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

AGIS SOFTWARE DEVELOPMENT, LLC,	§	
	§	Case No. 2:17-CV-0513-JRG
Plaintiff,	§	(LEAD CASE)
v.	§	
	§	**JURY TRIAL DEMANDED**
HUAWEI DEVICE USA INC., ET AL.,	§	
Defendants.	§	

AGIS SOFTWARE DEVELOPMENT, LLC,	§	
	§	Case No. 2:17-CV-0515-JRG
Plaintiff,	§	(CONSOLIDATED CASE)
v.	§	
	§	**JURY TRIAL DEMANDED**
LG ELECTRONICS INC.,	§	
Defendant.	§	

PLAINTIFF AGIS SOFTWARE DEVELOPMENT, LLC'S SUR-REPLY IN OPPOSITION TO DEFENDANT LG ELECTRONICS, INC.'S MOTION (DKT. 46) TO DISMISS FOR LACK OF PERSONAL JURISDICTION OR, IN THE ALTERNATIVE, TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA

I. INTRODUCTION

LG Electronics, Inc. ("LGEKR") has an established national distribution channel through which it supplies the Accused Products to customers in Texas: LGEKR supplies the Accused Products to its subsidiary, LG Electronics MobileComm U.S.A., Inc. ("LGEMU") which is a domestic distributor headquartered in California. Through LGEMU, LGEKR's products are distributed to the local retailers throughout Texas and the country. Dkt. 46-1, at ¶¶ 4, 5. LGEKR does not deny that it has continually distributed the Accused Products through this distribution network. LGEKR also does not deny that it knows, intends, and expects that this national distribution network will ship and sell its products in Texas, and throughout the nation.

LGEKR has also failed to show that the case should be transferred to the Northern District of California. In its Reply, LGEKR admits that its own documents are located in Korea. LGEKR also improperly disregards both AGIS's contacts to this District and the convenience of this District for AGIS's own witnesses. LGEKR relies heavily on non-party Google's presence in the Northern District of California, but LGEKR does not indicate that any Google evidence, to the extent it is necessary for this case, is inaccessible in a convenient location in or near this District. Because LGEKR has not shown that transfer to the Northern District of California is clearly more convenient or in the interest of justice, LGEKR's motion should be denied.

II. PERSONAL JURISDICTION OVER LGEKR IS PROPER

AGIS has made a *prima facie* showing that LGEKR is subject to the stream of commerce personal jurisdiction in this District, and LGEKR presents no sufficient facts to show otherwise. Further, LGEKR failed to show that the exercise of jurisdiction would be unreasonable, *i.e.* offend "traditional notions of fair play and substantial justice." *Breckenridge Pharm., Inc. v. Metabolite Labs., Inc.*, 444 F.3d 1356, 1362 n.3 (Fed. Cir. 2006).

LGEKR admits that it designs, engineers, sources components, and manufactures the Accused Products. Dkt. 46-1, at ¶ 4. LGEKR admits that it supplies the Accused Products to its domestic subsidiary, LGEMU. Dkt. 46-1, at ¶ 5. LGEKR further admits that LGEMU imports and sells the Accused Products to "*national* mobile device carriers, retailers, and distributors who, in turn, sell those products to end users *throughout the country*." Dkt. 46-1, at ¶ 5 (emphasis added). LGEKR does not deny that this national distribution network has been ongoing and continuous. Nowhere has LGEKR stated that the intermediaries in its distribution network sell LGEKR's Accused Products throughout the country *except for Texas*. Nor has LGEKR denied that it intends and expects its Accused Products to end up in Texas through its network. Thus, LGEKR has not, and cannot, deny that it "knew, or reasonably could have foreseen, that a termination point of the channel was [the forum state]." *Beverly Hills Fan*, 21 F.3d at 1564. In view of these uncontroverted facts, a *prima facie* case of purposeful entry into the Texas stream of commerce is established as "the defendant's products were sold into a nationwide distribution network and [] the products were available in Texas." *IDQ Operating, Inc. v. Aerospace Commc'ns Holdings Co*., No. 6:15-CV-781, 2016 WL 5349488, at *4 (E.D. Tex. Jun. 10, 2016), *report and recommendation adopted sub nom. Armor All/STP Prod. Co. v. Aerospace Commc'ns Holdings Co., Ltd*, No. 6:15-CV-781, 2016 WL 5338715 (E.D. Tex. Sept. 23, 2016) (Gilstrap, J.).

