

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

LUMINATI NETWORKS LTD.,

Plaintiff,

v.

UAB TESONET AND METACLUSTER
UAB,

Defendants.

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Case No. 2:18-CV-0299-JRG

JURY TRIAL DEMANDED

**LUMINATI NETWORKS LTD.'S MOTION TO CONSOLIDATE CASES AND RESET
FEBRUARY 3, 2019 TRIAL DATE TO ACCOMMODATE A CONSOLIDATED TRIAL
AS ORDERED BY THE COURT**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND AND PROCEDURAL HISTORY..... 2

III. ARGUMENT..... 3

 A. Legal Standard 3

 B. Consolidation is Appropriate Because There Are Common Legal Issues, The Patents are Related, and the Parties and Accused Products are Nearly Identical 3

 C. Consolidation Would Prevent Unnecessary Costs and Conserve Judicial Resources4

 D. Consolidation Would Not Prejudice Either Party 5

IV. CONCLUSION..... 5

I. INTRODUCTION

Plaintiff Luminati Networks Ltd. (“Luminati”) hereby moves this Court, pursuant to Federal Rule of Civil Procedure 42 to consolidate this case with the recently filed *Luminati Networks Ltd. v. Teso LT, UAB a/k/a UAB Teso LT et al.*, Case No. 2-19-cv-00395 (the “395 action”) which was recently filed in this Court on December 6, 2019 and related to patents that just issued last month.¹ Luminati immediately provided copies of the Complaint in the 395 action to opposing counsel and are currently working to serve the Complaint on defendants.

The 395 action involves the same parties (Luminati, Teso, Metacluster and Oxysales, UAB—the sales arm of Teso and Metacluster), the same accused products—Defendants’ residential proxy service and a newly issued related patent sharing the same specification as the patents asserted in this case, as well as two other patents from another patent family that is also involved in this case. Discovery in the 395 action will be limited as the discovery in the this case has been completed and relates directly to the allegations in the 395 action. Plaintiff would be prepared to try this case at the Court’s earliest convenience after July 2020, after trial in the *Luminati v. Bi Science* case currently set for trial in June 2020.

The 395 action is also pending in this Court so there will be no change of venue associated with Plaintiff’s request to consolidate. Accordingly, in the interests of avoiding unnecessary costs, expenses, and use of judicial resources associated with holding at least two separate trials concerning the same accused products and related patents between the same parties, Luminati requests that the Court reset this case for trial and set a consolidated trial date for this case and the 395 action.

¹ Plaintiff is contemporaneously filing an unopposed Motion to Expedite Briefing pursuant to which Defendants’ will file their opposition hereto by December 31, 2019. Plaintiff is available for a hearing on this motion any time thereafter including on January 2 the day before the pretrial conference.

II. BACKGROUND AND PROCEDURAL HISTORY

Luminati filed this lawsuit against UAB Tesonet on July 19, 2018 alleging that UAB Tesonet's residential proxy service infringes asserted U.S. Patent Nos. 9,241,044 and 9,742,866. (Dkt. No. 1 at ¶ 8). After Luminati sued UAB Tesonet, the entity went through a corporate reorganization which resulted in UAB Tesonet changing its name to UAB Teso LT ("UAB Teso") and the formation of new corporate entities including UAB Metacluster LT ("Metacluster"). (*See* Court Order granting Luminati's Motion to Amend, Dkt. No. 92 at 2-3). The Court granted Luminati leave to Amend its Complaint to add Metacluster as a Defendant, noting that "Luminati's infringement claims against the alleged conduct previously undertaken by Tesonet but now disclosed by Teso as being undertaken by Metacluster are important and should not be relegated to a separate action that would needlessly duplicate the Court's and the parties' expenditure of resources." (*Id.* at 2).

This litigation proceeded through claim construction, fact and expert discovery, and the parties are currently engaged in pretrial briefing with a pretrial hearing scheduled for January 3, 2020 and jury selection scheduled for February 3, 2020.

However, just last month Luminati obtained new patents and filed the 395 action regarding the same technology, Defendants' accused product. Luminati filed the 395 action on December 6, 2019 naming Teso, Metaculster, and their sales arm Oxysales as Defendants. The Tesonet entities involved in the new litigation all sprung from the post-filing reorganization of UAB Tesonet and all fall under the Tesonet family of companies. Luminati provided a courtesy copy of the lawsuit to counsel for Defendants immediately after it was filed and is actively pursuing service of the second lawsuit now.

The asserted patents in the 395 action are U.S. Patent Nos. 10,469,614 (the "614 Patent") issued on April 9, 2019, 10,257,319 (the "319 Patent") issued on November 5, 2019, and

10,484,510 (the “510 Patent”) issued on November 19, 2019. (See Dkt. No. 1 at ¶ 14 in the 395 action). All of the patents asserted in the 395 action were issued after Luminati filed this lawsuit and as recently as approximately one month ago.

Shortly after the second lawsuit was filed, counsel for Plaintiff and Defendant met and conferred about how the second filing impacted the overall set of lawsuits and whether there was a more efficient way to handle the cases together. However, counsel was unable to reach agreement as to the best course of action.

III. ARGUMENT

A. Legal Standard

Fed. R. Civ. P. provides that: “if actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.” “A trial court has broad discretion in determining whether to consolidate a case pending before it. *Nat’l Ass’n for Advancement of Colored People of La. v. Michot*, 480 F.2d 547, 548 (5th Cir. 1973); See also *In re EMC Corp.*, 677 F.3d 1351, 1360 (Fed. Cir. 2012) (holding that “the district court has considerable discretion to consolidate cases for discovery and for trial under Rule 42.”). The Court in *EMC* held that “[t]he existence of a common question by itself is enough to permit consolidation under Rule 42(a), even if the claims arise out of independent transactions.” See *Innovative Automation, LLC v. Audio Video & Video Labs, Inc.*, No. 6:11-CV-234 LED-JDL, 2012 U.S. Dist. LEXIS 114503, at *53 (E.D. Tex. 2012) (consolidating cases where overlapping facts existed).

B. Consolidation is Appropriate Because There Are Common Legal Issues, The Patents are Related, and the Parties and Accused Products are Nearly Identical

All of the Defendants in this case and the 395 action sprung from Tesonet’s corporate reorganization. In addition to the patent infringement counts, the 395 case also includes tort counts

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