

**BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

IN RE GOLDEN RULE FASTENERS)
PATENT LITIGATION) MDL NO. _____
)
)

**BRIEF IN SUPPORT OF THE NEVERLEAK CO.’S MOTION FOR TRANSFER OF
ACTIONS TO THE NORTHERN DISTRICT OF OHIO, PURSUANT TO 28 U.S.C. §
1407, FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS**

1. *Golden Rule Fasteners, Inc. v. NeverLeak Co., LP*, No. 3:17-cv-00249-MPM-JMV (N.D. Miss.) (the “Mississippi Case”);
2. *Golden Rule Fasteners, Inc. v. Oatey Co.*, No. 1:19-cv-00341-BYP (N.D. Ohio) (the “Ohio Case”); and
3. *Golden Rule Fasteners, Inc. v. RP Lumber Co., Inc.*, No. 1:20-cv-00692 (N.D. Ill.) (the “Illinois Case”).

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. FACTUAL BACKGROUND.....	4
A. <i>Ex Parte</i> Reexamination of Golden Rule’s Patents.....	4
B. The Pending Golden Rule Actions	5
1. The Mississippi Case.....	5
2. The Ohio Case	7
3. The Illinois Case.....	8
III. ARGUMENT.....	9
A. The Pending Cases Should Be Transferred and Consolidated Because They Present Common Questions of Fact and Law.....	9
B. Centralization Will Serve the Convenience of the Parties and Witnesses.	12
C. Centralization Will Promote the Just and Efficient Conduct of This Litigation.	14
1. Centralization will ensure efficient pretrial proceedings.	14
2. Centralization will promote consistency in pretrial rulings.	15
3. The cases will benefit from centralization because each case is in the beginning stages of litigation.	16
4. Golden Rule’s litigation history demonstrates that additional tag-along cases could be added to this potential MDL.....	17
D. The Northern District of Ohio is the Most Convenient Forum for These Actions.....	18
IV. CONCLUSION	20

TABLE OF AUTHORITIES

	<u>Page</u>
Cases	
<i>In re: Bear Creek Techs., Inc. ('722) Pat. Litig.,</i> 858 F. Supp. 2d 1375 (J.P.M.L. 2012).....	9, 15
<i>In re Cygnus Telecomms. Tech., LLC, Pat. Litig.,</i> 177 F. Supp. 2d 1375 (J.P.M.L. 2001).....	10, 18
<i>In re Ermi LLC ('289) Pat. Litig.,</i> 396 F. Supp. 3d 1358 (J.P.M.L. 2019).....	10, 14, 19
<i>Golden Rule Fasteners Inc. v. Aztec Washer Co.,</i> No. 2:16-cv-01006 (M.D. Ala.)	1, 4
<i>Golden Rule Fasteners, Inc. v. Best Materials LLC,</i> No. 2:19-cv-00168 (M.D. Ala.)	4
<i>Golden Rule Fasteners, Inc. v. Best Materials LLC,</i> No. 2:19-cv-04386 (D. Ariz.)	4
<i>Golden Rule Fasteners, Inc. v. Big Rock Supply, Inc.,</i> No. 1:19-cv-03641 (N.D. Ill.).....	4
<i>Golden Rule Fasteners, Inc. v. Bramec Corp.,</i> No. 4:19-cv-04069 (D. S.D.)	4
<i>Golden Rule Fasteners Inc. v. Deks North America Inc.,</i> No. 2:16-cv-00289 (M.D. Ala.)	4
<i>Golden Rule Fasteners, Inc. v. Modern Builders Supply Inc.,</i> No. 3:19-cv-00338 (N.D. Ohio).....	4
<i>Golden Rule Fasteners, Inc. v. NeverLeak Co., LP,</i> No. 3:17-cv-00249-MPM-JMV (N.D. Miss.).....	1, 6, 17, 20
<i>Golden Rule Fasteners, Inc. v. Oatey Co.,</i> No. 1:19-cv-00341-BYP (N.D. Ohio).....	1, 7, 19, 20
<i>Golden Rule Fasteners, Inc. v. Protech Products, Inc.,</i> No. 6:19-cv-00405 (M.D. Fla.).....	4
<i>Golden Rule Fasteners, Inc. v. RP Lumber Co., Inc.,</i> No. 1:20-cv-00692 (N.D. Ill.)	1

TABLE OF AUTHORITIES

(continued)

