

**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.	§	

**DEFENDANT POWERCHIP SEMICONDUCTOR CORPORATION’S
MOTION TO TRANSFER VENUE**

In light of the Federal Circuit’s February 29, 2008 decision in *Micron Technology, Inc. v. MOSAID Technologies, Inc.*, Defendant Powerchip Semiconductor Corporation (“Powerchip”) files this motion to transfer venue pursuant to 28 U.S.C. § 1404(a) to the Northern District of California.

On February 29, 2008, the Federal Circuit reversed and remanded the Northern District of California’s ruling dismissing an earlier filed declaratory judgment action by Defendant Micron Technology, Inc. (attached to Sangalli Decl., at Ex. 1). In doing so, the Federal Circuit rejected Plaintiff MOSAID’s attempt to forum shop by filing this lawsuit in the Eastern District of Texas one day after Micron filed its declaratory judgment action in the Northern District of California. Specifically, the Federal Circuit held that the California court should have applied “the ‘convenience factors’ of § 1404(a) before effectively transferring the case to another jurisdiction.” (*Id.* at p. 13). After evaluating those factors, the Federal Circuit and found that “it would be *an abuse of discretion* to transfer the [earlier-filed Micron declaratory judgment] action” out of the Northern District of California and to the Eastern District of Texas. (*Id.* at p. 13 (emphasis added)).

As a result of the Federal Circuit's decision in Micron's appeal, two substantially similar cases will be concurrently pending in two different courts: the Northern District of California and the Eastern District of Texas. The two cases both involve eight of the twelve patents at issue and two of the three parties that are presently before this Court and over which the Federal Circuit has ruled that the Northern District of California has jurisdiction.¹ Three of the remaining four patents in the Texas action are related as continuations to the eight patents at issue in the California action.² The fourth remaining patent involves similar technology but has not been asserted against Powerchip.³ Accordingly, while complete identity between the two pending actions is not present, there is substantial overlap between the cases. Moreover, any differences between the actions are insignificant and may well be nothing more than a transparent attempt by MOSAID to forum shop by adding additional parties and additional patents.

In view of the Federal Circuit's remand of the Micron declaratory judgment action to the Northern District of California, the substantial overlap between the two actions, and the application of the "convenience factors" to the proceedings against Powerchip in this Court, Powerchip now moves to transfer this case to the Northern District of California where it can be consolidated with Micron's earlier-filed declaratory judgment action.

I. BACKGROUND

Plaintiff Mosaid Technologies, Inc. ("MOSAID") owns several patents in the area of dynamic random access memory ("DRAM"), and MOSAID has pursued a systematic licensing and litigation strategy with respect to those patents. (Sangalli Decl., Ex. 1, p. 3). As part of that

¹ The eight patents are U.S. Patent Nos. 5,751,643; 5,822,253; 6,278,640; 6,603,703; 5,828,620, 6,236,581; 6,657,919; and 6,992,950. The two common parties in both actions are Micron and MOSAID.

² U.S. Patent Nos. 7,038,937; 6,980,448; and 5,406,523.

³ U.S. Patent No. 6,847,573.

strategy, MOSAID has filed and litigated patent infringement actions against several major DRAM manufacturers, including Samsung Electronics Company, Ltd. (“Samsung”) in the District of New Jersey in 2001, Infineon Technologies North America Corporation (“Infineon”) in the Northern District of California in 2002, Hynix Semiconductor, Inc. (“Hynix”) in the Eastern District of Texas in 2005, and Infineon again in the Eastern District of Texas in 2005. With respect to the California Infineon case and the New Jersey Samsung case, the Judicial Panel for Multidistrict Litigation consolidated the Infineon case for pretrial proceedings with the earlier filed Samsung action in New Jersey because of the complexity of the technology and the need to avoid duplicative consideration of related factual and legal questions. Notably, all of these actions involved the same or related patents pertaining to DRAM technology as have been asserted in both the present action and Micron’s earlier-filed declaratory judgment action.

