IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 13-cv-00840-PAB-KLM

FIBER, LLC, a Wyoming limited liability company,

Plaintiff,

v.

CIENA CORPORATION, a Delaware corporation, and
CIENA COMMUNICATIONS, INC., a Delaware corporation,

Defendants.

ORDER

This matter is before the Court on the Joint Motion to Consolidate Cases [Docket No. 53] filed by plaintiff Fiber, LLC ("Fiber") and defendants Ciena Corporation and Ciena Communications, Inc. (collectively, "Ciena"). The parties seek an order consolidating this case with a related case, *Fiber LLC v. Viavi Solutions Inc.*, No. 15-cv-01743-PAB ("*Viavi*" or "the *Viavi* action"), for all pre-trial purposes. Defendants in the *Viavi* action agree that the two cases should be consolidated. *Id.* (Docket No. 26 at 1). After review of the pleadings in each of these cases, the Court concludes that consolidation is appropriate under Fed. R. Civ. P. 42(a).

I. BACKGROUND

Fiber initiated this lawsuit on April 2, 2013, alleging that Ciena and/or its subsidiaries or agents are engaged in the business of making, using, offering for sale, and selling devices that infringe United States Patent Nos. 6,430,332 B1 (the "'332

Patent") and 7,095,917 B2 (the "'917 Patent). *See generally* Docket No. 1. On July 18, 2013, the Court stayed this lawsuit pending the resolution of an *inter partes review* ("IPR") of the patents-in-suit initiated by JDS Uniphase Corporation ("JDSU"), a non-party to this action. Docket No. 33; *see also* Docket No. 29 at 1, ¶ 2. On September 18, 2015, Fiber moved to reopen this case, representing that the United States Patent and Trademark Office Patent Trial and Appeal Board ("PTO") issued final written decisions in the IPR proceedings on December 5, 2014. Docket No. 36 at 2, ¶ 4. The PTO's decisions invalidated certain claims of the patents-in-suit, but left eight claims – claims 125, 126, 128, 130, and 132 of the '332 Patent and claims 67, 68, and 70 of the '917 Patent – undisturbed. Docket No. 36 at 2; ¶ 4. Based on Fiber's representation that the IPR proceedings had concluded, the Court reopened this case on November 2, 2015. Docket No. 52.

On August 12, 2015, Fiber initiated the *Viavi* action. *Viavi* (Docket No. 1). In the *Viavi* action, Fiber brings claims for infringement of the '332 and '917 Patents against Viavi Solutions Inc., the successor entity of JDSU, as well as against Lumentum Holdings Inc., Lumentum Inc., and Lumentum Operations LLC (collectively, "Lumentum"). *See id.* The parties state that Lumentum supplies Ciena with components of the accused devices. Docket No. 53 at 4.

II. ANALYSIS

Rule 42(a) of the Federal Rules of Civil Procedure provides that, "[i]f actions before the court involve a common question of law or fact, the court may . . . consolidate the actions." Fed. R. Civ. P. 42(a)(2). Pursuant to Local Rule 42.1, the

judge assigned to the lowest numbered case decides whether consolidation is warranted. D.C.COLO.LCivR 42.1.[1] The decision whether to consolidate actions involving common questions of law or fact is committed to the sound discretion of the district court. *Shump v. Balka*, 574 F.2d 1341, 1344 (10th Cir. 1978). The purpose of Rule 42(a) is "to give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties." *Breaux v. Am. Family Mut. Ins. Co.*, 220 F.R.D. 366, 367 (D. Colo. 2004) (quoting 9 C. Wright & A. Miller, Fed. Prac. & Proc. § 2381 (2d. Ed. 2995)). Therefore, the Court will consider both judicial economy and fairness to the parties in exercising its discretion under Rule 42(a). *See Harris v. Ill.-Cal. Express, Inc.*, 687 F. 2d 1361, 1368 (10th Cir. 1982).

Both cases involve the same patents and seek to answer the same question: whether the patents are likely to be infringed. Thus, Rule 42(a)'s requirement of a common question of law or fact is satisfied. Additionally, the Court notes that Ciena, Viavi Solutions, Inc., and Lumentum are all represented by the same counsel. Moreover, as this action was stayed until the Court reopened it on November 2, 2015 and the *Viavi* action was filed relatively recently, the cases are at a similar stage of litigation, which further favors consolidation. Finally, the Court agrees with the parties that consolidation of these two cases for pre-trial purposes will promote judicial economy, particularly since consolidation will allow for a single claim construction process while keeping the cases separate would require both counsel and the Court to

[1]In this instance, both cases are before the Court.

duplicate effort unnecessarily. Therefore, because the cases involve common questions of law and fact, the cases will be consolidated.

III. CONCLUSION

For the foregoing reasons, it is

ORDERED that the Joint Motion to Consolidate Cases [Docket No. 53] filed by plaintiff Fiber, LLC and defendants Ciena Corporation and Ciena Communications, Inc. is **GRANTED**. It is further

ORDERED that, pursuant to Fed. R. Civ. P. 42(a) and D.C.COLO.LCivR. 42.1, Civil Action Nos. 13-cv-00840-PAB-KLM and 15-cv-01743-PAB shall be consolidated for all pre-trial matters up to, but not including, the final pretrial conference. It is further

ORDERED that the Clerk of the Court shall reassign Civil Action No. 15-cv-01743-PAB to Magistrate Judge Kristen L. Mix. It is further

ORDERED that, as of the date of this Order, all future pleadings and other filings shall be filed in this case only and shall be captioned as shown below:

Civil Action No. 13-cv-00840-PAB-KLM

(Consolidated with Civil Action No. 15-cv-01743-PAB-KLM)

FIBER, LLC, a Wyoming limited liability company,

Plaintiff,

v.

CIENA CORPORATION, a Delaware corporation, and
CIENA COMMUNICATIONS, INC., a Delaware corporation,

Defendants.

FIBER, LLC, a Wyoming limited liability company,

Plaintiff,

v.

VIAVI SOLUTIONS, INC., f/k/a JDS Uniphase Corporation,
LUMENTUM HOLDINGS, INC.,
LUMENTUM INC., and
LUMENTUM OPERATIONS, LLC,

Defendants.

DATED November 16, 2015.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge