

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

AGIS SOFTWARE DEVELOPMENT LLC,	§	
	§	Case No. 2:21-cv-00072-JRG
	§	(LEAD CASE)
Plaintiff,	§	
	§	<u>JURY TRIAL DEMANDED</u>
v.	§	
	§	
T-MOBILE USA, INC. and T-MOBILE US,	§	
INC.,	§	
	§	
Defendants.	§	

AGIS SOFTWARE DEVELOPMENT LLC,	§	
	§	Case No. 2:21-cv-00026-JRG
	§	(MEMBER CASE)
Plaintiff,	§	
	§	<u>JURY TRIAL DEMANDED</u>
v.	§	
	§	
UBER TECHNOLOGIES, INC., d/b/a	§	
UBER,	§	
	§	
Defendant.	§	

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S SUR-REPLY
IN OPPOSITION TO DEFENDANT UBER TECHNOLOGIES, INC.,
D/B/A UBER'S MOTION TO STAY PENDING
RESOLUTION OF STANDING ISSUE (DKT. 25)**

Plaintiff AGIS Software Development LLC (“AGIS” or “Plaintiff”), by and through its undersigned counsel, hereby submits this sur-reply in opposition to Defendant Uber Technologies, Inc., d/b/a Uber’s (“Defendant” or “Uber”) Motion to Stay Pending Resolution of Standing Issue (Dkt. 25) (the “Motion”).

Defendant misrepresents AGIS’s arguments and alleges that AGIS has allegedly not disputed or not addressed much of Defendant’s “evidence.” Dkt. 52 (“Reply”) at 5. To the contrary, it is *Defendant* that largely ignores much of AGIS’s arguments. Defendant has not submitted *any* evidence that calls into question AGIS’s standing. The motion lacks any factual representations that are clear or accurate. The entire motion is based on excerpts of a draft “Candidate Document” that appears to be generated by a non-party for an unknown individual. Dkt. 25-4. The “Candidate Document” has no relation or relevance to any party to this case or to Mr. Rice. *Id.* Moreover, other than bare attorney speculation, there is no evidence to support that this “Candidate Document” was in any way “in effect in 2005” as to any of the non-parties, to the extent the meaning of the term “in effect” is ascertainable. AGIS maintains that Defendant’s motion is frivolous and designed to vexatiously multiply the proceedings.

AGIS does not dispute that standing is a requirement to bring suit in federal court. Rather, AGIS disputes that (1) standing is not met here; and (2) a stay is not warranted in light of Defendant’s unsubstantiated allegations regarding standing. Defendant attempts to create a factual dispute regarding standing by submitting unsupported assumptions based on a generic “Candidate Document” that is unrelated to any party to this case or Mr. Rice. Such submissions are insufficient to warrant a stay here.

As a preliminary matter, Defendant incorrectly alleges that AGIS has failed to address the case law it has set forth in its Motion. However, all of the cases cited by Defendant are inapposite.

For example, in both *Sicom Sys. Ltd. v. Agilent Techs., Inc.* and *Alps South LLC v. Ohio Willow Wood Co.*, it was found that a *licensee* lacked standing to sue for infringement because (1) an agreement executed permitted licensee “the exclusive right to sue for commercial infringement” was insufficient to establish licensee had all substantial rights in the patent necessary to have standing 427 F.3d 971, 974 (Fed. Cir. 2005); and (2) the licensee agreement executed restricted licensee’s rights, for example, settling infringement actions without written consent from the licensor (787 F.3d 1379, 1383-84 (Fed. Cir. 2015), respectively. Moreover, the issue in *U.S. Philips Corp. v. Iwasaki Elec. Co.*, was whether the purported infringer had notice of the patent under § 287(a). 505 F.3d 1371, 1375 (Fed. Cir. 2007). In *Israel Bio-Eng’g Project v. Amgen Inc.*, the Federal District reviewed the District Court’s determination *on summary judgment* regarding “ownership of a future invention, which became the subject matter of only one claim” based on a provision of research and development agreements entered between Israel and the Israel Bio-Engineering Project. 475 F.3d 1256, 1267 (Fed. Cir. 2007). The same applies for *AntennaSys, Inc. v. AQYR Techs., Inc.*, where the court had determined *on summary judgment* that a co-owner must be joined for proper standing. 976 F.3d 1374, 1376 (Fed. Cir. 2020). However, the dispute there concerned two inventors who assigned their interests to their respective employers, therein the parties entered into a license agreement where one of the requirements (a sales requirement) was not met, which resulted in only one half-interest in the patent becoming non-exclusive. *Id.* at 1376. None of these cases provide a legal basis to bring this frivolous motion.