Micron filed its declaratory judgment action in the Northern District of California on July 24, 2006. (Sangalli Decl., Ex. 1 at p. 3). The day after Micron filed its declaratory judgment action, MOSAID filed the present action in the Eastern District of Texas asserting infringement of substantially the same patents at issue in Micron’s action. (*Id.*). Although Micron’s action was the earlier-filed case, it was never allowed to proceed as the California court dismissed it for lack of subject matter jurisdiction. (Sangalli Decl., Ex. 2 at p. 4). The California court also held that even if subject matter jurisdiction did exist, the court would exercise its discretion and still decline to hear the case. (*Id.*). Micron appealed the Northern District of California’s dismissal of its action to the Federal Circuit.

The Federal Circuit has now ruled on Micron’s appeal, holding that Micron’s first-filed declaratory action should be re-instated in the Northern District of California. (Sangalli Decl., Ex. 1). Not only did the Federal Circuit find that the California court had erred in dismissing

Micron's action based on lack of subject matter jurisdiction, but the Federal Circuit also determined the most appropriate forum in which Micron's action should proceed. In making this determination, the Federal Circuit found that in cases in which a declaratory judgment action and an infringement action have been filed at substantially the same time, a district court's decision as to whether it should exercise its discretionary declaratory judgment jurisdiction involves the same considerations as a transfer analysis under 28 U.S.C. § 1404(a). (*Id.* at pp. 11, 12). In other words, the district court should not merely apply categorical rules such as "tenuousness of jurisdiction, broadness of the case, and degree of vestment" of one court as opposed to the other court, or even the first-to-file rule in making its determination. (*Id.* at p. 10). Indeed, the Federal Circuit found that it would be an abuse of discretion to decline declaratory judgment jurisdiction and thus effectively transfer the case to another forum based on such considerations. (*Id.* at p. 13). Instead, the Federal Circuit found that "the more appropriate analysis takes account of the convenience factors under 28 U.S.C. § 1404(a)," and further noted that "when the discretionary determination is presented after the filing of an infringement action, the jurisdiction question is basically the same as a transfer action under 1404(a)." (*Id.* at pp. 10-11, 12).

The Federal Circuit's application of the § 1404(a) convenience factors with respect to the two cases pending in California and Texas has resulted in the Federal Circuit's determination that the Northern District of California is the appropriate forum for Micron's declaratory judgment action to proceed. (*Id.* at p. 13). Because of the substantial overlap between the Micron action in California and the action against Powerchip in this Court, many of the convenience factors considered by the Federal Circuit in reaching its decision with respect to the earlier-filed Micron action apply equally to a transfer analysis with respect to MOSAID's case against Powerchip here. These factors, as well as additional considerations, weigh in favor of

transferring the Texas action against Powerchip to the Northern District of California, where it can be consolidated with Micron's earlier-filed declaratory judgment action.

It is on this basis that Powerchip files this motion to transfer venue.

II. ARGUMENT

A. TO AVOID DUPLICATIVE LITIGATION AND THE POSSIBILITY OF INCONSISTENT RULINGS, THE PROCEEDINGS AGAINST POWERCHIP SHOULD BE TRANSFERRED.

“The general principle in the interrelation of federal district courts is to avoid duplicative litigation.” *California Security Co-op, Inc. v. Multimedia Cablevision, Inc.*, 897 F. Supp. 316, 317 (E.D. Tex. 1995). Thus, when multiple cases involving substantially overlapping issues are filed, 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. *Nat'l Instruments Corp. v. Softwire Tech., LLC*, 2003 U.S. Dist. LEXIS 26952 *2 (E.D. Tex. May 9, 2003).

1. When “Substantial Overlap” Is Present, Transfer Of The Subsequently-Filed Case Is Appropriate.

When deciding whether the two actions are duplicative, there is no requirement that the cases be identical. Rather, the crucial inquiry is one of “substantial overlap.” *Save Power Ltd v. Syntek Finance Corp.*, 121 F.3d 947, 950 (5th Cir. 1997); *see also Mann Mfg. Inc. v. Hortex, Inc.*, 439 F.2d 403, 408 n.6 (5th Cir. 1971) (noting that “regardless of whether or not the suits here are identical, if they overlap on the substantive issues, the cases would be required to be consolidated ...”). In determining whether “substantial overlap” is present, neither complete identity of issues nor complete identity of parties is required. *Save Power*, 121 F.3d at 951; *see also West Gulf Maritime Assoc. v. ILA Deep Sea Local 24*, 751 F.2d 721, 731 n.5 (5th Cir. 1985) (noting that incomplete identity of parties does not mandate that two “essentially identical”

actions remain pending simultaneously where complete relief was nevertheless available in one forum and the missing parties probably could be made parties to the action in that forum).

