

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

B.E. Technology, L.L.C.,

Plaintiff,

v.

**Sony Computer Entertainment America,
LLC,**

Defendant.

Civil Action No. 12-cv-02826-JPM-tmp

B.E. Technology, L.L.C.,

Plaintiff,

v.

Sony Mobile Communications (U.S.A.) Inc.,

Defendant.

Civil Action No. 12-cv-02827-JPM-tmp

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

Plaintiff,

v.

Sony Electronics Inc.

Defendant.

Civil Action No. 12-cv-02828-JPM-tmp

**UNOPPOSED MOTION AND MEMORANDUM FOR LEAVE TO FILE REPLY
SUPPORTING SONY'S MOTION TO TRANSFER
(INCLUDING CERTIFICATE OF CONSULTATION)**

Pursuant to this Court's Local Rule 7.2(c), defendants Sony Computer Entertainment America LLC's ("SCEA"), Sony Electronics Inc. ("SEL"), and Sony Mobile Communications (U.S.A.) Inc. ("SoMC") (collectively "Sony"), respectfully move for entry of the accompanying

proposed Order, granting leave to file a reply memorandum, not exceeding 10 pages in length, supporting Sony's pending Motion to Transfer Venue to the Northern District of California under 28 U.S.C. 1404. *See* Case No. 12-cv-02826-JPM-tmp ("SCEA's Docket"), Dkt. 25; Case No. 12-cv-02827-JPM-tmp ("SoMC's Docket"), Dkt. 29; Case No. 12-cv-02828-JPM-tmp ("SEL's Docket"), Dkt. 24.¹ As set forth in the Certificate of Consultation below, plaintiff has advised that while it cannot consent to this motion, it will not oppose it. In further support of the relief sought herein, Sony respectfully submits the following:

Sony seeks leave to file a reply because Plaintiff B.E. Technology, L.L.C.'s ("BET") Opposition to Sony's Motion to Transfer Venue ("Motion to Transfer") (1) argues for application of an incorrect legal standard in determining motions to transfer, (2) provides facts purporting to show that this District is BET's home forum when such facts are contradicted by BET's Federal and State filings, (3) contravenes Federal Circuit precedent by dismissing a factor in the analysis for determining motions to transfer, and (4) does not actually dispute the location of the defendants, the evidence, the witnesses, and the prior art, all of which favor granting Sony's Motion to Transfer.

The determination of which venue best serves the interests of justice and the convenience of the parties is among the most important matters in these actions. The Court will determine the effect of venue on the burden to third parties, parties to this action, and judicial economy, as well as whether and how the parties can obtain relevant discovery.

¹ These actions were commenced on September 21, 2012. *See* SCEA's Docket, Dkt. 1; SoMC's Docket, Dkt. 1; SEL's Docket, Dkt. 1. Sony filed responses to the complaints on December 31, 2012. SCEA's Docket, Dkt. 21; SoMC's Docket, Dkt. 25; SEL's Docket, Dkt. 20. On January 28, 2013, Sony filed motions and supporting documents seeking transfer of this action to the Northern District of California pursuant to 28 U.S.C. § 1404. SCEA's Docket, Dkt. 25; SoMC's Docket, Dkt. 29; SEL's Docket, Dkt. 24. Plaintiff B.E. Technology, L.L.C. ("BET") filed a response opposing such transfer on February 14, 2013. SCEA's Docket, Dkt. 32; SoMC's Docket, Dkt. 36; SEL's Docket, Dkt. 31.

As the party moving for transfer, Sony bears the burden on the underlying motion, and allowing Sony an opportunity for rebuttal through a reply memorandum comports with the fair application of that burden. BET's opposition to Sony's Motions raises new arguments that require a response. As an example, BET argues that "Mr. Hoyle has directed BET's business from this district since at least 2008." SCEA's Docket, Dkt. 32 at 1. This claim is directly contradicted by representations made by BET in its application for a Certificate of Authority to conduct business in the State of Tennessee. Sony should have the opportunity to fully respond to BET's arguments and claims, including the opportunity to address and rebut the new arguments raised by BET's positions. The Court should have the benefit of full argument on Sony's motion for transfer.

As with any transfer motion in a case of this type, briefing must address a number of issues and circumstances. While Sony is committed to its reply being as brief as possible, addressing the issues meriting a reply requires more than the five pages normally permitted by Local Rule 7.2(e). This motion respectfully requests authorization to use up to ten (10) pages for this purpose.

OF COUNSEL

/s/ John Flock
John Flock (*admission pending*)
jflock@kenyon.com
Michael E. Sander (*admission pending*)
msander@kenyon.com
KENYON & KENYON LLP
One Broadway
New York, NY 10004-1007
212.425.7200

Attorneys for Defendants Sony Computer Entertainment America LLC, Sony Mobile Communications (U.S.A.) Inc., and Sony Electronics Inc.

Respectfully submitted,

/s/ Glen G. Reid, Jr.
Glen G. Reid, Jr. (#8184)
WYATT, TARRANT & COMBS, LLP
1715 Aaron Brenner Drive, Suite 800
Memphis, TN 38120-4367
Phone: 901.537.1000
Facsimile: 901.537.1010
greid@wyattfirm.com

/s/ Mark Vorder-Bruegge, Jr.
Mark Vorder-Bruegge, Jr. (#06389)
WYATT, TARRANT & COMBS, LLP
1715 Aaron Brenner Drive, Suite 800
Memphis, TN 38120-4367
Phone: 901.537.1000
Facsimile: 901.537.1010
mvorder-bruegge@wyattfirm.com

CERTIFICATE OF CONSULTATION

The undersigned attorney hereby certifies that prior to the filing of the foregoing motion, multiple consultations were held with Richard Carter, attorney for plaintiff B.E. Technology, to determine whether plaintiff would agree to the relief sought. During that time, the Court granted motions similar to the foregoing in a number of related cases. On February 25, 2013, Mr. Carter informed the undersigned by electronic mail that plaintiff could not consent, but will not oppose this motion.

s/Mark Vorder-Bruegge, Jr.
Mark Vorder-Bruegge, Jr.

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/ Mark Vorder-Bruegge, Jr.
Mark Vorder-Bruegge, Jr.

60329442.1
2/25/2013 2:40 pm