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

	)	
	)	
In re Yu Luo	)	MDL Docket No.: 24-39
Design Patent Litigation	)	
	)	
	)	

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR TRANSFER OF ACTIONS
PURSUANT TO 28 U.S.C. §1407**

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In re MLR, 269 F.Supp. 2d 1380, 1381 (J.P.M.L. 2003). *10*

Egyptian Goddess, Inc. v. Swisa, Inc., 543 F.3d 665, 678 (Fed. Cir. 2008). *10*

In re Rivastigmine Patent Litig., 360 F.Supp. 2d 1361 (J.P.M.L. 2005). *11*

INTRODUCTION

On March 8, 2024, Plaintiff Yu Luo filed a lawsuit against thirty defendants in the United States District Court for the Northern District of Illinois (1:24-cv-1977 ("the '1977 Case")) alleging infringement of one patent, U.S. Patent No. D1,012,683 ("the **683 Patent") (attached hereto as Exhibit A). Also on March 8, 2024, Plaintiff Yu Luo filed a lawsuit against six defendants in the United States District Court for the Middle District of Florida (8:24-cv-00615 ("the '0615 Case"), alleging infringement of the **683 Patent. Both actions allege infringement of the same patent and therefore certainly will involve parallel discovery and claim construction issues.

By this motion, Yu Luo seeks to transfer and consolidate these two actions for pretrial proceedings to the Middle District of Florida, or alternatively the Northern District of Illinois, pursuant to 28 U.S.C. §1407. Transfer and consolidation is merited in this case because both actions involve common questions of fact and law concerning a single patent that all remaining defendants have infringed by engaging in similar behavior, because the convenience of the parties and witnesses, and because the just and efficient conduct of the actions will best be promoted by coordinated proceedings in the Middle District of Florida.

The Middle District of Florida is an appropriate jurisdiction for the proposed multi-district litigation ("MDL") because one hearing on substantive aspects of the issues has already been held.[1] Florida is also a convenient location for the proceedings.

[1] Motion Hearing of March 20, 2024 (Dkt. 19).

BACKGROUND

A. The **683 Patent.

The**683 patent and the corresponding 'SHELF BRACKET' Products based upon the **683 patent, is recognized as an inventive design in the industry of furniture. Since the **683 patent was issued, the 'Shelf Bracket' products have become popular online, spurring hundreds of knock-offer versions of the patented product. Usually, as is the case for defendants in the '1977 Case and the '0615 Case, the knock-off versions are exact replicas of the patented design. Plaintiff designed, patented, and launched the 'Shelf Bracket' products long before Defendants' acts described herein. Plaintiff is the owner of the **683 patent, whereby the patents should be deemed valid and enforceable.

The **683 patent was subject to a high degree of scrutiny during the patent prosecution process. *See, High Point Design, LLC v. Buyer's Direct, Inc.*, 621 F. App'x 632 (Fed. Cir. 2015)("Design patents are presumed to be valid."); *see also*,15 U.S.C. §282. At one point, the application preceding the **683 patent was rejected as being anticipated by an earlier sold product. In response to this rejection, Plaintiff presented a declaration and evidence showing the alleged prior art was in fact based on authorization/permission granted by the inventor, and Plaintiff, Yu Luo. The rejection was withdrawn and the invention was allowed. The patented design of the **683 Patent is shown in Figure 1 below:

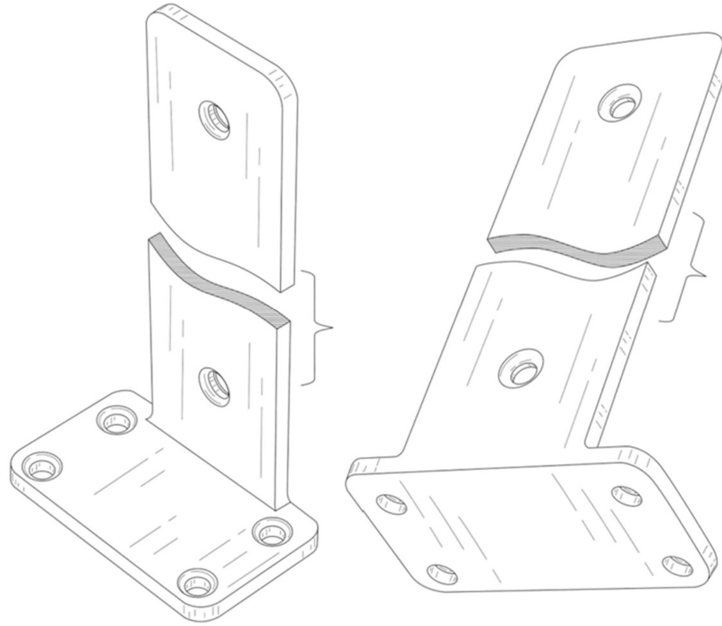


FIGURE 1. Patent Design of the **683 Patent.

