

EXHIBIT 6

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

ROY-G-BIV CORPORATION,

Plaintiff,

vs.

FANUC LTD., et al.,

Defendants.

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CIVIL ACTION NO. 2:07-CV-418 (DF)

ORDER

Before the Court is Plaintiff’s Motion to Dismiss Defendants’ Infringement Claims or, Alternatively, Motion to Sever. Dkt. No. 103. Also before the Court are Defendants’ Response, Plaintiff’s Reply, and Defendants’ Sur-reply. Dkt. Nos. 112, 118, and 123. Having considered the arguments of counsel, all relevant papers and pleadings, the Court finds that Plaintiff’s Motion to Dismiss should be **DENIED** and that Plaintiff’s alternative Motion to Sever should be **GRANTED**.

Plaintiff, ROY-G-BIV Corporation (“RGB”), filed this suit on September 19, 2007, alleging that FANUC Ltd., FANUC Robotics America, Inc., GE Fanuc Automation Americans, Inc., and GE Fanuc Intelligent Platforms, Inc. (collectively, “Defendants”) infringe U.S. Patent Nos. 5,691,897 (“the ’897 Patent”), 6,513,058 (“the ’058 Patent”), 6,516,236 (“the ’236 Patent”), and 6,941,543 (“the ’543 Patent”). Dkt. No. 1.

On October 9, 2008, a full year after this suit was initially filed, Defendants amended their pleadings to accuse RGB of infringing two previously-unasserted patents: U.S. Patent Nos. 5,825,361 (“the ’361 Patent”) and 5,764,155 (“the ’155 Patent”). Dkt. No. 90. While Plaintiff’s patents relate to motion control methods and systems that include software for communicating with

and controlling different motion control devices, Defendants' two recently asserted patents relate to computer graphics and data exchange. Given the different technology embodied in Defendants' patents, this Court believes that a severance would simplify an already complex matter.

Moreover, while claim-construction discovery and briefing is complete with regard to Plaintiff's asserted patents, little discovery has yet occurred on Defendants' patents. Indeed, Defendants' added these new patents mere days before the parties were to file their Joint Claim Construction and Prehearing Statement on the patents originally in suit. *See* Dkt. Nos. 54 & 88. Defendants' delay in bringing their counterclaims created a situation in which discovery and claim-construction on both parties' patents could not proceed simultaneously without drastic modification of this Court's Docket Control Order. For this reason alone, the Court is inclined to sever Defendants' patents from this suit.

Federal Rule of Civil Procedure 21 states that "[a]ny claim against a party may be severed and proceeded with separately." The Fifth Circuit has noted that "[t]he trial court has broad discretion to sever issues to be tried before it." *Brunet v. United Gas Pipeline Co.*, 15 F.3d 500, 505 (5th Cir. 1994) (citing Rule 21).

Because Defendants' two counterclaim patents deal with relatively distinct technology and because this case would be unduly delayed if those patents remain in this case, the Court finds that Defendants' infringement counterclaims against RGB warrant a severance pursuant to Rule 21. A severance in this case will avoid substantial prejudice to RGB, further the convenience of both parties, and promote judicial economy.

Accordingly, Plaintiff's Motion to Dismiss Defendants' Infringement Claims or, Alternatively, Motion to Sever is **GRANTED IN PART** as set forth above. It is further **ORDERED**

that Defendants' patent infringement counterclaims be **SEVERED** from the above-styled action. It is therefore **ORDERED** that the Clerk of the Court shall assign a new case number for Defendants' patent infringement counterclaims against Plaintiff. The Clerk shall waive payment of a filing fee.

The Court will take up the schedule for the severed claims at the close of the claim-construction tutorial on April 15, 2009.