

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

B.E. TECHNOLOGY, L.L.C.,
Plaintiff,

v.

SAMSUNG TELECOMMUNICATIONS
AMERICA LLC.,

Defendants.

CIVIL ACTION NO.
2:12-CV-02824-JPM-tmp

B.E. TECHNOLOGY, L.L.C.,
Plaintiff,

v.

SAMSUNG ELECTRONICS AMERICA,
INC.,

Defendants.

CIVIL ACTION NO.
2:12-CV-02825-JPM-tmp

**SAMSUNG’S MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF SAMSUNG’S
MOTION TO TRANSFER AND MEMORANDUM IN SUPPORT**

Pursuant to Local Rule 7.2(c), Defendants Samsung Telecommunications America LLC (“STA”) and Samsung Electronics America, Inc. (“SEA”) (collectively, “Samsung”) respectfully move for entry of the accompanying proposed Order, granting leave to file a reply memorandum, not exceeding 10 pages in length, supporting Samsung’s pending motions to transfer venue under 28 U.S.C. § 1404. In support, Samsung respectfully submits the following:

1. These actions were commenced on September 21, 2012 (STA D.E. 1; SEA D.E. 1).¹ Samsung timely responded to the complaint on December 31, 2012 (STA D.E. 22; SEA D.E. 26). On January 22, 2013, Samsung filed a motion and supporting documents seeking to transfer the actions under 28 U.S.C. § 1404 to the District of New Jersey or, in the alternative, to the Northern District of California (STA D.E. 27; SEA D.E. 31). Plaintiff B.E. Technology, L.L.C. (“B.E.”) filed a response opposing Samsung’s transfer motion on February 8, 2013 (STA D.E. 34; SEA D.E. 38).

2. The determination of which venue best serves the interests of justice and the convenience of parties and witnesses is among the most important matters the Court will decide in this action. It will determine which Court’s resources will be employed in managing and deciding the case, whether and how the parties may procure relevant evidence, and a potentially extended series of travel and lodging arrangements for a large number of people. Indeed, given the existence of 18 other cases filed by the same plaintiff involving common U.S. Patents (as detailed in the transfer motion), the filing of transfer motions in at least the majority of the cases, and the relationship of all the motions to the Court’s consideration of each, the Court’s decision will likely affect an *extremely* large number of people. The issue merits thorough consideration of all relevant facts, arguments, and authorities.

3. As the party moving for transfer, Samsung bear the burden on the underlying motion. Allowing Samsung an opportunity for rebuttal, through a reply memorandum, comports with fair application of that burden.

4. The opposition to transfer filed by B.E. includes arguments that were not predictable as certain or requiring pre-emptive or hypothetical argument in Samsung’s opening

¹ All citations to “STA D.E.” refer to the docket entries in *B.E. v. STA*, Case No. 2:12-cv-2824. All citations to “SEA D.E.” refer to the docket entries in *B.E. v. SEA*, Case No. 2:12-cv-2825.

motion papers, including self-contradictory arguments that merit analysis. For example, B.E. has suggested on the one hand that this action should be consolidated with 18 others (STA D.E. 24; SEA D.E. 28), yet addresses the transfer motion as a contest between only two parties' circumstances (STA D.E. 34, at 11-12; SEA D.E. 38, at 11-12). Additionally, B.E.'s opposition contains factual assertions which were neither previously ascertainable by Samsung nor asserted by B.E. in its oppositions to other defendants' motions to transfer, to which Samsung should be given an opportunity to respond. While Samsung believes the circumstances tilt strongly in favor of either proposed transferee district from any perspective, the Court should have the benefit of full argument on the implications of B.E.'s assertions in making its venue determination.

5. These actions are at an early stage. No Scheduling Order has been entered yet. The proposed Order on this motion would require defendants to file their reply memorandum within just 7 days from the grant of leave. Allowing these few additional days before the motion is at issue for decision will not materially impede the progress of these actions. Similar requests for leave to file a reply memorandum have been submitted in at least seven other cases and granted by this Court.

6. Like any Section 1404 motion in a case of this type, briefing must address a number of issues and circumstances. While Samsung is committed to its reply being as concise as possible, coverage of the issues meriting a reply appears likely to require more than the 5 pages normally permitted by Local Rule 7.2(e). This motion respectfully requests authorization to use up to 10 pages for such purpose.

7. Anticipating B.E.'s response to this motion, Samsung respectfully asks the Court to grant the requested leave without pre-imposing requirements for what the reply may contain.

The underlying motion to transfer was filed early in the case consistent with efficient administration goals, is not subject to a deadline, and is not based on a closed fact record in the way that a summary judgment motion would be. If the reply is permitted, judgment is involved in determining what content of the response merits attention in a reply of limited length, and how to give the Court the best information possible for its decision-making process. Respectfully, B.E. should not be permitted to pre-block content from the reply sought here, if allowed.

DATE: February 13, 2013

Respectfully submitted,

/s/ Jonathan E. Nelson

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CERTIFICATE OF CONSULTATION

I, Jonathan Nelson, attorney for Defendants Samsung Electronics America, Inc. and Samsung Telecommunications America, LLC, certify that I communicated with Counsel for Plaintiff, Craig Kaufman, on February 13, 2013 via email regarding Defendants' intention to file the foregoing Motion, and conferred with him to determine whether the Plaintiff would agree to the relief sought, such that the Motion could be presented as unopposed. Mr. Kaufman advised that the Plaintiff would not oppose the Motion provided that Samsung agree to certain conditions. Samsung was unwilling to agree to those conditions. Plaintiff therefore opposes this Motion.

/s/ Jonathan Nelson
Jonathan Nelson

CERTIFICATE OF SERVICE

The foregoing document was filed under the Court's CM/ECF system, automatically effecting service on counsel of record for all other parties who have appeared in this action on the date of such service.

/s/ Jonathan Nelson