B. The Ongoing Litigations.

1. Action pending in Northern District of Illinois.

On March 8, 2024, Yu Luo filed suit in the Northern District of Illinois (the '1977 Case), claiming that the multiple defendants directly infringed the **683 Patent by selling, offering for sale, operating, advertising, and/or marketing copycat products of the design in the **683 Patent within the United States. In the '1977 Case, Yu Luo filed a complaint against 30 entities. Following multiple settlements, as well as voluntary dismissals without prejudice, ten defendants remain:

> MHMY Global Sell; Yeazhen;
> Yufengfanzhi; Teli-US; AAG, Inc.; YMD Parts; Hitomen; Elsker

Regarding actions by defendants in this case, MHMY Global Sell filed an answer to the complaint on April 1, 2024 (Dkt. 18), Hitomen filed an answer to the complaint on April 1, 2024 (Dkt. 19), Hitomen and MHMY filed a Motion to Vacate (the temporary restraining order) on

April 5, 2024 (Dkt. 25), AOCAN filed an answer to complaint on April 11, 2024 (Dkt. 37), AAG, Inc. filed a motion to sever on April 11, 2024 (Dkt. 40), AAG, Inc. filed a motion to dissolve the injunction (temporary restraining order) on April 11, 2024 (Dkt. 41), AOCAN filed a motion for joinder (read: misjoinder) on April 19, 2024 (Dkt. 56), and YMD Parts and Lalagogo filed an answer to the complaint on April 19, 2024 (Dkt. 57).

No scheduling order has been issued, and no discovery has been served in this case.

2. Action pending in Middle District of Florida.

On March 8, 2024, Yu Luo filed suit in the Middle District of Florida (the ‘0615 Case), claiming that the multiple defendants directly infringed the **683 Patent by selling, offering for sale, operating, advertising, and/or marketing copycat products of the design in the **683 Patent within the United States. The ‘0615 Case had six defendants, of which four defendants remain:

AOCAN; Grier; LALAGOGO; Binazon

Yu Luo originally joined these separate defendants together in order to litigate the clearly common issues of law and fact together. Following a substantive motion hearing on Plaintiff’s Motion for Temporary Restraining Order, the motion was granted on April 12, 2024.

No scheduling order has been issued, and no discovery has been served in this case.

ARGUMENT

A. Transfer and consolidation is proper under §1407 Because the Actions Are Pending in Different Districts, Share a Common Question of Law or Fact, and a Transfer is for the Convenience of the Parties and Witnesses and Promotes Judicial Economy.

1. The Legal Standard under 28 U.S.C. §1407.

Section 1407(a) of Title 28 of the United States Code provides:

When civil actions involving one or more common questions of facts are

> *pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions*.
>
> 28 U.S.C. §1407 (2006).

Patent cases were stated as among the types of cases where substantial economy and efficiency gains could be expected through consolidation for pretrial hearings. *See* H.R. No. 90-1130, at 3 (1968). To obtain transfer and consolidation, civil actions must be (1) pending in different districts, (2) involve one or more common questions of facts, and transfer must be (3) for the convenience of parties and witnesses and promote the just and efficient conduct of such actions. 28 U.S.C. §1407(a); *In re Phoenix Licensing, L.L.C., Patent Litigation.,* 536 F.Supp. 2d 1373, 1374 (J.P.M.L. 2008). As Yu Luo's actions are spread between the Northern District of Illinois, and the Middle District of Florida, the actions involve at least one common question of fact, and transfer would promote the just and efficient conduct of the actions while being convenient for the parties, transfer and consolidation are warranted.

2. The Actions Involve Multiple Common Questions of Fact and Law.

The two Yu Luo actions involve numerous identical issues of fact and law. Yu Luo alleges that all defendants have violated the **683 patent by engaging in substantially similar behavior, and thus both actions will involve several identical factual and legal questions relating to the **683 patent.

Common issues that will be decided will involve claim construction, patent validity, and infringement. The Panel has recognized that where a single patent is at stake in multiple actions, there will often be substantial common issues of fact. In In re Mirtazapine Patent Litig., where the plaintiff sought consolidation stemming from the infringement of a single patent, the Panel

held that centralization was "necessary" because "[a]ll actions concern the validity and alleged infringement of Patent No. 5,977,099". *In re Mirtazapine Patent Litig.*, 199 F.Supp. 2d 1380, 1381 (J.P.M.L. 2002). Because the validity of the **683 Patent will be at issue in both actions, the actions present common questions of fact, and should be transferred and consolidated.

