IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

B.E. TECHNOLOGY, L.L.C., **Plaintiff,** **v.** **APPLE INC.,** **Defendant.**	**Civil Action No. 2:12-cv-02831–JPM–tmp**

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

Defendant Apple Inc. ("Apple") respectfully submits this memorandum in support of its motion to stay proceedings pending the Court's ruling on Apple's motion to transfer venue pursuant to 28 U.S.C. § 1404(a) ("Motion to Transfer") (Dkt. 22). At this stage in proceedings, the parties are poised to expend significant time and resources in disclosure and discovery pursuant to the Local Patent Rules – time and resources that may not be necessary in the event that this Court grants Apple's Motion to Transfer. Furthermore, plaintiff B.E. Technology, LLC ("B.E.") will not be prejudiced by such a stay.

B.E. Technology, LLC ("B.E.") brought nineteen separate suits in this District against a large number of defendants, the overwhelming majority of which are based in California—most in the Northern District of California--alleging separate and independent infringement of certain of its patents.[1] On December 20, 2012, Apple filed a motion to transfer this case to the Northern

[1] Case Nos. 12-cv-02767, 12-cv-02769, 12-cv-02772, 12-cv-02781, 12-cv-02782, 12-cv-02783, 12-cv-02823, 12-cv-02824, 12-cv-02825, 12-cv-02826, 12-cv-02827, 12-cv-02828, 12-cv-02829, 12-cv-02830, 12-cv-02832, 12-cv-02833, 12-cv-02834 and 12-cv-02866.

District of California. (Dkt. 22.) Most of the other defendants also filed motions to transfer to a more convenient forum, and most of those motions request transfer to the Northern District of California. On January 7, 2013, B.E. filed a memorandum in opposition to transfer (Dkt. 30), and Apple filed a reply, by leave of the Court, on January 29, 2013. (Dkt. 39.)

Defendants in most of the other B.E. cases have also filed motions to stay proceedings pending determination of proper venue.[2] This Court has, to date, granted the motions filed by Facebook, Inc. ("Facebook"), Samsung Telecommunications America, LLC, Samsung Electronics America, Inc. (together, the "Samsung entities") and Pandora Media, Inc ("Pandora").[3] Because the issues presented by Apple's motion to stay are substantially identical to the arguments presented by the other defendants, and to prevent the unnecessary duplication of those arguments, Apple joins and adopts by reference the arguments set forth in the memoranda filed by Facebook, (Case No. 12-cv-02769, Dkt. 37-1), the Samsung entities, (Case No. 12-cv-02824, Dkt. 30; Case No. 12-cv-02825, Dkt. 34) and Pandora (Case No. 12-cv-02782, Dkt. 35).

Courts in the Third, Fifth and Federal Circuits recognize that a motion to transfer venue should be resolved prior to other proceedings in the case, as Facebook notes in its motion. *In re Fusion-IO*, 489 F. App'x 465, 465 (Fed. Cir. 2012) ("We fully expect, however, … for the district court to act on [the motion to stay proceedings and motion to transfer] before proceeding to any motion on the merits of the action."); *In re Horseshoe Entm't*, 337 F.3d 429, 433 (5th Cir. 2003) (stating that "in [the court's] view disposition of [the motion to transfer] should have taken

[2] Case No. 12-cv-02769 (Dkt. 37); Case No. 12-cv-02782 (Dkt. 35); Case No. 12-cv-02824 (Dkt. 30); Case No. 12-cv-02825 (Dkt. 34); Case No. 12-cv-02781 (Dkt. 28); Case No. 12-cv-02826 (Dkt. 28); Case No. 12-cv-02827 (Dkt. 32); Case No. 12-cv-02828 (Dkt. 27); Case No. 12-cv-02829 (Dkt. 40); Case No. 12-cv-02830 (Dkt. 39); Case No. 12-cv-02866 (Dkt. 38).

[3] Case No. 12-cv-02769 (Dkt. 43); Case No. 12-cv-02782 (Dkt. 36); Case No. 12-cv-02824 (Dkt. 33); Case No. 12-cv-02825 (Dkt. 37).

a top priority in the handling of this case by the [district court]."); *McDonnell Douglas Corp. v. Polin*, 429 F.2d 30, 30-31 (3d Cir. 1970) (stating that "it is not proper to postpone consideration of the application for transfer under § 1404(a) until discovery on the merits is completed, since it is irrelevant to the determination of the preliminary question of transfer.").

Without a stay, Apple must serve its initial noninfringement contentions and produce supporting documentation under Local Patent Rules 3.3 and 3.4 by February 21, 2013. Apple's invalidity contentions are to be served by April 1, 2013 and Apple must propose terms for claim construction by April 5, 2013. LPR 3.5, 3.6, 4.1. In the event that this case is transferred, the parties will be required to comply with a different set of patent rules imposing different timing and requirements. See Local Rules of Practice for Patent Cases before the Northern District of California. The Northern District of California rules do not require certain major activities required by the rules of this District, including non-infringement contentions.

Resolution of Apple's Motion to Transfer, and the many other pending preliminary motions, potentially will impact a significant amount of effort by the parties and the Court. Based on the similarities among the cases, decisions on the pending motions to transfer likely will require application of the same or similar standards, and it would be most appropriate to resolve these pending motions prior to further proceedings on the merits, consistent with common sense and precedent in other Federal Circuits.

For the foregoing reasons, Apple respectfully requests that this Court stay all proceedings in this case, including disclosure and discovery pursuant to the Local Patent Rules, pending resolution of Apples' Motion to Transfer.

Respectfully submitted,

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