

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MYPAQ HOLDINGS LTD.,

Plaintiff,

v.

DELL TECHNOLOGIES INC. and DELL
INC.,

Defendant.

§
§
§
§
§
§
§
§
§

NO. 6:21-cv-00933-ADA

**DEFENDANTS’ OPPOSED MOTION TO STAY PENDING RESOLUTION OF
DEFENDANTS’ MOTION FOR INTRA-DISTRICT TRANSFER OF VENUE**

Defendants Dell Technologies Inc. and Dell Inc. (collectively, “Dell”) respectfully request that this case be stayed pending the resolution of Dell’s Motion for Intra-District Transfer (Dkt. 36) to the Austin Division. In response to Dell’s Motion, Plaintiff MyPAQ Holdings Ltd. (“MyPAQ”) gave notice that it “inten[ds] to proceed with venue discovery, which will be completed no later than May 3, 2022,” and “it will file its response brief within two weeks of completing venue discovery[.]” Dkt. 41 at 1. Accordingly, MyPAQ would not file its opposition to Dell’s Motion to Transfer until May 17—two weeks **after** the scheduled *Markman* hearing in this case. Dkt. 20 at 4. Because this case should not proceed to a *Markman* hearing or any other substantive phase until after Dell’s Motion to Transfer is resolved, it is appropriate to stay the non-venue aspects of this case now.

It is well-established that motions to transfer should be given “top priority.” *In re TracFone Wireless, Inc.*, 848 F. App’x 899, 900 (Fed. Cir. 2021) (nonprecedential) (quoting *In re Horseshoe Ent.*, 337 F.3d 429, 433 (5th Cir. 2003)); *see also In re Apple Inc.*, 979 F.3d 1332, 1337 (Fed. Cir. 2020) (“once a party files a transfer motion, disposing of that motion should unquestionably take top priority”); *In re Google Inc.*, No. 2015–138, 2015 WL 5294800, at *1–2 (Fed. Cir. July 16, 2015) (nonprecedential) (directing the district court to promptly resolve transfer motion); *In re*

Nintendo Co., Ltd., 544 F. App'x 934, 941 (Fed. Cir. 2013) (nonprecedential) (“[A] trial court must first address whether it is proper and convenient venue before addressing any substantive portion of the case.”). Following that principle, this case should not proceed further before Dell’s Motion to Transfer is resolved.

Equity also favors granting a stay. Most importantly: the need for a stay comes from MyPAQ’s decision to seek three months of venue discovery, thereby delaying resolution of Dell’s Motion to Transfer. *See* Dkt. 41 at 1. MyPAQ also does not sell any products or services and does not compete against Dell, so any prejudice to MyPAQ from a short stay would be negligible at best. Weighed against this negligible prejudice, in the event this case is ultimately transferred to another judge in the Austin division, staying this case now before claim construction would provide that judge with an opportunity to make the claim construction ruling in this case. Dell, for its part, takes no position on the manner in which cases are assigned to judges in the Western District of Texas. However, Dell is aware that several cases that were previously transferred from the Waco Division to the Austin Division were reassigned to other judges including Hon. Lee Yeakel, Hon. Robert Pitman, and Hon. David Ezra. *See, e.g., Neo Wireless LLC v. Dell Techs. Inc.*, No. 1:22-cv-00060-DAE (W.D. Tex.). If this case will likewise be reassigned upon transfer to the Austin Division, it would be most efficient for the judge who ultimately will preside over the case to also handle the claim construction process. Claim construction is one of the most significant events in a patent case, and it would be appropriate for the judge that is assigned to preside over the trial of the case to also make the necessary claim construction rulings in the case.

I. BACKGROUND

MyPAQ filed this lawsuit in September 2021. Dkt. 1. On December 6, 2021, MyPAQ filed an Amended Complaint. Dkt. 22. Less than two months later, on February 3, 2022, Dell filed a Motion for Intra-District Transfer. Dkt. 36. MyPAQ served venue discovery requests on February 16, 2022; the same day it provided notice to the Court that it would take venue discovery, “which will be completed no later than May 3, 2022.” Dkt. 41 at 1. Under the existing schedule for this case, Dell’s Opening Claim Construction Brief is due March 2, 2022, and claim

construction briefing is expected to continue through April 20, 2022. Dkt. 20 at 3. A *Markman* hearing is scheduled for May 4, 2022. *Id.* at 4. Fact discovery and other substantive deadlines follow shortly after the *Markman* hearing. *Id.*

II. ARGUMENT

A. The Transfer Motion Should be Resolved Before the Case Proceeds

“[D]istrict courts must give promptly filed transfer motions top priority before resolving the substantive issues in the case.” *TracFone Wireless*, 848 F. App’x at 900. Failing to prioritize such motions can “frustrate 28 U.S.C. § 1404(a)’s intent to ‘prevent the waste of time, energy, and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense.’” *Google*, 2015 WL 5294800 at *1 (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964)). Consistent with this precedent, this Court has a formal policy to resolve inter-district transfer motions before conducting a claim construction hearing. Second Amended Standing Order Regarding Motions for Inter-District Transfer dated August 18, 2021, at 1 (“The Court will not conduct a *Markman* hearing until it has resolved the pending motion to transfer.”)

