

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

_____)	
Trading Technologies International, Inc.,)	
)	Civil Action No. 05-4811
Plaintiff,)	
)	
v.)	Judge James B. Moran
)	
CQGT, LLC and CQG, Inc.)	
)	Magistrate Judge Cole
Defendants.)	
)	
_____)	

**TRADING TECHNOLOGIES INTERNATIONAL, INC.’S
MOTION TO REASSIGN AND CONSOLIDATE**

Trading Technologies International, Inc. ("Trading Technologies") has seven pending actions in this jurisdiction involving infringement of the same two patents--U.S. Patent No. 6,766,304 ("the '304 patent") and U.S. Patent No. 6,772,132 ("the '132 patent") (collectively "the patents-in-suit"). Three of these actions, including this case ("the CQG Illinois Action"), *Trading Technologies International, Inc. v. eSpeed, Inc., eSpeed International, Ltd. Ecco LLC and EccoWare Ltd*, No. 04 C 5312 ("the eSpeed case"), and *Rosenthal Collins Group, LLC v Trading Technologies International, Inc.*, No. 05 C 4088, are before your Honor in this Court.¹ The seventh case, *CQG v. Trading Technologies International, Inc.*, was transferred from the District Court for the District of Colorado to Judge Darrah of the Northern District on October 2, 2006, and was assigned Civil Action No. 06 C 5222 (the "Transferred CQG Action"). All seven

¹ The remaining actions are: 1) *Trading Technologies International, Inc. v. REFCO Group Ltd., LLC, REFCO, LLC, and REFCO EasySolutions, LLC*, No. 05 C 1079 (Judge Andersen); 2) *Trading Technologies International, Inc. v. GL Consultants, Inc., GL Trade SA, NYFIX, Inc., and NYFIX Overseas, Inc.*, No. 05 C 4120 (Judge Gottschall); and 3) *Trading Technologies International, Inc. v. FuturePath Trading, LLC*, No. 05 C 5164 (Judge Shadur).

currently pending Trading Technologies cases are nearly identical as they each involve charges of infringement and invalidity of same two patents, and all of the cases with the exception of the Transferred CQG Action have already been assigned to this Court for coordination of discovery.

Pursuant to Local Rule 40.4, Trading Technologies now requests that the Transferred CQG Action be reassigned to this Court and consolidated with the CQG Illinois Action. This Court has already indicated that it believes this to be the appropriate course of action in its opinion denying CQG's Motion to Dismiss or Transfer. Memorandum Opinion and Order of October 31, 2005, Docket Entry No. 26 at 7 (“[W]e accept jurisdiction and believe that the Colorado court should transfer the related case to Illinois for consolidation with [the CQG Illinois Action].”)

I. FACTUAL BACKGROUND

On August 17, 2005, CGQ filed a suit in the District Court for the District of Colorado (“the Colorado Action”) seeking declaratory judgment of non-infringement and invalidity of the patents-in-suit. On August 19, 2005, TT filed a complaint against CQG in the District Court for the Northern District of Illinois (Case No. 05-C-4811, “the Illinois Action”). The Illinois Action was assigned to this Court. As indicated above, several additional actions between TT and various defendants alleging infringement of the patents-in-suit are assigned to this Court for coordinated discovery.

TT sought to dismiss the CQG Colorado Action or have it transferred to the Northern District of Illinois because TT still believed it was involved in licensing negotiations with CQG at the time CQG filed suit, and thus that CQG did not have the requisite reasonable apprehension of suit to confer declaratory judgment jurisdiction. Similarly, CQG sought to dismiss the CQG

Illinois Action or transfer it to Colorado, arguing that its first filed action was valid and should stand.

On October 31, 2005, this Court denied CQG's motion to dismiss or transfer, and indicated that the Colorado Action should be transferred to the Northern District of Illinois for consolidation with the Illinois Action. Memorandum Opinion and Order of October 31, 2005, Docket Entry No. 26 at 7 (“[W]e accept jurisdiction and believe that the Colorado court should transfer the related case to Illinois for consolidation with [the CQG Illinois Action].”)

