

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

WIRELESS RECOGNITION
TECHNOLOGIES LLC,

Plaintiff,

v.

A9.COM, INC., AMAZON.COM, INC.,
GOOGLE INC., NOKIA, INC., and
RICOH INNOVATIONS, INC.,

Defendants.

C.A. No. 2:10-cv-00364-JRG

JURY TRIAL DEMANDED

WIRELESS RECOGNITION
TECHNOLOGIES LLC,

Plaintiff,

v.

NOKIA CORPORATION and RICOH
COMPANY, LTD.,

Defendants.

C.A. No. 2:10-cv-00365-JRG

JURY TRIAL DEMANDED

WIRELESS RECOGNITION
TECHNOLOGIES LLC,

Plaintiff,

v.

A9.COM, INC., AMAZON.COM, INC.,
GOOGLE INC., NOKIA, INC., and
RICOH INNOVATIONS, INC.,

Defendants.

C.A. No. 2:10-cv-00577-JRG

JURY TRIAL DEMANDED

**WIRELESS RECOGNITION
TECHNOLOGIES LLC,**

Plaintiff,

v.

**NOKIA CORPORATION and RICOH
COMPANY, LTD.,**

Defendants.

C.A. No. 2:10-cv-00578-JRG

JURY TRIAL DEMANDED

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' SUPPLEMENTAL
BRIEF ADDRESSING THE DISMISSAL OF RICOH INNOVATIONS, INC.
AND RICOH COMPANY, LTD. ON THEIR MOTION TO TRANSFER VENUE**

Beginning on March 23, 2011, nearly a year ago, in cases originally filed well over a year ago, Defendants attempted to transfer venue to the Northern District of California. Now that former Defendants Ricoh Innovations, Inc. ("RII") and Ricoh Company, Ltd. ("Ricoh") (collectively "Ricoh Entities") have been dismissed from the foregoing civil actions, the remaining Defendants seek to use that event as another excuse to transfer venue.

In particular, Defendants cite that several RII employees, in particular Jonathan Hull, are now relevant third-party witnesses (as opposed to party witnesses) located in the proposed transferee forum, and therefore not subject to the subpoena power of this Court in contrast to the Northern District of California. Presumably, Defendants are promoting that the second private interest factor, namely the availability of compulsory process, favors their position due to RII's dismissal.¹

Defendants attempted to make similar arguments one-sided arguments in their Reply

¹ See, e.g., Plaintiff's Opposition, C.A. No. 2:10-cv-00364, Dkt. No. 68 at 14.

motion,² to which Plaintiff Wireless Recognition Technologies LLC ("WRT") established that numerous Plaintiff witnesses are either more easily accessible to Texas jurisdiction or fall under the jurisdiction of neither Court and are often located closer to this Court.³ At that time, Defendants also offered seven individuals associated with RII as designer/developers in a fashion calculated to promote their transfer agenda, as now they use Mr. Hull's new status for the same purpose.⁴

The problem for Defendants' position now, as it was then, is the extreme unlikelihood that these individuals, be they former employees or Mr. Hull, serving as contractors and working for RII, would be required as witnesses, or that they would provide any issues in their cooperation with counsel given their status with RII. It also hardly bears mentioning that it is a routine matter for counsel to subpoena depositions of third party witnesses in distant federal jurisdictions. It is for this reason that the availability of compulsory process factor "will weigh more heavily for transfer when more third-party witnesses reside within the non-transferee venue." *Optimum Power Solutions LLC v. Apple, Inc.*, Memorandum Opinion and Order, Case No. 6:10-cv-61 (E.D. Tex. Feb. 22, 2011)⁵ (emphasis added) (citing *Volkswagen II*, 545 F.3d at 316).

However, contrary to the Defendants' position, this is simply not the case, for the Defendants' witnesses are located through the United States and in different countries. Plaintiff WRT has already presented support for this fact in its Opposition motion and will not take up additional Court time by repeating its arguments.⁶ In fact, the more accurate position is that the

² Defendants' Reply, C.A. No. 2:10-cv-00364, Dkt. No. 73 at 7.

³ Plaintiff's Sur-Reply, C.A. No. 2:10-cv-00364, Dkt. No. 78 at 5.

⁴ *Id.*

⁵ Defendants' Motion, C.A. No. 2:10-cv-00364, Dkt. No. 62-14 at 3.

⁶ *See, e.g.*, Plaintiff's Opposition, C.A. No. 2:10-cv-00364, Dkt. No. 68, 9 at ¶ 2 - 14.

Ricoh Entities' dismissal indeed weakens Defendants' attempt to transfer venue, or at best (for Defendants) is an outcome neutral event. The reason is that RII was perhaps the only Defendant whose principal witnesses, namely developers and technologists creating and maintaining the accused products, were located in Northern California.⁷ This fact is key to balancing the first private interest factor, namely the relative ease of access to sources of proof,⁸ and without RII as a Defendant, the remaining Defendants' can hardly argue that their position is strengthened.

Accordingly, Plaintiff WRT respectfully maintains that Defendants have not met their burden of showing that transfer to the Northern District of California is warranted under §1404(a).

Dated: February 9, 2012

Respectfully submitted,

By:

/s/ Cameron H. Tousi
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⁷ *Id.*

⁸ *See, e.g.*, Plaintiff's Opposition, C.A. No. 2:10-cv-00364, Dkt. No. 68 at 8.

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 9th day of February, 2012.

/s/ Cameron H. Tousi _____
Cameron H. Tousi