	<u>Page</u>
<i>In re Katz Interactive Call Processing Pat. Litig.</i> , 481 F. Supp. 2d 1353 (J.P.M.L. 2007).....	18
<i>In re Liquid Toppings Dispensing Sys. ('447) Pat. Litig.</i> , 291 F. Supp. 3d 1378 (J.P.M.L. 2018).....	13, 14
<i>Marine Polymer Techs., Inc. v. HemCon, Inc.</i> , 672 F.3d 1350 (Fed. Cir. 2012).....	11
<i>Markman v. Westview Instruments</i> , 517 U.S. 370 (1996).....	15
<i>In re MLR, LLC Pat. Litig.</i> , 269 F. Supp. 2d 1380 (J.P.M.L. 2003).....	9, 10, 11, 14
<i>In re Neo Wireless LLC, Pat. Litig.</i> , 610 F. Supp. 3d 1383 (J.P.M.L. 2022).....	15, 16, 19
<i>In re Panty Hose Seaming Pat. Litig.</i> , 402 F. Supp. 1401 (J.P.M.L. 1975).....	16, 18
<i>Presidio Components, Inc. v. Am. Tech. Ceramics Corp.</i> , 875 F.3d 1369 (Fed. Cir. 2017).....	11
<i>In re Proven Networks, LLC, Pat. Litig.</i> , 492 F. Supp. 3d 1338 (J.P.M.L. 2020).....	15
<i>In re RAH Color Techs. LLC Pat. Litig.</i> , 347 F. Supp. 3d 1359 (J.P.M.L. 2018).....	10, 11
<i>In re Rembrandt Techs., LP, Pat. Litig.</i> , 493 F. Supp. 2d 1367 (J.P.M.L. 2007).....	9, 12, 19
<i>Southwall Techs., Inc. v. Cardinal IG Co.</i> , 54 F.3d 1570 (Fed. Cir. 1995).....	19
<i>In re Taasera Licensing, LLC Pat. Litig.</i> , 619 F. Supp. 3d 1352 (J.P.M.L. 2022).....	<i>passim</i>
<i>In re: TransData, Inc., Smart Meters Pat. Litig.</i> , 830 F. Supp. 2d 1381 (J.P.M.L. 2011).....	9, 17
Statutes	
28 U.S.C. § 1407.....	1, 9, 18, 20

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
35 U.S.C. § 252.....	11
35 U.S.C. § 286.....	17
35 U.S.C. § 305.....	10
35 U.S.C. § 315.....	10
Other Authorities	
Federal Rule of Civil Procedure 30(b)(6).....	13

I. INTRODUCTION

Over the last eight years, Golden Rule Fasteners, Inc. (“Golden Rule”) has taken a shotgun approach to asserting infringement of its roof flashing patents, filing multiple lawsuits in different United States District Courts against distinct and unrelated defendants who make, distribute, or sell roof flashing products. Golden Rule’s scattershot approach to asserting patent infringement is a recipe for wasteful and duplicative litigation with distinct possibility of inconsistent pretrial rulings, particularly with respect to claim construction. Accordingly, Movant, The NeverLeak Co., LP (“NeverLeak”), respectfully submits this Memorandum in support of its motion, pursuant to 28 U.S.C. § 1407, to centralize the three pending patent litigations for coordinated pretrial proceedings in the Northern District of Ohio.

Of the eleven infringement actions filed by Golden Rule across the country, four were dismissed without prejudice, and three of these actions (the “Golden Rule Actions”) remain pending and are as follows:

1. *Golden Rule Fasteners, Inc. v. NeverLeak Co., LP*, No. 3:17-cv-00249-MPM-JMV (N.D. Miss.) (the “Mississippi Case”);
2. *Golden Rule Fasteners, Inc. v. Oatey Co.*, No. 1:19-cv-00341-BYP (N.D. Ohio) (the “Ohio Case”); and
3. *Golden Rule Fasteners, Inc. v. RP Lumber Co., Inc.*, No. 1:20-cv-00692 (N.D. Ill.) (the “Illinois Case”).

All three of these actions are in their early stages, having been stayed until only recently due to *ex parte* reexamination proceedings¹ before the United States Patent and Trademark Office (“USPTO”) on Golden Rule’s three patents at issue. Because one of Golden Rule’s

¹ The reexaminations were requested by third party Aztec Washer, Inc., whom Golden Rule sued and then dismissed without prejudice in *Golden Rule Fasteners Inc. v. Aztec Washer Co.*, No. 2:16-cv-01006 (M.D. Ala.).

patents was cancelled in reexamination, and the other two emerged with completely new or amended claims, the parties have had to start the patent disputes anew in each of the Golden Rule Actions. Golden Rule's amended complaints confirm that it is now asserting—or is likely to assert—infringement of the same two patents by one common accused product: the Electrical Mast Connection Master Flash (“EMC”) product manufactured by Aztec Washer Company, Inc. (“Aztec”).² Centralization of these three substantially identical patent suits is warranted because each of the three actions necessarily involve many common issues of law and fact, including the scope of the claimed invention, the validity and enforceability of the patents, and whether the EMC product infringes Golden Rule's two patents.

Centralization is warranted for the Golden Rule Actions. All involve multiple common questions of fact and law relating to essentially the same patent infringement cause of action. All three Golden Rule Actions necessarily involve many common issues of law and fact, including the scope of the claimed invention, the validity and enforceability of the patents, the availability of various defenses, and whether the EMC product infringes Golden Rule's two freshly amended patents. Centralization is also warranted to avoid duplicative fact and expert discovery and to avoid inconsistent rulings as these cases proceed.

The Panel has regularly centralized cases involving common patents in view of the significant efficiencies gained by having one court conduct claim construction and preside over discovery relating to the patents and accused products. Indeed, fact discovery in each of these cases is likely to involve similar, if not the same, documents relating to these common issues. Many of the same fact witnesses will be deposed in each action, including the inventors and

² Golden Rule has only asserted infringement of the reexamined patents by one other accused product, the Master Flash Retrofit® roof flashing, also manufactured by Aztec.

third-party witnesses, and corporate designees will testify to many of the same deposition topics. Likewise, the same experts on both sides will likely provide opinions on identical or substantially similar issues such as infringement, invalidity, and patent damages. Thus, due to their substantial commonality, centralization of the three Golden Rule Actions will ensure the patent disputes are adjudicated consistently, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of the actions and any tag-along actions that might follow.

