

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ANCORA TECHNOLOGIES, INC.,

Plaintiff,

v.

LG ELECTRONICS INC. and LG
ELECTRONICS U.S.A., INC.,

Defendants.

CIVIL ACTION NO. 1:20-CV-00034-ADA

JURY TRIAL DEMANDED

ANCORA TECHNOLOGIES, INC.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.,
and SAMSUNG ELECTRONICS
AMERICA, INC.,

Defendants.

CIVIL ACTION NO. 1:20-CV-00034-ADA

JURY TRIAL DEMANDED

**DEFENDANTS LG ELECTRONICS INC. AND LG ELECTRONICS U.S.A., INC.'S
OPPOSITION TO ANCORA'S MOTION TO TRANSFER THE ANCORA-LGE
MATTER BACK TO WACO UNDER 28 U.S.C. § 1404(a)**

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I. A BALANCING OF THE EQUITIES WEIGHS STRONGLY IN FAVOR OF ENFORCING THE PARTIES' BARGAIN REGARDING THE TRIAL SETTING

As the Court is familiar with based on Ancora's similar transfer motion against Samsung prior to settlement, (Dkt. 164), the current trial setting in Austin is the result of mutual consent between the parties in the form of a joint stipulation. The record reflects the parties' agreement that the case would be transferred from the Waco to Austin Division, in exchange for defendants' waiver of right to challenge the propriety of venue or seek transfer. Dkt. 33. The stipulation reads:

Ancora, LG, and Samsung, through each's respective counsel, hereby jointly stipulate to the entry of an Order transferring the above-captioned actions to the United States District Court for the Western District of Texas, Austin Division, pursuant to 28 U.S.C. § 1404(b). Defendants further stipulate and agree that LG and Samsung each waives any right it may have to object to venue or move to transfer either above-captioned action to another division or district.

Id. The Court "reviewed and considered" the parties' stipulation prior to transferring the action to the Austin Division. Dkt. 34. This agreement and the Court's endorsement of the agreement cannot be unwound based on the circumstances presented in Ancora's Motion.

A. LGE Has a Strong Reliance Interest in Proceeding in the Austin Division

For the last sixteen months, LGE has spent extensive amounts of resources preparing this case for trial in the Austin courthouse. Notwithstanding the onset of the COVID-19 pandemic, the parties pressed on with this litigation – all the while LGE expecting that when it came time for trial, the parties' stipulation would control the trial setting. This case is *unlike* the *VLSI* litigation because of the binding stipulation. In *VLSI*, no stipulation between the parties existed and the Court was therefore not constrained, as it is here, to honor the terms agreed to between the parties. As a matter of basic equity, LGE is entitled to the terms of the bargain it struck with Ancora and the certainty that has accompanied that bargain as LGE made strategic decisions and has spent millions of dollars litigating this case through the pandemic.

Ancora's motion strategically omits that the terms of the stipulation were carefully negotiated between counsel. Counsel for Ancora sought LGE's written confirmation that LGE was "agreeing not to otherwise contest venue or move to transfer if we agree to transfer to Austin – retaining Judge Albright." Ex. A at 2. LGE confirmed that it would "not contest venue *in exchange for a transfer to the Austin Division.*" *Id.* at 1 (emphasis added). In other words, this bargain is an enforceable quid pro quo. Each side made a meaningful concession in order to reach an agreement that was memorialized in a Court Order. LGE would not have agreed to this language *but for* Ancora's consent to transfer the case to the Austin Division. Ancora's motion to transfer aims to portray LGE as a bystander when considering whether to accept venue in this district, but the record reflects that LGE actively negotiated the terms of the stipulation which the Court reviewed, considered, and ultimately granted. Dkt. 34.

It would be manifestly unfair for Ancora not to be bound by the terms that it negotiated for. Ancora contends that the agreement between the parties can be set aside based on the COVID-19 pandemic, but parties routinely enter into agreements not knowing how the relevant landscape might later shift. The fact that the circumstances arising from the pandemic were not known at the time the parties reached this bargain is not a basis for the Court to deny one side the benefit of its bargain. To the contrary, parties must be able to rely on both the terms they negotiated for and the certainty provided by the Court's endorsement.¹

B. The Concerns Raised in Ancora's Motion Can Be Addressed by a Short Continuance

Ancora's request to transfer the case back to Waco is premised exclusively on the status of the Austin courthouse. Ancora heavily incorporates the Court's reasoning in the *VLSI* litigation in

¹ The Court previously indicated during a January 26, 2021 telephone hearing that it would be "absolutely fine" as far as the Court was concerned if the case were to be tried in Austin. *See* Hearing Tr. at 15:15-17:4.

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