IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

COLLEGE PRODUCTS, INC.,

Plaintiff,

vs. No. C23-4002-KEM

INTIRION CORPORATION, TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE

Defendant.
_____/

INTIRION CORPORATION,

Plaintiff,

vs. No. C23-4023-KEM

COLLEGE PRODUCTS., INC.,

Defendant.
_____/

The Status Conference held before the Honorable Kelly K.E. Mahoney, Chief Magistrate Judge of the United States District Court for the Northern District of Iowa, at the Federal Courthouse, 320 Sixth Street, Sioux City, Iowa, May 4, 2023, commencing at 2:03 p.m.

Intirion Corporation Exhibit 2009
College Products, Inc. v. Intirion Corporation
IPR 2023-01042

Contact Shelly Semmler at 712-233-3846 or ssemmlerreporting@gmail.com to purchase a complete copy of the transcript.

APPEARANCES

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For the Defendant Intirion:	R. SCOTT JOHNSON, ESQ. THOMAS M. PATTON, ESQ. CARA S. DONELS, ESQ. Fredrikson & Byron Suite 301 111 East Grand Avenue Des Moines, IA 50309 MICHAEL J. FREY, ESQ. Michael J. Frey, PC Suite 300 701 Pierce Street Sioux City, IA 51101
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1 (The following transcript was prepared from an audio
2 recording.)
3 * * * *
4 THE COURT: Hi. This is Judge Mahoney. We're
5 here in the matter of College Products, Inc., versus
6 Inti -- is it Intirion Corporation, 23-CV-4002, as well
7 as Case Number -- or case Intirion Corporation versus
8 College Products, Inc., Case Number 23-CV-4023. Who do
9 we have on the line on behalf of Intirion? And please
10 let me know if I'm mispronouncing that name.
11 MR. JOHNSON: Good afternoon, Your Honor. This
12 is Scott Johnson with Fredrikson & Byron. I think you're
13 pronouncing it correctly, Intirion. With me today I have
14 Thomas Patton and Cara Donels as well as Mike Frey from
15 the Mayne law firm.
16 THE COURT: All right. And, Mr. Johnson, I
17 understand you'll be handling the hearing today?
18 MR. JOHNSON: Yes. Unfortunately I think
19 you're stuck talking to me today, Judge.
20 THE COURT: No problem.
21 And then on behalf of College Products, who do we
22 have on the line?
23 MR. LLAGOSTERA: Hello, Your Honor. This is
24 Domingo Llagostera. Oh, I'm sorry. Go ahead, Jeana.
25 MS. GOOSMANN: You bet, Your Honor. This is

1 Jeana Goosmann, as well. And Domingo's going to be
2 arguing today.
3 THE COURT: Very well. So we are here for a
4 status conference about consolidation of these cases. I
5 did receive the parties' e-mail with the bullet points of
6 the issues to be discussed as well as your individual
7 positions or each side's position on them.
8 From review of that at this point I guess the only
9 questions I have -- well, I have a coup -- few questions.
10 So for College Products, you indicate you do not think
11 that Intirion should be making an argument for personal
12 jurisdiction or argument against having personal
13 jurisdiction over it at this time. Why is that?
14 MR. LLAGOSTERA: Well -- sorry, Your Honor.
15 This is Domingo Llagostera with Blank Rome. It's nice to
16 meet you. I'm out of Houston.
17 The reason I -- we made that comment is because the
18 issues in this e-mail were about whether -- which case
19 should be consolidated into which. And I understand that
20 Intirion (interrupted connection) file a motion for lack
21 of personal jurisdiction, and that being the case
22 (interrupted connection) in a brief. I'm not sure if
23 that has any bearing on the consolidation issue. The
24 reason is because they -- they've (interrupted
25 connection) to have their case transferred to this court.

1 And we believe that's another reason that personal
2 jurisdiction is proper in this action. We amended our
3 complaint about a week ago, two weeks ago to point that
4 out. So personal jurisdiction is -- is a problem in the
5 first instance, particularly as for amended complaint
6 (interrupted connection) of this Court. But to the
7 extent we're going to go into that, we should probably
8 brief that in a 12(b) motion that they file.
9 THE COURT: All right. And I guess for
10 Intirion, you mention a couple times that if this case
11 were to be consolidated into the College -- or the action
12 filed here by College Products that it would improperly
13 align the parties putting them in positions inconsistent
14 with the primary purpose of the litigation.
15 I guess I'm just -- I want to clarify what you mean
16 by that.
17 MR. JOHNSON: Sure, Your Honor. This is a
18 patent infringement case. Intirion owns four patents
19 that are at issue in both cases. In the Texas case, of
20 course, we filed as the patent owner a patent
21 infringement case against someone who we believe to be an
22 infringer to align with that primary purpose of the
23 litigation, and that was the original subject matter of
24 their declaratory judgment action as well was the patent
25 infringement accusations.

