IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

AGIS SOFTWARE DEVELOPMENT LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
HUAWEI DEVICE USA INC., HUAWEI DEVICE CO., LTD. AND HUAWEI DEVICE (DONGGUAN) CO., LTD.,	§ § §	Civil Action No. 2:17-CV-513-JRG (Lead Case)
HTC CORPORATION,	§	Civil Action No. 2:17-CV-514-JRG
LG ELECTRONICS INC.,	§	Civil Action No. 2:17-CV-515-JRG
APPLE INC.,	§	Civil Action No. 2:17-CV-516-JRG
ZTE CORPORATION, ZTE (USA), INC., AND ZTE (TX), INC.,	§	Civil Action No. 2:17-CV-517-JRG
Defendants.		

HUAWEI'S AND LGEKR'S REPLY IN SUPPORT OF THEIR MOTION TO STAY PENDING RESOLUTION OF HUAWEI'S MOTION TO TRANSFER (DKT. NO. 36) AND LGEKR'S MOTION TO DISMISS OR TRANSFER (DKT. NO. 46)

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

I. INTRODUCTION

AGIS's opposition is based on a fundamental mischaracterization of Huawei's and LGEKR's Motion To Stay as seeking only a stay of discovery rather than a stay of the *litigation*. In focusing exclusively on discovery issues, AGIS ignores the substantial resources required to prepare for the looming claim construction deadlines, and the risk that this work would need to be redone if transfer is granted. This possibility alone weighs heavily in favor of a stay.

AGIS's opposition also ignores that a stay is likely to last only a few months, not years, as the transfer motions are fully briefed and ripe for this Court's decision. Where AGIS does address the points in the Motion, its arguments fall flat. AGIS has presented no evidence that it will be prejudiced by a stay beyond the mere procedural effect of a delay in litigation (which, again, is expected to last only months). Nor could it. AGIS does not practice the invention or compete with Defendants, so a stay poses no particular harm to its business. And its behavior to date, in waiting to file suit and declining to pursue a preliminary injunction, suggests there is no particular urgency in enforcing its patents at trial. For these reasons, the Court should stay the litigations until the transfer motions are resolved.

II. ARGUMENT

A. AGIS Mischaracterizes The Motion To Stay.

AGIS mischaracterizes the relief sought in Huawei's and LGEKR's Motion. In its Response, AGIS asserts repeatedly that the Motion seeks only to stay discovery, and focuses its arguments exclusively on discovery issues. But the Motion does not merely seek to stay discovery deadlines—it seeks to stay the *litigation*. *See* Dkt. No. 102 & 102-2.

Having mischaracterized the Motion as a motion to stay discovery, AGIS then contends that the Court may institute a stay only upon a showing of "good cause." Dkt. No. 122 at 3-4.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

But the cases AGIS cites in support (*Retractable*, *Griffin*, and *Moser*) do not indicate that "good cause" is the appropriate standard for the instant Motion, which seeks to stay the litigation pending a determination on transfer. *See id.* at 3. While *Retractable* and *Griffin* apply the "good cause" standard, they both address motions to stay *discovery* pursuant to Federal Rule of Civil Procedure 26(c)(1), not motions to stay a *litigation* pending resolution of a transfer motion. *Moser* does address a motion to stay a litigation pending transfer, but notably, does not employ AGIS's proposed "good cause" standard. Rather, *Moser* applies the same three-factor test from Huawei's and LGEKR's Motion. *See Moser v. Navistar Int'l Corp.*, No. 4:17-cv-00598, 2018 WL 1169189, at *2 (E.D. Tex. Mar. 6, 2018) ("In determining whether to grant a stay . . . the Court considers: '(1) the potential prejudice to Plaintiffs from a brief stay; (2) the hardship to [the defendant] if the stay is denied; and (3) the judicial efficiency in avoiding duplicative litigation if the [MDL] Panel grants [the defendant's] motion.'"). While the case law demonstrates that the Court should evaluate the stay according to the three factors in *Moser*, even under a "good cause" standard, a stay is appropriate for the reasons in the Motion and below.

B. AGIS Never Contests That A Stay Would Serve Judicial Efficiency And Reduce Hardship In View Of Upcoming Claim Construction Deadlines.

The imminent claim construction deadlines provide the strongest support for a stay. Absent a stay, both the parties and the Court will be forced to expend resources on claim construction, and the parties risk duplicating these efforts if the cases are transferred. AGIS *never* rebuts these claim construction arguments. AGIS even acknowledges in its Response that in order to identify proposed terms on April 27, exchange proposed constructions on May 18, and submit the Joint Claim Construction Statement on June 8, the parties will need to "spend significant time drafting and negotiating preliminary claim terms for construction." Dkt. No. 122 at 5. AGIS never disagrees that this work potentially would need to be redone post-transfer, due

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

to different local rules or practices of the transferee court. *See* Dkt. No. 102 at 7. Nor does AGIS disagree that transfer to the Northern District of California could necessitate a second claim construction hearing and waste this Court's claim construction efforts. *See id.* at 7-8.

