Exhibit E

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

MOSAID TECHNOLOGIES INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 2:06-CV-302 (DF)**
	§	
MICRON TECHNOLOGY, INC. and POWERCHIP SEMICONDUCTOR CORP.,	§	
	§	
Defendants.	§	
	§	

ORDER

Currently before the Court are Micron Technologies Inc.'s ("Micron") Emergency Motion to Stay Proceedings (Dkt. No. 301), Powerchip 's Emergency Motion to Stay Proceedings (Dkt. No. 302), and Micron's Motion to Dismiss and Transfer (Dkt. No. 303), Powerchip's Motion to Change Venue (Dkt. No. 304). The Court held a hearing on these matters on March 27, 2008. Having considered the arguments and the briefing, the Court **DISMISSES** Defendants' Motions to Stay (Dkt. Nos. 301 & 302) and **GRANTS** Defendants' Motions to Transfer (Dkt. No. 303) and Change Venue (Dkt. No. 304).

I. BACKGROUND

Micron filed a declaratory judgment action against Mosaid in the Northern District of California on July 24, 2006 (the "California action"). Complaint, *Micron v. Mosaid*, No. C06-04496 (N.D. Cal. filed July 24, 2006). Micron sought a declaratory judgment as to the "Lines Family Patents" (U.S. Patent Nos. 5,214,602, 5,751,643, 5,822,253, 6,278,640, and 6,603,703), the "Foss Family Patents" (U.S. Patent Nos. 5,828,620, 6,055,201, 6,236,581, and 6,580,654), the "Cell Plate

Family Patents" (U.S. Patent No. 6,057,676), the "Delayed Locked Loop Family Patents" (U.S. Patent Nos. 6,067,272, 6,657,919, and 6,992,950), and the "Bit-Line Isolation Family Patents" (U.S. Patent No. RE 37,641). *Id.* at 10-12. Mosaid filed its complaint the next day in the Eastern District of Texas (the "Texas action"). Complaint, Dkt. No. 1. In its most recent complaint, Mosaid asserts four of the five "Lines Family Patents" (specifically U.S. Patent Nos. 5,751,643, 5,822,253, 6,278,640, and 6,603,703), two of the four "Foss Family Patents" (specifically U.S. Patent Nos. 5,828,620, and 6,236,581), two of the three "Delayed Locked Loop Family Patents" (specifically U.S. Patent Nos. 6,657,919 and 6,992,950), and additionally asserts U.S. Patent Nos. 7,038,937, 6,980,448, 5,406,523, and 6,847,573. Second Amended Complaint, Dkt. No. 39 at 3-4. Thus, eight of the patents asserted in the California action are asserted in the pending Texas action.

The Northern District of California dismissed the action for lack of subject matter jurisdiction applying the reasonable apprehension of suit test. *Micron Tech. Inc., v. Mosaid Techs., Inc.*, No. C06-4496, 2006 U.S. Dist. LEXIS 81510, at *4-*5 (N.D. Cal. Oct. 23, 2006) (order dismissing action for lack of subject matter jurisdiction). The Federal Circuit reversed the district court's decision in light of the Supreme Court's decision in *MedImmune Inc. v. Genentech Inc.*, 127 S. Ct. 764 (2007). *Micron Tech. Inc. v. Mosaid Techs, Inc.*, 518 F.3d 897, 899 (Fed. Cir. 2008). The Federal Circuit denied Micron's petition for rehearing on April 7, 2008.

The Court had previously denied Micron's Motion to Stay Pending a Decision by the United States Court of Appeals for the Federal Circuit (Dkt. No. 92). Dkt. No. 98 at 1. The Court advised Micron that it could re-file its motion upon a decision by the Federal Circuit. *Id.* Both defendants now seek a stay, dismissal and transfer.

II. LEGAL PRINCIPLES

The "first-to-file" rule "comes into play when a plaintiff files similar lawsuits in two different federal districts." *Dillard v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 961 F.2d 1148, 1161 n.28 (5th Cir. 1992). The rule allows a district court to dismiss, stay, or transfer a case where "issues presented can be resolved in an earlier-filed action pending in [the first filed] court." *West Gulf Maritime Ass'n v. ILA Deep Sea Local,* 751 F.2d 721, 729 (5th Cir. 1985). The "first-to-file" rule may affect an action when there is "substantial overlap" between it and a pending action in another federal district court. *See Datamize, Inc. v. Fidelity Brokerage Servs., LLC, et al.*, 2004 WL 1683171 (E.D. Tex. 2004).

The Fifth Circuit generally follows the first-to-file rule. *See West Gulf,* 751 F.2d at 730. "The federal courts have long recognized that the principle of comity requires federal district courts – courts of coordinate jurisdiction and equal rank – to exercise care to avoid interference with each other's affairs." *Id.* at 728. The "first-to-file" rule is based on "principles of comity and sound judicial administration." *Save Power Ltd. v. Syntek Fin. Corp.*, 121 F.3d 947, 950 (5th Cir. 1997); *see, generally, West Gulf*, 751 F.2d at 729. The general principle in the interrelation of federal district courts is to avoid duplicative litigation. *Colo. River Water Conservation Dist. v. United States,* 424 U.S. 800, 817 (1976). Federal courts should try to avoid the waste of duplication, rulings that may trench upon the authority of sister courts, and piecemeal resolution of issues that call for a uniform result. *West Gulf,* 751 F.2d at 729.

In deciding whether to apply the first-to-file rule, the Court must resolve two questions: (1) are the two pending actions so duplicative or do they involve such substantially similar issues that

one court should decide the subject matter of both actions, and if so, (2) which of the two courts should take the case. *Texas Instruments v. Micron Semiconductor,* 815 F.Supp. 994, 997 (E.D. Tex.1993). "Once the likelihood of substantial overlap between the two suits has been demonstrated, it is no longer up to the second-filed court to resolve the question of whether both should be allowed to proceed." *Cadle Co. v. Whataburger of Alice, Inc.*, 174 F.3d 599, 605-06 (5th Cir.1999) (quoting *Mann Mfg., Inc., v. Hortex, Inc.,* 439 F.2d 403, 407 (5th Cir.1971)). Instead, "the proper course of action [is] for the [second-filed] court to transfer the case" to the first-filed court. *Id.* at 606. It is then the responsibility of the first-filed court to decide "whether the second suit filed must be dismissed, stayed, or transferred and consolidated." *Sutter Corp. v. P & P Indus., Inc.,* 125 F.3d 914, 920 (5th Cir. 1997).

III. DISCUSSION

Micron argues that the claims relating to all 12 patents should be transferred to the Northern District of California. Dkt. No. 303 at 2 & 5. Micron states that the Federal Circuit held that the Northern District of California should have applied the convenience factors of § 1404(a) and it would be an "abuse of discretion" to transfer the action out of California. *Id.* at 2 & 7. With regard to the eight common patents between the two districts, Micron argues that the same issues are pending in an earlier-filed action and thus the claims should be dismissed. *Id.* at 6 (citing *West Gulf*, 751 F.3d at 729). Regarding the remaining four patents that are not asserted in California, Micron argues that there is a substantial overlap in issues relating to claim construction, invalidity, and non-infringement that would result in "substantially the same experts, fact witnesses, and documents." *Id.* (citing *Nat'l Instruments Corp. v. Softwire Tech., LLC*, 2003 U.S. Dist. LEXIS 26952, at *2 (E.D.

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