UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: NEUROGRAFIX ('360) PATENT LITIGATION MDL No. 2432

TRANSFER ORDER

Before the Panel: Defendants in the five actions listed on the attached Schedule A move under Panel Rule 7.1 to vacate our orders conditionally transferring these actions to the District of Massachusetts for inclusion in MDL No. 2432.[1] Defendants in one of the initially-centralized actions (*Brainlab*) responded in support of the motions. Common plaintiffs (collectively NeuroGrafix) oppose the motions.[2]

Moving defendants do not contest that these actions, which involve alleged infringement of the 5,560,360 patent,[3] share factual issues with actions previously centralized in this MDL. *See In re: Neurografix ('360) Patent Litig.*, 936 F. Supp. 2d 1376, 1377-78 (J.P.M.L. 2013). Rather, defendants' principal argument is that the actions (and, indeed, the MDL itself) should be transferred to the Central District of California, and assigned to the Honorable Mariana R. Pfaelzer. Defendants argue that Judge Pfaelzer is very familiar with the '360 patent, because she previously presided over two infringement actions involving the patent. Defendants further argue that the Panel's reasons for selecting the District of Massachusetts as transferee district no longer exist. They point out that eight of the nine initially-centralized actions have been dismissed, and that neither plaintiffs nor the defendants in *Brainlab*, which is the only remaining original action, have any connection to Massachusetts.

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[1] Defendants are the self-described "Toshiba Defendants" (Toshiba America Medical Systems, Inc.; Toshiba Medical Systems Corporation, Inc.; Seashore Imaging, LLC; Coastal Radiology Associates, PLLC; Eastern Radiologists, Inc.; Smart Scan MRI; St. Mary's Health Care System, Inc.; St. Mary's Medical Group, Inc.; and Athens Radiology Associates, P.C.); two Hitachi entities (Hitachi Medical Systems America, Inc., and Hitachi Medical Corporation); St. Louis University; and Tenet Healthcare Corporation.

[2] Plaintiffs are NeuroGrafix, Neurography Institute Medical Associates, Inc., Image-Based Surgicenter Corporation, and Dr. Aaron Filler.

[3] The patent, which is entitled " Image Neurology and Diffusion Anisotropy Imaging," relates to the imaging of nerve tissue using a modified magnetic resonance imaging (MRI) system.

The Panel repeatedly has stated that it is "extremely reluctant" to order retransfer of an MDL,[4] and has further stated that retransfer will be ordered "only in the most extraordinary instances."[5] Such circumstances do not exist here.

Since this MDL was centralized in April 2013, the circumstances of the litigation certainly have changed. But these changes have not been so extraordinary as to justify the litigation's retransfer. In fact, they have not been extraordinary at all. In 2013, the Panel was well aware that Judge Pfaelzer had significant experience overseeing litigation involving the '360 patent,[6] that all plaintiffs were located in the Central District of California, that the attorneys who prosecuted the patent were located in the state of Washington, and that plaintiffs' counsel were based in Los Angeles. The only changes identified by moving defendants that now (arguably) further favor the Central District of California are that (1) the defendants with Massachusetts ties in the initially-centralized actions have been dismissed from the litigation; (2) defendant Toshiba America Medical Systems, Inc., which is sued in three of the five actions, is based in the Central District of California; and (3) it would be somewhat more convenient for the Japan-based Toshiba and Hitachi defendants to litigate in that district. These changes are insufficient to warrant retransfer.[7]

After considering the argument of counsel, we find that these actions involve common questions of fact with actions previously transferred to MDL No. 2432, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. As mentioned above, moving defendants do not dispute that their actions share questions of fact with the actions already in the MDL.

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[4] *E.g., In re: Air Crash Disaster in the Ionian Sea, on Sept. 8, 1974*, 438 F. Supp. 932, 934 (J.P.M.L. 1977) (denying request for retransfer of litigation from S.D. New York to N.D. California); *In re: Petroleum Prods. Antitrust Litig.*, 419 F. Supp. 712, 719 (J.P.M.L. 1976).

[5] *See In re: Helicopter Crash in Germany on Sept. 26, 1975*, 443 F. Supp. 447, 450 (J.P.M.L. 1978).

[6] According to the record, Judge Pfaelzer's last substantive involvement with the patent occurred in 2012, more than two years ago.

[7] Moving defendants also speculate that Judge Stearns is overburdened. The record does not support this speculation. Indeed, we note that last year, the judge agreed to handle another MDL, in addition to this one. *See In re: Collecto, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 999 F. Supp. 2d 1373 (J.P.M.L. 2014).

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the District of Massachusetts, and, with the consent of that court, assigned to the Honorable Richard G. Stearns for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Marjorie O. Rendell
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

IN RE: NEUROGRAFIX ('360) PATENT LITIGATION MDL No. 2432

SCHEDULE A

Middle District of Georgia

NEUROGRAFIX, ET AL. v. TOSHIBA AMERICA MEDICAL SYSTEMS, INC., ET AL., C.A. No. 3:15-00002

Northern District of Illinois

NEUROGRAFIX, ET AL. v. TOSHIBA AMERICA MEDICAL SYSTEMS, INC., ET AL., C.A. No. 1:15-00033

Eastern District of Missouri

NEUROGRAFIX, ET AL. v. SAINT LOUIS UNIVERSITY, ET AL., C.A. No. 4:15-00158

Eastern District of North Carolina

NEUROGRAFIX, ET AL. v. TOSHIBA AMERICA MEDICAL SYSTEMS, INC., ET AL., C.A. No. 4:15-00006

Northern District of Ohio

NEUROGRAFIX, ET AL. v. HITACHI MEDICAL SYSTEMS AMERICA, INC., ET AL., C.A. No. 5:15-00026