1			
2			
3			
4			
5	UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON		
6	AT SEATTLE		
7 8	ULTIMATE TIMING, L.L.C., a Washington limited liability company; and ARASH KIA, an individual,	Case No. 2:08-CV-01632-MJP	
_		ORDER DENYING PLAINTIFFS'	
9	Plaintiffs,	MOTION TO CONSOLIDATE	
10	v.		
11	DAVID SIMMS, an individual; SA INNOVATIONS, LLC d/b/a SAI TIMING &		
12	TRACKING, a Michigan limited liability company,		
13	Defendants.		
14			
15	This matter is before the Court on Plaintiffs' motion to consolidate. (Dkt. No. 146. ¹)		
16	The Court has considered the motion, Defendants' response (Dkt. No. 158), Tacit Solutions		
17	and Chronotrack's response (Case No. C10-0598MJP; Dkt. No. 71), the reply (Dkt. No.		
18	160), and all other pertinent documents in the record. For the reasons set forth below, the		
19	Court DENIES the motion to consolidate.		
20	Background		
21	Plaintiffs move to consolidate Ultimate Timing, et al. v. Simms, et al. (C08-		
22	1632MJP) (the "Ultimate Timing" matter) with Tacit Solutions, Inc., v. Kia, et al. (C10-		
23	0598MJP) (the "Tacit Solutions" matter). A brief summary of the procedural posture of each		
24	case is a useful starting point for the Court's analysis.		
25			
26	¹ Unless otherwise noted, all citations to the docket refer to Ultimate Timing, et al. v. Simms, et al., C08-1632MJP.		

ORDER - 1 (Case No. 2:08-CV-01632-MJP)

- 1
- I. The Ultimate Timing Action (C08-1632MJP)

On November 7, 2008, Ultimate Timing, L.L.C. and Arash Kia (together 2 "Ultimate/Kia") filed a complaint against David Simms and SA Innovations, LLC (together 3 "Simms/SAI") in this Court. (Dkt. No. 1.) In essence, the complaint alleges Kia developed a 4 novel process to time sports events using Radio Frequency Identification ("RFID") tags and 5 Simms/SAI violated several agreements between the parties by misappropriating the 6 innovation. (Compl. ¶¶ 7-34.) The Court originally set March 25, 2009 as the deadline for 7 joinder, but extended the deadline to May 26, 2009. (Dkt. No. 23.) Discovery has ended, the 8 parties have filed cross-motions for summary judgment, and trial is set to begin on June 14, 9 2010. 10 II. The Tacit Solutions Action (C10-0598MJP) 11 On September 11, 2009, Tacit Solutions and Chronotrack Systems (together 12 "Tacit/Chronotrack") filed a declaratory judgment action against Ultimate/Kia in Indiana 13 Superior Court. (C10-0598MJP; Dkt. No. 1-2 at 2.) Tacit/Chronotrack filed the matter after 14 receiving a series of demand letters from Ultimate/Kia, the first dated March 21, 2008, 15 asserting Tacit/Chronotrack misappropriated proprietary information. (Id. at 11, 14-15.) 16 Tacit/Chronotrack seek a declaration that they have not misappropriated trade secret 17 information from Ultimate/Kia. The matter was removed to federal court and, ultimately, 18 transferred to this district on April 2, 2010. Ultimate/Kia's counterclaim alleges 19 Tacit/Chronotrack breached various agreements and misappropriated trade secrets. 20 Discussion 21 Motion to Strike I. 22 Tacit/Chronotrack ask the Court to strike all references to participation in a mediation 23 among the parties because mention of the participation violates the terms of the Agreement 24 to Mediate. (C10-0598MJP; Dkt. No. 71 at 4.) Asserting they "frankly forgot" the language 25 in the agreement, Ultimate/Kia withdraws the references. (Dkt. No. 160 at 6 n.2.) The 26 ORDER - 2 (Case No. 2:08-CV-01632-MJP)

Court strikes those portions of the briefing and declarations that reference the mediation
 participation and draws no inference based on Tacit/Chronotrack's participation.