The Golden Rule Actions are also ripe for centralization because they are all in their infancy. Although these cases have been pending for several years, they were all stayed in their early stages due to the reexaminations. Thus, even in the Mississippi Case, which is the farthest along of the three cases, the parties only conducted limited discovery and exchanged preliminary patent disclosures that have now been rendered moot by the reexaminations. Golden Rule recently filed an amended complaint, and NeverLeak has filed an answer and counterclaims in response. In view of the changed claims, the amended scheduling order in the Mississippi case has in turn set new deadlines for the parties to serve new infringement and invalidity contentions and begin the claim construction process anew. In the Illinois case, Golden Rule has filed its amended complaint, and RP Lumber has yet to answer. In the Illinois and Ohio cases, no scheduling orders have issued since the stays were lifted.

The Northern District of Ohio is the logical district for consolidation because of that District's experience with complex patent litigation and local patent rules, and because Judge Pearson, who is currently presiding over the Ohio Case, has familiarity with the patents at issue in this case as reflected in her order granting Oatey's contested motion for stay pending

reexamination. In addition, the Northern District of Ohio is centrally located for the defendants and Golden Rule.

II. FACTUAL BACKGROUND

Golden Rule is the owner of U.S. Patent Nos. 8,141,303 (“the ’303 patent”) and 8,464,475 (“the ’475 patent”) (collectively, “the Asserted Patents”), both of which are in the same patent family, and are directed to a pipe flashing apparatus and method.³ Over the last eight years, Golden Rule has filed no fewer than eleven different patent infringement lawsuits in seven different districts across the country. In each lawsuit, Golden Rule asserted one or both Asserted Patents against the EMC product or similar Accused Products, most of which were made by Aztec. The three Golden Rule Actions are currently pending, whereas the other cases were voluntarily dismissed by Golden Rule.⁴ Golden Rule dismissed four of these cases without prejudice.

A. *Ex Parte* Reexamination of Golden Rule’s Patents.

In February 2019 Aztec filed requests for *ex parte* reexamination with the USPTO for the ’303, ’475, and ’002 Patents. The USPTO instituted all three reexaminations on March 6, 2019.

³ Golden Rule previously asserted a third related patent, U.S. Patent No. 8,534,002 (“the ’002 Patent”), which was cancelled after *ex parte* reexamination.

⁴ The voluntarily dismissed cases are *Golden Rule Fasteners, Inc. v. Best Materials LLC*, No. 2:19-cv-04386 (D. Ariz.), *Golden Rule Fasteners, Inc. v. Big Rock Supply, Inc.*, No. 1:19-cv-03641 (N.D. Ill.), *Golden Rule Fasteners, Inc. v. Bramec Corp.*, No. 4-19-cv-04069 (D. S.D.), *Golden Rule Fasteners, Inc. v. Best Materials LLC*, No. 2:19-cv-00168 (M.D. Ala.), *Golden Rule Fasteners, Inc. v. Protech Products, Inc.*, No. 6:19-cv-00405 (M.D. Fla.), *Golden Rule Fasteners, Inc. v. Modern Builders Supply Inc.*, No. 3:19-cv-00338 (N.D. Ohio), *Golden Rule Fasteners Inc. v. Deks North America Inc.*, No. 2:16-cv-00289 (M.D. Ala.), *Golden Rule Fasteners Inc. v. Aztec Washer Co.*, No. 2:16-cv-01006 (M.D. Ala.).

None of the original asserted claims of the '303, '475, or '002 Patents survived the reexaminations. The '002 Patent emerged from reexamination with all claims cancelled. Although the '475 and '303 Patents emerged from reexamination with allowed claims, all of the allowed claims were new or amended. The '475 Patent reexamination certificate issued on September 7, 2021, with original claims 1 through 7 cancelled, amended claims 8 and 9, and new claims 10 through 12. The '303 Patent reexamination certificate issued on September 18, 2023, with only one new claim, claim 3, which incorporated the limitations of cancelled claim 1.⁵ The reexamined '475 Patent expires on December 21, 2032, and the '303 reexamined patent expires on February 1, 2030.

B. The Pending Golden Rule Actions

As set forth below, all three of the Golden Rule Actions were in their early stages when the reexaminations were instituted and were stayed until this year pending conclusion of the reexaminations.

1. The Mississippi Case

On December 17, 2017, Golden Rule filed a complaint against NeverLeak in the Northern District of Mississippi. Ex. 1. In its initial complaint, Golden Rule alleged that NeverLeak infringed the '303 Patent, the '475 Patent, and the '002 Patent. Golden Rule asserted that NeverLeak sold four Accused Products that infringed its patents: the Electrical Mast Connection for Shingle Roof, Electrical Mast Connection Master Flash, Master Flash Retrofit, and the Aztec Master Flash. Golden Rule also asserted copyright infringement against NeverLeak based on the allegation that NeverLeak reproduced a Golden Rule copyrighted image in a printed advertisement. NeverLeak filed its Answer and Counterclaim on March 12,

⁵ Golden Rule has never asserted infringement of original claim 2 of the '303 Patent, which was also not subject to reexamination.