Here, substantial overlap exists between the Micron declaratory judgment action pending in California and the present action against Powerchip in Texas. The Micron action involves fourteen patents relating to DRAM technology. The Texas action involves eight of the same patents in the California action, and three of the four remaining patents are continuations of the patents at issue in the California action. The fourth remaining patent has not been asserted against Powerchip. Accordingly, should both cases proceed in parallel, this Court and the Northern District of California would be faced with essentially identical issues, particularly with respect to claim construction and invalidity. In addition, many of the witnesses and much of the discovery and evidence will be the same for both the Northern District of California and the Eastern District of Texas with respect to both Powerchip and Micron. As such, not only would allowing the two actions to proceed in parallel be a waste of judicial resources, but the impact on the resources of all parties would also be severe as the parties would be forced to engage in duplicative discovery and proceedings.

Significantly, it was precisely because of these concerns for the courts' and the parties' resources, coupled with the overlap of the extremely technical and complex legal and factual issues, that the Judicial Panel for Multidistrict Litigation had consolidated the California Infineon action with the Samsung action for pretrial proceedings in New Jersey. In the Order consolidating the cases, the Panel stated:

At issue in both of the actions are the same seven complex patents, which purportedly relate to circuitry used in dynamic random access memory chips. Both actions can thus be expected to share factual and legal questions concerning such matters as patent validity, prior art, obviousness and interpretation of various claims of the patents. Centralization under Section 1407 is necessary in order to eliminate duplicative discovery; prevent inconsistent pretrial rulings, especially

with respect to time-consuming and complex matters of claims construction; and conserve the resources of the parties, their counsel and the judiciary.

(Sangalli Decl., Ex. 2).

The situation here is no different and no different conclusion should be reached. Eleven of the patents in both actions all are in the same patent families, eight of the patents at issue are identical, and all eight of these patents have been asserted against both Powerchip and Micron. As such, there is substantial overlap on the substantive issues, and allowing these actions to proceed in parallel would waste both judicial and party resources, and create the risk of inconsistent rulings.

Moreover, the fact that the Texas action involves one additional party—Powerchip—carries little (if any) significance. Indeed, the Federal Circuit in the Micron appeal expressly rejected imparting much weight on such a distinction between two concurrently pending actions. Specifically, the Federal Circuit noted that the fact that a later-filed action may be broader (*i.e.*, includes additional claims and/or parties) than the earlier-filed action

carries little weight because a patent holder may often easily file an artificially broader infringement suit to avoid declaratory judgment jurisdiction. If, as in this case, a patent holder could simply name another defendant or add a few additional claims to the later filed infringement, then the Supreme Court's more lenient standard for the declaratory judgment plaintiff would lose its primary intended effect. Accordingly, although the relationship between the two competing lawsuits remains a consideration, ***this consideration cannot be given undue weight because it is easily manipulated.***

(Sangalli Decl., Ex. 1 at p. 10 (emphasis added)).

MOSAID's assertion of the same patents involved in the California action against an additional defendant—Powerchip—as well as its addition of related patents in the Texas action should be viewed as nothing more than a transparent attempt to artificially manipulate the relationship between the two pending actions in an effort to forum shop. Such an effort should

not be rewarded as it does not change the fact that substantial overlap exists between the California action and the Texas action.

2. Because the Federal Circuit Has Decided that Micron's Action Should Proceed in the Northern District Of California, the Proceedings Against Powerchip Also Should Proceed There.

