

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

**AGIS SOFTWARE DEVELOPMENT LLC,**

**Plaintiff**

**v.**

**XIAOMI CORPORATION, XIAOMI H.K.  
LTD., XIAOMI COMMUNICATIONS CO.,  
LTD., AND XIAOMI INC.,**

**Defendants.**

**Case No. 2:22-cv-00450-JRG**

**DEMAND FOR A JURY TRIAL**

**DEFENDANTS' UNOPPOSED MOTION FOR  
A MANDATORY STAY UNDER 28 U.S.C. § 1659**

Defendants Xiaomi Corporation, Xiaomi H.K. Ltd., Xiaomi Communications Co., Ltd., and Xiaomi Inc. (collectively, "Xiaomi") appear specially to move this Court to stay this case under 28 U.S.C. § 1659, which requires a district court to stay proceedings in a case involving the same parties as a concurrent U.S. International Trade Commission ("ITC") investigation at the timely request of a respondent.

Because Defendants' request is timely and all other requirements are met, 28 U.S.C. § 1659(a) provides that this case "shall" be stayed until the ITC determination becomes final, including during any appeals and until the Commission proceedings are no longer subject to judicial review. *See In re Princo*, 478 F.3d 1345, 1355 (Fed. Cir. 2007) (granting a writ of mandamus and directing a district court to stay proceedings pursuant to 28 U.S.C. § 1659(a) until the ITC proceeding became final). A stay of the proceedings will minimize the time and effort

required for the Court and the litigants to resolve the dispute. Moreover, a stay is warranted given Plaintiff's non-opposition to the request.

## I. STATEMENT OF FACTS

This action was filed on November 18, 2022, alleging infringement of U.S. Patent Nos. 8,213,970 (the "970 Patent"), 9,445,251 (the "251 Patent"), 9,467,838 (the "838 Patent"), 9,749,829 (the "829 Patent"), and 9,820,123 (the "123 Patent") (collectively, "the Asserted Patents"). Dkt. No. 1. Two days prior, on November 16, 2022, AGIS Software Development LLC ("AGIS") and Advanced Ground Information Systems, Inc. filed a Complaint under Section 337 of The Tariff Act of 1930, as amended, in the ITC, requesting that the ITC institute an investigation under Section 337 against Xiaomi and other respondents. *See* Declaration of Sid V. Pandit ("Pandit Decl."), Ex. A ("ITC Compl."). On December 22, 2022, an ITC investigation was instituted titled *In the Matter of Certain Location-Sharing Systems, Related Software, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-1347. Pandit Decl., Ex. B. The ITC Investigation names, among others, Defendants as respondents and asserts that Defendants infringe the same Asserted Patents.

## II. LEGAL STANDARD

Under Section 1659 of Title 28, upon the request of any party to a civil action who is also a respondent in an ITC investigation involving the parties, the Court "shall stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission." 28 U.S.C. § 1659(a). This stay is mandatory and must be granted if made within thirty days from the later of: (1) the party being named a respondent in a proceeding before the ITC, or (2) the filing of the district court action. 28 U.S.C. § 1659(a)(1)-(2); *see also In re Princo* at 1355 (Fed. Cir. 2007).

A stay issued under this statute must remain in effect during any appeal(s) and must continue “until the Commission proceedings are no longer subject to judicial review.” *Id.*

### **III. A STAY OF ALL PROCEEDINGS IN THIS COURT IS MANDATORY AND UNOPPOSED**

Defendants’ motion for a stay satisfies § 1659(a)’s requirements for a mandatory stay.

First, the parties in the instant action are the same parties in the ITC Investigation: AGIS Software and Development LLC, the plaintiff here, is a Complainant in the ITC Investigation. Xiaomi Corporation, Xiaomi H.K. Ltd., Xiaomi Communications Co., Ltd., and Xiaomi Inc., the defendants here, are respondents in the ITC Investigation. *See* 28 U.S.C. § 1659(a) (“at the request of a party to the civil action that is also a respondent in the proceeding before the Commission, the district court shall stay”).

Second, the claims in this action involve the same issues involved in the ITC Investigation. In both the Complaint here and the ITC Complaint, AGIS alleges that Defendants infringe the Asserted Patents, and the allegations of infringement are the same. *Compare* Compl. ¶¶ 10-15, 19-85 *with* ITC Compl. ¶¶ 59, 139-141, 215-220. The claims in both this action and the ITC Investigation encompass the same issues relating to the Asserted Patents, including infringement, validity, and enforceability, as well as the same defenses that Defendants might raise in the two proceedings. *See* 28 U.S.C. § 1659(a) (“the district court shall stay . . . proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission”).

Finally, Defendants’ request is timely. This motion is timely under 28 U.S.C. § 1659(a)(1) because it was filed within 30 days after Defendants were named as respondents in the ITC Investigation pursuant to the Commission’s December 22, 2022 notice of institution.

*See, e.g., Evolved Wireless, LLC v. Samsung Elecs. Co.*, No. 21-033, 2021 WL 7161368, at \*1 (E.D. Tex. Mar. 10, 2021) (deadline for filing motion to stay occurs thirty days after ITC's notice of institution). A stay is, therefore, mandatory under § 1659(a).

For the foregoing reasons, Xiaomi respectfully requests that the Court enter the attached proposed order staying all proceedings in this action until the determination of the 337-TA-1347 Investigation becomes final, including any appeals and until the ITC proceedings are no longer subject to judicial review.

Xiaomi appears specially to make this motion because AGIS has not yet served process on Xiaomi.

Xiaomi's special appearance does not waive any of its objections and defenses to AGIS's Complaint, including, but not limited to, any defenses based on lack of jurisdiction, improper venue, inconvenient venue, insufficiency of process, and insufficiency of service of process and does not waive Xiaomi's rights to seek appropriate relief, including dismissal of the Complaint or venue transfer. *See, e.g., Mann v. Castiel*, 681 F.3d 368, 374 (D.C. Cir. 2012) (holding that a motion to stay does not waive an objection to sufficiency of service of process); *Lane v. XYZ Venture Partners, L.L.C.*, 322 F. App'x 675, 678 (11th Cir. 2009) (holding that defendants "did not waive their defense of lack of personal jurisdiction by moving to stay the proceedings"). Thus, Xiaomi expressly reserves all objections, defenses, and rights in response to AGIS's Complaint allegations. Requesting a stay at this juncture without resolution of such objections and defenses will conserve judicial resources consistent with FRCP 1.

#### IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court stay this action

under 28 U.S.C. § 1659(a) until the determination of the 337-TA-1347 Investigation becomes final, including any appeals, and until the Commission proceedings are no longer subject to judicial review.

DATED: JANUARY 11, 2023

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