

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

B.E. TECHNOLOGY, L.L.C.,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Civil Action No. 2:12cv2769 JPM-tmp

Hon. Jon Phipps McCalla

JURY DEMAND

**MEMORANDUM IN SUPPORT OF DEFENDANT FACEBOOK'S MOTION TO
STAY PENDING *INTER PARTES* REVIEWS OF U.S. PATENT NO. 6,628,314**

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. FACTUAL AND PROCEDURAL BACKGROUND.....	2
A. B.E. is Not a Practicing Entity, So None of the Considerations Associated With Staying Litigation Between Competitors are Implicated by this Motion.....	2
B. Little Has Occurred in This or Related Litigations Involving the ‘314 Patent.....	2
C. The New Inter Partes Review Process Will Resolve Validity Disputes Faster and More Efficiently Than the Old Reexamination Process.....	3
D. The Petitions for IPR Attack Every Asserted Claim of the ‘314 Patent.....	4
III. ARGUMENT	5
A. All Three Factors That Courts Consider When Weighing a Stay Favor Staying Litigation Over the ‘314 Patent	5
1. B.E. Will Not Be Prejudiced or Suffer Tactical Disadvantage.....	6
2. A Stay Will Simplify Issues for Trial	6
3. The Early Stage of the Case Favors a Stay.....	8
B. A Stay is Appropriate Even Though the PTO Has Yet to Institute IPR Proceedings.....	8
IV. CONCLUSION.....	9

TABLE OF AUTHORITIES

PAGE(S)

CASES

Fresenius USA, Inc. v. Baxter International Inc. Fresenius,
721 F.3d 1330 (Fed. Cir. 2013).....7, 8, 9

Visual Interactive Phone Concepts, Inc. v. Samsung Telecom. America, LLC,
No. 11-12945, 2012 WL 1049197 (E.D.Mich. March 28, 2012).....6

Neste Oil OYJ v. Dynamic Fuels, LLC,
No. 12-1744-GMS, 2013 WL 3353984 (D. Del. July 2, 2013)8, 9

One Stockduq Holdings, LLC v. Becton, Dickinson and Company,
No. 2:12-cv-03037-JPM-tmp, D.I. No. 85 (W.D. Tenn. Nov. 12, 2013) passim

Round Rock Research LLC v. Dole Food Co. Inc.,
2012 WL 1185022 (D. Del. Apr. 6, 2012).....6

STATUTES

35 U.S.C.

§ 311(b).....3

§ 312(a).....3

§ 313.....3

§ 314(a).....3

§ 314 (b).....3

§ 315.....7

§ 315(e)(2)3

§ 316(a).....3

§ 316(a)(11)3

§ 318(a).....3

OTHER AUTHORITIES

37 C.F.R.

§ 42.51.....3

§ 42.53.....3

H.R. Rep. No. 112-98 (part 1), at 40 (2011).....3

U.S. Patent No. 6,628,314.....1

U.S. Patent No. 6,771,290.....1

I. INTRODUCTION

Facebook, Inc. respectfully moves to stay all litigation in this and related cases involving U.S. Patent No. 6,628,314 (“the ‘314 Patent”).¹ Facebook, Google, and Microsoft recently filed a combined total of four petitions for *inter partes* review (“IPR”) against the ‘314 Patent. The petitions demonstrate that every asserted claim of the ‘314 Patent is invalidated by prior art that was not considered by the Patent Office during prosecution.

This Court recently recognized in *One Stockduq Holdings, LLC v. Becton, Dickinson and Company* that an *inter partes* review warrants staying district court litigation. The IPR process is fast and streamlines litigation by eliminating issues for trial—if not ending underlying litigation altogether. *One Stockduq Holdings, LLC*, No. 2:12-cv-03037-JPM-tmp, D.I. No. 85 (W.D. Tenn. Nov. 12, 2013). As the Court further recognized in *One Stockduq Holdings*, the benefits of a stay are greatest when (i) a case is in its early stages, (ii) all asserted claims are subject to IPR, and (iii) the litigants are not direct competitors. *Id.* Each of these factors is present here.

An immediate stay is warranted because BE Technology does not oppose staying all litigation involving the ‘314 and ‘290 Patents—the two patents that are subject to *inter partes* review.^{2,3} (Armon Decl. Ex. 1, Oct. 24, 2013 Letter from D. Weinberg, and Ex. 2, Nov. 18, 2013 Email from D. Weinberg.) B.E.’s position confirms that it will not be unfairly prejudiced by a stay. It is virtually assured that the Patent Office will institute IPR proceedings on the ‘314 Patent because four IPRs were filed against each asserted claim, so it is appropriate to stay litigation over the ‘314 Patent now to reduce burdens of litigation on the Court and parties.

¹ To promote judicial economy, Facebook and B.E. agreed to consolidate briefing. Facebook expects that all other defendants accused of infringing the ‘314 Patent except Apple Inc. will file their own motion or join this motion.

² Defendant Apple, Inc., Case No. 2:12-cv-02831, indicated that it neither supports nor opposes a stay and may file a notice or other paper in its case further explaining its position on a potential stay.

³ Samsung filed a motion to stay all litigation involving the ‘290 Patent on November 22, 2013 (see Case 2:12-cv-02825-JPM D.I. No. 63), and all other defendants (except Apple) accused of infringing that patent are expected to join Samsung’s motion.

For these reasons and the additional considerations set forth below, the Court should stay this case and all other litigation involving the '314 Patent until a final written decision issues on each IPR initiated against the '314 Patent.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. B.E. is Not a Practicing Entity, So None of the Considerations Associated With Staying Litigation Between Competitors are Implicated by this Motion

B.E. is a non-practicing entity that registered to do business in Tennessee one day before filing suit against Facebook. (D.I. 30, Ex. 4.) B.E.'s only business is enforcing its patents, so this motion does not implicate any of the considerations relating to irreparable harm from a stay that might arise in a competitor lawsuit. (*Id.*, Ex. 5.)

B. Little Has Occurred in This or Related Litigations Involving the '314 Patent

More than a year after the service of B.E.'s Complaint, this litigation and related litigations involving the '314 Patent are still in their infancy. Lengthy extensions of time were granted at the outset of this litigation to align B.E.'s patent infringement lawsuits on similar schedules. (D.I. 16.) Next, Facebook and other defendants filed motions to stay pending decision on motions to transfer which the Court granted. (D.I. 43.) A case management conference was held on July 26, 2013 and a litigation schedule was entered on July 30, 2013. (D.I. 64.) That schedule ends with a claim construction hearing for all *B.E. Technology* cases on April 28, 2014. (*Id.*) No trial date has been set in any case involving the '314 Patent. (*Id.*)

Since the case management conference in late July 2013, very little discovery has occurred. B.E. and the defendants are still negotiating Discovery and Protective Orders. In the absence of agreement on discovery limits or protections for confidential information and source code, discovery has proceeded slowly. On August 21, 2013, B.E. served its First Set of Interrogatories on Facebook, consisting of a single interrogatory. (Armon Decl. ¶ 6.) B.E. has

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