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

MAXELL, LTD.,

Plaintiff

v.

APPLE INC.,

Defendant.

Civil Action NO. 5:19-cv-00036-RWS

JURY TRIAL DEMANDED

[redacted]

APPLE INC.'S REPLY IN FURTHER SUPPORT OF ITS OPPOSED MOTION TO STAY PENDING DECISION ON ITS MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(A)

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

I. INTRODUCTION

With no sound basis to oppose a stay, Maxell's opposition—predictably—turns to inflated rhetoric and *ad hominem* attacks. Tellingly, Maxell's brief lacks any evidence of Apple's alleged efforts to "stonewall" discovery and of Apple's "insincerity" in discussing business prospects. [redacted] Instead, Maxell is the one that has made resolving the merits of the parties' dispute more expensive by trying to litigate in this District, [redacted], and by conjuring unnecessary discovery disputes.

Maxell's vexatious strategy is plain: force Apple to expend resources litigating in an inconvenient venue, *see, e.g.*, *Omni MedSci, Inc. v. Apple Inc.*, No. 2:18-cv-00134-RWS, Dkt. No. 279, at *8 (E.D. Tex. Aug. 14, 2019) (finding NDCA more convenient for Apple), [redacted] The inherent prejudice to Apple in litigating in an inconvenient venue outweighs Maxell's speculative concerns of a short delay (one that is of its own making). Thus, a stay should be granted.

II. ARGUMENT

A. The Case Law Supports That All Proceedings in This Case Should Be Stayed

Maxell's two-and-a-half pages of argument attempting to distinguish Apple's cited caselaw belies its claim that Apple cites no case law to support its arguments and is otherwise unavailing. Dkt. No. 107 at 3-5. *In re Fusion-IO* stands for more than the notion that "pending motions to transfer should be promptly resolved." *Id.* at 4. The Federal Circuit also recognized the inherent inefficiency to litigate while a transfer motion is pending and directed the "district court to act on [the transfer motion] before proceeding to any motion on the merits of the action."

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

In re Fusion-IO, Inc., 489 F. App'x 465, 466 (Fed. Cir. 2012); *see also In re Nintendo Co., Ltd.*, 544 F. App'x 934, 941 (Fed. Cir. 2013) ("a trial court must first address whether it is a proper and convenient venue before addressing any substantive portion of the case"). Maxell's straw-man argument—that there is no blanket rule requiring every case to be stayed pending a transfer motion—mischaracterizes Apple's argument and ignores that Apple cites cases staying all proceedings pending a decision on transfer. Maxell has no answer to those cases.

Maxell's narrow reading of the case law also ignores the reasons those decisions provide for granting a stay. Given 28 U.S.C. § 1404(a) "protect[s] litigants, witnesses and the public against unnecessary inconvenience and expense," Apple is inherently prejudiced by "expend[ing] resources litigating substantive matters in an inconvenient venue" while a motion to transfer is pending. *In re Google Inc.*, No. 2015-138, 2015 WL 5294800, at *1 (Fed. Cir. July 16, 2015). Preserving judicial economy further warrants deciding a transfer motion before any decisions on the merits. *In re Nintendo*, 544 F. App'x at 941 ("Judicial economy requires that [a] district court should not burden itself with the merits of the action until it is decided [whether] a transfer should be effected."). Apple appreciates that the Court will decide its motion to transfer promptly, but also understands the Court is busy and has limited resources. Apple's prejudice and preserving judicial economy, balanced against no prejudice to Maxell, warrant a stay.

B. A Stay Will Not Unduly Prejudice or Disadvantage Maxell

Maxell cannot dispute that it does not practice any of the asserted patents and would not suffer undue prejudice from a short stay under the prevailing case law in this District.[1] Seeking

[1] [redacted]

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

to invent prejudice attributable to a stay, [redacted] And Maxell's speculative claims does not warrant denial of a stay. *Ericsson Inc. v. TCL Commc'n Tech. Holdings, Ltd.*, No. 2:15-CV-00011-RSP, 2016 WL 1162162, at *2 (E.D. Tex. Mar. 23, 2016) (this factor is neutral "[a]bsent a showing of any specific prejudice"); *Sierra Club v. Fed. Emergency Mgmt. Agency*, No. CIV. H-07-0608, 2008 WL 2414333, at *7 (S.D. Tex. June 11, 2008) (motion to stay should not be denied based on "a party's speculative concerns").

Maxell's reliance on *Realtime Data LLC v. Actian Coporation*, No. 6:15-CV-463-RWS-JDL, 2016 WL 3277259 (E.D. Tex. June 14, 2016) is misplaced. Maxell acknowledges that this Court will promptly resolve the pending motion to transfer and any stay would be short. Dkt. No. 107 at 4. Thus, the "substantial delay" that extended "well beyond the scheduled trial date" that motivated the court in *Realtime* to deny a stay is just not a concern here. No. 6:15-CV-463-RWS-

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

JDL, 2016 WL 3277259, at *2; *see also Realtime Data, LLC v. Rackspace US, Inc.*, No. 6:16-CV-00961-RWS-JDL, 2017 WL 772654, at *4 (E.D. Tex. Feb. 28, 2017) (finding that "concerns such as timely enforcement of patent rights are generally too generic . . . to defeat a stay motion"). And any delay to Maxell's enforcement of its patents would result from [redacted] *See Microlinc, LLC v. Intel Corp.*, No. 2:07-CV-488TJW, 2010 WL 3766655, at *2 (E.D. Tex. Sept. 20, 2010) (no prejudice where patentee's own conduct warranted stay).

Finally, Maxell argues that the Court should deny a stay because Apple has refused to participate in discovery. Dkt. No. 107 at 6. Maxell's rhetoric is just that—the facts demonstrate the opposite. Apple has produced more than 1,000,000 pages of documents and made available more than 1,200,000 source code files. These efforts have not slowed since Apple filed its motion to stay three weeks ago—despite the completeness of its local rule productions, Apple has produced nearly 200,000 additional pages of documents and 200,000 additional source code files in response to Maxell's requests, despite the disproportionality of those requests. Yet, more than two months after Apple first made its source code available, Maxell has seemingly only reviewed the code for the purpose of manufacturing discovery disputes. [redacted] Maxell unsurprisingly failed to produce meaningful P.R. 3-1(g) contentions that specify its infringement theories relating to source code. It is Maxell, not Apple, that has failed to meet its discovery obligations. Maxell's failures to comply with Local Rules will necessitate delays with or without a stay. Any speculative harm resulting from Maxell's own misconduct does not warrant denial of a stay.

C. A Stay Will Simplify the Issues

Maxell's claim that a stay will not simplify the issues ignores crucial differences in Local

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.