

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

PACT XPP SCHWEIZ AG)	
)	
Plaintiff,)	C.A. No. 6:19-cv-00273-ADA
)	
v.)	
)	
INTEL CORPORATION,)	
)	
Defendant.)	

INTEL CORPORATION'S MOTION TO DISMISS, STAY, OR TRANSFER

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Pursuant to Federal Rule of Civil Procedure 12(b)(1), 12(b)(3), and 12(b)(6) and 28 U.S.C. § 1404(a), Defendant Intel Corporation (“Intel”), by and through its counsel, moves to dismiss, or in the alternative, stay or transfer this case (the “Texas Case”) in favor of Intel’s co-pending declaratory judgment action against PACT XPP Schweiz AG (“PACT”) in the Northern District of California (the “California Case”) involving the same 12 patents asserted here.

I. INTRODUCTION

This District was not PACT’s preferred forum. PACT originally sued Intel in Delaware (the “Delaware Case”) on the same 12 patents asserted here. Only after learning that Intel intended to move for transfer to a more convenient forum near its engineering facilities in Oregon did PACT suddenly abandon its Delaware Case to file in Texas—a transparent attempt to thwart Intel’s transfer. Intel promptly filed the California Case to secure a more convenient forum, but this time near its headquarters in the Northern District of California where PACT is subject to personal jurisdiction. PACT maintains that its “first filed” Texas action—filed merely one day before the California Case—should control. But PACT’s tactical end-run around convenience should not be rewarded, and the “first filed” rule it relies on does not apply in cases of forum shopping. Intel respectfully asks this Court to dismiss, stay, or transfer this case to the Northern District of California, where Intel is headquartered, and where Intel’s declaratory judgment action on the same 12 PACT asserted patents is currently pending.

There is no question PACT filed this case based on an improper forum shopping motive:

- When it filed the Texas Case, PACT already had a pending case against Intel, initiated three months earlier in Delaware, alleging the exact same claims;
- Intel informed PACT that it intended to file a motion to transfer the Delaware Case to Oregon because, in part, it would be far more convenient and efficient to litigate this case near Intel’s engineering facilities there and because PACT and the dispute have no connection to Delaware;

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