Dell respectfully submits that these considerations warrant a stay in this case while Dell’s Motion for Transfer is resolved. For the reasons set forth in Dell’s Motion, the Austin Division—where Dell’s headquarters are located and where its and relevant third-party witnesses reside—is clearly a more convenient forum for this discovery and substantive litigation.¹ But MyPAQ’s pursuit of three months of venue discovery will delay any opportunity for Dell to have this case moved to the Austin Division, potentially forcing Dell to continue litigating in a less-convenient venue. MyPAQ should not be allowed to use extensive venue discovery to frustrate the purpose of convenience analysis under 28 U.S.C. § 1404(a). Resolving the transfer motion now is also important because this case may be assigned to a different judge following transfer.

¹ Indeed, this Court has repeatedly recognized that cases between Dell and a plaintiff without any connection to Waco should be transferred to the Austin Division. *See Neo Wireless*, ECF No. 60, at 14; *see also Datascape, Ltd. v. Dell Techs., Inc.*, No. 6:19-CV-00129-ADA, 2019 WL 4254069, at *2–3 (W.D. Tex. June 7, 2019). MyPAQ is a foreign company from the Seychelles with investors in Singapore; it also has no connections to Waco. *See* Dkt. 4.

It also makes no difference that Dell’s Motion is for intra-district transfer, as opposed to inter-district transfer. The convenience analysis under 28 U.S.C. § 1404(a) applies equally to both inter-district and intra-district motions. *See In re Radmax, Ltd.*, 720 F.3d 285, 288 (5th Cir. 2013) (“The § 1404(a) factors apply as much to transfers between divisions of the same district as to transfers from one district to another.”). Thus—for the same reasons that this Court would not conduct a *Markman* hearing while a motion to transfer to another district is pending—this case should not proceed to substantive matters while Dell’s Motion to Transfer to the Austin Division is pending. Indeed, this Court has previously granted analogous motions to stay pending intra-district transfer in other cases. *See, e.g., Express Mobile, Inc. v. Expedia, Inc.*, No. 6:20-cv-00801-ADA, Text Order Granting ECF No. 38 (W.D. Tex. Aug. 2, 2021) (granting motion to stay pending transfer to Austin division); *Sonrai Memory Ltd. v. Oracle Corp.*, No. 6:21-CV-00116-ADA, Text Order Granting ECF No. 44 (W.D. Tex. Jan. 2, 2022) (same).

B. Equity Favors a Stay

A district court has inherent authority to stay its proceedings. *B&D Produce Sales, LLC v. Packman I, Inc.*, No. SA-16-CV-99-XR, 2016 WL 4435275, at *1 (W.D. Tex. Aug. 19, 2016). Courts consider three factors in determining if a stay is proper: “(1) any potential prejudice to the non-moving party; (2) the hardship and inequity to the moving party if the action is not stayed; and (3) the judicial resources saved by avoiding duplicative litigation.” *Id.* The Federal Circuit has recognized that a stay of proceedings on the merits is appropriate while a district court considers and resolves a transfer motion. *See In re SK hynix Inc.*, 835 F. App’x 600, 601 (Fed. Cir. 2021) (nonprecedential); *see also Google*, 2015 WL 5294800 at *1–2 (directing the district court to stay all proceedings pending completion of the transfer motion).

MyPAQ would not be unfairly prejudiced by a stay. The main reason a stay is necessary is because MyPAQ has given notice that it wants three months of venue discovery before filing its opposition to Dell’s Motion to Transfer. Because MyPAQ is the cause of the delay, MyPAQ cannot complain about the need for a stay while Dell’s Motion is pending. In addition, MyPAQ does not offer any products or services, and it does not compete with Dell. In contrast, if a stay is

not granted, Dell would be required to continue litigating in a less-convenient forum for several months while its transfer motion is pending—frustrating the very purpose of Dell’s Motion to Transfer.

Counsel for MyPAQ also recently informed the Court by email that “foreign discovery is already going to be difficult to complete under the current discovery deadline.” Ex. A (Feb. 22, 2022 email from Michael Shore). MyPAQ expressed this concern in connection with the Court’s resolution of a dispute between the parties on the scope of early discovery. Dell suggests that a stay could be crafted to allow progress on the ordered early discovery, in parallel with the venue discovery that MyPAQ recently requested. Thus, rather than harming or prejudicing MyPAQ, a brief stay of other deadlines now could ultimately facilitate MyPAQ’s efforts to pursue foreign discovery.

Further, both parties could potentially be prejudiced if costly work, such as claim construction, is litigated in this Court, and then later has to be repeated or amended following a transfer. Judicial resources will also be saved by staying this action now. Because this case may be transferred—and Dell respectfully submits that it *should* be transferred—there is no reason for the Court to spend its judicial resources on the merits of this case now. This Court should not burden itself with the merits of this action in the short term, including claim construction, when it is uncertain whether another judge will ultimately be responsible for this case. *See Apple*, 979 F.3d at 1338 (“Indeed, a *Markman* hearing and claim construction order are two of the most important and time-intensive substantive tasks a district court undertakes in a patent case.”).

III. CONCLUSION

For the foregoing reasons, Dell hereby requests that this case be stayed, except for the resolution of Dell’s Motion to Transfer.

Statement Pursuant to Local Rule CV-7.G. Counsel for the parties have conferred in a good-faith attempt to resolve the matter by agreement and no agreement could be made due to disagreements about the subject matter of the motion.

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.