UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

B.E. TECHNOLOGY, L.L.C., **Plaintiff,** **v.** **MOTOROLA MOBILITY HOLDINGS LLC,** **Defendant.**	**Civil Action No. 2:12-cv-02866 – 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 Motorola Mobility Holdings LLC[1] ("Motorola") is respectfully moving this Court to stay all proceedings in this case, including proceedings called for in the Local Patent Rules, pending resolution of Motorola's motion to transfer this case to the Northern District of California, pursuant to 28 U.S.C. § 1404(a).

I. INTRODUCTION

On December 19, 2012, Motorola filed a motion to transfer this case to the Northern District of California. *See* D.I. 18. Absent a stay, the Court and the parties will likely expend significant resources that they might otherwise not need to expend if Motorola's motion is granted. For example, by February 21, 2013[2] Motorola must respond to more than 1000 pages of vague infringement contentions and produce related documents pursuant to Local Patent Rules 3.3 and 3.4. Moreover, Motorola's Invalidity Contentions and accompany documents are due April 4, 2013, and Motorola 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] Motorola Mobility Holdings LLC is not the proper entity as it does not use, make, sell, or offer to sell the Xyboard and Xoom tablets or the Atrix, Electrify 2, Defy XT, or Photon Q 4G LTE smartphones. The proper entity is Motorola Mobility LLC ("Motorola").

[2] 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.[3] Because the ultimate determination of venue for this and the other 18 cases will impact an extraordinary amount of burdensome and costly activity, Motorola 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).[4] In accordance with *Fusion-IO*, Motorola 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 Motorola alleging infringement of one claim of U.S. Patent No. 6,771,290 ("the '290 Patent"). *See* D.I. 4. In its Complaint, B.E identified the following accused products: "Motorola tablets: Xyboard and Xoom tablets; Motorola smartphones: Atrix, Electrify 2, Defy XT, Photon Q 4G LTE." *Id*. Motorola timely filed its Answer on December 31, 2012. *See* D.I. 25.

[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

[4] 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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