If substantial overlap is present between actions filed in different districts, the next inquiry is which of the two courts should take the case. Generally, the court of the first-filed action is the court which should decide whether it should try the case. *California Security*, 318 F.2d at 407; *see also Mann Mfg.*, 439 F.2d at 407. Here, the first-filed court is the Northern District of California. However, the Federal Circuit effectively has decided the transfer issue for the California court by holding in Micron's appeal that it would be an abuse of discretion for the California court to transfer Micron's case to Texas. (Sangalli Decl., Ex. 1, p. 13). The Federal Circuit was well aware that this action was pending in this Court when it issued its decision in Micron's appeal. Yet, even so, the Federal Circuit found that the California court was the more appropriate forum for the Micron action. (*Id.* at pp. 10-11 (stating that "[i]nstead of relying solely on considerations such as ... degree of vestment ..., the more appropriate analysis takes account of the convenience factors under 28 U.S.C. § 1404(a)")).

Accordingly, in light of the Federal Circuit's decision in Micron's appeal and the substantial overlap between Micron's declaratory action in California and the proceedings against Powerchip in this District, the proceedings against Powerchip should be transferred to the Northern District of California for consolidation with the earlier-filed and closely related Micron action. *See West Gulf Maritime*, 751 F.2d at 729 n.1 (noting that once a first-filed court denies transfer, any stay in the later-filed action should be lifted and the later-filed action should be dismissed or transferred and consolidated with the first-filed action); *see also California Security*, 897 F. Supp. at 321.

B. CONSIDERATION OF THE CONVENIENCE FACTORS UNDER 28 U.S.C. § 1404(A) ALSO DICTATE THAT THE PROCEEDINGS AGAINST POWERCHIP SHOULD BE TRANSFERRED TO AND CONSOLIDATED WITH THE MICRON ACTION IN THE NORTHERN DISTRICT OF CALIFORNIA.

Transfer of venue is governed by 28 U.S.C. § 1404(a) which provides, “[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). Transfer of an action is committed to the district court’s discretion according to an “individualized, case-by-case consideration of convenience and fairness.” *Z-TEL Communications, Inc. v. SBC Communications, Inc.*, 331 F. Supp. 2d 567, 570 (E.D. Tex. 2004).

Determining whether to transfer venue entails balancing two categories of interest: (1) the convenience of the litigants and witnesses, and (2) the public interest in the fair and efficient administration of justice. *Hanby v. Shell Oil Co.*, 144 F. Supp. 2d 673, 676 (E.D. Tex. 2001). These two categories of interest encompass several private and public interest factors, none of which alone is dispositive to the transfer decision. A non-exclusive list of the private interest factors include (1) the convenience of parties and witnesses; (2) the cost of obtaining the attendance of witnesses and the subpoena power of the court; (3) the place of the alleged wrong; (4) the accessibility and location of the evidence; and (5) the possibility of delay and prejudice if transfer is granted or denied. *See id.* at 676-77; *Mohamed v. Mazda Motor Corp.*, 90 F. Supp. 2d 757, 771 (E.D. Tex. 2000). The public interest factors include, but are not limited to, (1) the administrative difficulties caused by court congestion; (2) the local interest in having local juries decide local disputes; (3) the forum’s familiarity with the governing law; and (4) the avoidance of unnecessary problems in conflicts of law. *Hanby*, 144 F. Supp.2d at 677; *Mohamed*, 90 F. Supp. 2d at 771.

In the Micron appeal, the Federal Circuit stated that, in that case, the discretionary declaratory judgment “jurisdiction question is basically the same as a transfer action under § 1404(a).” (Sangalli Decl, Ex. 1 at p. 12). Accordingly, the Federal Circuit has already applied the convenience factors of a § 1404(a) transfer analysis to determine the appropriate forum for the substantially related Micron declaratory judgment action. Specifically, the Federal Circuit considered “[t]he convenience and availability of witnesses, absence of jurisdiction over all necessary or desirable parties, possibility of consolidation with related litigation, or considerations relating to the interest of justice ... to ensure the case receives attention in the most appropriate forum.” (*Id.* at p. 12). After examining these factors, the Federal Circuit found that “the Northern District of California is the more appropriate forum for the dispute between Micron and MOSAID.” (*Id.*). More specifically, the Federal Circuit found that MOSAID’s U.S. operations are based out of California, both Micron and MOSAID conduct business in California (as well as in Texas), and the availability of witnesses or jurisdiction over desirable parties does not favor Texas over California. (*Id.* at pp. 12-13). In addition, the Federal Circuit found that “[w]hile the well-known patent forum of the Eastern District of Texas has heard cases involving some of the same patents, the record does not show any ongoing litigation requiring consolidation.” (*Id.* at p. 13). After considering these factors, the Federal Circuit held that “it would be an abuse of discretion to transfer the [Micron] action” to Texas. (*Id.*).