2018. The parties then engaged in limited fact discovery: exchanging Initial Disclosures and a First Set of Interrogatories and Requests for Production. Although the parties exchanged infringement and invalidity contentions and engaged in early claim construction exchanges, these were all rendered moot by the reexaminations and the changed claims that emerged. The parties also briefed, and the Mississippi court ruled on, a motion to compel relating to NeverLeak's invalidity contentions and claim construction disclosures.

On January 4, 2019, NeverLeak filed a motion to stay in light of reexamination proceedings in the USPTO. Golden Rule opposed NeverLeak's motion. The court granted the motion to stay on January 30, 2019. In granting the stay, the court held that the early stage of the case supported a stay because "the parties have not yet submitted their briefing on the claims construction issues." *Golden Rule Fasteners, Inc. v. Neverleak Co., L.P.* ("Neverleak"), No. 3:17-cv-249-MPM-JMV, 2019 WL 384003, at *3 (N.D. Miss. Jan. 30, 2019). The court also held that "it is particularly important to obtain the expert views of the PTO regarding this case, since its own expertise in the patent area is so limited." *Id.* The court also expressed its concerns "regarding whether plaintiff is seeking to use litigation as a means of securing for itself an unjustified share of the roof flashing marketplace, and thereby cause unjustified harm to competitors." *Id.*

After the reexaminations concluded, the court lifted the stay on October 5, 2023. Golden Rule filed an amended complaint on October 25, 2023, Ex. 2, dropping the '002 Patent, but still asserting infringement of the '303 and '475 Patents by the EMC and the Master Flash Retrofit®, as well as the same copyright infringement claim from the original complaint. NeverLeak filed its Answer and Counterclaims, Ex. 3, on November 6, 2023. The parties served amended initial disclosures on November 10, 2023, and Golden Rule served new

infringement contentions on November 17, 2023. The court has issued an amended scheduling order and set a trial date of July 14, 2025.

2. The Ohio Case

On February 14, 2019, Golden Rule filed a complaint against Oatey in the Northern District of Ohio, and amended its complaint on March 27, 2019, Ex. 4, after the USPTO instituted the reexaminations. In its amended complaint, in a thinly veiled attempt to avoid a stay, Golden Rule asserted only infringement of the claims of the '475 Patent that were not subject to reexamination through sale of the Electrical Mast Connection Master Flash. Golden Rule, however, still stated its intention to “assert additional claims from the '475 in this case” and to “assert additional claims from the ['303] and ['002] patents” as well, after the *ex parte* reexaminations were complete. *See* Am. Compl. ¶ 15 n.1, *Golden Rule Fasteners, Inc. v. Oatey Co.*, No. 1:19-cv-341 (N.D. Ohio Mar. 27, 2019). Oatey filed its Answer and Counterclaim on March 15, 2019.

On May 17, 2019, Oatey filed a motion to stay pending the reexamination proceedings in the USPTO. The court granted the motion to stay on May 31, 2019. In granting the stay, the court ruled the potential simplification of the case “weighs strongly in favor of a stay” because “Golden Rule has already indicated its intention to persist in related litigation ‘in this case’ after the USPTO reexamination concludes,” and “[t]here is an obvious litigative economy that attends consolidation of related matters, even when matters are only loosely related.” *Golden Rule Fasteners, Inc. v. Oatey Co.* (“Oatey”), No. 1:19CV341, 2019 WL 2330474, at *2 (N.D. Ohio May 31, 2019) (citation omitted). The court also reasoned that “Golden Rule will suffer no prejudice if[sic] in the event of a stay, and the court proceedings here are in their infancy.” *Id.*

After the reexaminations concluded, the parties filed a joint motion to lift the stay on October 16, 2023. The parties still await the court's response to the joint motion. The court has not entered a scheduling order or held a case management conference, and fact discovery has not started in the Ohio Case.

3. The Illinois Case

On January 20, 2020, Golden Rule filed a complaint against RP Lumber asserting that RP Lumber infringed the '475 Patent through sale of the Electrical Mast Connection Master Flash product. Illinois Case, Dkt. 1. In its complaint, Golden Rule made clear it had the same intention as in the Ohio case: to "assert additional claims from the '475 in this case" and to "assert additional claims from the ['303] and ['002] patents" as well, after the *ex parte* reexaminations were complete. *See id.* ¶ 18 n.1. Following extensions of time to file its responsive pleadings, the parties jointly moved to stay the case pending the reexamination proceedings on November 20, 2020. The court granted RP Lumber's motion on November 23, 2020. The parties did not engage in any discovery prior to the stay being granted.

After the reexaminations concluded, the court lifted the stay on October 12, 2023. Golden Rule filed its amended complaint on November 16, 2023, asserting infringement of the '303 and '475 Patents by the EMC product,⁶ with a responsive pleading due on December 7, 2023. The court has not entered a scheduling order or held a case management conference, and fact discovery has not started in the Illinois Case.

⁶ The Amended Complaint refers to the "Oatey Master Flash Series 14090 Roof Flashing." However, the images of this product in Golden Rule's amended complaint clearly show that it is the same EMC product, and Movant further understands that this is the case. *Compare* Ex. 4 at Ex. B, *with* Ex. 2 at Ex. G.

