

against Apple Inc. (“Apple”) for patent infringement, also in the Houston Division of the Southern District of Texas. Gwee asserts that both cases involve similar facts and similar questions of law. Samsung asserts that at least the facts specific to Apple and Samsung will be different, but believes there would still be efficiencies in consolidation. Both cases were brought for patent infringement under 35 U.S.C. § 271 and both seek judgments of infringement and injunctive relief. In both cases, Gwee alleges infringement of the same four patents-in-suit: U.S. Patent Nos. 10,589,320; 10,562,077; 10,259,021; and 10,259,020. While joinder of Samsung and Apple (together, “Defendants”) for trial is not permitted under 35 U.S.C. § 299(b), consolidation for purposes of common discovery by the Defendants from Gwee and for claim construction will benefit the parties and will permit the Courts to avoid potentially inconsistent claim construction or validity rulings. *See, e.g., Auto-Dril, Inc. v. Canrig Drilling Tech., Ltd.*, 2015 WL 12780793, at *4 (W.D. Tex., May 22, 2015) (holding that 35 U.S.C. § 299 does not bar consolidation for pre-trial matters, and collecting cases). Further, consolidating both cases for pretrial purposes promotes and advances judicial economy.

ARGUMENT

Rule 42(a) of the Federal Rules of Civil Procedure 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.

The Fifth Circuit has noted that “Rule 42(a) should be used to . . . eliminate unnecessary repetition and confusion.” *Miller v. U.S. Postal Serv.*, 729 F.2d 1033, 1036 (5th Cir. 1984). This case is ripe for pre-trial consolidation given the common patents-in-suit to be construed, potential validity

issues to be decided, and the common disclosures and discovery Gwee will provide to Samsung and Apple.

Consolidation would permit a single judge of this District, rather than two, to become familiar with the patents-in-suit while avoiding potentially inconsistent decisions on, for example, claim construction, validity and priority dates for the patents-in-suit. Efficiency would also be furthered by coordinated discovery by Defendants from Gwee on issues common to both Defendants. Further, judicial efficiency will be advanced by having one court rule on common discovery issues, claim construction, validity and priority dates. No party would be prejudiced by pretrial consolidation, and both cases are in their infancy. In *Samsung*, Judge Bennett held a scheduling conference on October 16 and entered a scheduling order the same day. Dkt. No. 38. In *Apple*, the parties appeared before Judge Hanks on October 19 and a schedule for discovery and briefing of Apple's motion to transfer will be set shortly per Judge Hank's instructions. Further, Samsung has represented that it too will seek transfer, and Gwee will presumably seek a similar period of venue discovery once Samsung files its venue motion. The cases should synchronize easily once the venue issues are decided. Regardless, it is Gwee's position that while the Apple case may lag behind the Samsung case by a matter of weeks, the scheduling order entered in the *Samsung* case was designed to provide some time for the *Apple* motion to transfer venue to be decided such that the two cases could proceed together. While Apple intends to file a motion to stay discovery in the *Apple* case, Gwee intends to press its position to Judge Hanks that discovery in the *Apple* case does not and should not be stayed pending the Court's determination of the motion to transfer venue such that both cases can proceed with discovery including mandatory infringement, validity and claim construction disclosures under the patent rules of the Southern District of Texas, and the two cases can and should be consolidated for discovery and other pretrial

purposes. Samsung believes that the transfer issues should be determined first, then the schedule should be re-evaluated for both cases after that determination (if needed).

Gwee and Samsung take no position as to which court should preside over the two cases if this Motion to Consolidate is granted and leave that issue to the respective courts to decide.

CONCLUSION

Gwee and Samsung respectfully requests entry of the attached proposed order consolidating the two above-captioned cases for pretrial purposes.

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Respectfully submitted:

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