LGEKR argues that it "does not manufacture, use, test, advertise, market, sell, offer to sell, trade, import, package, or distribute any products" in the United States, and that it "has no distribution agreements or business contracts" with entities in Texas. Reply at 3. However, none of these "contacts" alter the outcome of the stream of commerce analysis in this case. Rather, personal jurisdiction under the stream of commerce theory is proper because, as LGEKR admits,

it continuously sells its products, including the accused devices, to LGEMU, with the expectation that LGEMU will distribute those products nationwide (Dkt. 46-1, at ¶¶ 4-6; Dkt. 46, at 6) including in Texas. *See* Dkt. 46, at 7. This is sufficient to establish a *prima facie* case of purposeful entry into the Texas stream of commerce by LGEKR and LGEKR presents no facts that rebut AGIS's *prima facie* showing of minimum contacts.

LGEKR's attempt to distinguish the cases cited in AGIS's opposition fail. First, LGEKR attempts to distinguish *IDQ Operating*, 2016 WL 5349488, stating "the defendant deliberately sold its products directly to a national retailer with a sales outlet in Texas and admittedly knew that its products would reach customers there." Reply at 4. Next, LGEKR attempts to distinguish *ATEN Int'l Co. v. Emine Tech. Co.*, 261 F.R.D. 112, 119 (E.D. Tex. 2009), stating "the foreign defendant itself provided its products to a U.S. retailer with sales outlets in Texas." Reply at 4. LGEKR argues that "finding personal jurisdiction here would be a step further" than these cases because LGEMU, not LGEKR, "provides the Accused Devices directly to the retailers it selects." Reply at 4. LGEKR's argument is incorrect because the relevant inquiry considered by the Court in *IDQ* and *ATEN* was not whether the defendant provided the products directly to the retailers in Texas, but whether the defendant, like LGEKR here, "placed its products into the stream of commerce with knowledge and an intention that they be sold in Texas." *IDQ Operating*, 2016 WL 5349488 at *4; *ATEN Int'l Co.*, 261 F.R.D. at 120.

Next, LGEKR attempts to distinguish *MHL Tek, LLC v. Nissan Motor Co.*, No. 2:07-CV-289 (TJW), 2008 WL 910012, at *1 (E.D. Tex. Apr. 2, 2008), stating "*MHL Tek* is of no help to AGIS" because the "Court in *MHL Tek* did not decide whether BMW AG - the international entity - would be subject to personal jurisdiction in Texas, which would be the parallel inquiry to this matter." Reply at 5. However, The Court in *MHL* did not consider the location of BMWMC

in its stream of commerce analysis, and the physical location where BMWMC first placed products destined for the U.S. into the stream of commerce had no bearing on the analysis. The Court only considered whether BMWMC 1) placed its products in the stream of commerce via an established distribution channel, 2) knew the likely destination of its products, and 3) sold its products to an intermediary knowing that a second intermediary would distribute the products throughout the U.S., including Texas. *MHL Tek*, 2008 WL 910012, at *1. LGEKR, by its own admissions, satisfies all three of this Court's considerations in *MHL* and, therefore, "should reasonably anticipate being haled into court in Texas." *Id.*

The Federal Circuit has held that "the sale of a product of a manufacturer . . . is not simply an isolated occurrence, but arises from the efforts of the [defendant] to serve, directly or indirectly, the market for its product . . ., it is *not unreasonable* to subject [the defendant] to suit." *Beverly Hills Fan*, 21 F.3d at 1566 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98 (1980)) (emphasis added); *see also MHL Tek*, 2008 WL 910012, at *1 (finding jurisdiction reasonable over the defendant based on almost identical admissions). This case is not a "compelling case" that would support a finding that the exercise of jurisdiction over LGEKR would be unreasonable. *See Beverly Hills Fan*, 21 F.3d at 1568 (citing *Burger King*, 471 U.S. at 477).

III. THE NORTHERN DISTRICT OF CALIFORNIA IS NOT CLEARLY MORE CONVENIENT

LGEKR's Reply does not demonstrate that the Northern District of California is clearly more convenient or that transfer would serve the interests of justice.

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