1 To align that with the plaintiff and the defendant
2 with the burdens of proof, it just makes sense to have
3 the patent owner as the plaintiff and the accused
4 infringer as the defendant.
5 At the 11th hour, they filed an amended complaint,
6 and that was actually after our meet and confer on
7 consolidation. And they added in these new claims of
8 unfair competition and defamation in just sort of an
9 attempt to try and remain plaintiff for some reason.
10 We're not sure why they did that. But we think it only
11 makes logical sense to keep the patent owner as the
12 plaintiff, the accused infringer as the defendant. And
13 if they want to add in some counterclaims, they're free
14 to do that in our case.
15 THE COURT: And you don't think that the
16 counterclaims that they would file or basically the
17 claims in their case they filed here are compulsory
18 counterclaims?
19 MR. JOHNSON: They may be, Judge. I mean, I'm
20 assuming that they arise out of the same operative facts,
21 if you will, related to our enforcement of our
22 intellectual property. But it doesn't really change the
23 narrative that the patent owner should be the plaintiff
24 in what is otherwise a, you know, multi-patent patent
25 infringement suit.

1 THE COURT: And I guess for College Products,
2 why do you need the separate case versus adding these in
3 as counterclaims in the case initially filed by Intirion?
4 MR. LLAGOSTERA: I'm sorry, Your Honor. It cut
5 out for me for one second there. If you would please
6 repeat that question.
7 THE COURT: Sure. I guess why could your
8 claims that you filed in the lawsuit you brought here not
9 be included as counterclaims and perhaps -- or should
10 they not be included as counterclaims in the original
11 suit filed in Texas by Intirion?
12 MR. LLAGOSTERA: Well, they could.
13 (Interrupted connection) compulsory from our perspective
14 because they're not just related to the allegations of
15 patent infringement against College Products' customers.
16 They are related to the defamatory statements that we
17 believe or contend Intirion has been making to College
18 Products' customers like the suggestions of bankruptcy
19 and unsafe products. That's a different issue. And
20 we've included the letters that Intirion has sent to
21 College Products' customers in the complaint. So those
22 are definitely not compulsory I don't think.
23 THE COURT: Okay.
24 MR. LLAGOSTERA: But I would like to address
25 what defendant's couns -- or what Intirion's counsel just

1 said about the proper order in a patent. We -- if the
2 Court would permit me to do that.
3 THE COURT: Sure. Go ahead.
4 MR. LLAGOSTERA: So the issue here is whether
5 from our view they filed an infringement action in Waco.
6 They filed (interrupted connection) months ago, and right
7 out of the gate we told them that that was not a proper
8 venue because under the venue statute for patent cases
9 you have to -- the defendant has to have a physical place
10 of business in the jurisdiction. And there was no
11 allegation of a physical place from the jump that we
12 spent over a year fighting about because under the
13 court's rules in Waco, the plaintiff, Intirion, is
14 entitled to jurisdictional discovery.
15 While that was going on, we discovered that they
16 were sending letters to customers like the one we
17 included in our complaint, and it was clear to us that
18 what was happening was that they were forum shopping to
19 pull us into Texas and putting the screws (interrupted
20 connection) small company operating out of Sioux City.
21 There's only less -- there's less than ten employees. No
22 question we don't have a physical place of business in
23 Texas.
24 But what happened was during discovery we recognized
25 that it was a very good chance that Intirion was