III. ARGUMENT

Section 1407 of Title 28 of the United States Code authorizes the centralization of multidistrict actions for pretrial proceedings when three factors are met: (1) “one or more common questions of fact are pending in different districts”; (2) a transfer would serve “the convenience of parties and witnesses”; and (3) a transfer would “promote the just and efficient conduct of [the] actions.” 28 U.S.C. § 1407(a) (2006).

Here, as set forth below, the Golden Rule Actions readily satisfy all three of these factors, and because the Northern District of Ohio is the logical choice of forum to promote efficiency in these related actions, all three actions should be transferred to the Northern District of Ohio and consolidated for pretrial proceedings before Judge Pearson.

A. **The Pending Cases Should Be Transferred and Consolidated Because They Present Common Questions of Fact and Law.**

Because they involve substantially the same patent infringement allegation, there can be little question that the Golden Rule Actions involve common issues of fact and law warranting centralization. The Panel has regularly found patent infringement actions particularly suited to centralization when they involve overlapping patents or accused products, because such cases will “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.” *In re MLR, LLC Pat. Litig.*, 269 F. Supp. 2d 1380, 1381 (J.P.M.L. 2003); *see also In re: Bear Creek Techs., Inc., ('722) Pat. Litig.*, 858 F. Supp. 2d 1375 (J.P.M.L. 2012) (same); *In re: TransData, Inc., Smart Meters Pat. Litig.*, 830 F. Supp. 2d 1381 (J.P.M.L. 2011) (same); *In re Rembrandt Techs., LP, Pat. Litig.*, 493 F. Supp. 2d 1367 (J.P.M.L. 2007) (same). Because of the unique pretrial proceedings of patent litigation cases, centralization is necessary “in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the

parties, their counsel and the judiciary.” *In re MLR*, 269 F. Supp. 2d at 1381. Accordingly, the Panel has regularly ordered centralization of even small numbers of patent infringement cases involving the same products and patents. *See In re RAH Color Techs. LLC Pat. Litig.*, 347 F. Supp. 3d 1359, 1359 (J.P.M.L. 2018) (ordering centralization of three patent cases pending in three districts because actions involved common questions “about the alleged infringement, validity, and enforceability” of the asserted patents); *In re MLR*, 269 F. Supp. 2d 1380 (ordering centralization of three patent cases pending in three districts for the same reasons); *see also In re Taasera Licensing, LLC Pat. Litig.*, 619 F. Supp. 3d 1352 (J.P.M.L. 2022) (ordering centralization of four patent cases pending in three districts); *In re Ermi LLC ('289) Pat. Litig.*, 396 F. Supp. 3d 1358 (J.P.M.L. 2019) (ordering centralization of five patent cases pending in five districts); *In re Cygnus Telecomms. Tech., LLC, Pat. Litig.*, 177 F. Supp. 2d 1375 (J.P.M.L. 2001) (ordering centralization of five patent cases pending in four districts).

The same considerations apply here. In each of these cases, Golden Rule has asserted, or is likely to assert, infringement of the same two related patents against at least one common accused product, the EMC Master Flash. Further, the defendant has asserted, or is anticipated to assert defenses and counterclaims of noninfringement, invalidity under Sections 101, 102, 103, and/or 112, the intervening rights doctrine, and equitable defenses. Movant thus expects that, like the cases discussed above, all of the Golden Rule Actions will involve the same basic questions of law and fact, namely: whether the claims of the patents are valid and enforceable,⁷

⁷ There is no legal estoppel created by an *ex parte* reexamination proceeding, and the defendants are not estopped from asserting invalidity or unenforceability of the Asserted Patents in each of the Golden Rule Actions. *Compare* 35 U.S.C. § 305, *with* 35 U.S.C. § 315 (the inter parties review (“IPR”) statutes specifically estop an IPR petitioner from arguing invalidity on any ground that was “raised or reasonably could have raised” during the proceedings while the *ex parte* reexamination statutes mention no such estoppel).

and whether the accused EMC product sold by each defendant infringes the asserted patents. For instance, all of the cases will involve fact questions about the same pipe flashing technology described in the patents and the scope of the patents' claims. The cases will also present common fact issues regarding the scope and content of the prior art, alleged secondary considerations of nonobviousness of the Asserted Patents, the nature of the disclosure of the patents, and the design, development, and sales of the accused EMC product. Thus, centralization is warranted in view of the substantial common issues of law and fact across the Golden Rule Actions. *See In re RAH*, 347 F. Supp. 3d at 1359-60; *In re MLR*, 269 F. Supp. 2d at 1381; *In re Taasera*, 619 F. Supp. 3d at 1352.

In addition, the Golden Rule Actions present two unique common issues of law and fact that further warrant centralization. First, there are common questions of law and facts as to whether the doctrines of absolute and equitable intervening rights bar some or all of Golden Rule's potential damages for patent infringement because all originally asserted claims of the Asserted Patents were cancelled or amended.⁸ *See generally* 35 U.S.C. § 252; *Marine Polymer Techs., Inc. v. HemCon, Inc.*, 672 F.3d 1350, 1362 (Fed. Cir. 2012) (“[A]fter a patent emerges from reexamination, the statute makes available absolute and equitable intervening rights to the same extent provided in the reissue statute, but only with respect to ‘amended or new’ claims in the reexamined patent.”). Furthermore, to the extent Golden Rule contests its application, Movant intends to seek early summary judgment of absolute intervening rights, and expects other defendants are likely to do so as well. Thus, centralization is warranted to allow a single court to adjudicate this question of law. *See Presidio Components, Inc. v. Am. Tech. Ceramics*

⁸ Movant has asserted intervening rights as an affirmative defense, and expects the other defendants will likely do the same. Ex. 3 at 12.

