

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

PROXENSE, LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Case No. 6:23-cv-00319-ADA

**JURY TRIAL DEMANDED**

**MICROSOFT'S OPPOSED MOTION TO STAY  
PENDING RESOLUTION OF MICROSOFT'S MOTION TO TRANSFER**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. Introduction.....	1
II. Factual Background .....	1
III. This Case Should be Stayed Pending the Transfer Decision.....	2
A. The Resolution of Microsoft’s Motion to Transfer Should Take “Top Priority” ...	2
B. All Relevant Factors Favor a Stay Pending a Decision on Transfer.....	4
1. A Stay Will Not Prejudice Proxense.....	4
2. Microsoft Will Suffer Undue Hardship Absent a Stay .....	5
3. A Stay Will Conserve Judicial Resources .....	6
IV. Conclusion .....	6

**TABLE OF AUTHORITIES**

	<b><u>Page(s)</u></b>
<b>Cases</b>	
<i>Aire Tech. Ltd., v. Apple Inc.</i> , No. 6:21-cv-01101-ADA (W.D. Tex. Nov. 8, 2022), Dkt. 71.....	3
<i>In re Apple Inc.</i> , 979 F.3d 1332 (Fed. Cir. 2020).....	2, 3, 6
<i>In re Apple Inc.</i> , No. 2023-120, 2023 WL 2359699 (Fed. Cir. Mar. 6, 2023).....	2
<i>In re Apple, Inc.</i> , 52 F.4th 1360 (Fed. Cir. 2022) .....	2, 3
<i>Cont’l Grain Co. v. The Barge FBL-585</i> , 364 U.S. 19 (1960).....	3
<i>Crossroads Sys., Inc. v. Dot Hill Sys. Corp.</i> , No. A-13-CA-1025-SS, 2015 WL 3773014 (W.D. Tex. June 16, 2015) .....	4
<i>In re EMC Corp.</i> , 501 F. App’x 973 (Fed. Cir. 2013) .....	6
<i>In re Google Inc.</i> , No. 2015-138, 2015 WL 5294800 (Fed. Cir. 2015) .....	3, 6
<i>In re Google LLC</i> , 58 F.4th 1379 (Fed. Cir. 2023) .....	4
<i>Kirsch Rsch. &amp; Dev., LLC v. Tarco Specialty Prods., Inc.</i> , No. 6:20-CV-00318-ADA, 2021 WL 4555804 (W.D. Tex. Oct. 4, 2021).....	4
<i>KOSS Corp. v. Plantronics, Inc.</i> , No. 6:20-cv-00663-ADA (W.D. Tex. Apr. 8, 2021) .....	3
<i>In re Morgan Stanley</i> , 417 F. App’x 947 (Fed. Cir. 2011) .....	4
<i>NewFlux v. Best Buy Co.</i> , No. 6:20-cv-00732-ADA (W.D. Tex. Apr. 13, 2021) .....	3
<i>NFC Tech. LLC v. HTC Am., Inc.</i> , No. 2:13-CV-1058-WCB, 2015 WL 1069111 (E.D. Tex. Mar. 11, 2015).....	5

*Red Rock Analytics, LLC v. Apple Inc. et al.*,  
No. 6:21-cv-00346-ADA (W.D. Tex. June 13, 2022), Dkt. 130 .....3

*Scramoge Tech. Ltd. v. Apple Inc.*,  
No. 6:21-cv-01071-ADA (W.D. Tex. Nov. 8, 2022), Dkt. 68.....3

*In re SK hynix Inc.*,  
835 F. App'x 600, 600-01 (Fed. Cir. 2021).....3

*In re TikTok, Inc.*,  
85 F.4th 352 (5th Cir. 2023) .....2

*In re TracFone Wireless, Inc.*,  
848 F. App'x 899 (Fed. Cir. 2021) .....3

*Transmatic, Inc. v. Gulton Indus., Inc.*,  
180 F.3d 1343 (Fed. Cir. 1999).....5

*Underwater Devices Inc. v. Morrison-Knudsen Co., Inc.*,  
717 F.2d 1380 (Fed. Cir. 1983), *overruled on other grounds by*  
*In re Seagate Tech., LLC*, 497 F.3d 1360 (Fed. Cir. 2007) .....5

*In re Volkswagen of Am., Inc.*,  
545 F.3d 304 (5th Cir. 2008) (*en banc*) .....6

*XR Commc'ns LLC v. Apple Inc.*,  
No. 6:21-cv-00620-ADA (W.D. Tex. Nov. 8, 2022), Dkt. 83.....4

*Yeti Coolers, LLC v. Home Depot U.S.A., Inc.*,  
No. 1:17-CV-342-RP, 2018 WL 2122868 (W.D. Tex. Jan. 8, 2018).....4

**Statutes**

28 U.S.C. § 1404(a) .....2, 3, 6

## I. INTRODUCTION

Defendant Microsoft Corporation (“Microsoft”) moves to stay all case activity pending resolution of its Motion to Transfer to the Western District of Washington (“WDWA”). As the Fifth and Federal Circuits have emphasized, resolving a pending motion to transfer should take “top priority,” ahead of addressing underlying substantive issues. Venue discovery has been closed since October 30, 2023, and Microsoft’s Motion to Transfer was fully briefed six weeks before the Court cancelled the *Markman* hearing. A stay is necessary as substantive deadlines would be quickly approaching, including final infringement and invalidity contentions, if discovery opens. These efforts should be postponed until the Court has ruled on Microsoft’s Motion to Transfer Venue.

All relevant factors favor a stay. First, Plaintiff Proxense, LLC (“Proxense”) will not be prejudiced by a stay, as it does not make any products and is not seeking injunctive relief. Dkt 1. Second, Microsoft will be harmed without a stay, as it will need to invest significant resources to litigate in an inconvenient venue having almost no relevant witnesses or evidence. Finally, without a stay, judicial resources will be wasted if this case is later transferred to WDWA, which is clearly the more convenient venue, as the relevant witnesses and documents are firmly anchored there. Moreover, as embodied in the Court’s exemplary schedule for patent cases, resolving all claim construction disputes before fact discovery opens is a more efficient and streamlined process. *See* Ex. 1 (OGP 4.4) at 13-17 (Exemplary Schedule). Thus, further proceedings should be stayed pending a decision on transfer.

## II. FACTUAL BACKGROUND

Proxense filed this suit in the Western District of Texas (“WDTX”) on May 2, 2023. Dkt. 1 (Complaint). Microsoft filed its Motion to Dismiss for Failure to State a Claim on July 10, 2023, Dkt. 21, and timely filed a motion to transfer on October 10, 2023, Dkt. 29. The ten-week venue

# 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.