IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

APPLE COMPUTER, INC.,	:	
	:	
Plaintiff,	:	Civil Action No. 03-101-JJF
	:	
v.	:	
	:	
UNOVA, INC. INTERMEC TECHNOLOGIES CORPORATION, CINCINNATI MACHINE OF UNOVA, INC., and UNOVA INDUSTRIAL AUTOMATION SYSTEMS, INC.	:	
	:	
Defendants.	:	

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Counsel for Defendants UNOVA, Inc. and Intermec Technologies Corporation.

MEMORANDUM OPINION

November 25, 2003

Wilmington, Delaware

Farnan, District Judge

Presently before the Court are the Motion to Strike Plaintiff's Amended and Supplemental Complaint (33-1), Motion to Transfer (D.I. 12-1), and Motion to Dismiss (14-1) filed by Defendants UNOVA, Inc. ("Unova") and Intermec Technologies Corporation ("Intermec"). For the reasons discussed, Defendants' motions will be denied.

BACKGROUND

Apple Computer, Inc., ("Apple") filed suit against the Defendants alleging infringement of several Apple patents. Unova and Intermec responded by filing the instant Motion to Dismiss and Motion to Transfer. Apple then filed an amended complaint that added supplemental allegations and claims of patent infringement against Cincinnati Machine of Unova, Inc. ("CMU"), and Unova Industrial Automation Systems, Inc. ("UIAS"). Unova and Intermec filed a motion to strike the amended complaint. Unova is currently involved in a patent infringement lawsuit against Apple in the Central District of California.

Apple is a California corporation with its principal place of business in northern California. Intermec, CMU, and UIAS are subsidiaries of Unova. Unova is a Delaware corporation, has its principal place of business in California, and is in the process of moving its headquarters to Seattle. Intermec is a Washington

corporation with its principal place of business in Washington. CMU and UIAS are Delaware corporations with their principal places of business in Ohio and Michigan respectively.

DISCUSSION

I. The Legal Standards

A. Motion to Strike

Federal Rule of Civil Procedure 12(f), in relevant part, states that "[a] court may order stricken... any redundant, immaterial, impertinent, or scandalous matter." However, such motions are generally disfavored unless the matter is clearly irrelevant to the litigation or will prejudice the adverse party. See Rechsteiner v. Madison Fund, Inc., 75 F.R.D. 499, 505 (D. Del.1977).

B. Motion to Transfer

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). In the Third Circuit, decisions on motions to transfer are guided by the private and public factors announced in Jumara v. State Farm Ins. Co. 55 F.3d 873, 879 (3d Cir. 1995). When determining whether transfer is warranted, district courts must balance all of the relevant

factors and respect that a plaintiff's choice of forum is entitled to substantial deference and should not be lightly disturbed when it is due to legitimate, rational concerns. Id. at 883. The burden is upon the movant to establish that the balance of the interests strongly weighs in favor of transfer, and a transfer will be denied if the factors are evenly balanced or weigh only slightly in favor of the transfer. See Continental Cas. Co. v. American Home Assurance Co., 61 F. Supp.2d 128, 131 (D. Del. 1999).

C. Motion to Dismiss

Federal Rule of Civil Procedure 12(b)(6) allows a claim to be dismissed for "failure to state a claim upon which relief can be granted." The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of a complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In reviewing a motion to dismiss for failure to state a claim, "all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the non-moving party." Strum v. Clark, 835 F.2d 1009, 1011 (3d Cir.1987), 835 F.2d at 1011. A court may dismiss a complaint for failure to state a claim only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Hishon v. King &

Spalding, 467 U.S. 69, 73 (1984).

II. Assertions of the Parties

A. Motion to Strike

Intermec and Unova assert that the claims against Cincinnati Machine, and UIAS were only added in an attempt to maintain forum in Delaware. Intermec and Unova assert that Apple's complaint could not be amended without leave of court and that such leave was not granted.

Apple contends that under Federal Rule of Civil Procedure 15(a) ("Rule 15(a)") it had the right, without leave of court, to add UIAS and CMU and to amend its allegations based on facts in existence before the filing of the original complaint. As to its other amendments, Apple requests leave under Federal Rule of Civil Procedure 15(d) ("Rule 15(d)") to the extent leave is required. Apple makes this request in its briefs and has not filed a motion seeking leave. Apple contends that allowing its amendments will not unfairly prejudice the defendants.