Due at least in part to the substantial overlap between the earlier-filed Micron action in California and the later-filed action against Powerchip in Texas, the § 1404(a) convenience factors considered by the Federal Circuit in the Micron appeal dictate that the most appropriate forum for MOSAID’s action against Powerchip also is the Northern District of California. These factors include both private interest factors and public interest factors.

1. The § 1404(a) Private Interest Factors Weigh in Favor of Transferring the Proceedings Against Powerchip to the Northern District of California.

The first private interest factor is the convenience of the parties and witnesses. With respect to Powerchip and MOSAID, Powerchip is a Taiwanese corporation and MOSAID is a Canadian corporation. (*See* D.I. 265; D.I. 39). Powerchip offices are located in Taiwan, and Powerchip has no offices in either Texas or California. (Sangalli Decl, Ex. 3). MOSAID, however, as noted by the Federal Circuit in Micron’s appeal, has U.S. operations based out of the Northern District of California. (Sangalli Decl, Ex. 1 at pp. 12-13; Exs. 4 & 5).

With respect to the witnesses, Powerchip’s witnesses reside in Taiwan, while most of MOSAID’s witnesses reside in Canada or in States other than Texas and California. (Sangalli Decl., Exs. 6 & 7). Thus, for at least the Powerchip witnesses, travel to San Francisco will be significantly less burdensome than travel to Marshall, Texas. For instance, travel from Taipei, Taiwan to Marshall, Texas would take, on average, a minimum of eight to nine hours longer than travel from Taipei to San Francisco. (Sangalli Decl., Exs. 8-10). “Where another venue is more convenient to the residences of the parties, in terms of travel miles, over a more remote venue with no factual nexus to the case, the closer venue is the more appropriate.” *Hanby*, 144 F. Upp. 2d at 678.

With respect to counsel for the parties, MOSAID’s counsel, Howrey LLP, has offices throughout the United States, including Texas and California. (Sangalli Decl., Ex. 11). However, the majority of the substantive dealings with MOSAID’s counsel in this lawsuit have occurred with Howrey’s office located in the Northern District of California. Indeed, MOSAID’s counsel has on multiple occasions requested that this Court’s required in-person meet and confers take place in the Northern District of California. (Sangalli Decl., Exs. 12 & 13). Counsel for Powerchip has its offices in the Southern District of Texas. However,

Powerchip's trial counsel also has offices located in the Northern District of California. (Sangalli Decl., Ex. 14).

In view of MOSAID's operations in the Northern District of California, the relative burden on the witnesses for traveling to the Northern District of California as opposed to the Eastern District of Texas, and the presence of counsel for both parties in the Northern District of California, the first private factor—the convenience of the parties and witnesses—weighs in favor of transfer.

The second private interest factor considers the cost of obtaining the attendance of witnesses and the subpoena power of the court. This factor is neutral in the transfer analysis since many of the witnesses of both parties are outside the subpoena power of both courts or reside in States other than California or Texas.

The third private interest factor is the location of the alleged wrong. MOSAID has asserted that the alleged acts of infringement have occurred in the Eastern District of Texas and elsewhere in the United States. (D.I. 39). As such, the alleged acts of infringement have no special connection to either forum, and this factor is neutral with respect to transfer.

The fourth private interest factor deals with the accessibility and location of the evidence. This factor also is neutral with respect to transfer as the parties' evidence is located in various locations around the world, including Taiwan and Canada, as well as at counsels' offices in Texas and California. (Sangalli Decl., Ex. 6 & 7).

