



Taking Advantage of the Rocket Docket and Avoiding the Pitfalls...At the Same Time?

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Juniper Network Inc.'s strategic plan to take advantage of the Rocket Docket as a plaintiff in its patent infringement claims against GraphOn Corp., while transferring GraphOn's patent infringement claims to a slower jurisdiction, appears to be coming to fruition. The dispute between Juniper and GraphOn initially began in 2007 in the Eastern District of Texas, where GraphOn sued Juniper for patent infringement for network security products. Juniper retaliated by suing GraphOn in the Eastern District of Virginia for patent infringement for data transmission. Not to be outdone, GraphOn attempted to take advantage of the Rocket Docket by filing in the Virginia case a counterclaim for infringement based on the Juniper products it accused of infringement in the Texas case. However, GraphOn's attempt to bring its claims to Virginia were not successful.

In an opinion by Judge Lee, the Eastern District of Virginia recently granted Juniper's motion to sever and transfer GraphOn's patent infringement counterclaim to the Texas case. Juniper moved to transfer only GraphOn's counterclaim for patent infringement -- not Juniper's affirmative claim for patent infringement. Juniper successfully argued that that patent infringement counterclaims were better suited to be adjudicated in the Texas court because they targeted all but one of the same products which were already at issue there. Juniper further justified the transfer by showing that the counterclaims had no relation to the patent infringement suit that Juniper was asserting against GraphOn in the Virginia case. Juniper therefore kept its claims for patent infringement against GraphOn in the Rocket Docket, while transferring GraphOn's claims for infringement to a slower jurisdiction in Texas.

Meanwhile, the saga continues as the Texas court is currently entertaining Juniper's motion to transfer the Texas suit to the Northern District of California. GraphOn pointed out this fact to Judge Lee in its opposition to Juniper's motion, alleging that Juniper's actions were simply an attempt to exploit the federal court system. However, the Court was not persuaded by GraphOn's arguments.

Juniper Networks Inc. v. GraphOn Corp., Case No. 1:09-cv-00287 (E.D. Va., Alexandria Division).

GraphOn Corp. v. Juniper Networks Inc., Case No. C. A. No. 2:07-CV-373-CE (E.D. Tex., Marshall Division)