



Plaintiff AGIS Software Development LLC (“AGIS” or “Plaintiff”), by and through its undersigned counsel, hereby submits this response in opposition to Defendant Lyft, Inc.’s (“Defendant” or “Lyft”) Opposed Motion (Dkt. 217) to Stay Pending Adoption of the Dispositive Report and Recommendation (Dkt. 212) (the “Motion”).

AGIS is entitled to file its objections to Magistrate Judge Payne’s Report and Recommendation regarding Lyft’s Motion to Dismiss. Dkt. 217 at 1. AGIS’s objections are due to be filed by November 24, 2021 and AGIS intends to timely file its Objections. Lyft seeks a stay of the case pending Judge Gilstrap’s decision whether to adopt the Magistrate Judge’s Report and Recommendation on the Motion to Dismiss. Dkt. 217 at 1-2.

There is no compelling reason to stay this case. Under the Court’s Docket Control Order, fact discovery is now complete. In addition, on November 8, 2021, the parties served their opening expert reports on infringement, damages, and patent invalidity. The expert rebuttal reports are due to be exchanged on November 29, 2021. Dkt. 170. Further, AGIS’s opposition briefs to Lyft’s motion to stay, motion to strike, and motion to compel have already been filed. *See* Dkts. 224, 225, and 226.

The granting of a stay of the case at the present time would greatly prejudice AGIS. The case is scheduled for trial on March 7, 2022, and a stay would effectively remove the case from the trial calendar. To permit the case to continue forward to allow the District Judge to consider AGIS’ Objections to the Report and Recommendation on the Motion to Dismiss will preserve the trial date and the status quo pending a ruling from the Court. While Lyft’s attorneys argue in the stay motion that there are purported additional discovery deficiencies, not the subject of any timely filed motion to compel, which would need to be addressed if the case continues, these arguments are nothing more than an attempt to create post-fact discovery controversies that do not genuinely

exist. AGIS has diligently sought to provide all relevant discovery. These purported discovery deficiencies could have been raised before the close of fact discovery. AGIS has already served its opening infringement report and its damages expert report and is preparing its rebuttal expert report. Defendants Uber and Lyft have collectively served expert reports regarding invalidity. Should the Court decline to adopt the Report and Recommendations, a stay of the case “may needlessly lengthen the litigation.” *Health Choice Grp., LLC v. Bayer Corp.*, No. 5:17cv126-RWS-CMC, 2018 WL 5728520, at \*2 (E.D. Tex. Aug. 8, 2018) (denying motion to stay).

In addition, Malcolm K. Beyer, Jr., the CEO of AGIS, and a named inventor of the Asserted Patents, is 83 years old and given his advanced age, a stay would greatly prejudice his ability to timely assert his patent rights. *See, e.g. Network-1 Sec. Sols., Inc. v. Alcatel-Lucent USA Inc.*, No. 6:11cv492, 2015 WL 11439060, at \*5 (E.D. Tex. Jan. 5, 2015) (“This Court has repeatedly recognized a plaintiff’s interest in timely enforcement of a patent.”).

The cases relied upon by Lyft are distinguishable. In *Cellular Comm’ns Equip. LLC v. AT&T Inc.*, No. 2:15-cv-00576-RWS-RSP, Dkt. 547 (E.D. Tex. July 4, 2017), the Court *sua sponte* ordered a stay because of the Court’s grant of summary judgment invalidating one of the patents-in-suit and the pretrial conference, which was scheduled for one week later. In *Allergan Sales, LLC v. Teva Pharms. USA, Inc.*, No. 2:15-cv-01471-JRG-RSP, Dkt. 259 at 1 (E.D. Tex. Oct. 3, 2017), the Court *sua sponte* stayed the case in light of the Report and Recommendation recommending the grant of summary judgment, because trial was scheduled to begin twenty days after ordering the stay. Similarly, in *Honeywell Int’l Inc. v. Acer Am. Corp.*, No. 6:07-cv-125, Dkt. 242 (E.D. Tex. May 26, 2009), the Court granted *plaintiff’s* motion to stay deadlines pending the Court’s adoption of a report and recommendation on motions for summary judgment of non-infringement where parties had already entered pretrial orders and proposed jury instructions.

Lastly, in *Cave Consulting Grp., Inc. v. Health Care Serv. Corp.*, No. 6:17-cv-00344-RWS, Dkt. 49 (E.D. Tex. Jan. 18, 2018), the Court granted defendant's motion for a stay pending the Court's decision regarding adoption of the report and recommendation on defendant's motion to dismiss for failure to state a claim, based on the "approaching discovery and hearing deadlines." In contrast, the pretrial conference in this case is not until February 2, 2022. *See* Dkt. 170. AGIS is preparing to file its objections to the Report and Recommendations in compliance with the Local Rules and the deadline set forth in the Report and Recommendation. *See* Dkt. 212 at 14. Accordingly, AGIS respectfully requests that Lyft's request to stay this case be denied.

## I. CONCLUSION

For the foregoing reasons, AGIS respectfully requests that the Court deny Defendant's Motion (Dkt. 217) in its entirety.

Dated: November 22, 2021

Respectfully submitted,

/s/ Vincent J. Rubino, III

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