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UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: HIGH QUALITY PRINTING)
INVENTIONS, LLC, ('070'))
Patent Litigation.)
) Docket No.
) No. 2690
)

REPORTER'S TRANSCRIPT OF THE PROCEEDINGS

THURSDAY, MARCH 31, 2016

EN BANC:

JUDGE SARAH S. VANCE, Chair

JUDGE MARJORIE O. RENDELL

JUDGE CHARLES R. BREYER

JUDGE LEWIS A. KAPLAN

JUDGE ELLEN SEGAL HUVELLE

JUDGE R. DAVID PROCTOR

JUDGE CATHERINE D. PERRY

TARA SANDFORD, RPR, CSR #3374
taracsr3374@hotmail.com
Official Court Reporter

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APPEARANCES:

For Defendants Great FX Business Cards, LLC; and Posty Card, Inc.:

LEECH TISHMAN FUSCALDO & LAMPL
BY: JEFFREY G. SHELDON, ESQ.

For Defendant Staples, Inc.:

DLA PIPER
BY: NICHOLAS G. PAPASTAVROS, ESQ.

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Santa Barbara, California

Thursday, March 31, 2016

JUDGE VANCE: Next up is Docket 2690, In Re: High Quality Printing Inventions, LLC, Patent Litigation. And Mr. Sheldon.

MR. SHELDON: Good morning. Jeffrey Sheldon of Leech Tishman representing Defendants Great FX and Great Western. I appreciate your indulgence. I have two minutes.

No rebuttal since there is nobody to rebut against. And your indulgence in that my clients have been dismissed, and you probably noticed that everybody who signed up to argue Plaintiff dismissed.

JUDGE RENDELL: What's going on here?

MR. SHELDON: It appears that anybody who signed up to argue --

JUDGE PROCTOR: Should we delay you a couple of months and allow everyone else to file and join your motion to centralize these cases?

MR. SHELDON: No. We're opposed to centralization.

JUDGE PROCTOR: I'm joking. They will be dismissed.

MR. SHELDON: It is sort of whack-em-all.

1 Anybody who sticks their head up gets dismissed
2 temporarily. And that's the concern. I think at that
3 point we know there is less than ten cases pending and
4 maybe less than five. We don't know how many cases are
5 pending. We don't know where they are pending.

6 JUDGE RENDELL: Tell us about the dismissals.
7 What is going on here? A lot of these are being
8 dismissed without prejudice?

9 MR. SHELDON: Yes, exactly. Our particular
10 situation, we filed a Rule 11 motion and we got
11 dismissed. I was all excited.

12 And then everyone else is getting dismissed
13 without filing the motions. In the Northern --

14 JUDGE VANCE: Dismissed without prejudice?

15 MR. SHELDON: Without prejudice. In Northern
16 District of California, they filed invalidity motions.
17 Dismissed.

18 JUDGE KAPLAN: Has anybody realized that by
19 filing an Answer a stop could be put to this?

20 MR. SHELDON: Hindsight, yes, we did, but our
21 cases were stayed before we even got to oppose the stay.
22 We didn't even have an opportunity to file an Answer.
23 So --

24 JUDGE VANCE: I think we get it.

25 MR. SHELDON: As a matter of policy, this

1 should not be rewarded. The motion should be denied or,
2 at a minimum, give the Plaintiffs 30 days to refile
3 whatever they want --

4 JUDGE PROCTOR: Have you talked with opposing
5 counsel about these dismissals and about this upcoming
6 hearing today?

7 MR. SHELDON: My co-counsel talked to the
8 opposing counsel about the Rule 11 motions. And we
9 thought they were dismissed because of that, but now we
10 are suspicious.

11 We did not talk about the hearing. I didn't
12 realize they weren't even going to show up until today.

13 JUDGE HUVELLE: Has anybody objected on the
14 basis of Rule 42 to any of these dismissals?

15 MR. SHELDON: No. Some of the dismissals were
16 yesterday.

17 Defense counsel have been cooperating. We sort
18 of got caught by surprise. Everybody who wanted to
19 appear gets dismissed, and even people who filed
20 applications to appear late got dismissed.

21 JUDGE RENDELL: If we were to centralize,
22 wouldn't Judge Garbis in Maryland be a logical judge
23 because he knows about this type of --

24 MR. SHELDON: I don't know why he would know
25 about this type of patent versus any other type of

1 patent.

2 JUDGE VANCE: He has a similar case.

3 MR. SHELDON: That I don't know. I don't
4 recall reading that in the papers. I am not saying
5 that's not true. I don't know.

6 My client didn't want centralization. But if
7 we were going to be in the Northern District of
8 California but everybody in the Northern District of
9 California has been dismissed.