AGIS bypasses these claim construction issues, and instead, argues that a stay would not serve judicial efficiency because the Apple case would continue to proceed on the current schedule. *See* Dkt. No. 122 at 7. However, though Apple did not file a formal joinder, it does not oppose Huawei's and LGEKR's motion to stay. *See* Dkt. No. 102-1 at ¶ 2. Moreover, should the Court determine that a stay of all consolidated actions would serve judicial efficiency, it has the power to stay the Apple action *sua sponte*. *See Market-Alerts Pty. Ltd. v. Bloomberg Fin. L.P.*, 922 F. Supp. 2d 486, 497 n.15 (D. Del. 2013); *Safe Storage LLC v. Dell Inc.*, No. 12-01624, D.I. 36, at *2, n.1 & 4 (D. Del. Jan. 22, 2015) (staying coordinated actions pending *inter partes* review even though four defendants did not join in the stay motion).

Finally, while AGIS claims that the posture of the case weighs against a stay, "there is more work ahead of the parties and the Court than behind the parties and the Court," especially regarding claim construction and discovery.[1] *See Tierravision, Inc. v. Google, Inc.*, No. 11-cv-2170, 2012 WL 559993, at *1-3 (S.D. Cal. Feb. 21, 2012) (stage of case favored stay where parties had completed infringement and invalidity contentions and some claim construction-related discovery, but claim construction briefing had not yet begun); *Docusign Inc. v. RPost Commc'ns Ltd.*, No. 13-cv-735, 2014 WL 2178234, at *1-2 (W.D. Wash. May 23, 2014) (stage of case favored stay where parties had exchanged some written discovery, trial date was six months away, no depositions had been conducted, and discovery was far from complete).

[1] On the same day Huawei and LGEKR filed the instant Motion, Apple filed petitions for *inter partes* review of the four patents asserted against each of the defendants in the consolidated litigations. *See* IPR2018-00817, IPR2018-00818, IPR2018-00819, IPR2018-00821 (filed Mar. 22, 2018).

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

C. AGIS Fails To Identify Any Specific Undue Prejudice From A Stay Likely To Last *Only Months*.

Notably, AGIS never acknowledges that the requested stay is likely to be short. The motions to dismiss or transfer have been fully briefed since January 12, 2018, and likely will be resolved in the next few months. Dkt. Nos. 81 & 82. AGIS's arguments, therefore, are flawed because they claim a generalized prejudice, and never specifically explain how a modest delay of only a few months would impose an undue prejudice. Indeed, the three cases cited by AGIS on this point (*Realtime Data*, *Ariba*, and *Cummins-Allison*) each involved motions to stay pending proceedings in the Patent Office, which were expected to delay the litigations for *two to three years*, not months. *See* Dkt. No. 122 at 5. By contrast, where a stay is "likely to last two to three months," other courts have found no prejudice to the plaintiff. *See, e.g.*, *Genetic Techs. Ltd. v. Agilent Techs., Inc.*, No. 12-cv-01616, 2012 WL 2906571, at *3 (N.D. Cal. July 16, 2012).

Ultimately, AGIS's claims of prejudice boil down to a single point—that AGIS has invested in this litigation and will be prejudiced by a delay in enforcing its patent rights. *See* Dkt. No. 122 at 4-6. But, as explained in Huawei's and LGEKR's Motion, this factor is present in any opposed request for a stay and is "not sufficient, standing alone, to defeat a stay motion." *See Alacritech, Inc. v. CenturyLink, Inc.*, No. 2:16-cv-00693, 2017 WL 4231459, at *2 (E.D. Tex. Sept. 22, 2017) (finding no prejudice where "Alacritech has not presented evidence it would be prejudiced beyond the procedural effect of the delay."); *see also NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-cv-1058, 2015 WL 1069111, at *2 (E.D. Tex. Mar. 11, 2015).

That AGIS is unable to identify any specific prejudice beyond the mere fact of delay is not surprising.[2] No such prejudice exists. ***First***, AGIS does not claim to practice the invention,

[2] AGIS claims that Huawei and LGEKR have improperly shifted the burden on the prejudice factor. *See* Dkt. No. 122 at 4. But AGIS conflates the notion of burden and the absence of evidence to support AGIS's claim of

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

WHAT WILL YOU BUILD? | sales@docketalarm.com | 1-866-77-FASTCASE

fastcase®
Smarter legal research.