Corp., 875 F.3d 1369, 1378-79 (Fed. Cir. 2017) (holding application of absolute intervening rights is a question of law requiring comparison of claim language “based on normal claim construction analysis”).

Second, although Golden Rule asserts a copyright infringement claim in the Mississippi Case that it does not assert in the other two cases, this claim raises additional common issues of fact with the patent allegations. In particular, Golden Rule’s copyrighted image appears to be invalidating prior art to the Asserted Patents that Golden Rule never disclosed to the Patent Office, and therefore factual issues relevant to the copyright claim are also likely to be relevant to patent invalidity. *See* Ex. 3 at 11. In addition, the copyright claim is unlikely to present unique legal issues because it appears to be barred by the statute of limitations on the facts that Golden Rule has presently pleaded. Finally, to the extent the copyright claim does involve separate factual and legal issues, “[t]ransfer . . . does not require a complete identity or even a majority of common factual or legal issues as a prerequisite” because “[t]he transferee court will be able to formulate a pretrial program that allows any unique discovery . . . to proceed concurrently on separate tracks with discovery on common issues.” *In re Rembrandt, Techs.*, 493 F. Supp. 2d at 1369-70.

Accordingly, the Golden Rule Actions involve numerous common questions of fact and law that warrant centralization.

B. Centralization Will Serve the Convenience of the Parties and Witnesses.

Since the three actions involve identical questions of fact and law, centralization will be inherently more convenient for all the parties and witnesses, and the Panel has emphasized that for patent cases, “[t]here are significant efficiencies to be gained, for both the parties and the judicial system, by having only one court oversee discovery relating to the common patents” that warrant centralization over alternative measures such as informal coordination between

related cases.” *In re Taasera*, 619 F. Supp. 3d at 1352-53 (rejecting argument that “informal coordination” of cases obviated need for consolidation); *In re Liquid Toppings Dispensing Sys. ('447) Pat. Litig.*, 291 F. Supp. 3d 1378, 1379-80 (J.P.M.L. 2018) (“Substantial efficiencies can be gained by centralizing these actions which involve a similar class of accused infringers . . . a similar allegedly infringing product . . . , and the same or related patents Alternative measures and the cooperation of the parties (and ten judges across the nation) are inferior, in these circumstances, to centralization.”).

Here, each of the three cases will involve a substantial amount of overlapping fact discovery. In each of the actions, the defendants will likely seek to depose the same named inventors and Golden Rule employees. Movant anticipates that each defendant will have to prepare and present corporate witnesses on presumably very similar, if not identical, Rule 30(b)(6) topics. In addition, the parties will likely subpoena the same third-party witnesses, such as the third parties who submitted declarations for Golden Rule during the reexaminations, persons in the industry knowledgeable about prior art, the attorneys who prosecuted the Asserted Patents, and Aztec, the manufacturer of the Accused Products. In expert discovery, all parties will have to likely put forth the same experts to opine on similar issues such as claim construction, infringement, invalidity, and damages. Without consolidated discovery, all of these witnesses would likely be subjected to multiple depositions noticed by different parties, and the defendants’ experts will have to provide multiple expert reports on similar issues. Moreover, third party witnesses who have relevant information may be subpoenaed multiple times in the different actions. In contrast, if the Panel centralizes the actions, the parties and the court can establish a discovery plan that will minimize the number of fact and expert depositions, and the number of expert reports. Centralization will therefore greatly convenience

the witnesses in the Golden Rule Actions and is far superior to relying on informal coordination. *In re Taasera*, 619 F. Supp. 3d at 1353; *In re Liquid Toppings Dispensing*, 291 F. Supp. 3d at 1380.

C. Centralization Will Promote the Just and Efficient Conduct of This Litigation.

1. Centralization will ensure efficient pretrial proceedings.

Each of the Golden Rule Actions will involve the same pretrial proceedings, which would be prone to inconsistency and duplication of effort without centralization. For example, in each of the three pending litigations, the parties will need to serve infringement and invalidity contentions and exchanges related to claim construction discovery. The required content and timing of such disclosures in each case would be different as a result of the applicable patent local rules (or lack thereof) and/or the scheduling orders⁹ for each case, leading to potential inconsistencies that may require motion practice to amend contentions that would be unnecessary if the cases were centralized. Centralization is particularly appropriate to avoid such problems given the limited discovery to date and the very early stages of these cases, because it “has the benefit of placing all actions . . . before a single transferee judge who can structure pretrial proceedings to consider all parties’ legitimate discovery needs while ensuring that common parties and witnesses are not subjected to discovery demands which duplicate activity that has already occurred or is occurring in other actions.” *In re MLR*, 269 F. Supp. 2d at 1381; *see also In re Taasera*, 619 F. Supp. 3d at 1353 (same); *In re Ermi*, 396 F. Supp. 3d at 1359 (same).

⁹ As one example, the parties are required to serve responsive non-infringement and validity contentions in the Ohio and Illinois cases under each court’s Patent Local Rules, whereas the Mississippi Case has no such requirement under the amended scheduling order. Ex. 6.