B. Motion to Transfer

Unova and Intermec assert that the parties in the instant case have no substantial connection to Delaware and that the case should be moved to the Central District of California, a forum

more convenient for the parties and more related to the action. Unova and Intermec contend that because Delaware is not the forum closest to Apple's residence or principal place of business, Apple will be less inconvenienced by a transfer and assert that Apple only chose the current forum for tactical reasons. Defendants allege that the case will be more quickly resolved in the Central District of California and that, because the parties already have litigation between them pending in the Central District of California, the case will be more efficiently heard in that District. Unova and Intermec contend that CMU and UIAS were not properly joined to this case and should not be considered in determining whether to transfer the case.

Unova and Intermec assert forum is appropriate in California and have asserted facts indicating that all parties are subject to personal jurisdiction in California. Unova and Intermec assert that the Central District of California is closer to the headquarters of Unova, Apple, and Intermec.

Unova and Intermec assert that the Central District of California will provide greater access to witnesses. Unova and Intermec contend that the patents involved have inventors most of whom are in California and none of whom are in Delaware. According to Unova and Intermec, no witness with knowledge of Apple's use of the inventions or licensing of the patents is in Delaware. Apple and Unova contend that unless a court has

personal jurisdiction over a witness, that witness's presence at trial cannot be ensured. Apple and Unova contend that therefore the presence of more witnesses can be ensured by moving the case to California.

Unova and Intermec assert that nothing concerning Apple's inventions is located in Delaware. Unova and Intermec contend that more sales of the allegedly infringing products have occurred in California than in Delaware and that the products are manufactured far from Delaware. Unova and Intermec contend that no documents on the design, manufacture, use, or sale of the products accused to violate the patents are located in or near Delaware.

Apple asserts that, as the plaintiff, it is entitled to deference on its choice of forum and that it has chosen an appropriate forum. Apple asserts that, with the exception of Intermec, three of the four defendants are Delaware corporations and are properly sued in Delaware even if not conducting business in the state. Apple asserts that Unova will be headquartered in Washington and not California by the time this case reaches trial.

Apple asserts that no location will be ideal for the convenience of the witnesses who are dispersed throughout the United States and France. Apple contends that Defendants have not provided evidence establishing that any witness critical to

its case will be unavailable for trial in Delaware. Apple contends that the key witnesses on infringement are in Washington, Michigan, and Iowa, and not in California.

Apple contends that this case is unrelated to the one pending in the Central District of California and that moving the case would not produce improvements in judicial economy. Apple contends that the disposition of this case would occur at essentially the same time in Delaware as in California.

Apple asserts that there is not sufficient reason to justify moving this case. Apple asserts that patent law does not implicate local interests and that local interest should not be a factor in deciding whether to move this case. Apple asserts that Delaware's expertise and experience in patent law also point to keeping the case in Delaware. Apple asserts that Defendants are large corporations with substantial resources who will not be substantially burdened by travel to Delaware.

C. Motion to Dismiss

Unova contends that all of Apple's claims against it should be dismissed; Intermec contends that Apple's claims against it alleging indirect infringement should be dismissed. Unova asserts that it is a holding company that does not make, use, sell, or import any of the accused products and that has not contributed to or induced infringement. Unova asserts that Apple

has neither alleged that Unova sold infringing products nor alleged that Unova should be held liable for Intermec's sale of allegedly infringing products.

Unova and Intermec contend that Apple has not and can not set forth a basis for its allegations of induced infringement. Unova and Intermec contend they were unaware of the patents at issue in the case before the lawsuit was filed and have introduced an affidavit in support of this contention.

Apple asserts that its amended complaint has cured any defects in the original complaint and made the motion to dismiss moot. Apple asserts that the motion to dismiss targets the non-operative former complaint and that a ruling on this complaint would be, in effect, an advisory opinion. Apple asserts that it has sufficiently pled its causes of action.

Apple asserts that no discovery has occurred in this case and that neither dismissal nor summary judgment (should the Court choose to convert the motion to dismiss) is appropriate. Apple asserts that Unova's website and public declarations indicate that Unova makes and sells products. Apple asserts that Intermec also makes and sells products. Apple asserts that Unova and Intermec both have products infringing on at least one claim of each patent at issue in this action and have been actively and intentionally inducing their customers and, in the case of Unova, subsidiaries, to use the infringing products. Apple asserts that

all of the facts relevant to infringement are in Unova and Intermec's possession and that it is entitled to discovery as to its claims. Apple contends that there are material issues of fact that preclude summary judgement.

III. Analysis

A. Motion to Strike

"A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served[.]" FED. R. CIV. P. 15(A). "Neither a motion to dismiss, nor a motion for summary judgment, constitutes a responsive pleading under Federal Rule of Civil Procedure 15(a)." Centifanti v. Nix, 865 F.2d 1422, 1431 n.9 (3d Cir. 1989). Apple's amended complaint was filed before Defendants made a responsive pleading and therefore the Court concludes that Apple was generally entitled to amend its complaint.

