



3. No additional motions related to ECF Nos. 916, 947 and 952 are anticipated.

**BB&T's Statement:**

4. With the settlement of the claims between Maxim and Chase, BB&T becomes the sole opposing party remaining in this litigation, which once comprised more than twenty-five different parties transferred to this Court “for coordinated or consolidated pretrial proceedings” as a multi-district litigation (“MDL”). ECF No. 1 at 4; *see also* MDL 2354 ECF No. 104. Now that claim construction, fact and expert discovery in the BB&T case are complete, coordinated pretrial proceedings in this MDL have run their course, and remand to BB&T’s originating court is appropriate. *See* ECF No. 1 at 3 (“prompt remand after the common claims are construed and summary judgment addressed on certain common invalidity grounds may be appropriate.”). Accordingly, BB&T seeks leave to file a motion requesting that this Court recommend to the MDL Panel that its case be remanded for further proceedings to the Eastern District of North Carolina, where BB&T filed its declaratory judgment complaint.

5. BB&T seeks remand to the Eastern District of North Carolina for all remaining proceedings, including *Daubert*, summary judgment and trial. There is no dispute that should the BB&T trial go forward, it should take place in North Carolina. *See, e.g.*, Maxim Opp. 2d Mot. Stay [ECF No. 939] at 1 (discussing “return for these cases to their original districts for trial in early 2015”). For that reason, and because Fourth Circuit law will apply to the admissibility of expert testimony, the *Daubert* proceedings are best handled in North Carolina. *See, e.g.*, *Ethicon, Inc. v. U.S. Surgical Corp.*, 135 F.3d 1456, 1465 (Fed. Cir. 1998). In addition, the North Carolina judge conducting trial in the BB&T case will address all the same issues that will be the subject of summary judgment motions, including non-infringement, exhaustion, invalidity and enforceability. Moreover, in November 2014 when initiating new lawsuits involving the

same patented technology and accused products, Maxim itself chose a forum other than this Court. Maxim filed each of its six new lawsuits in the Western District of Texas, eschewing any judicial economies of remaining in this Court. BB&T's choice of forum deserves no less consideration than Maxim's decision to choose an alternative forum.

**Maxim's Statement:**

6. BB&T's proposed remand to the Eastern District of North Carolina for the remaining proceedings in this matter would be contrary to both the letter and spirit of the MDL Panel's transfer order, which explicitly contemplates consolidation before this Court for all pretrial matters, and recognized that "centralization will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation." ECF No. 1 at 3. To the contrary: BB&T's proposal to remove consideration of summary judgment and *Daubert* motions from the jurisdiction of this Court, which has invested substantial time in familiarizing itself with the patented technology, the accused products, and the key issues in dispute, would both promote inefficiency and defy common sense.

7. As such, Maxim opposes BB&T's attempt to remand this matter to the Eastern District of North Carolina. Should the Court be inclined to consider such a request, Maxim respectfully requests a briefing schedule be set so that Maxim can respond fully to BB&T's motion.

Dated: January 27, 2015

Respectfully submitted,

/s/ Leslie M. Spencer

Leslie M. Spencer (NY 3927050)

Jeffrey K. Dicker (NY 4761896)

**ROPES & GRAY LLP**

1211 Avenue of the Americas

New York, NY 10036

Telephone: (212) 596-9000

Facsimile: (212) 596-9090

Leslie.Spencer@ropesgray.com

Jeffrey.Dicker@ropesgray.com

James R. Myers (DC 231993)

**ROPES & GRAY LLP**

One Metro Center

700 12th St., NW, Suite 900

Washington, DC 20005

Telephone: (202) 508-4600

Facsimile: (202) 508-4650

James.Myers@ropesgray.com

Kirsten R. Rydstrom (PA 76549)

**REED SMITH LLP**

225 Fifth Avenue

Pittsburgh, PA 15222

Telephone: (412) 288-3131

Facsimile: (412) 288-3063

krydstrom@reedsmith.com

*Attorneys for Plaintiff and Counter  
Defendant BRANCH BANKING AND  
TRUST COMPANY*

*/s/ Bijal V. Vakil*

---

Bijal V. Vakil

CA State Bar No.: 192878

Shamita D. Etienne-Cummings

CA State Bar No.: 202090

**WHITE & CASE LLP**

3000 El Camino Real

Five Palo Alto Square 9th Floor

Palo Alto, CA 94306

Telephone 650.213.0300

Facsimile: 650.213.8158

bvakil@whitecase.com

setienne@whitecase.com

Samuel W. Braver

PA I.D. No. 19682

Ralph G. Fischer

PA I.D. No. 200793

**BUCHANAN INGERSOLL &  
ROONEY PC**

One Oxford Centre

301 Grant Street, 20th Floor

Pittsburgh, PA 15219-1410

Telephone 412.562.8800  
Facsimile 412.562.1041  
samuel.braver@bipc.com  
ralph.fischer@bipc.com

*Attorneys for Defendants JPMORGAN  
CHASE & CO. and JPMORGAN BANK, N.A.*

*/s/ Robin L. McGrath*  
Robin L. McGrath  
Edward J. Benz III  
**PAUL HASTINGS**  
1170 Peachtree Road, N.E.  
Suite 100  
Atlanta, GA 30309  
Tel: (404) 815-2400  
Fax: (404) 815-2424  
robinmcgrath@paulhastings.com  
joebenz@paulhastings.com

Kirsten R. Rydstrom  
PA ID No. 76549  
**REED SMITH**  
Reed Smith Centre  
225 Fifth Avenue  
Pittsburgh, PA 15222  
Tel: (412) 288-3131  
(412) 288-3063  
[krydstrom@reedsmith.com](mailto:krydstrom@reedsmith.com)  
*Attorneys for Defendant BANK OF THE  
WEST*

*/s/ William P. Nelson*  
Matthew D. Powers (*pro hac vice*)  
Steven S. Cherensky (*pro hac vice*)  
Paul T. Ehrlich (*pro hac vice*)  
William P. Nelson (*pro hac vice*)  
Aaron M. Nathan (*pro hac vice*)  
Stefani C. Smith (*pro hac vice*)  
Sam Y. Kim (*pro hac vice*)  
Robert L. Gerrity (*pro hac vice*)  
Palani P. Rathinasamy (*pro hac vice*)  
**TENSEGRITY LAW GROUP LLP**  
555 Twin Dolphin Drive, Suite 360  
Redwood Shores, CA 94065  
Phone: (650) 802-6000

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.