UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GODO KAISHA IP BRIDGE 1,

Plaintiff,

v.

INTEL CORPORATION,

Defendant.

Case No. 2:17-cv-00676-RWS-RSP

JURY TRIAL DEMANDED

IP BRIDGE'S RESPONSE TO INTEL'S OBJECTIONS TO THE REPORT AND RECOMMENDATION ON INTEL'S MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, TO TRANSFER TO THE DISTRICT OF OREGON

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I. INTRODUCTION

Plaintiff Godo Kaisha IP Bridge 1 ("IP Bridge") respectfully responds to Defendant Intel Corporation's ("Intel") Objections to Magistrate Judge Payne's Report and Recommendation regarding venue ("R&R").

Intel's Objections represent its second flawed attack on Magistrate Judge Payne's R&R. Prior to filing these Objection, Intel submitted a purported "*amicus*" brief to the Federal Circuit in another case in which Intel argued that the R&R here should be overturned. In both that "*amicus*" brief and in its Objections here, Intel mischaracterizes the R&R and the factual record on Intel's §1400(b) motion to dismiss. Furthermore, in both that "*amicus*" brief and its Objections here, Intel raises "nexus" arguments for the first time. Because Intel did not raise those arguments in its underlying motion, they are waived. But regardless of Intel's mischaracterizations and improper new arguments, Intel cannot avoid venue here when it operated a physical Intel office in Richardson, TX at the time the suit was filed, and for over two years prior. The facts—including that Intel sold Intel products from that Richardson office, placed Intel signage on it, and held out that Richardson office on Intel's websites as an Intel place of business even as of the hearing on Intel's motion—are fatal to Intel's Objections.

Finally, regarding the portion of Intel's Objections addressing Intel's alternative §1404(a) motion to transfer venue, Intel fails to meet its extraordinarily high standard of showing that the well-reasoned R&R was clearly erroneous or contrary to law.

II. PROCEDURAL HISTORY

A. The Present Case

Intel filed the underlying motion on December 7, 2017. Based on the motion's allegations, IP Bridge took certain venue discovery and uncovered more about Intel's presence in this District. IP Bridge filed its sur-reply to Intel's motion on March 22, 2018. Dkt. 67. Intel then delayed

nearly two months, until May 11, to request a hearing. Dkt. 83. A hearing was held on August 8, 2018 and Magistrate Judge Payne's R&R issued on August 20, 2018. Dkt 123, Dkt. 131.

This case has now progressed far. Fact discovery closes on September 28, and opening expert reports are due on October 9, 2018. Magistrate Judge Payne has issued claim construction rulings and ruled on discovery and disclosure related motions.

B. Intel's Collateral Attack on the R&R to the Federal Circuit

On September 11, 2018, one day before it filed its Objections, Intel submitted to the Federal Circuit an "*amicus*" brief in connection with a mandamus petition in another case. Intel asserted that "a favorable outcome" on that mandamus petition "would likely require" reversal of Magistrate Judge Payne's R&R here. *See* Palmieri Decl., Ex. A at 6. Since the facts in that case are unlike the facts here, a ruling in favor of petitioner there will have no impact here—despite Intel's misleading assertion to the contrary. More troubling, however, is that Intel's collateral attack to the Federal Circuit, made without notice to IP Bridge or this Court, mischaracterizes the R&R, omits key facts, and urges new arguments that Intel did not raise here and thus waived. IP Bridge raised these issues with Intel's counsel when it learned of Intel's *ex parte* filing, and requested that Intel correct the record, but Intel refused. *Id.*, Ex. B.

III. THIS COURT SHOULD ADOPT THE REPORT & RECOMMENDATION'S DETERMINATION THAT VENUE IS PROPER UNDER §1400(b)

A. Magistrate Judge Payne Correctly Determined that Intel's Richardson Facility—Operating as an Intel Facility in this District for *Over Two Years*—Was a Regular and Established Place of Business of Intel at the Time the Complaint Was Filed

Intel's Objections present a misleading account of its presence in this District and the findings of the R&R by omitting and mischaracterizing key facts relevant to Intel's motion (as it did in its "*amicus*" brief). Despite Intel's portrayal of the Richardson office as an Altera facility, it is undisputed that once Intel acquired Altera, that Richardson office became an ***Intel*** facility.

Intel installed Intel signage on the building, advertised for Intel jobs there, and listed that Richardson office as an Intel office on Intel's public websites—and continued to do so even as of the hearing on Intel's motion, nearly one year after the suit was filed. *See* Dkt. 52 at 5; Palmieri Decl., Ex. C. Indeed, Intel's own declarant from the Richardson office stated that she is an employee of Intel Corporation, not of Altera. Dkt. 21, Guesner Decl., ¶3. She also stated in her declaration that, "[a]fter the acquisition, the role of the Richardson office remained the same and remains the same to this day." *Id.*, ¶4. Intel continued to operate out of the Richardson office for months after this suit was filed, and continued to tout Intel's presence there for many more. Dkt. 52 at 5. Moreover, Intel maintained a lease on the Richardson facility through February 28, 2018 and resigned the lease several months after acquiring Altera. Dkt. 59, Ex 83.

As Magistrate Judge Payne correctly determined—these facts meet all the requirements for proper venue. The "regular and established" requirement of *In re Cray* does not require indefinite permanence nor does it consider the defendant's alleged non-public intent to abandon a place of business sometime later. *See* Dkt. 64 at 2.

Cray is replete with examples supporting the R&R's determination that "indefinite permanence" is not required. First, *Cray* explains that "while a business can certainly move its location, it must for a meaningful time period be stable, established." *In re Cray*, 871 F.3d 1355, 1363 (Fed. Cir. 2017). Moreover, *Cray* further describes the need for only "sufficient permanence." *Id.* Indeed, *Cray*'s contemplation of varying degrees of permanence and its explicit recognition that a business "***can certainly move its location***" unquestionably support the R&R's conclusion that "regular and established" business need not exist in perpetuity for § 1400.

The R&R also properly determined that whether Intel ***intended*** to vacate its Richardson facility sometime later is irrelevant to § 1400(b). Intel's sole argument to the contrary relies on a

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