As stated, AGIS has made a *prima facie* showing that AGIS is the owner of the Patents-in-Suit, and accordingly, “[t]he burden thus shifts to Defendants to demonstrate that, though [the inventors] conceived of the invention leading to the [Patents-in-Suit], ownership of this invention automatically vested in one of [Mr. Rice’s] employers by operation” of the agreement. Dkt. 42

(“Resp.”) at 8. Defendant incorrectly contends that it has provided “substantial, *unrebutted* evidence that objectively calls into question AGIS’s standing.” Motion at 6. It has not. Defendant’s citation to a generic “Candidate Document” from Microsoft without any authentication nor any evidence that this is the agreement binding Mr. Rice is insufficient. Moreover, Defendant offers no reason why, if it purportedly has “unrebutted” evidence, it has yet to bring a motion to dismiss. *Cf. ESN, LLC v. Cisco Sys., Inc.*, 685 F. Supp. 2d 631 (E.D. Tex. 2009). As AGIS has stated in its opposition, Defendant offers no reason why if it has such substantial evidence, it seeks a motion to stay instead of properly seeking a motion to dismiss for lack of standing. Instead, Defendant seeks to conduct a fishing expedition to create a “factual attack.” In support, Defendant cites to *ESN, LLC*, where defendants moved to dismiss the complaint for lack of standing based on the *actual employment agreement* signed by the inventor with an employer. *Id.* at 641. The Court found that based on this submission, the defendant had made a sufficient “factual attack.” *Id.* at 640. In contrast, Defendant attaches a generic “Candidate Document” from Microsoft without any authentication or any credible basis that the document is an actual agreement, that the document was “in effect in 2005,” or that the document was signed by Mr. Rice (it was signed by an unknown individual).

With regard to Defendant’s argument that AGIS was somehow required to submit a declaration from Mr. Rice to rebut Defendant’s “evidence,” there is no evidence to rebut. Mr. Rice’s name or signature do not appear on the “Candidate Document.” Dkt. 25-4. In fact, the document is electronically signed by an unknown individual having no relevance to this case or Mr. Rice. *Id.* There is no evidence in the record to support that the “Candidate Document” is an actual agreement or that the “Candidate Document” was “in effect in 2005.” Motion at 3; Reply at 3.

As AGIS has established, the factors do not weigh in favor of granting a stay. Resp. at 7-10. A stay would unduly prejudice AGIS despite Defendant's conclusory statements that AGIS was dilatory in bringing suit. *See Secure Axxess, LLC v. U.S. Bank Nat'l Ass'n*, No. 6:13-CV-717, 2014 WL 11394519, at *4 (E.D. Tex. Oct. 20, 2014) ("Moreover, Secure Axxess's decision to wait several years after the '191 Patent issued to file complaints against the Defendants does not establish that Secure Axxess was dilatory. Rather, Secure Axxess made a tactical decision, possibly compelled by limited resources, to first assert the '191 Patent against larger bank defendants in a previous lawsuit."). Further, while Defendant alleges that this issue will simplify the case, it argues that (1) one of the Patents-in-Suit is subject to reexamination; and (2) one Patent-in-Suit is subject to Defendant's own Motion to Dismiss. *See Reply* at 9. As AGIS submitted above, the alleged standing issue only affects one of the Patents-in-Suit, the '724 Patent, contrary to Defendant's contentions. *See supra* 1. Even if a stay were granted, it would only address one of the five Patents-in-Suit, and accordingly, would not simplify the case. AGIS respectfully requests that Defendant's Motion be denied.

I. CONCLUSION

For the foregoing reasons, none of the factors weigh in favor of a stay and AGIS respectfully requests that the Court deny Defendant's Motion to Stay Pending Resolution of Standing Issue (Dkt. 25) in its entirety.

Dated: May 31, 2021

FABRICANT LLP

/s/ Alfred R. Fabricant

Alfred R. Fabricant

NY Bar No. 2219392

Email: ffabricant@fabricantllp.com

Peter Lambrianakos

NY Bar No. 2894392

Email: plambrianakos@fabricantllp.com

Vincent J. Rubino, III

NY Bar No. 4557435

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.