2. Centralization will promote consistency in pretrial rulings.

Centralization would also prevent inconsistent pretrial rulings. This is especially important in a patent case such as this one, where the Court must construe the patent claims as a matter of law. *See Markman v. Westview Instruments*, 517 U.S. 370 (1996). Indeed, the Panel has regularly cited the efficiency and consistency benefits of “having a single judge become acquainted with the complex patented technology and construing the patent in a consistent fashion” as a particularly important reason for centralizing related patent cases. *In re Bear Creek*, 858 F. Supp. 2d at 1378-80; *see also In re Neo Wireless LLC, Pat. Litig.*, 610 F. Supp. 3d 1383, 1385 (J.P.M.L. 2022) (“Centralization offers substantial savings in terms of judicial economy by having a single judge become acquainted with the complex patented technology and construing the patent in a consistent fashion (as opposed to having five judges separately decide such issues)”; *In re Proven Networks, LLC, Pat. Litig.*, 492 F. Supp. 3d 1338, 1340 (J.P.M.L. 2020) (holding centralization will “prevent inconsistent pretrial rulings (particularly on the complex and time-consuming matter of claim construction)”; *In re Taasera*, 619 F. Supp. 3d at 1353 (“There are significant efficiencies to be gained, for both the parties and the judicial system, by having only one court oversee discovery relating to the common patents and conduct claim construction.”).

Here, centralization is essential and particularly appropriate for the Golden Rule Actions because claim construction on the Asserted Patents has not yet begun in any of the three cases. The parties have not filed any claim construction briefs, and none of the Courts have held a claim construction hearing.¹⁰ Moreover, although the parties exchanged preliminary claim construction disclosures in the Mississippi Case before it was stayed, these

¹⁰ The only case that has a claim construction hearing scheduled is the Mississippi case, which has set a hearing date of May 24, 2024. Ex. 6.

disclosures have been rendered moot by the reexaminations, and the Court has ordered the parties to redo them in the new schedule. Accordingly, centralization is warranted to ensure that a single judge can “conduct claim construction and construe the patents in a consistent manner.” *In re Taasera*, 619 F. Supp. 3d at 1353.¹¹

3. The cases will benefit from centralization because each case is in the beginning stages of litigation.

The Panel has recognized that “the common early procedural posture among the actions will facilitate their efficient coordination.” *In re Neo Wireless*, 610 F. Supp. 3d at 1385. Thus, patent litigation cases “in their earliest stages” benefit from centralization when “the patents and claims asserted . . . overlap completely.” *Id.* In these types of patent cases “the most efficient management . . . cannot be accomplished through informal coordination,” but rather is found “by having a single judge become acquainted with the complex patented technology and construing the patent in a consistent fashion.” *Id.*; see also *In re Panty Hose Seaming Pat. Litig.*, 402 F. Supp. 1401, 1403 (J.P.M.L. 1975) (granting centralization of five patent infringement actions because none of the cases were close to trial on the common validity issue and all the cases had engaged in “minimal discovery”).

The three Golden Rule Actions are all in their infancy. The Ohio and Illinois cases were stayed at the initial pleading stage, whereas the NeverLeak case was stayed after the parties engaged in limited fact discovery and preliminary claim construction exchanges. Moreover, because none of the claims of the Asserted Patents emerged from the reexamination intact, all three cases have effectively started over. Golden Rule has yet to file its anticipated amended

¹¹ Moreover, as noted above, Movant intends to seek early summary judgment of absolute intervening rights based on the reexaminations and anticipates the other defendants will also do so. Centralization would streamline adjudication of such motions by a single judge rather than having it subject to the different procedures for seeking early summary judgment before three judges.

complaint in two of the three cases, and responsive pleadings are still due in two of the three cases. Two of the three cases have engaged in no discovery, with the Mississippi Case having engaged only in minimal discovery that was largely rendered moot by the reexamination. None of the cases have engaged in the claim construction process, which will be similar, if not the same, for all three cases. Therefore, centralizing these three cases in front of one judge for pretrial proceedings will promote the just and efficient conduct of these three similar patent cases.

4. Golden Rule’s litigation history demonstrates that additional tag-along cases could be added to this potential MDL.

Centralization will also prevent duplication of discovery and pretrial proceedings in any tag-along cases that Golden Rule may file. Prior to the reexamination proceedings, Golden Rule filed ten patent litigation cases in seven districts against manufacturers, distributors, and sellers of the EMC and similar roof flashing products, with an eleventh suit filed shortly after reexamination commenced. Golden Rule’s litigation history suggests that it is seeking to file suit against as many disparate defendants as it can identify, and indeed, Judge Mills in the Mississippi Case expressed “concerns . . . whether plaintiff is seeking to use litigation as a means of securing for itself an unjustified share of the roof flashing marketplace.” *Neverleak*, 2019 WL 384003, at *3. Moreover, Golden Rule voluntarily dismissed four of these cases without prejudice, including its suit against Aztec, the manufacturer of the EMC. In addition, because the ’303 and ’475 patents do not expire until February 1, 2030 and December 21, 2032 respectively, Golden Rule could file further suits on these patents as late as 2038. 35 U.S.C. § 286 (limiting patent damages to “six years prior to the filing of the complaint”). Thus, there are at least four potential tag-along cases, if not more, that would benefit from centralization should Golden Rule re-file them. *See In re Transdata, Inc.*, 830 F. Supp. 2d at 1382 (“[W]hatever

TransData’s intentions in filing [patent] actions against several end users instead of manufacturers, we are presented with seven actions involving common questions of fact and overlapping discovery. Centralization will prevent the duplication of discovery and pretrial proceedings, such as claim construction hearings, that would otherwise occur.”). Accordingly, Golden Rule’s litigation history further supports centralization of the pending Golden Rule Actions, which would further benefit any tag-along actions that Golden Rule may file.

