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

MAXELL, LTD., *Plaintiff*, v. APPLE INC., *Defendant*.	Case No. 5:19-cv-00036-RWS **JURY TRIAL DEMANDED**

MAXELL, LTD.'S OPPOSITION TO APPLE INC.'S MOTION TO STAY PENDING DECISION ON ITS MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)

Plaintiff Maxell, Ltd. ("Maxell"), by and through its undersigned counsel, hereby submits this response in opposition to Defendant Apple Inc.'s ("Apple") Motion to Stay Pending Decision on its Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a) ("Motion to Stay") (D.I. 97).

I. INTRODUCTION

Apple's motion is nothing more than Apple's formal request that its practice in this case of delay, delay, delay be approved and encouraged. Although explicitly prohibited by this Court's rules, Apple has essentially already implemented a unilateral stay. It has been stonewalling discovery and has attempted to delay every effort by Maxell to move this case forward to resolution on the merits. Nowhere is this more plainly stated than in Apple's opposition to Maxell's Motion for Leave to Supplement Infringement Contentions (D.I. 96)—which even Apple has admitted it does not oppose on its merits.

Apple has finally acknowledged its practice by now moving the Court seeking an unnecessary stay. It does so under the guise of conserving resources on proceedings that may have to be redone in the Northern District of California. Given the Court's indication that it will issue

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an Order in the short term, and the stage of the case, however, there is no such efficiency to be gained by a stay. The work the parties are currently doing on the case—discovery and claim construction—will have to be done regardless of location, and there is no reason to believe it would have to be **redone** if the case were transferred. Further, should the case remain in this District, which Maxell believes is appropriate, there is also no reason to pause case activities. Apple does not want to conserve resources. It simply wants to delay the case by any means possible.

Contrary to the substance of Apple's Motion to Stay, Apple is not entitled to a stay merely because it filed a motion to transfer. In fact, this Court's discovery order requires active participation in discovery, even when motions to transfer are pending. *See* D.I. 42, Discovery Order at ¶ 10 ("No Excuses…Absent court order to the contrary, **a party is not excused from disclosure because there are pending motions** to dismiss, to remand or **to change venue**.") (emphasis added). Nevertheless, Apple has failed to establish that any of the relevant factors weigh in favor of a stay. Rather, Maxell will suffer significant prejudice if the stay is granted because, among other things, a stay will delay Maxell's day in court while Apple continues to infringe on Maxell's patents, causing Maxell and its licensees substantial harm. Apple cannot complain that it is being prejudiced by continuing case preparation before this Court. Whether or not this case is transferred, discovery and claim construction **must** proceed. In other words, the stay would prevent nothing because everything that needs to be done (e.g., discovery and claim construction) will still need to be done whether the case is transferred or not. All a stay would do is **delay** getting these thing done. Because Apple has not articulated any need to stay this case, the Court should deny Apple's Motion.

II. APPLICABLE LAW

"The district court has the inherent power to control its own docket, including the power to stay proceedings." *Soverain Software LLC v. Amazon.com, Inc.*, 356 F. Supp. 2d 660, 662 (E.D.

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Tex. 2005). In deciding whether to stay a proceeding, the Court "must weigh competing interests and maintain an even balance." *Landis v. North American Co*., 299 U.S. 248, 254-255 (1936). In particular, the Court "must first identify a pressing need for the stay, and then balance those interests against interests frustrated by the action." *In re Sacramento Mun. Util. Dist*., 395 Fed.Appx. 684, 687–88 (Fed. Cir. 2010) (citing *Cherokee Nation of Okla. v. United States*, 124 F.3d 1413, 1416 (Fed. Cir. 1997)). In the Fifth Circuit, "the moving party bears a heavy burden to show why a stay should be granted absent statutory authorization." *Coastal (Bermuda) Ltd. v. E.W. Saybolt & Co., Inc*., 761 F.2d 198, 203 n.6 (5th Cir. 1985). In deciding whether to stay litigation, courts typically consider: (1) whether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party, (2) whether a stay will simplify the issues in question and trial of the case, and (3) whether discovery is complete and whether a trial date has been set. *Soverain Software*, 356 F. Supp. 2d at 662. "Absent court order to the contrary, a party is not excused from disclosure because there are pending motions to dismiss, to remand or to change venue." D.I. 42, Discovery Order at ¶ 10.

