

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

R2 TECHNOLOGY, INC., and	)	
SHIH-PING WANG,	)	
	)	
Plaintiffs,	)	
	)	C.A. No. 02-472 GMS
v.	)	
	)	
INTELLIGENT SYSTEMS SOFTWARE,	)	
INC.,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

**I. INTRODUCTION**

On June 3, 2002, the plaintiffs, R2 Technology, Inc. and Shih-Ping Wang (collectively “R2”), filed the above-captioned action alleging patent infringement of a medical device that analyzes mammograms and marks possible signs of breast cancer. On July 11, 2002, R2 filed its First Amended Complaint. Rather than respond to this complaint, however, the defendants, Intelligent Systems Software, Inc. (“ISSI”), ISSI Acquisition Corporation, Inc. (“ISSI Acquisition”), and icad, inc. (“icad”) (collectively “the defendants” or “icad”), moved to transfer this case to the Southern District of Florida and for a more definite statement of the complaint. For the following reasons, the court will deny both of the defendants’ motions.

**II. DISCUSSION**

R2 is a privately-owned Delaware corporation, with its principal executive offices located in Northern California. It manufactures, and sells, proprietary medical systems to assist radiologists in cancer detection. In 1998, the United States Food and Drug Administration (“FDA”) approved R2's ImageChecker product. ImageChecker is the first commercially manufactured computer-aided

detection (“CAD”) system for analyzing mammograms by marking suspicious image features. In effect, ImageChecker operates as a second pair of “eyes” to assist radiologists in detecting breast cancer. R2 has also obtained numerous other CAD-related patents.

icad is a Delaware corporation with twenty-nine employees located in offices in New Hampshire and Florida. It is a public corporation and is listed on the NASDAQ. Like R2, icad develops, manufactures, and sells a CAD system that analyzes mammograms. It obtained FDA approval to sell its MammoReader throughout the United States earlier this year.

**A. Motion to Transfer**

icad first moves to transfer this action to the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. § 1404(a).<sup>1</sup> Section 1404(a) provides that “[f]or the convenience of [the] parties and [the] witnesses, in the interest of justice,” the court may transfer this action to “any other district where it might have been brought.” 28 U.S.C. § 1404(a). While R2 and icad do not expressly agree that this action could have been filed in the Southern District of Florida, there can be little dispute that this is so because icad’s principal place of business is located within that judicial district. *See* 28 U.S.C. § 1400(b) (stating that “[a]ny action for patent infringement may be brought in the judicial district where the defendant resides . . .”).

Having satisfied the initial section 1404(a) requirement, the court will, therefore, move on with the inquiry as directed by the Third Circuit. *See Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995). In *Jumara*, the Third Circuit provided a list of factors to assist the district court in determining “whether, on balance, the litigation would conveniently proceed and the interests of

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<sup>1</sup>icad does not dispute that the present court has personal jurisdiction over it, nor does it dispute that venue is proper in the District of Delaware.

justice [would] be better served by a transfer to a different forum.” *Id.* These factors include six private and five public interests which the court may consider. *See id.*

Upon consideration of the applicable *Jumara* factors, the court finds that icad has not met its burden of demonstrating that transfer is appropriate. In reaching this conclusion, the court relies on the following considerations, among others: (1) although icad is a relatively small corporation, it has a nationwide presence and is publically traded on the NASDAQ; (2) both parties are incorporated in Delaware and should reasonably expect to litigate in the forum; (3) there is nothing on the record to suggest that any potential third-party fact witnesses are unwilling or unable to testify before the court; (4) discovery will not be unduly hampered by litigating the case in Delaware; (5) no documents will be unavailable for trial in Delaware; and (6) Florida does not have a greater interest in adjudicating this case because this is a patent infringement action where the parties market their products nationally. *See Affymetrix, Inc. v. Synteni, Inc.*, 28 F. Supp. 2d 192, 207 (D. Del. 1998). Thus, in light of these considerations, the court cannot conclude that the ‘balance of convenience’ tips strongly in favor of transfer.

#### **B. Motion for a More Definite Statement**

icad also moves for a more definitive statement pursuant to Federal Rule of Civil Procedure 12(e). In making its argument, icad points out that the First Amended Complaint is only ten paragraphs long. Paragraph eight alleges that the defendants “have directly and contributorily infringed, and have induced others to infringe one or more claims” of the patents-in-suit “by making, using, selling, and/or offering to sell Computer-Aided Detection systems, which are identified by the trade name ‘MammoReader.’” To cure this alleged defect, icad asks that R2 be required to file another amended complaint that “i identifies, for each of the three patents-in-suit, the claims at issue

and states, for each defendant, whether the alleged infringement of each such claim is direct, contributory, and/or inducement to infringe.” Because the court does not believe that the complaint is “so vague or ambiguous” that icad could not be “reasonably . . . required to frame a responsive pleading” to it, the court will deny icad’s motion.

