

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

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

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Civil Action No. 2:12-cv-02830 – JPM-tmp

**DEFENDANT’S MEMORANDUM IN SUPPORT OF ITS
MOTION TO STAY PENDING RESOLUTION OF ITS
MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)**

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Defendant Google Inc. (“Google”) is respectfully moving this Court to stay all proceedings in this case, including proceedings called for in the Local Patent Rules, pending resolution of Google’s motion to transfer this case to the Northern District of California, pursuant to 28 U.S.C. § 1404(a).

I. INTRODUCTION

On December 18, 2012, Google filed a motion to transfer this case to the Northern District of California. *See* D.I. 22. Absent a stay, the Court and the parties will likely expend significant resources that they might otherwise not need to expend if Google’s motion is granted. For example, by February 21, 2013¹ Google must respond to more than 300 pages of vague infringement contentions and produce related documents pursuant to Local Patent Rules 3.3 and 3.4. Moreover, Google’s Invalidity Contentions and accompany documents are due April 4, 2013, and Google must identify claim terms for construction no later than April 8, 2013. *See* Local Patent Rules 3.5, 3.6 and 4.1. On the other hand, Plaintiff B.E. Technology, L.L.C. (“B.E.”) will suffer no prejudice as a result of a brief stay.

In addition, motions to transfer venue have been filed so far in nearly all of the other 18 other cases brought by B.E. in this Court based on the same family of patents. Because similar motions are pending in almost all the 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

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.

District of California, whose local patent rules impose different requirements.² Because the ultimate determination of venue for this and the other 18 cases will impact an extraordinary amount of burdensome and costly activity, Google maintains that venue should be decided first.

Moreover, a stay of proceedings pending a motion to transfer is consistent with the Federal Circuit's recent decision in *In re Fusion-IO, Inc.*, in which the Court indicated that: (1) a timely-filed motion to transfer under § 1404(a) should be decided before proceeding to the merits of an action; and (2) it is appropriate to stay litigation pending decision of a motion to transfer. *See* Ex. 1, *In re FusionIO, Inc.*, No. 12-139, 2012 WL 6634939, *1 (Fed. Cir. Dec. 21, 2012) (non-precedential).³ In accordance with *Fusion-IO*, Google respectfully requests the Court to decide its motion to transfer before discovery commences, and in the meantime, temporarily stay all other proceedings (including Local Patent Rule disclosures) in this case.

II. PROCEDURAL BACKGROUND

On September 21, 2012, B.E. filed this lawsuit against Google alleging infringement of one claim of U.S. Patent No. 6,628,314 (“the ‘314 Patent”) and one claim of U.S. Patent No. 6,771,290 (“the ‘290 Patent”). *See* D.I. 4. In its Complaint, B.E. only identified “demographically targeted advertising” and “Google Nexus products” as accused products and services. *See id.* Google timely filed its Answer on December 31, 2012. *See* D.I. 25.

² 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

³ Pursuant to Federal Rule of Appellate Procedure 32.1, a court may not prohibit or restrict the citation of federal judicial opinions that have been designated as “non-precedential” if they issued on or after January 1, 2007.

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