In sum, because all three of the § 1407 factors are met, the Panel should consolidate these three patent cases.

D. The Northern District of Ohio is the Most Convenient Forum for These Actions.

The Panel should centralize these cases in the Northern District of Ohio because the District is a convenient forum for all parties, the District has vast experience with complex patent litigation, and because Judge Pearson, who is currently presiding over the Ohio Case, has the most familiarity with the patents at issue in this case. The Panel has previously transferred cases to districts where the judge was “already familiar with the technology underlying the[] patents.” *In re Katz Interactive Call Processing Pat. Litig.*, 481 F. Supp. 2d 1353, 1356 (J.P.M.L. 2007); *In re Cygnus Telecomms. Tech.*, 177 F. Supp. 2d at 1377 (choosing the transfer court in part because the judge assigned had “already developed a familiarity with the complex issues in [the] docket”); *In re Panty Hose Seaming Pat. Litig.*, 402 F. Supp. at 1403 (choosing the MDL court in part because the parties and the judiciary could “benefit from the expertise [the judge] already [had] gained in the matter”).

First, the Northern District of Ohio is the most convenient forum because of the efficiency and predictability effected by its local patent rules and its easy accessibility and centrality to the other two actions. The local patent rules will allow the court to properly

structure the pretrial schedule, and the rule's presence reflects the ability and willingness of judges in the district to handle complex patent cases. Further, the Northern District of Ohio is centrally located to the pending three actions, and should Golden Rule decide to refile its patent infringement actions in the cases that it voluntarily dismissed, the Northern District of Ohio provides a geographically central location for all the actions. *See In re Ermi*, 396 F. Supp. 3d at 1360 (choosing the transfer district in part because the district was "a convenient and accessible district"); *In re Rembrandt Techs.*, 493 F. Supp. 2d at 1370 (choosing the transfer district in part because it was a "readily accessible district with the capacity to handle [the] litigation"); *In re Neo Wireless*, 610 F. Supp. 3d at 1385 (choosing the transfer district because it "is a convenient and easily accessible location").

Further, while Movant acknowledges that all three judges presiding over the Golden Rule Actions are capable jurists, Judge Pearson, who currently presides over the Ohio Case, is the judge with the best balance of familiarity with the merits of the Golden Rule Actions, experience with patent litigation, and an interest in consolidating related cases to resolve them efficiently. For example, in her order granting Oatey's motion to stay the Ohio Case, Judge Pearson analyzed the claim language of the '475 Patent and cited Federal Circuit precedent requiring claim terms to be "interpreted consistently from one claim to the next" to conclude that "[t]he USPTO's conclusions about the meaning of the term 'reinforcement material' in Claims 3 and 4 will necessarily affect the Court's understanding of the same term in Claims 5 and 6."¹² *See Oatey*, 2019 WL 2330474, at *2 (citing *Southwall Techs., Inc .v. Cardinal IG Co.*, 54 F.3d 1570, 1579 (Fed. Cir. 1995)). Moreover, in granting the stay, Judge Pearson

¹² Claims 5 and 6 were not subject to reexamination at the time of Judge Pearson's order but were subsequently added to the reexamination by the Patent Examiner and ultimately cancelled.

demonstrated that she was attuned to the efficiency and convenience benefits underlying centralization of related patent cases, explaining that in view of the fact that “Golden Rule has already indicated its intention to persist in related litigation ‘in this case’ after the USPTO reexamination concludes,” “[t]here is an obvious litigative economy that attends consolidation of related matters, even when matters are only loosely related.” *Id.* (citation omitted). Judge Pearson’s well-reasoned stay opinion thus indicates that she would be uniquely well-suited to and interested in presiding over the centralized Golden Rule Actions in the interest of judicial efficiency. In contrast, Judge Mills, who presides over the Mississippi Case, expressly voiced his concerns about the court’s “expertise in the patent area [being] so limited” in his order granting the motion to stay. *See Neverleak*, 2019 WL 384003, at *3 (“[T]his court cannot recall having previously conducted a single claims construction hearing during its time on the bench, and, that being the case, it has simply not had an opportunity to develop an expertise in this area.”). Finally, although Judge Tharp, who presides over the Illinois case, has ample patent experience, he has not yet had to delve into the technology of the Asserted Patents, as the parties mutually agreed to stay the case, and as such his order staying the case made no reference or analysis of the patents and technology at issue.

Accordingly, the Panel should centralize the cases in the Northern District of Ohio in front of Judge Pearson so that the actions can benefit from her expertise and familiarity.

IV. CONCLUSION

For the foregoing reasons, Movant respectfully asks that the Panel centralize the three pending Golden Rules Fasteners cases in the Northern District of Ohio for pre-trial coordination in accordance with 28 U.S.C. § 1407.

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Respectfully submitted,

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