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 OPPOSITION TO INTEL'S MOTION FOR LEAVE TO FILE A SUR-SUR REPLY IN SUPPORT OF INTEL'S MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, TO TRANSFER TO THE DISTRICT OF OREGON

Plaintiff Godo Kaisha IP Bridge 1 ("IP Bridge") respectfully submits this opposition to Defendant Intel Corporation's ("Intel") Motion for Leave to File a Sur-Sur Reply ("Motion for Leave"). Contrary to Intel's assertion, IP Bridge did not raise a new argument in its Venue Sur-Reply. The argument that Intel characterizes as "new," regarding Intel's Plano facility as of the time IP Bridge's causes of action accrued, was expressly raised in IP Bridge's Venue Opposition Brief.[1] Intel even responded to that argument in its responsive Reply Brief, and dismissed IP Bridge's argument as "irrelevant." Now, however, Intel appears to regret that position and wants a new bite at the apple. Intel's request to saddle the Court with another round of briefing should be denied for at least three independent reasons.[2]

First, Intel's argument that IP Bridge allegedly raised a new argument in its Venue Sur-Reply, has no basis in fact. In its Venue Opposition Brief, IP Bridge expressly and properly raised the argument that Intel's Plano facility established venue, including if analyzed as of the time that IP Bridge's causes of action accrued. *See* Dkt. No. 52 at 8 & 10-11. In its Venue Opposition Brief, after explaining that venue may be determined as of the date the plaintiff's causes of action accrued, IP Bridge argued that "Intel has not disputed that it has committed within this District acts that IP Bridge alleges infringe, nor has it disputed that Intel had regular and established places of business in this District (in Richardson ***or Plano***) ***when IP Bridge's causes of action accrued***." *See id.* at 11 n.6 (emphasis added). Intel's assertion that this argument was first raised in IP Bridge's Venue Sur-Reply simply is not true.

[1] "Venue Opposition Brief" and "Venue Sur-Reply" refer to IP Bridge's responses to Intel's Motion to Dismiss for Improper Venue or, In the Alternative, To Transfer to the District of Oregon, Dkt. Nos. 52 and 64, respectively.

[2] Should the Court decide to consider Intel's Sur-Sur Reply, IP Bridge alternatively requests that the Court grant IP Bridge leave to file a Sur-Sur-Sur Reply, attached as Exhibit A.

Not only did IP Bridge raise that argument in its Venue Opposition Brief, Intel even ***responded*** to that argument in its own reply brief. Instead of addressing the merits of that argument, Intel decided to assert in reply that IP Bridge's argument was "***irrelevant.***" *See* Dkt. No. 59 at 2 n.1 ("Whether this questions is measured . . . when [IP Bridge's] claims accrued is irrelevant . . . ."). Intel should not now be permitted to burden the Court with additional arguments on a matter it could have addressed, and in fact did address, in its reply brief—when Intel took the position that the matter is "irrelevant."

Second, Intel improperly devotes nearly half of its proposed sur-sur reply to making new legal arguments that it could have and should have made sooner. That tactic is improper and should not be permitted. In its proposed sur-sur reply, Intel argues for the very first time that §1400(b) requires venue to be assessed only as of the filing of suit, and not as of when a cause of action accrued. Intel had never made that legal argument before, even though in IP Bridge's Venue Opposition Brief, IP Bridge expressly argued that the applicable law allows for venue to be assessed as of the accrual of a cause of action. *See* Dkt. No. 52 at 1, 8, 10-11. The time for Intel to have addressed IP Bridge's legal argument was in Intel's reply brief, not in a proposed sur-sur reply. Accordingly, Intel has waived any argument concerning its interpretation of §1400(b) that it could have made in its reply brief, and Intel should not be permitted now to make that new argument in sur-sur reply. *Cf. See Miles Bramwell USA, LLC v. Weight Watchers Int'l, Inc.*, No. 4:12-cv-292, 2013 WL 1797031, at *4 (E.D. Tex. Mar. 27, 2013) ("Legal arguments raised for the first time in a sur-reply, like arguments raised for the first time in a reply, are waived.") (quotation marks and citation omitted).

Third, Intel unjustifiably delayed in seeking leave to file a sur-sur reply. The Local Rules of this District require sur-reply briefs to be filed within seven days of a reply. L.R. CV-7(f). In

contrast, Intel filed its Motion for Leave ***thirteen*** days after IP Bridge served its Venue Sur-Reply, yet provides no explanation or justification for its delay. Intel should not be rewarded for failing to act with diligence.

In summary, Intel's belated motion misleads the Court by asserting that IP Bridge first raised in sur-reply the argument that venue is proper based on Intel's Plano facility when IP Bridge's causes of action accrued. Such lack of candor should not be rewarded with the opportunity to provide arguments that Intel should and could have provided in its Reply. To the extent, however, that the Court considers Intel's proposed sur-sur reply, IP Bridge alternatively requests that the Court grant IP Bridge leave to file its responsive sur-sur-sur reply, attached as Exhibit A.

Respectfully submitted,

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