

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.

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Respectfully submitted,

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JPMC v. Maxim CBM2014-00180

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JPMC v. Maxim CBM2014-00180

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JPMC v. Maxim CBM2014-00180

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