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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

POWER INTEGRATIONS, INC., a California corporation,

Plaintiff,

vs.

CHAN-WOONG PARK, an individual; and DOES 1 to 20,

Defendants.

CASE NO. 5:16-cv-02366-BLF

DEFENDANT CHAN-WOONG PARK'S REPLY IN SUPPORT OF MOTION TO CONSOLIDATE RELATED CASES PURSUANT TO FED. R. CIV. P. 42(A)

Date: December 20, 2018
Time: 9:00 a.m.
Crtrm.: 3

Assigned to Hon. Beth Labson Freeman

I. INTRODUCTION

The only question before the Court is whether it should consolidate for all purposes these two related actions involving the same parties, the same counsel, and the same core factual allegations. Because it would save this Court's resources with no concurrent prejudice to the parties, the answer to that question is a resounding, "yes."

Plaintiff Power Integrations' ("PI") opposition brief does not contest the central claims that Chan-Woong Park advances in his opening brief: first, that the Court has broad discretion to grant consolidation; and second, that the separate cases involve identical parties, identical patents, overlapping witness lists, and virtually identical discovery requests and objections. Instead, PI argues against a common sense application of the Court's power to consolidate by unconvincingly contending that the two related cases involve different subject matter and that consolidation would increase the potential for jury confusion. PI's positions are both unavailing and insufficient to outstrip the tremendous burden and inconvenience on the parties—and more importantly, this Court—in proceeding with separate actions.

For instance, while PI's principal argument appears to be that the body of evidence would be too large for even a savvy jury to comprehend, that position is not supported by logic, any evidence, nor any legal authority. Further, as set forth in Park's opening brief, both Power Integrations' breach-of-contract claims and its tortious interference claims involve the same predicate allegations: (1) that Park took Power Integrations' proprietary information and used that information to obtain patents in the U.S. and Korea; and (2) that Park wrongfully asserted those patents against Power Integrations' customers. Resolution of these common factual questions is necessary to resolve both claims, and thus, should be decided in a single action.

Thus, despite PI's claims to the contrary, consolidation of the two cases is manifestly in the interest of the parties, the witnesses, and the Court. For those reasons, and for the reasons set forth more below and in his opening brief, the Court should grant Defendant Park's motion to consolidate the two cases for all purposes, including trial.

II. ARGUMENT

A. PI Ignores The Common Questions Of Fact That Permeate Both Actions.

Consolidation under Rule 42 turns on whether there are "common question[s] of law or fact." Fed. R. Civ. P. 42. Significantly, a common question or questions *need not predominate*. Rather, "[a]ll that is required is that the district court find they exist and that consolidation will prove beneficial." 8-42 Moore's Fed. Prac.-Civ. § 42.10; *see also Dusky v. Bellasaire Invs.*, 2007 U.S. Dist. WL 4403985, at *2 (C.D. Cal. Dec. 4, 2007) ("The Court need only find one issue of fact or law in common in order to permit consolidation."). Indeed, cases involving the same or related patents, such as the two cases here, are routinely consolidated. *See, e.g., Paxonet Communications, Inc. v. Transwitch Corp.*, 303 F. Supp. 2d 1027, 1029 (N.D. Cal. 2003) (granting consolidation of two cases involving common patents, citing common questions of law and fact relating to claim construction, validity, and underlying technology); *see also* 8 Moore's Federal Practice §42.14[5] ("Common issues of fact and law, such as the validity of a patent, the enforceability of a patent and its infringement, make patent cases reasonable candidates for consolidation.").

As Defendant Park's opening brief explains, and as the two separate complaints confirm, common factual questions are at the heart of both actions. (Motion at 3:24-28.) The complaints contain nearly identical factual allegations in support of their attendant claims:

Breach of Contract Case	**Tortious Interference Case**
Power Integrations has learned that Park is using Power Integrations' Proprietary Information by among other things, filing patent applications and obtaining patents in the U.S. and Korea . . . . (*See* Breach of	Park is using Power Integrations' Proprietary Information by among other things, filing patent applications and obtaining patents in the U.S. and Korea . . . . (*See* Tortious Interference Complaint, ¶¶

Contract Complaint, ¶¶ 12, 13.)	8,9.)
Park used his Korean Patents to interfere with Power Integrations' business relationships . . . . (*See* Breach of Contract Complaint, ¶¶ 14, 16.)	Park is using his issued patents (which are based on Power Integrations' Proprietary Information) to assert claims of infringement against Power Integrations' customers. (*See* Tortious Interference Complaint, ¶¶ 10, 16.)