10 JUDGE PROCTOR: I like that attitude.

11 JUDGE VANCE: Mr. Papastravros.

12 MR. PAPASTAVROS: Thank you, your Honor.

13 Many of the points I wanted to articulate were
14 made by my brother Mr. Sheldon.

15 But what I really want to do is try to shed a
16 little bit of light on what I think has been going on
17 here. We started with about 32 cases. I think we're
18 down, at last check, and you know it varies by the
19 minute apparently, but we're down to about six or eight
20 cases. None of those parties presented -- made notices
21 of presentment to the Court. So they are obviously not
22 here to argue.

23 I represent Staples. I did make a notice of
24 presentment. We were the only Northern District of
25 Georgia case. We were dismissed two days ago. I

1 already had plans to be out here.

2 JUDGE RENDELL: You are taking no position?

3 MR. PAPASTAVROS: Not with respect to
4 centralization. With respect to venue I am.

5 We have been dismissed. We're the only case in
6 the Northern District of Georgia. We don't believe any
7 centralization would be appropriate there. If
8 centralization were appropriate, we believe either
9 Illinois or California would be the appropriate venues.

10 JUDGE VANCE: What is your take on what is
11 going on? Dismissing people who could argue against
12 centralization?

13 MR. PAPASTAVROS: The concern is tagalong
14 actions. The concern is there will be some decision by
15 the panel to centralize. And one of you mentioned about
16 dismissal without prejudice. That is our real concern
17 here. These will get refiled and Plaintiff will attempt
18 to get us back in the game.

19 JUDGE HUVELLE: Plaintiff is not here to argue
20 for centralization, and you are not arguing for
21 centralization. As far as we know, there is nobody
22 else. What position should we be taking here on
23 centralization with nobody -- or why shouldn't we not
24 centralize?

25 MR. PAPASTAVROS: I would think -- we have not

1 taken that position at this point in time.

2 Circumstances have changed significantly since the
3 beginning of this.

4 I would agree with your Honor at this point.

5 JUDGE VANCE: Thank you. You have anything
6 else? You have a little time. Anything else you want
7 to say? I think you may be ahead.

8 MR. PAPASTAVROS: What I might say, your Honor,
9 I mean, I know a number of Defendants may be pursuing
10 motions for costs in the circumstance, a lot of expenses
11 paid. It would be appropriate to freeze the assets of
12 the Plaintiff to allow us to pursue those costs.

13 JUDGE RENDELL: We don't have that authority.

14 MR. PAPASTAVROS: I thought it might be a bit
15 of an overreach.

16 JUDGE HUVELLE: I thought we were supposed to
17 treat them like whackables.

18 MR. SHELDON: I take responsibility for putting
19 that bug in his ear.

20 JUDGE VANCE: Did you want to say something?

21 MR. SHELDON: Just a policy thing. I mean, at
22 this point it gives patent trolls a bad name. I mean a
23 good name. This is the worst of the worst. If this is
24 allowed, every patent troll is going to do this.

25 JUDGE HUVELLE: My question is, would

1 centralization prevent it better than leaving it the way
2 it is which you described as whackable?

3 MR. SHELDON: Leave it the way it is. If they
4 refile, we are going to file summary judgment motions
5 for noninfringement and invalidity motions will get
6 filed again in the Northern District, which will kill
7 the patent. They have been prepared, been filed. Don't
8 centralize.

9 JUDGE RENDELL: Presumably, if they refile
10 these without prejudice, then there'll be more of a
11 critical mass and maybe see you again.

12 MR. SHELDON: That's possible. But right now,
13 this panel doesn't have the facts. Who is really going
14 to be subject to this case? It is probably going to be
15 more tagalongs than original people.

16 JUDGE BREYER: If it is refiled, you could
17 dispose of the case earlier than this panel can act on
18 it.

19 MR. SHELDON: We are really little defendants
20 and the cost of MDLs is horrendous. They are not going
21 to pay the troll. They are not going to pay them.

22 JUDGE PROCTOR: Should we understand your
23 position to be this: I would call them a patent troll
24 but that would offend all the patent trolls.

25 MR. SHELDON: Well said, your Honor.

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JUDGE VANCE: Thank you very much.
(Hearing concluded.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA,)
) ss
COUNTY OF SANTA BARBARA.)

I, TARA ANN SANDFORD, CSR #3374, Certified Shorthand Reporter, in the County of Santa Barbara, State of California, hereby certify:

That the court proceedings were taken down by me in stenotype at the time and place herein named and thereafter reduced to typewriting by computer-aided transcription under my direction.

I further certify that I am not interested in the event of the action.

WITNESS my hand this 4th day of April, 2016, at Santa Barbara, California.

Certified Shorthand Reporter
State of California
CSR No. 3374