

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HARVARD BATTERY, INC.,	:	
	:	
Plaintiff,	:	
v.	:	No. 06-cv-2702
	:	
SYMBOL TECHNOLOGIES, INC.,	:	
	:	
Defendant.	:	

Green, S.J.

October __, 2006

MEMORANDUM

Presently pending is Defendant's "Motion to Dismiss or Transfer to the United States District Court for the Eastern District of New York," and the response thereto. For the foregoing reasons, Defendant's Motion will be denied.

Plaintiff filed the instant action seeking a declaratory judgment that Plaintiff did not infringe on certain patents owned by Defendant. Subsequent to Plaintiff's filing of the instant action, Defendant filed an action against Plaintiff for patent infringement, and other related claims, in the United States District Court for the Eastern District of New York.

As a general rule, the first-filed case is favored, "unless considerations of judicial and litigant economy, and the just and effective disposition of disputes, require otherwise." Genentech, Inc. V. Eli Lilly & Co., 998 F.2d 931, 937 (Fed. Cir. 1993). Defendant claims that as a result of Plaintiff's alleged anticipatory filing of the present case, coupled with public policy concerns and issues of convenience, the court should dismiss the instant action in favor of the second-filed action.

Although Plaintiff no doubt filed a declaratory judgment action in anticipation of a lawsuit by Defendant, that fact alone is not dispositive. It is the nature of a declaratory judgment action that it is filed in anticipation of some action by another party. The court finds no other compelling factors which would weigh in favor of transferring this case to the Eastern District of

New York. Specifically, the distance between the Eastern District of Pennsylvania and the Eastern District of New York is not so great as to inconvenience Defendant or any of its witnesses. The court also notes that Defendant has an office location within the Eastern District of Pennsylvania. The court finds no other “considerations of judicial and litigant economy, and the just and effective disposition of disputes” that would require a departure from the general edict of Genentech that the first-filed action is favored. Therefore, Defendant’s Motion will be denied. An appropriate order follows.

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Plaintiff,	:	
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SYMBOL TECHNOLOGIES, INC.,	:	
	:	
Defendant.	:	

Green, S.J.

October 2, 2006

ORDER

AND NOW, this 2nd day of October, 2006, **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss or to Transfer to the United States District Court for the Eastern District of New York is **DENIED**.

BY THE COURT:

s/Clifford Scott Green_____

CLIFFORD SCOTT GREEN, S.J.