1 (interrupted connection) course around Texas go to the
2 Eastern District or Southern District because they
3 (interrupted connection) for broader discovery the
4 Western District of Texas (interrupted connection) to
5 stop that to make sure that their patent claims were
6 going to be litigated and adjudicated in the proper
7 venue.
8 The court in the Western District of Texas agreed
9 with us and found their venue arguments irrelevant,
10 unpersuasive, unconvincing was I think what the court
11 used, not a single (interrupted connection) was proper.
12 And so from our perspective and under the law we
13 cited, there was never a properly filed suit in Waco, so
14 they're not the first to file. And our DJ action takes
15 precedence over that type of forum shopping, and we put
16 some case law in our (interrupted connection) on that.
17 And I'll note all of the cases -- there's not a single
18 case in there where it was initially improper filing.
19 And so we believe that (interrupted connection)
20 plaintiffs (interrupted connection) both in the unfair
21 (interrupted connection) to stay as plaintiff. We just
22 discovered a few months ago the letters to the
23 universities. We're hoping this case would get settled
24 after it was transferred out of Waco. That didn't
25 happen. So the counterclaims of unfair competition

1 (interrupted connection).
2 THE COURT: Okay. And just for the record, you
3 were -- you cut out a bit during what you said there. I
4 was able to follow what you were saying, though. I guess
5 why does it matter to you who's the plaintiff?
6 MR. LLAGOSTERA: Why does it matter? Did I
7 hear you say what does it matter who's the plaintiff,
8 Your Honor?
9 THE COURT: Yes.
10 MR. LLAGOSTERA: Because we think we have the
11 affirmative cause of action here. I mean, I understand
12 that they brought a patent infringement claim. But in
13 our view, this really is not something that they're
14 interested or have been interested in really adjudicating
15 (interrupted connection) a DJ action in our other
16 affirmative claims. And we are facing substantial harm
17 in the industry because of the filing in Waco and having
18 drug that out over a year. And so we believe that we
19 should be a plaintiff and recover for all the harm that's
20 been caused to our university relationships.
21 THE COURT: But can you still recover if you
22 filed counterclaims in a case with Intirion as the --
23 essentially original case even though it was filed in
24 Texas?
25 MR. LLAGOSTERA: I believe that -- yes, Your

1 Honor. I don't see any reason why we couldn't bring
2 counterclaims of unfair competition and defamation in --
3 in their case and recover for that. But we -- because of
4 what has happened in the past, we don't think that's the
5 appropriate action and (interrupted connection) in our
6 case and that we really are truly the first to file
7 plaintiffs.
8 THE COURT: All right. And again, I've looked
9 at the docket from the Western District of Texas case. I
10 read the order denying the motion to dismiss filed by
11 College Products and instead transferring the case here
12 to the Northern District of Iowa. Again, I read your
13 points from the e-mail you submitted earlier.
14 So at this point it looks like there's going to be a
15 motion to dismiss filed by Intirion for lack of personal
16 jurisdiction in the College Products case. That's the
17 4002 case filed here originally in this district. I
18 think that's going to have to be litigated, and that will
19 need to be determined by either a district judge or by me
20 if the parties -- you may all consent to the case
21 proceeding before a magistrate judge.
22 I think in light of that, it makes the most sense to
23 leave the cases separated at this point. It could be
24 done otherwise. But I think that's probably just the
25 most efficient and the most timely way to get it done.

1 And then once that is resolved, it doesn't appear the
2 parties disagree that the ca -- they're in agreement the
3 cases should be consolidated. It's just who should be
4 the lead case, which case should be the lead case, and
5 when should that happen.
6 So in answer to the when, I think it should happen
7 after any motion for lack of personal jurisdiction has
8 been resolved in the College Product case. So that's the
9 4002 case filed first here in this district. After that
10 I don't know as it really matters as to which case is
11 filed -- or which case is consolidated into the other
12 assuming there still is a case on the College Products
13 matter. Generally this Court will go with the first
14 filed. Obviously there's a wrinkle in this because the
15 first filed was the Intirion case which is the 4023 case
16 in this district originally filed in Texas.
17 But at the end of the day, I think that was the
18 original case filed, and it would make sense for that to
19 be the lead case even though it was later transferred to
20 this district.
21 So again, this is informal guidance at the request
22 of the parties on a status conference. So I guess does
23 that answer the questions you have at this point,
24 Mr. Johnson, on behalf of Intirion?
25 MR. JOHNSON: Yes, Your Honor. I would ask one