The decision of whether to grant or deny icad’s motion rests within the sound discretion of the district court. *See Scriptgen Pharmaceuticals, Inc. v. 3-Dimensional Pharmaceuticals, Inc.*, No. 98-583-GMS, slip. op. at 3 (D. Del. Feb. 22, 1999) (citing 5A CHARLES ALLEN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1377, at 600-601 & n.3 (2d ed. 1990)). Courts generally view motions for a more definitive statement with disfavor. *See Frazier v. Southeastern Pennsylvania Transp. Auth.*, 868 F. Supp. 757, 763 (E.D. Pa. 1994); *Geir v. Educational Serv. Unit No. 16*, 144 F.R.D. 680, 685 (D. Neb. 1992). They do so because the Federal Rules of Civil Procedure require that a pleading contain only a “short and plain statement of the claim showing that the p[arty] is entitled to relief.” FED. R. CIV. P. 8. As a result, a party may only move for a more definitive statement in an effort to remedy an unintelligible pleading. *See In re Health Mgmt., Inc. Sec. Litig.*, 970 F. Supp. 192, 207 (E.D.N.Y. 1997).

Furthermore, the Rule 8 standard does not change in an action for patent infringement. *See Scriptgen*, 98-583-GMS, slip. op. at 3; *see also* FED. R. CIV. P. 84, Appendix of Forms, Form 16 (Complaint for Infringement of Patent). Indeed, it is apparent from the form patent infringement complaint that a complaint need only identify the patent, not the specific claims, being asserted. *See* FED. R. CIV. P. 84, Appendix of Forms, Form 16; *see also Gen-Probe, Inc. v. Amoco Corp., Inc.*, 926 F. Supp. 948, 960 (S.D. Cal. 1996) (stating that “[t]he Federal Rules do not require that the plaintiff plead with particularity the specific patent claims that have been infringed . . .”).

icad does not dispute that there is no requirement in the Federal Rules of Civil Procedure that R2 plead with the specificity icad now requests. It nevertheless argues that the facts of this case are such that the court should exercise its discretion in icad's favor. In essence, icad argues that because there are three defendants in this case, and three patents with a possible eighty-two claims, the court should require a more stringent pleading standard. For the following reasons, the court disagrees.

First, it is not entirely clear that the defendants are, in fact, three "distinct entities." Although the complaint technically names three defendants, ISSI, ISSI Acquisition, and icad, these companies appear to be the same entities using different names. Indeed, icad's CEO, Kip Speyer, explained that ISSI merged into icad on June 28, 2002, and that ISSI Acquisition is merely a shell company that has "no staff and has had no operations than to facilitate the acquisition of ISSI" Speyer Decl., ¶¶ 3-6. Moreover, the three defendants are represented by the same counsel. Thus, the court is not persuaded by icad's argument that each of the three defendants will have to independently analyze the infringement claims. Nor is the court persuaded by the fact that there are a possible eighty-two claims in this action. *See Scriptgen*, 98-583-GMS, slip op. at 3 (citing *Thomson S.A. v. Time Warner, Inc.*, No. 94-83 slip op. at 4 (D. Del. June 2, 1994) (Longobardi, C.J.) (reaching the same conclusion in a case involving four patents which contained a total of three hundred and twenty-two claims)).

Further, after reviewing R2's First Amended Complaint, the court concludes that it otherwise conforms to federal pleading requirements. In addition to setting forth an allegation of jurisdiction and identifying the patents-in-suit, the complaint plainly and succinctly states that the defendants are being sued for their alleged direct and contributory infringement and for having induced others to infringe one or more of the claims by "making, using, selling, and/or offering to sell Computer-

Aided Detection systems.” Therefore the court will deny icad’s motion.

### **III. CONCLUSION**

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. The Defendants’ Motion to Transfer (D.I. 12) is DENIED.
2. The Defendants’ Motion for a More Definite Statement (D.I. 12) is DENIED.
3. The Defendants shall file an Answer to the Plaintiffs’ First Amended Complaint within twenty (20) days of the date of this order.

Dated: October 9, 2002

Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE