

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

NETWORK APPLIANCE, INC.	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION NO. 9:07-cv-206 RHC</b>
	)	
<b>VS.</b>	)	
	)	<b>Jury Trial Demanded</b>
	)	
SUN MICROSYSTEMS, INC.	)	
	)	
<b>Defendant,</b>	)	

**AGREED MOTION TO TRANSFER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff Network Appliance, Inc. and Defendant Sun Microsystems, Inc., hereinafter referred to jointly as “the Parties”, and file this Agreed Motion to Transfer. The parties respectfully show the Court as follows:

**I.**

The Parties have met and conferred regarding the best venue for the resolution of this case. As a result of such conferences, Plaintiff and Defendant have agreed to a transfer of this case, pursuant to 28 U.S.C. Section 1404, to the United States District Court for the Northern District of California to be heard by Magistrate Judge Elizabeth D. Laporte. There is currently pending between the parties in the Northern District of California another patent infringement action, entitled *Sun Microsystems, Inc. v. Network Appliance, Inc.*, Case No. C-07-05488.

Plaintiff agrees to this transfer because of the parties’ agreement to have this case and the other pending patent litigation between the parties in the Northern District of California resolved by Judge Laporte. Plaintiff believes in particular that having Judge Laporte preside over both of the parties’ patent cases will lead to a just and speedy resolution of all of their disputes. Counsel for the parties have conferred with Judge Laporte, who has agreed to hear this matter and to

conduct a prompt Case Management Conference with the goal of a prompt resolution of the disputes. The parties have consented to have Judge Laporte hear this matter for all purposes, including trial.

Defendant agrees to this transfer because it believes that, in light of the location of the parties, the location of the potential witnesses in this case, and the location of the other evidence relevant to this case, the Northern District of California is the most convenient venue for this action and, accordingly, such a transfer is warranted. The Parties have substantial facilities in the Northern District of California, their headquarters are located near one another in the Northern District of California, and most of the potential witnesses and documents are located in the Northern District of California. Defendant also agrees to this transfer in light of the existence of the other pending patent litigation between the parties in the Northern District of California, and in view of the agreement to have Judge Laporte hear both cases.

In sum, the parties agree that the interest of justice would best be served in this case by a transfer of this case to the Northern District of California to be heard by Judge Laporte to whom the Parties hereby consent.

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff Network Appliance, Inc. and Defendant Sun Microsystems, Inc. pray that the Court transfer this case to United States Magistrate-Judge Elizabeth E. LaPorte of the United States District Court for the Northern District of California.

Respectfully submitted,

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**Attorney for Defendant  
and Counter-Claimant  
Sun Microsystems, Inc.**

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 21 day of November, 2007, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3). Any other counsel of record will be served by a facsimile transmission and/or first class mail.

/s/ Mark Fowler  
Mark Fowler