

**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 PROCEEDINGS AT THE PATENT OFFICE OR, IN
THE ALTERNATIVE TO CONTINUE TRIAL DUE TO THE COVID-19 PANDEMIC**

TABLE OF CONTENTS

	<u>Page</u>
I. Factual Background	2
II. Legal Standard	4
III. Analysis.....	5
A. Prejudice, Stage of the Proceedings, and Potential Simplification Each Weigh Against A Stay Pending Post-Grant Proceedings	5
1. The Prejudice Factor Weighs Against Stay	5
2. The Stage of the Proceedings Weighs Strongly Against Stay	8
3. The Potential Simplification of the Case is Speculative and Thus Weighs Against Stay.....	9
B. Trial Should Not Be Continued in View of COVID-19	12
1. Apple’s Presentation of the COVID-19 Statistics Are Misleading	12
2. The Court is Capable of Safely Conducting In-Person Proceedings	13
3. Proceeding with Trial Does Not Raise Due Process Concerns.....	14
IV. Conclusion	15

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>AGIS Software Dev. LLC v. Google LLC</i> , No. 2:19-cv-00361-JRG, 2021 WL 465424 (E.D. Tex. Feb. 9, 2021)	10, 11
<i>Blitzsafe Texas LLC v. Maserati North America Inc., et al.</i> , No. 2:19-cv-00378, Dkt. No. 258 (E.D. Tex. Feb. 16, 2021)	4, 14
<i>Fall Line Patents, LLC v. Am. Airlines Grp.</i> , No. 6:17-cv-00202-RWS, 2018 WL 4169251 (E.D. Tex. May 21, 2018)	4, 6
<i>Image Processing Techs., LLC v. Samsung Elecs. Co.</i> , No. 2:20-cv00050, Dkt. 200 (E.D. Tex. June 29, 2020)	5
<i>KIPB LLC v. Samsung Electronics Co., Ltd.</i> , Case No. 2:19-cv-00056-JRG-RSP, 2019 WL 6173365 (E.D. Tex. Nov. 20, 2019)	11
<i>Landis v. N. Am. Co.</i> , 299 U.S. 248 (1936)	4
<i>NFC Techs. LLC v. HTC Am., Inc.</i> , Case No. 2:13-cv-1058-WCB, 2015 WL 1069111 (E.D. Tex. Mar. 11, 2015)	5, 8
<i>Optis Wireless Tech., LLC v. Apple Inc.</i> , No. 2:19-cv-00066, Dkt. 387 (E.D. Tex. July 21, 2020)	4
<i>Ramot at Tel Aviv Univ. Ltd. v. Cisco Sys., Inc.</i> , No. 2:19-cv-00225-JRG, 2021 WL 121154 (E.D. Tex. Jan. 13, 2021)	<i>passim</i>
<i>Ramot at Tel Aviv Univ. Ltd. v. Cisco Sys., Inc.</i> , No. 2:19-cv-00225-JRG, Dkt. 205 (E.D. Tex. Nov. 23, 2020)	7
<i>Realtime Data LLC v. Actian Corporation</i> , No. 6:15-cv-463-RWS-JDL, 2016 WL 3277259 (E.D. Tex. June 14, 2016)	5, 6
<i>Rembrandt Wireless Techs., LP v. Samsung Elecs. Co.</i> , No. 2:13-cv-213-JRG-RSP, 2015 WL 627887 (E.D. Tex. Jan. 29, 2015)	5, 7
<i>Soverain Software LLC v. Amazon.com, Inc.</i> , 356 F.Supp.2d 660 (E.D. Tex. 2005)	7, 10
<i>Stragent, LLC v. BMW of N. Am., LLC</i> , No. 6:16-cv-446-RWS-KNM, 2017 WL 2839260 (E.D. Tex. Apr. 20, 2017)	9

Uniloc 2017 LLC v. Samsung Elec. Am., Inc.,
NO. 2:19-cv-00259-JRG-RSP, 2020 WL 143360 (E.D. Tex. Mar. 24, 2020)8

United States v. German,
486 F.3d 849 (5th Cir. 2007)4

VirnetX Inc., et al. v. Apple Inc.,
Case No. 6:12-cv-00855-RWS, D.I. 945 (E.D. Tex. Oct. 15, 2020)13

Other Authorities

37 CFR §42.100(c).....3

Apple does not want to try this case. With its endless resources, Apple has tried every trick in the book to delay, move, or otherwise avoid this trial—efforts that include motions to transfer, motions to stay, two mandamus petitions, and serial filings at the Patent Office challenging the same patents in multiple proceedings. This motion is just Apple’s latest effort.

When the Court rescheduled trial from December 2020 to March 2021, Apple quickly began constructing efforts to cause further delay. It reworked its denied *Inter Partes* Review petitions—some denied as early as June 2020 based on the same prior art—into requests for *Ex Parte* Reexamination (“EPR”) beginning on December 10, 2020. At the same time, Apple was pushing to narrow Maxell’s case for trial (an effort that we now know from Apple’s objection to severance was intended to further delay Maxell’s day in court)—knowing all the while it intended to request a stay/continuance. Though Apple no doubt hopes the Court overlooks the factual deficiencies with its request (not one claim has been rejected in connection with the EPRs, indeed, some have not yet even been granted review) and the resulting prejudice to Maxell in having its case narrowed for trial if there are further delays, Apple’s backup is of course COVID-19. While a request to delay for COVID-19 concerns is not unusual during this pandemic, it is unusual that this is Apple’s first time requesting a continuance on this particular basis. That Apple chose not to file a “COVID motion” prior to the last trial, but does so now when the current situation is dramatically improved and improving, signals an ulterior motive. Apple does not seek a continuance “until later this year,” but until Apple can find traction through its EPR filings sufficient to obtain a stay for years.

But justice delayed is justice denied. This case has already been rescheduled twice. The parties have been working diligently for months in preparation for a trial that is now just three weeks away. Yet, Apple laid in wait as the parties marched towards trial and now springs this

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