complaint, Defendant Trading Technologies International, Inc. ("TT") now renews its motion for dismissal of CQG's declaratory judgment ("DJ") action.[1] CQG's amended complaint does not change the fact that this case should be heard in Illinois. As set forth in TT's accompanying motion to dismiss claims II-V, and to strike CQG's amended complaint, CQG's knee-jerk antitrust claims are an all too common tactic used to evade the enforcement of legitimate patent rights.

Even if CQG's amended claims remain in this case, it becomes even clearer that this case should be heard in Illinois. CQG's new claims are compulsory counterclaims that should have been brought in the Illinois patent case. CQG's allegations focus on

[1] TT's original motion to dismiss or transfer CQG's DJ action (hereinafter "TT Motion") has been fully briefed as of October 12, 2005 and is awaiting this Court's ruling. (Ex. 1.)

Dismiss filed by CQG, and ruled against CQG, finding that the Illinois Court had proper jurisdiction. Thus, at a minimum, CQG's DJ action should be stayed pending resolution of the Illinois case, which is almost certain to resolve this case as well.[2]

II. BACKGROUND

This case is duplicative of the *TT v. CQG* case already underway in the Northern District of Illinois. In Illinois, CQG moved to transfer the case to this Colorado Court. CQG's motion was denied. In fact, Judge Moran ruled that CQG's DJ action was improper, finding CQG's "race to the courthouse [was] in contravention of the purposes of the declaratory judgment act" and the convenience to the parties and judicial

[2] Under Fed. R. Civ. P. 12, this motion and TT's companion motion to strike certain allegations and to dismiss Counts II-V inclusive are filed in lieu of an answer to CQG's amended complaint.

cases (*Rosenthal Collins Group, LLC v. TT*, 05-cv-04088, and *TT v. Refco Group Ltd.*, 05-cv-01079) already include the very same antitrust and patent misuse claims based on TT's enforcement of its patent rights now also alleged by CQG.

III. ARGUMENT

A. CQG's Patent-Based Antitrust Claims Are Compulsory Counterclaims That Must Be Heard In Illinois

CQG's patent-based antitrust claims are baseless, and nothing more than a transparent attempt to distinguish this case from the Illinois case and avoid transfer. As compulsory counterclaims allegedly based on TT's enforcement of its patent rights, CQG's new claims should have been brought in the parties' Illinois patent case.

images, as CQG recently emphasized to this Court.

CQG's tactics cannot be condoned. This case should be dismissed or transferred in favor of the Illinois case, where the parties' patent case is already underway. Transfer under § 1404 is not limited to cases that are identical. Courts regularly transfer cases that are merely similar. *Monsanto Technology LLC v. Syngenta Crop Protection, Inc.*, 212 F.Supp.2d 1101 (E.D. Mo. 2002) ("The two cases do not have to be identical but must have issues that substantially overlap."); *AT&T v. MCI Comm. Corp.*, 736 F.Supp 1294 (D.N.J. 1990). Moreover, "[a] court acting under § 1404(a) may not transfer part of a case for one purpose while maintaining jurisdiction for another

CQG's amended claims.

Even CQG's attempt to raise Colorado state law claims does not weigh in favor of hearing this case in Colorado, as CQG's claims are still compulsory in the Illinois action. Further, the application of state law is nothing new to a federal court. Federal courts routinely apply state laws, including applying the law of the state where the court sits, applying the law of other states, and deciding issues of preemption when a conflict between state and federal law arises.

B. As The Illinois Court Found, CQG Cannot Establish Declaratory Judgment Jurisdiction For CQG's Colorado Action

Likewise, CQG's amended complaint does not remedy the lack of jurisdiction for this DJ action. TT's pending motion to dismiss this DJ action sets forth the facts

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