

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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

Plaintiff,

v.

SONY COMPUTER ENTERTAINMENT
AMERICA, LLC,

Defendant.

Civil Action No. 12-cv-02826-JPM-tmp

JURY TRIAL DEMANDED

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

Plaintiff,

v.

SONY MOBILE COMMUNICATIONS
(U.S.A.) INC.,

Defendant.

Civil Action No. 12-cv-02827-JPM-tmp

JURY TRIAL DEMANDED

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

Plaintiff,

v.

SONY ELECTRONICS INC.

Defendant.

Civil Action No. 12-cv-02828-JPM-tmp

JURY TRIAL DEMANDED

**DEFENDANTS SONY COMPUTER ENTERTAINMENT AMERICA LLC, SONY
MOBILE COMMUNICATIONS (U.S.A.) INC., AND SONY ELECTRONICS INC.'S
MEMORANDUM IN SUPPORT OF THEIR MOTION TO STAY PROCEEDINGS
PENDING RESOLUTION OF THE MOTIONS TO TRANSFER TO THE U.S.
DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**

Defendants Sony Computer Entertainment America LLC (“SCEA”), Sony Mobile
Communications (U.S.A.) Inc. (“SoMC”), and Sony Electronics Inc. (“SEL”) (collectively,
“Sony”) respectfully submit this memorandum in support of their motion for a stay of the

proceedings in each of the above captioned cases pending the Court's ruling on the motions to transfer those cases to the U.S. District Court for the Northern District of California. Sony makes this motion because it is appropriate to allow a pending motion to transfer to be decided before proceeding with discovery, as has been recognized by the Third, Fifth, and Federal Circuits. In this district, in the absence of a stay, that discovery includes the need for Sony to digest and respond to nearly four thousands of pages of Plaintiff's Preliminary Infringement Contentions and to respond to those contentions and to produce related documents.

To eliminate the necessity of this Court reviewing what would otherwise be substantially duplicative legal argument, the law supporting this relief is set forth in detail in the memorandum and exhibits supporting the motion to stay filed in a related action by defendant Facebook, Inc. ("Facebook"), Case No. 2:12-cv-02769-JPM-tmp, Doc. 37, and Sony incorporates that memorandum and its exhibits by reference.

As noted in Facebook's motion, the Federal Circuit has endorsed staying proceedings pending the resolution of a motion to transfer. *See In re Fusion-IO, Inc.*, Misc. Dkt. No. 139, 2012 WL 6634939, at *1 (Fed. Cir. Dec. 21, 2012; non-precedential) (suggesting that on remand, Fusion-IO file a motion to transfer as well as "a motion to stay proceedings pending disposition of the transfer motion, and for the district court to act on those motions before proceeding to any motion on the merits of the action."). Moreover, while there is no Sixth Circuit case on the issue, other Circuit Courts have recognized that motions to transfer should be decided without delay, and before proceeding with discovery. *McDonnell Douglas Corp. v. Polin*, 429 F.2d 30, 31 (3d Cir. 1970); *see also In re Horseshoe Entertainment*, 337 F.3d 429, 433 (5th Cir. 2003).

On January 28, 2013, SCEA, SoMC and SEL each filed Motions to Transfer Venue to the Northern District of California. Case Nos. 2:12-cv-02826-JPM-tmp, Doc. 25; 2:12-cv-02827-

JPM-tmp, Doc. 29; 2:12-cv-02828-JPM-tmp, Doc. 24. SCEA's Memorandum in Support of its motion demonstrates that there are strong factors in favor of transfer, including (i) the inconvenience to the parties, given the location of relevant information, the defendants, and the witnesses (Case No. 2:12-cv-02826-JPM-tmp, Doc. 27-1 at pp. 4-11), and (ii) the Plaintiff's weak connection to this district. *Id.* at 7-8.

Without a stay, Sony will be tasked with responding to 3,980 pages of infringement contentions against each of SCEA, SoMC, and SEL, as well as producing related documents pursuant to Local Patent Rules 3.3 and 3.4 by February 21, 2013.¹ The nearly 4,000 pages of Preliminary Infringement Contentions ("PICS") have materially expanded the scope of the case alleged by Plaintiff in its Complaint against 18 products in six product categories to now accusing 115 accused products in nine product categories, including media players, smartphones, smart TVs, smart Blu-ray systems, smart media systems, personal computers, tablets, eReaders, and game consoles, along with all "reasonably similar products and/or services" for each of SCEA, SoMC, and SEL. The PICs also accuse 15 separate services that allegedly run on the accused products, most of which are third-party services and one or more of which are alleged to be present or used in each accused product.²

Furthermore, motions to transfer venue have been filed in virtually all if not all of the other cases brought by Plaintiff in this Court based on the same family of patents. Because

¹ Counsel for the parties agreed pursuant to Fed. R. Civ. P. 29 to extend the original time period for serving non-infringement contentions and related document production by 14 days, without impacting any deadlines or events affecting the Court. The parties of course recognize that the latter cannot be modified under Rule 29 and would require Court order.

² The accused services include Android Market, Google Play (including Play Store, Play Music, Play Books, Play Magazines, and Play Movies & TV), YouTube, Sony Entertainment Network (*e.g.*, Music Unlimited and Video Unlimited), PlayStation Store, Netflix, Hulu Plus, Amazon (Prime) Instant Video, Kindle Store, Sony Reader Store, Windows Store, Xbox Video, Xbox Music, Xbox Games, and Sony Media Go.

similar motions are pending in all such other cases, it seems reasonable that the Court will consider the question of venue and case-management measures, such as stays, on a consistent, global basis. Moreover, most of the transfer motions seek venue in the Northern District of California, whose local patent rules impose different requirements.³ Because the ultimate determination of venue for this and the other 18 cases will impact an extraordinary amount of burdensome and costly activity, Sony maintains that venue should be decided first.

For these reasons, Sony respectfully requests that the above captioned cases be stayed pending a resolution of the motions to transfer filed by the Sony entities.

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Respectfully submitted,

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³ For example, the Local Rules of the Northern District of California do not require non-infringement contentions or responses to invalidity contentions. *See* www.cand.uscourts.gov/localrules/patent.