The fifth private interest factor is the possibility of delay or prejudice if the motion to transfer is granted or denied. Here, no prejudice should result from a transfer to the Northern District of California since the Texas case is currently in the discovery stage, and any discovery that has been taken thus far may also be used in the Northern District of California. In addition,

while this Court has heard and issued orders on discovery disputes, no substantive issues have been decided. Moreover, both the Northern District of California and the Eastern District of Texas have adopted substantially similar local patent rules. Thus, the efforts of the parties towards complying with this Court's patent rules, such as their preparation of infringement and invalidity contentions and their joint claim construction statement, also are appropriate for use in the Northern District of California. Thus, little—if any—of the Court's and the parties' resources will be wasted by transferring this action for consolidation with the earlier-filed declaratory judgment action that the Federal Circuit has now remanded to California. Accordingly, this factor also is neutral with respect to transfer.

On balance, the private interest factors weigh in favor of transfer of the proceedings against Powerchip from the Eastern District of Texas to the Northern District of California.

2. The Public Interest Factors Strongly Favor Transfer of the Proceedings Against Powerchip to the Northern District of California.

With respect to public interest factors, these factors include the administrative difficulties caused by court congestion, the local interest in having local juries decide local disputes, the court's familiarity with the governing law, and conflict of law problems. Each of these factors are neutral with respect to transfer.

However, there also is a strong public interest in avoiding duplicative litigations which waste court resources and may result in inconsistent judgments. *See, e.g., California Security Co-op*, 897 F. Supp. at 317. Thus, as recognized by the Federal Circuit in Micron's appeal, a § 1404(a) transfer analysis should also consider “the possibility of consolidation with related litigation.” (Sangalli Decl., Ex. 1 at p. 12). This public interest factor is of particular concern in this case since the Federal Circuit has ruled that the Micron declaratory judgment action should proceed in the Northern District of California. Because the Micron action bears substantial

overlap with the proceedings against Powerchip in Texas, the danger of inconsistent results and the duplication of efforts by both courts and parties are of particular concern. Accordingly, this public interest factor weighs heavily in favor of transfer of the Texas action against Powerchip to the Northern District of California where it may be consolidated with the currently pending and closely related Micron action. *See Kinetic Concepts, Inc. v. Bluesky Medical Group, Inc.*, 2008 U.S. Dist. LEXIS 2900 at *5-6 (E.D. Tex. Jan. 14, 2008) (holding that the public interest factors overwhelmingly favored transfer of a second-filed suit that was based on patents that were closely related to the patents in a first-filed suit); *see also The Whistler Group, Inc. v. PNI Corp.*, 2003 U.S. Dist. LEXIS 21968 at *17-20 (N.D. Tex. Dec. 5, 2003) (holding that the convenience factors weighed heavily in favor of transfer where the second-filed case pertained to the same technology and similar patents).

Given that the Federal Circuit has remanded Micron's closely related declaratory judgment action to the Northern District of California, that district is now the appropriate court for the present action against Powerchip to proceed. If both actions are allowed to proceed in parallel, consideration of the complex and fact-intensive claims and technology at issue will result in litigation of the same or very closely related issues in different forums, wasting both judicial and party resources and creating substantial risk of inconsistent rulings and judgments.

Accordingly, the public interest factors weigh heavily in favor of transferring the proceedings against Powerchip in this District to the Northern District of California for consolidation with the closely related and currently pending Micron declaratory judgment action.

III. CONCLUSION

For the foregoing reasons, Powerchip respectfully requests that the Court grant its motion to transfer the proceedings by MOSAID against Powerchip to the Northern District of California where it may be consolidated with Micron's currently pending declaratory judgment action.

Date: March 3, 2008

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CERTIFICATE OF SERVICE

I hereby certify that, on this 3d day of March 2008, 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).

/s/ Diana M. Sangalli
Diana M. Sangalli

CERTIFICATE OF CONFERENCE

Counsel for Powerchip conferred by telephone with John D. Hamann, counsel for MOSAID, on February 29, 2008, and MOSAID's counsel is opposed to this motion.

/s/ Diana M. Sangalli
Diana M. Sangalli