Even if a responsive pleading has not been filed, Court approval is required for "supplemental pleading[s] setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." FED. R. CIV. P. 15(D). "[A] supplemental pleading adds to the original some matter occurring after the beginning of the action or after a responsive pleading has been filed." Klee v. Pittsburgh & W.V. Ry. Co., 22 F.R.D. 252, 254 (W.D. Pa.1958). Apple's claims

alleging knowledge based on information conveyed in the original complaint are clearly supplemental pleadings.

Additionally, Federal Rule of Civil Procedure 21 ("Rule 21"), in relevant part, holds that "[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." FED. R. CIV. P. 15(A). Some courts have held that Rule 21 supersedes Rule 15 and requires court permission before parties are added. See, e.g., Renard v. Dillman, 1998 U.S. App. LEXIS 38626 (2nd Cir. 1998). Other courts, including courts in this District, have indicated that, before a responsive pleading has been issued, parties may be added even without leave to amend. See e.g. Standard Chlorine of Del., Inc. v. Sinibaldi, 821 F. Supp. 232, 259 (D. Del. 1992). The Court has not considered on the issue and need not do so today.

Apple has requested leave to amend to the extent its pleading requires such leave. "[I]n the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive[], repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of [the] amendment," leave to amend is to be given freely and is entrusted to the discretion of the court. Foman v. Davis, 371 U.S. 178, 182 (1962). The Court finds that Defendants will not suffer

unfair prejudice from granting leave to amend. While Apple should have made its request more formally, the Court will grant Apple leave to amend to the extent such leave is now required.

B. Motion to Transfer

Jumara v. State Farm Ins. Co. dictates that the Court examine the private and public interest in determining whether a transfer is warranted. 55 F.3d 873, 879 (3d Cir. 1995).

The Court finds that the asserted public advantages of moving the case to the Central District of California are insufficient. The parties are already involved in a dispute in the Central District of California; however, the California action is unrelated to the claims of the instant action and involves multiple parties not joined in this case. Also, on comparing the jurisdictional statistics for the Central District of California and the District of Delaware, the Court finds that moving the case to the Central District of California will produce little advantage in expediency and in the allocation of judicial resources. Neither California nor Delaware has a local interest in the decision of this case.

The Court also finds that the private factors do not favor transfer. While more witnesses can be subpoenaed in California, a particular need to subpoena these witnesses has not been demonstrated. The parties are predominantly located closer to

California and neither the parties nor the case have strong ties to Delaware. However, the parties as a whole are not located close to the Central District of California and all of the parties are sophisticated and substantial enough to litigate in Delaware. Apple is entitled to deference on its choice of forum, and therefore the Court concludes that Unova and Intermec's Motion to Transfer must be denied.

C. Motion to Dismiss

Initially the Court observes that Apple's amended complaint has made parts of Unova and Intermec's motion to dismiss moot. In its Amended Complaint, Apple has alleged that, since the initial pleading, Intermec and Unova were aware of Apple's patents. In this regard Apple has plead a claim for inducement of infringement and contributory infringement.

Unova contends that it does not make, use, sell, or offer for sale any of the accused products and is entitled to the dismissal of Apple's claims. Apple has pled the opposite and has stated a claim for infringement. The parties have not yet engaged in discovery, and, at this early stage, factual determinations are not appropriate. If Unova is correct in its contentions about itself and about Apple's motives in filing suit, summary judgment and sanctions may later be appropriate. At present, however, the Court will deny Unova and Intermec's

motion to dismiss.

CONCLUSION

For the reasons discussed, the Court has denied the Motion to Strike Plaintiff's Amended and Supplemental Complaint (33-1), Motion to Transfer (D.I. 12-1), and Motion to Dismiss (14-1) filed by Defendants UNOVA, Inc. and Intermec Technologies Corporation. An Order consistent with this Memorandum Opinion will be entered.

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Plaintiff,	:	Civil Action No. 03-101-JJF
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v.	:	
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	:	
Defendants.	:	

O R D E R

At Wilmington, this 25th day of November, 2003, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1) The Motion to Strike Plaintiff's Amended and Supplemental Complaint (33-1) filed by Defendants UNOVA, Inc. and Intermec Technologies Corporation is **DENIED**.

2) The Motion to Transfer (D.I. 12-1) filed by Defendants UNOVA, Inc. and Intermec Technologies Corporation is **DENIED**.

3) The Motion to Dismiss (D.I. 14-1) filed by Defendants UNOVA, Inc. and Intermec Technologies Corporation is **DENIED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE