

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

Godo Kaisha IP Bridge 1

Plaintiff,

vs.

Intel Corporation

Defendant.

Civil Action No. 2:17-cv-00676-RWS-RSP

DEFENDANT INTEL CORPORATION'S RESPONSE TO PLAINTIFF'S MOTION TO CONTINUE THE HEARING ON INTEL'S MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, TO TRANSFER TO THE DISTRICT OF OREGON

On June 4, 2018, the Court initially set Defendant Intel Corporation's ("Intel") Motion to Dismiss for Improper Venue or, In the Alternative, to Transfer to the District of Oregon, DKT #21 ("Motion to Dismiss") for hearing on July 6, 2018 [DKT #88]. Ten days later, on June 14, 2018, counsel for Plaintiff Godo Kaisha IP Bridge 1 ("IP Bridge") first contacted counsel for Intel and advised of the conflicts of Ms. Doan and Mr. Thomases for the July 6 date that are described in IP Bridge's Motion to Continue [DKT #98 at p. 1].¹ It should be noted that lead counsel for Intel also had a conflict with the hearing date set by the Court but, due to the importance of the hearing, has arranged for other counsel to handle the hearing. IP Bridge initially suggested that the hearing be moved to July 12-13.² Intel's counsel advised that they had a conflict with those dates, and proposed July 16 instead.³ IP Bridge reported that its counsel had a conflict with the July 16 date and proposed the week of July 23, another time period for which Intel's counsel has scheduling

¹ See Exhibit 1; see also Exhibit 2 at p. 3

² See Exhibit 1.

³ See Exhibit 2 at p.1-2 .

conflicts.⁴ Intel then proposed July 18, but IP Bridge declined, citing conflicts for the entire week of July 16.⁵ IP Bridge then filed its motion seeking to continue the hearing to August 8, asking that it be consolidated with the *Markman* hearing previously set for that date [DKT #98]. As reflected by this exchange, Intel has tried to accommodate opposing counsel.

Both the Federal and Fifth circuits have “stressed the importance of addressing motions to transfer at the outset of litigation.” *In re Google Inc.*, 2015 WL 5294800 at *1 (Fed. Cir. July 16, 2015) (citing *In re Nintendo Co., Ltd.*, 544 F. App’x 934, 941 (Fed. Cir. 2013) and *In re Horseshoe Entm’t*, 337 F.3d 429, 433 (5th Cir. 2003)). The Federal Circuit has also made clear that in the context of venue motions, “delays have the ability to frustrate [the statutes’] intent to ‘prevent waste of time, energy and money’ and ‘to protect litigants, witnesses and the public against unnecessary inconvenience and expense.” *Id.* In *In re Google*, the Federal Circuit specifically noted that “pressing forward” and “conducting a *Markman* hearing” in a case where the venue motion at issue had been filed “approximately eight months ago” implicated these concerns. *Id.* IP Bridge’s desire to consolidate this hearing with the *Markman* hearing not only ignores this case law; it runs directly contra to it.

Where Intel filed its Motion to Dismiss on December 17, 2017, and IP Bridge filed its sur-reply to same on March 22, 2018, Intel is concerned that postponing the scheduled hearing for another month, and consolidating it with the *Markman* hearing, may “amount to a denial of the right to have [its] request meaningfully considered.” *Id.* In particular, one of IP Bridge’s principal arguments in opposing Intel’s Motion to Dismiss has been that this Court has familiarity with two (2) of the nine (9) patents-in-suit by virtue of having conducted a *Markman* hearing on, in part,

⁴ See Exhibit 2 at p. 1-2.

⁵ See Exhibit 2 at p. 1.

claim terms in those two patents in a prior case, *Godo Kaisha IP Bridge 1 v. Broadcom Limited, et al.*, No. 2:16-cv-00134 (E.D. Tex.) [e.g., DKT #52 at p. 2, 4, 9-10, 15-17; DKT #64 at p. 6-7]. Intel has responded, in part, that this familiarity should be afforded less weight given that there are undisputedly seven (7) patents-in-suit for which this Court has yet to address claim construction issues. Should this Court postpone the hearing on Intel's Motion to Dismiss to coincide with the *Markman* hearing, Intel's position will be undermined, through no fault of its own. IP Bridge will then be free to assert that the Court has now heard claim construction argument on all nine (9) of the patents, and that this Court should retain the case in the interests of "judicial economy" in order to prevent duplicative effort in the proposed transferee court.

In the interest of professional courtesy, counsel for Intel attempted to work amicably with IP Bridge to find a mutually agreeable date for the hearing once they were advised of IP Bridge's conflicts with the noticed date, and proposed two alternative dates that were not agreeable to IP Bridge. However, due to substantive reasons, Intel opposes IP Bridge's request to have the date for the hearing on its Motion to Dismiss to coincide with the *Markman* hearing on August 8, and respectfully requests that the hearing of its Motion to Dismiss proceed on the noticed date of July 6, 2018.

Notably, IP Bridge noted in its Motion to Continue the Hearing that if the Court were not inclined to move the hearing to August 8, "IP Bridge will be ready to appear and argue the [Motion to Dismiss] on July 6, 2018, but without lead and local counsel present." [DKT #98 at p. 2]. As the Court is well aware, the mandatory presence of lead/local counsel under this Court's orders is only invoked in cases of hearings on discovery-related motions (which the Motion to Dismiss clearly is not). Intel's lead counsel also cannot be there. Despite these conflicts, both parties have stated on the record they can be ready for the hearing on July 6, 2018.

Accordingly, Intel requests that IP Bridge's Motion to Continue the Hearing on Intel's Motion to Dismiss be denied, and that the hearing on said motion proceed as currently noticed.

Dated: June 21, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on June 21, 2018.

/s/ Michael E. Jones

Michael E. Jones

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