III. ARGUMENT

A. Apple Does Not Cite to Any Case Law that Supports its Motion

None of the cases cited by Apple support its request for a stay in this case. In fact, Apple's Motion to Stay does not cite to a single case that states "all proceedings should be stayed pending disposition of a transfer motion," as Apple asserts. Motion at 3. For example, in *In re Fusion-IO*, petitioner requested that the Federal Circuit transfer a case from the Eastern District of Texas to the District of Utah. 489 F. Appx. 465 (Fed. Cir. 2012). The district court had not addressed the merits of petitioner's motion for transfer; it had only severed petitioner's claims from the claims against other defendants and denied petitioner's motion to transfer without prejudice to refile the same motion in the new case. *Id.* The Federal Circuit declined to transfer the case before the district

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court had weighed the facts and considerations relevant to petitioner's transfer motion, and stated that it "fully expect[ed]" petitioner "to promptly request transfer in the lead case along with a motion to stay proceedings pending disposition of the transfer motion, and for the district court to act on those motions before proceeding to any motion on the merits of the action." *Id*. at 465-466. Thus, *In re Fusion-IO* stands only for the proposition that pending motions to transfer should be promptly resolved. But that proposition is not in dispute here, as neither Maxell nor this Court have ever suggested otherwise. It certainly does **not** hold that all proceedings should be stayed pending disposition of a transfer motion, no matter how Apple spins the case.

The liberties Apple takes with the case law continue with its citation to *In re Google Inc*., 2015 WL 5294800 (Fed. Cir. July 16, 2015). In this case, petitioner filed a motion to transfer venue, and the district court proceeding continued for eight months without a ruling on the motion to transfer. *Id*. at *1. The Federal Circuit emphasized the importance of addressing motions to transfer in a timely manner and stated that the district court's refusal to consider the merits of its transfer motion was improper. *Id*. at *1-2. Therefore, the Federal Circuit ordered the magistrate to rule on the motion to transfer within 30 days and to stay all proceedings pending completion of the transfer matter. *Id*. at *2. Here, however, the motion to transfer has not been pending for eight months, or anything near that. Apple filed its motion to transfer on August 9, 2019, and briefing was complete on September 6, 2019. (D.I. 57. 65, 69, and 76). The Court promptly held a hearing concerning Apple's motion to transfer on September 17, 2019, less than two weeks after briefing on the motion was complete. (D.I. 80). There is no evidence that this Court has delayed or refused to consider the merits of Apple's transfer motion. If there has been any delay, it has been on Apple's part, as this case was filed on March 15, 2019 but Apple did not move to transfer until nearly 5 months later on August 9, 2019 after previously requesting this Court to rule on its substantive motion to dismiss. Importantly, *In re Google* also does not hold that all proceedings

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should be stayed pending disposition of a transfer motion.

In *In re Nintendo Co.*, petitioners moved to sever and stay the claims against Nintendo's retailers and transfer the case against Nintendo from the Eastern District of Texas to the Western District of Washington. 544 F. Appx. 934, 936 (Fed. Cir. 2013). Petitioners then filed a second motion to sever, this time seeking to sever all non-Nintendo product claims. *Id*. The district court rejected the motion to sever the non-Nintendo claims against the retailers and found the motion to sever the retailers and transfer the case against Nintendo moot. *Id*. The Federal Circuit noted that the district court made these judgments without considering the merits (*i.e*., without considering whether the transferee venue was clearly more convenient for trial of the claims against Nintendo). *Id*. at 941. As a result, the Federal Circuit ordered the district court to analyze whether the litigation had any meaningful connection to the Eastern District of Texas. A proper reading of *In re Nintendo Co.* (and the cases cited therein) again stands for the proposition that motions to transfer should be addressed promptly—something not in contention here. It does not hold that all proceedings should be stayed pending disposition of a transfer motion. Similarly, *In re EMC Corp*. stands solely for the proposition that transfer motions should be addressed "at the outset of litigation" (501 F. Appx. 973, 975 (Fed. Cir. 2013)), not that cases should be stayed pending disposition of a transfer motion.

In *Nexus Display Technologies LLC v. Dell, Inc*., the Court merely stated that Dell "could have requested a stay" pending a ruling on its transfer motion. 2015 WL 5043069, at *5, n. 4 (E.D. Tex. Aug. 25, 2015). A party's ability to request a stay and whether a court should actually grant a stay are two entirely different matters, and *Nexus Display* says nothing about whether such a stay was actually warranted. Accordingly, none of the cases Apple cited support the contention that "all proceedings should be stayed pending disposition of its transfer motion," as Apple states. Motion to Stay at 3.

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