1 other question --
2 THE COURT: Sure.
3 MR. JOHNSON: -- I guess with regard to
4 scheduling -- scheduling conferences I guess or the
5 scheduling order. Can we delay entry of a scheduling
6 order or discussion of a scheduling order until we know
7 which case is really going forward until after resolution
8 of that motion to dismiss?
9 THE COURT: Yeah. And I guess what is College
10 Products' position on that, Mr. Llagostera?
11 MR. LLAGOSTERA: I think it makes sense to hold
12 off on a scheduling order until we get the personal
13 jurisdiction issue resolved.
14 THE COURT: Okay. I'll enter an order then in
15 the College Products case -- that's the 4002 case -- to
16 extend the deadline for filing a proposed scheduling
17 order and discovery plan. That deadline right now is
18 tomorrow. So I will order that that be extended.
19 Obviously you're trying to gauge how long it will take to
20 get a ruling on a motion that has not yet been filed and
21 fully briefed. I'll go ahead and just extend that for 60
22 days likely at this point, or I'll include it in the
23 order, but I think that probably makes sense to push it
24 down at least that far down the road.
25 I guess anything -- anything on what I've advised so

1 far on guidance from the Court on behalf of College
2 Products at this case -- point?
3 MR. LLAGOSTERA: Sure, Your Honor, just a point
4 of clarification. On the comments about the Waco court
5 being the first to file and whether it's really the first
6 to file, will we have an opportunity after the personal
7 jurisdiction motion is decided to either reraise this
8 issue or key it up for perhaps some short briefing
9 because I do think we've got kind of an unusual situation
10 here with the case being filed in an improper venue and
11 also want to comment that there was never a offer to
12 transfer that case up until the court was going to
13 dismiss their case for lack of venue. That was a
14 throw-in at the hearing at the very end. So I think it
15 might benefit the Court if we could at least lay some of
16 these things out. It doesn't have to be long.
17 THE COURT: Yeah. No. I mean, you're free to
18 do that. I -- frankly, I've found in a lot of these
19 cases there's nothing -- there's never anything that
20 isn't long. Briefs tend to be very lengthy, lots of
21 attachments and such. But no, you're free to reraise the
22 issue after issues of personal jurisdiction have been
23 dealt with in the College Products case.
24 Yeah. What else on behalf of College Products do
25 you think we need to discuss at this point?

1 MR. LLAGOSTERA: That's it for us, Your Honor.
2 We'll work with the other side on any further briefing
3 schedule including a page limit to not burden the Court
4 with something that is overburdensome.
5 THE COURT: Sure. Anything else on behalf of
6 Intirion, Mr. Johnson?
7 MR. JOHNSON: Yes, Your Honor. The same
8 deadline is approaching in the Intirion -- the
9 transferred case in Texas. I think our deadline is May
10 13 to file our scheduling order or proposed scheduling
11 order in that matter. Could we get a 60-day extension of
12 that as well, please?
13 THE COURT: No. I'll go ahead and run those --
14 I'll do a written order in both cases. It will be the
15 same deadline.
16 The only other thing I would say to the parties
17 are -- and I know that some counsel -- I don't know as
18 that I've had you appear before me before. So welcome to
19 the Northern District of Iowa if we have not had a case
20 together.
21 Obviously this is a case -- at least the Intirion
22 case has been pending for some time. You've had a lot of
23 interaction. I can understand the parties' frustrations
24 on both sides as to where you're at and why you're here
25 and how things have gone.

1 I'll just let you know that at the end of the day I
2 fully expect you're going to work well together to move
3 the case along. To the extent you have pleadings,
4 briefings, and things, I've already noted some
5 contentiousness in those pleadings, just, oh, the way
6 that motions are -- things that have happened have been
7 described and things. And I hope that that doesn't
8 continue. I think that you can make your arguments and
9 make your points without needing to go there.
10 And so to the extent that that's helpful guidance to
11 you, it's not a requirement, but it's just generally my
12 preference that we don't act in that manner.
13 So I will do a written order extending the deadlines
14 for proposed scheduling orders and discovery plans in
15 both of these cases. Otherwise there will be a minute
16 entry entered in both cases just what we discussed here
17 today.
18 And again, this is general guidance. There was no
19 formal motion made, so it's not a formal order. But you
20 requested the guidance, and that's the guidance I have
21 for you at this point. So with that, that will conclude
22 this status conference. Thank you.
23 (The foregoing hearing was
24 concluded at 2:21 p.m.)
25 (This concludes the transcript of the audio recording.)

1 CERTIFICATE

2 I certify that the foregoing is a correct

3 transcript to the best of my ability from the digital

4 recording of proceedings in the above-entitled matter.

5 S/Shelly Semmler 5-22-23
Shelly Semmler, RDR, CRR Date

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