Several defendants have asserted invalidity as a defense in the Yu Luo actions. The Panel has "consistently held that the issue of patent validity presents common questions of fact which satisfy the statutory requirements of § 1407." *In re Embryo Patent Infringement Litig.*, 328 F.Supp. 507, 508 (J.P.M.L. 1971) (collecting cases). The legal and factual questions to be dealt with in the pretrial proceedings of the actions will be identical. It is not necessary that all cases involve precisely the same issues; thus, the fact that some defendants have asserted a counterclaim against Yu Luo for inequitable conduct does not preclude consolidation. *See, In re Tribute Co. Fraudulent Conveyance Litig.,* M.D.L. No. 2296, 2011 WL 6740260 (J.P.M.L. Dec. 19, 2011). "Section 1407 does not require a complete identity or even a majority of common factual issues as a prerequisite to centralization." *Id.* Where consolidation will achieve efficiency, as in this case, the Panel has not denied transfer merely because of a single issue that is not common to all actions, because "[c]entralization will place all actions in this docket before a single judge who can structure pretrial proceedings to accommodate all parties' legitimate … needs." *In re Method of Processing Ethanol Byproducts & Related Subsystems*, 730 F.Supp. 2d at 1380.

B. Consolidation will Promote Just and Efficient Resolution of Yu Luo's Actions and Will Best Serve the Convenience of the Parties and Witnesses.

As all the actions pertain to the **683 patent, a substantial portion of the discovery sought will be the same in both actions. The same documents will be sought and the same witnesses will need to be deposed in each case, more than like over identical issues. Section

1407 was enacted to prevent this waste of time and resources. *See* H.R. No. 90-1130, at 2 (1968) ("The committee believes that the possibility for conflict and duplication in discovery and other pretrial procedures in related cases can be avoided or minimized by such centralized management"). "[T]ransfer under Section 1407 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 subject to discovery demands which duplicate activity that has already occurred or is occurring in other actions." *In re MLR*, 269 F.Supp. 2d 1380, 1381 (J.P.M.L. 2003). As the actions are in disparate locations, consolidating the actions will serve the convenience of the witnesses, who will otherwise need to give testimony on identical issues in both locations and will be more convenient for parties who will avoid duplicative efforts to obtain the same documents and information.

C. Consolidating will avoid multiple hearings for determinations under the Ordinary Observer Test.

Consolidating the actions will avoid the need to hold multiple hearings for determinations under the Ordinary Observer Test, as required in allegations involving design patent infringement. In evaluating design patent infringement, the test is "whether an ordinary observer, familiar with the prior art, would be deceived into thinking that the accused design was the same as the patented design." Infringement for design patents will only be found when an article copies the patented design or is a "colorable imitation thereof". *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 678 (Fed. Cir. 2008). The outcome of key issues in design patent cases, for example infringement, or determination of the impact of the prior art on the metes and bounds of the design patent claim depend on the court's determination under the 'Ordinary Observer' Test. The Panel has noted the need to prevent inconsistent rulings relating to patents: "[c]entralization under Section 1407 is necessary in order to .. prevent inconsistent pretrial

rulings …". *In re Rivastigmine Patent Litig.*, 360 F.Supp. 2d 1361 (J.P.M.L. 2005). Allowing one judge to construe and apply the Ordinary Observer Test will avoid inconsistency between the cases.

D. Consolidation will prevent inconsistent pretrial rulings.

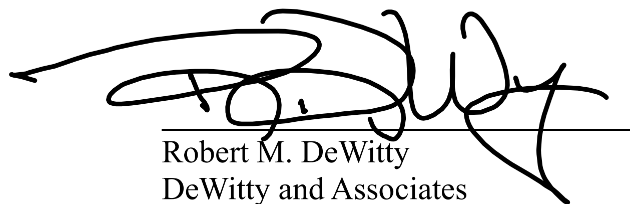
Consolidation will prevent inconsistent pretrial rulings on many issues, for example preliminary injunctions which will require determinations of substantial harm, validity of the design patent, and likelihood of success on the issue of design patent infringement. The courts presiding over these actions will likely face the same or similar motions on the same issues, wasting the time of both the court and the parties. Consolidating the cases will eliminate this waste of resources, just as Section 1407 was intended to do. *See, In re Mirtazapine,* 199 F.Supp. 2d at 1381 ("Centralization under Section 1407 is thus necessary in order to eliminate duplicative discovery, prevent inconsistency pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.")

CONCLUSION

For the foregoing reasons, Yu Luo respectfully requests that the Panel consolidate the Illinois action and the Florida action in Middle District of Florida, or alternatively the Northern District of Illinois pursuant to 28 U.S.C. § 1407.

DATED: April 22, 2024

Respectfully Submitted:



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