdles Defendants would throw up to waste additional court resources and halt the administration of justice between now and Defendants' preferred future date. It is precisely to prevent such delay tactics and squandering of valuable judicial resource and costs, that forced WRT's hand in filing its motion on the subject.

## **II. Conclusion**

Plaintiff WRT respectfully asks that the Court exercise its discretion to grant WRT's motion to consolidate pursuant to Fed. R. Civ. P. 42(a) and L. R. CV-42(b). Contrary to

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<sup>14</sup> 287PDA ("364 Case") Dkt. No. 62.

<sup>15</sup> 287PDA ("364 Case") Dkt. No. 96.

Defendants' position, WRT requests that the Court determine the present motion respecting consolidation prior to the pending motions to transfer venue.

Dated: October 11, 2011

Respectfully Submitted,

*/s/ Cameron H. Tousi*

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 11th day of October, 2011.

*/s/ Cameron H. Tousi*  
\_\_\_\_\_  
Cameron H. Tousi

**CERTIFICATE OF CONFERENCE**

Pursuant to Local Rule CV-7(h), and on behalf of the Plaintiff filing this motion, Plaintiff's counsel, Cameron Tousi held a teleconference with Michael Smith and Daniel Shvodian, counsel for Defendants A9.com, Inc., Amazon.com, Inc., Google Inc., Michael Smith and Allison Altersohn, counsel for Nokia Inc., and Mark Rowland, counsel for Ricoh Innovations, Inc., regarding the present Consolidation matter and Defendants' Cross-Motion to Sever Pursuant to Rules 20 and 21 of the Federal Rules of Civil Procedure on several dates, including most recently on July 14, 2011. Plaintiff had proposed consolidating four cases filed by Plaintiff (the '364, '365, '577, and '578 cases) into a single action. Defendants rejected the proposed consolidation, and proposed that the issue be addressed, if at all, later in the case. Defendants also proposed in the alternative, that the cases be severed and consolidated into four separate cases against: (1) Google Inc; (2) Amazon.com, Inc. and A9.com, Inc.; (3) Nokia Inc. and Nokia Corporation; and (4) Ricoh Innovations, Inc. and Ricoh Company, Ltd. Not able to achieve consensus, Plaintiff's counsel proceeded with filing a motion to consolidate the four cases. Therefore, there was a conclusive impasse between the parties regarding Defendants' proposed severance, leaving an open issue for the Court to resolve.

Dated: October 11, 2011

*/s/ Cameron H. Tousi*  
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Cameron H. Tousi