Counsel's stated excuse that he forgot the terms of an agreement he negotiated is 3 concerning on several levels. (See Dkt. No. 160 at 6; Supp. Wright Decl., Ex. 1.) The Court 4 observes that the declaration has been submitted by an attorney whose pro hac vice status has 5 been revoked. (See Dkt. No. 102.) If Mr. Wright is continuing to work with other counsel 6 for Ultimate/Kia to prepare documents for this matter, the Court expects Mr. Baum is 7 supervising him to the extent required to affix Mr. Baum's own signature on the pleading 8 pursuant to Fed. R. Civ. P. 11. The Court further notes that it has twice sanctioned 9 Ultimate/Kia for failure to follow the rules governing discovery. (See Dkt. Nos. 102, 162.) 10 As this matter approaches trial, the Court reminds the parties they must comply with the civil 11 rules and this Court's orders, as well as the agreements reached among the parties. 12

II. Motion to Consolidate

13

If two cases "involve a common question of law or fact," Rule 42(a) provides the 14 Court may consolidate the actions or issue "any other orders to avoid unnecessary cost or 15 delay." Fed. R. Civ. P. 42(a). The Court considers a number of factors analyzing the 16 appropriateness of consolidation; those factors include judicial economy, whether 17 consolidation would expedite resolution, whether separate cases may yield inconsistent 18 results, and the potential prejudice to a party opposing consolidation. See 8 Moore's Federal 19 Practice – Civil § 42.10[4-5]. Consolidation may be inappropriate where two cases have been 20 proceeding on two vastly different schedules to trial. See Mills v. Beech Aircraft Corp., 886 21 F.2d 758, 762 (5th Cir. 1989). 22

First, there is no question consolidation would produce a significant delay in the
Ultimate Timing action. Under the scheduling order originally issued in the Tacit Solutions
action, the parties would complete the exchange of expert reports no later than January 7,
2011. (C10-0598MJP; Dkt. No. 52.) In contrast, the parties in the Ultimate Timing action

(Case No. 2:08-CV-01632-MJP)

have completed the exchange of expert reports and the matter is set for trial in a few weeks 1 time. The differing progress of expert discovery is just one example of how these matters are 2 significantly far apart in terms of trial preparedness. Simms/SAI would be prejudiced by 3 having to postpone the resolution of this case. Likewise, Tacit/Chronotrack may be 4 prejudiced if they were forced to litigate their dispute on a compressed schedule as 5 Ultimate/Kia propose. The Court agrees with Simms/SAI's concern that consolidation at this 6 late phase would be "tantamount to allowing Plaintiffs to add additional parties and claims 7 long after the deadlines for doing so have passed." (Dkt. No. 158 at 10.) Ulimate/Kia had 8 the opportunity to join Tacit/Chronotrack if they intended to follow up on their demand 9 letters, but failed to do so before the joinder deadline. Simms/SAI should not be prejudiced 10 by their failure to do so. The Court finds that the matters' disparate progress weighs strongly 11 against consolidation. 12

Second, though the factual allegations overlap, Ultimate/Kia's claims against the 13 parties at hand are distinct. In particular, the alleged agreements at issue in the Ultimate 14 Timing action are different from the ones alleged in the Tacit Solutions case. (See C10-15 0598MJP; Dkt. No. 71 at 8.) Washington law governs the alleged nondisclosure agreement 16 between Ultimate/Kia and Simms/SAI and Indiana law controls the Ultimate/Kia agreement 17 with Tacit/Chronotrack. (Id. at 9.) There is at least potential for confusion if a jury were 18 asked to apply different substantive law to purportedly parallel agreements. The lack of 19 overlap in the substantive claims further suggests consolidation is inappropriate. 20

Given the differences in trial preparedness and substantive claims, the Court finds
 consolidation is inappropriate.

23

Conclusion

The Court DENIES Ultimate/Kia's motion to consolidate. (Dkt. No. 146.) The
Ultimate Timing action is almost ready for trial, while the Tacit Solutions case is not. The
Court further grants Tacit/Chronotracks' motion to strike the mention of the mediation from
ORDER - 4 (Case No. 2:08-CV-01632-MJP)

1	the briefing on this issue. The Court directs the Clerk to transmit copies of this Order to all	
2	counsel of record and post a copy of this Order on the docket in C10-0598MJP.	
3	Dated this 10th day of May, 2010.	
4		
5	Maesluf Helena	
6	Marsha J. Pechman United States District Judge	
7	Onned States District Judge	
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
15
17
18
19
20
21
22
23
24
25
26
20