Again, in both actions, PI must establish the factual predicate that Park stole PI's proprietary information and used it to obtain his patents. PI is simply wrong in arguing that the tort claims are "independent of whether Defendant asserts that the technology was his alone to patent, which is at issue in the Contract Case." (Opp. at 1:27-28). In fact, PI must prove that Defendant's technology was not his alone in the Tort Case as well. This is because to prevail on a claim for intentional interference with prospective economic advantage, PI must establish, among other elements, "that defendant . . . engaged in conduct that was *wrongful* by some legal measure other than the fact of interference itself." *Della Penna v. Toyota Motor Sales USA, Inc*., 11 Cal.4th 376, 389, 393 (1995) (emphasis added). But if Defendant Park establishes that he rightfully owns the patents at issue in the Contract Case—that is, that they were not based on PI's proprietary information, but rather, his own know-how and ingenuity—then he cannot have tortiously interfered with PI's prospective economic advantage as alleged in the Tort Case, since his lawful assertion of a rightfully obtained patent is not a wrongful act. Put differently, PI must establish in both cases the same factual predicate, namely, that Park's patents are wrongfully based on PI's proprietary information. Hence, the factual issues around both PI's tort and contract claims are almost if not entirely coterminous.

Moreover, PI's assertion that "the cases involve separate subject matter . . . different witnesses, and different time frames" (Opp. at 1:2-6) is belied by its own opposition brief as well as the discovery PI has propounded in the two cases. For example, although PI

claims that the cases involve different witnesses, PI recites a litany of facts regarding both cases, but relies upon the same two witnesses – Cliff Walker and Balu Balakrishnan – to substantiate these facts for both. It is also expected that Defendant Park will be called as a witness. Thus, the only three witnesses disclosed thus far will be called to testify in both cases. Where multiple cases share core issues, documents, witnesses and parties, there is sufficient cause to consolidate those cases for all purposes, including trial. *Takeda v. Turbodyne Technologies, Inc.*, 67 F. Supp. 2d 1129, 1132 (C.D. Cal. 1999).

Further, the interrogatories propounded by PI in the two cases overlap significantly. Indeed, thirteen of the seventeen interrogatories propounded in the Contract Case are *identical* to those propounded in the Tort Case. *See* Declaration of Timothy B. Yoo, ¶ 2, Ex. A (chart comparing interrogatories propounded by PI in the "Tort Case" and the "Contract Case"). Thus, PI's assertion that the Contract and Tort Cases "are based on entirely different bad acts and entirely separate timeframes" is flatly wrong. The cases clearly have several common questions of fact, and on that basis alone the Court can and should grant Defendant Park's motion for consolidation.

B. Proceeding Separately Would Require Overlapping Litigation and Duplication of Judicial Efforts.

Absent consolidation, orderly management and coordination of the two overlapping cases would soon become onerous for both the Court and the parties, as dedicating separate time and resources to the many redundant legal and factual issues of the two cases would waste valuable judicial and party resources. In addition, the fact that both cases are in their early stages means that the time and effort saved by consolidating them now will be maximized.[1]

As noted above and in Park's opening brief, PI has propounded virtually identical

[1] Although the complaints were filed on April 29, 2016, the parties have been engaged in a dispute related to protective orders and accordingly remain in the very early stages of the discovery process.

sets of interrogatories on Park, and Park has responded to those interrogatories with substantially similar objections. (Dkt. 61 at 4:19-22.) Should a discovery dispute arise while the cases remain separate, the parties would have no choice but to litigate the disputes separately and the Court would be burdened with addressing each dispute individually.

Consolidation under these circumstances would lead to fewer discovery requests, eliminate unnecessary and duplicative proceedings, substantially reduce burdens on all involved, and significantly lessen the Court's burden in managing the cases. Further, by requiring trial and discovery witnesses to appear only once, rather than twice, consolidation will significantly reduce their burden, not to mention eliminate the risk of inconsistent judgments.

C. Consolidation Would Not Delay Litigation or Prejudice Any Party or the Interests of Justice.

The benefits of consolidation greatly outweigh any possible risks. Consolidation poses no risk of delay, no risk of prejudice or confusion, and no undue burden on any party. To the contrary, consolidation is likely to *expedite* the litigation process by streamlining resolution of the same discovery disputes and procedural motions in each case, and by consolidating the discovery proceedings and using the same witnesses and evidence in a single consolidated trial proceeding. If the cases are litigated and tried separately, there will be inevitable delay and duplication of effort as the separate cases proceed through motion practice, discovery, and trial.

PI wrongly contends that consolidation would prejudice PI because "the large body of evidence . . . will confuse even the savviest of juries." (Opp. at 8:2-3.) This argument is nonsensical and without merit. PI never explains how or why a purported large body of evidence would confuse a jury, nor does PI provide any support for the proposition that a "large body of evidence" militates against consolidation. Indeed, as the Court noted during the March 16, 2017 hearing, juries in the Northern District of California are well equipped to hear issues such as those in the instant case. Dkt. 61-2 at 4:14-21 (noting that

it is "not out of the ordinary" for a jury in the Northern District to include jurors with advanced and technical degrees). As such, PI has failed to show that it would be prejudiced by consolidation.

Conversely, beyond the inefficiencies, there is a real and abiding risk of inconsistent judgments if two separate juries are asked to resolve identical factual questions separately. Avoidance of that risk alone makes consolidation desirable here.

III. CONCLUSION

For the reasons stated in Park's opening brief and above, Park respectfully requests that this Court grant his motion to consolidate these two related cases for all purposes, including trial.

DATED: September 28, 2018

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