On November 22, 2005, in an attempt to overcome the decision of this Court denying CQG's motion to transfer or dismiss, CQG served a first amended complaint in the Colorado Action adding claims for patent misuse, violation of Section 2 of the Sherman Act, and violation of Colorado antitrust and consumer protection laws.² On December 22, 2005, TT filed a Renewed Rule 12 Motion to Dismiss, Stay or Transfer [the Colorado Action] Pursuant to 28 U.S.C. § 1404 (“Renewed Rule 12 Motion”). On the same day, TT also filed a Motion to Strike Certain Allegations and Dismiss Claims II-V of CQG's First Amended Complaint (“Motion to Strike”).

On June 26, 2006, CQG filed a motion for leave to amend its answer in the Illinois Action to add claims substantially identical to the claims pending in the Colorado action (“Motion to Amend”; Docket Nos. 84 and 85). This Court continued the motion, and it is presently still pending in the Illinois Action.

On September 21, 2006, Judge Blackburn of the District of Colorado granted TT's Renewed Rule 12 Motion, denied the Motion to Strike as moot, and ordered the Colorado Action transferred to the United States District Court for the Northern District of Illinois. The

² This Court dismissed similar Sherman Act and Illinois state law unfair competition claims in the RCG case.

transferred action was assigned to Judge Darrah of the Northern District as Civil Action No. 06-C-5222.

II. THIS CASE POSES PRECISELY THE FACTUAL SITUATION CONTEMPLATED BY LOCAL RULE 40.4 AS PARTICULARLY APPROPRIATE FOR REASSIGNMENT AND CONSOLIDATION

Local Rule 40.4 permits later-filed actions to be reassigned to the calendar of another judge if the later-filed actions are related to an earlier-filed action. Under Local Rule 40.4(a), cases may be related if they involve the same property or if the cases involve some of the same issues of fact or law. L.R. 40.4(a)(1), (a)(2). In this case, the later-filed action, i.e. the Transferred Action is related to the first-filed CQG Illinois Action because they both involve infringement of the '132 and '304 patents by CQG's products, and CQG's allegations of invalidity and unenforceability.

The Courts look to four factors in assessing reassignment pursuant to Local Rule 40.4(b): (1) both cases are pending in this District; (2) the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort; (3) the earlier case has not progressed to the point where designating a later-filed case as related would be likely to delay the proceedings in the earlier case substantially; and (4) the cases are susceptible of disposition in a single proceeding. Local Rule 40.4(b). None of these factors are seriously in dispute, and each weighs in favor of reassignment.

Both cases are pending in the Northern District of Illinois, and reassignment and consolidation would result in a substantial saving of judicial time and effort because the cases involve the same patents, the same prior art, the same infringing products for trading futures, and substantially the same issues of fact and law. *See Sage Prods. v. Devon Indus., and Becton,*

Dickinson and Co., 148 F.R.D. 213 (N.D. Ill. 1993) (discussing grant of motion to reassign patent suit that involved same plaintiff and same patents).

This Court's handling of these related cases would enhance efficiency because this Court has already invested substantial time and effort to become familiar not only with the two patents in suit and numerous provisions of the patent claims, but also with general concepts related to state-of-the-art and prior art electronic trading systems, futures, and the roles of the various participants (e.g., independent software vendors ("ISVs"), traders, FCMs, exchanges) in the electronic trading universe. In addition, this Court has already conducted a *Markman* hearing in the eSpeed case, in which CQG was a participant. Because of this Court's prior experience in overseeing the related litigation against eSpeed involving the same two patents and undoubtedly many of the same legal issues, this Court is in a unique position to conserve judicial resources by also handling the Transferred Action.

Common oversight by this Court this would also provide an opportunity to protect numerous third parties from wasteful repetitive discovery. Instead, this court is already coordinating discovery for third parties among all the litigants in all the pending TT cases other than the Transferred Action, preventing third parties from multiple depositions and discovery requests.

Third, there is no likely delay to the CQG case. Because the parties are already addressing CQG's issues in the CQG Illinois Action, and because no deadlines have been set in that case, nor will they be set until after resolution of the bellwether eSpeed case, CQG still has ample time to obtain discovery related to its defenses, even with reassignment and consolidation.

Finally, the two cases are susceptible of having common issues resolved in a single proceeding, because the issues are identical.

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