

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MOBILEMEDIA IDEAS LLC,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 11-cv-02353-N
v.	§	
	§	
RESEARCH IN MOTION LIMITED and	§	
RESEARCH IN MOTION CORPORATION,	§	
	§	
Defendants.	§	

SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO STAY

Defendants Research In Motion Limited and Research In Motion Corporation (collectively “RIM”) file this Supplemental Brief in further support of their August 26, 2011 Motion to Stay (“Motion to Stay”) (Docket No. 102). RIM submitted its Reply Brief in further support of its Motion to Stay on November 15, 2011 (Docket No. 171), and this issue is currently pending before the Court. RIM respectfully files this Supplemental Submission in order to inform the Court of events that have an impact on its Motion to Stay that have occurred since RIM’s Reply Brief was filed.

RIM’s Motion to Stay is based on two alternative grounds: (1) there is an arbitration pending that effects six of the sixteen patents-in-suit, and (2) many of the asserted claims of the patents-in-suit are currently in reexamination proceedings before the United States Patent and Trademark Office (“PTO”) and/or have had claims significantly modified as part of reexamination proceedings. That is, since RIM filed its Motion to Stay, MMI has added, amended, and cancelled dozens of patent claims, including many of the claims previously and/or currently being asserted against RIM. As of February 27, 2012, MMI has amended thirty-six

original claims of the patents-in-suit, cancelled forty-seven claims, and added nearly 200 additional new claims. The timeline below illustrates the rapidity with which the claims in the patents-in-suit have changed over the past several months.

Status of MMI Patents During Reexamination (April 2011-January 2012)

April 2011	2 new claims added
May 2011	29 new claims added 4 original claims amended 4 claims cancelled
June 2011	20 new claims added 7 original claimed amended 1 claim cancelled
July 2011	25 new claims added 2 original claims amended 12 claims cancelled
August 2011	20 new claims added 4 original claims amended
September 2011	60 new claims added
October 2011	8 new claims added 2 original claims amended 6 new claims amended 25 claims cancelled
November 2011	25 new claims added 5 original claims amended 1 claim cancelled
December 2011	12 original claims amended 9 new claims amended 4 claims cancelled
January 2012	1 amended claim amended back to original claim language

With eleven of the patents-in-suit still currently in reexamination, additional rejections and amendments to the asserted claims are inevitable. As long as MMI continues to amend and cancel the claims asserted against RIM, the landscape of this litigation continues to evolve and neither RIM nor MMI can effectively or efficiently prepare for claim construction, fact discovery, and expert discovery.

In addition, since RIM's filed its Reply Brief, MMI has served Amended Infringement Contentions that further demonstrate why a stay pending reexamination is warranted. In those Amended Infringement Contentions, MMI attempts to assert fifteen claims from six of the MMI patents that were amended during still-pending reexaminations, nearly all of which were substantively amended. (Exhibit 1, excerpts from Jan. 20, 2012 MMI Amended Contentions.) MMI's assertion of these claims is premature because *none* of these claims have issued in a valid patent. Proposed amendments to claims, or claims added, during reexamination are not incorporated into a patent until a reexamination certificate is issued. 35 U.S.C. §307(a). MMI cannot thus enforce any pending claim that has been substantively changed through amendment during reexamination. *See Aspex Eyewear, Inc. v. E'Lite Optik.*, 552 F. Supp. 2d 620, 624 (N.D.T.X. 2008) ("Unless a claim granted or confirmed upon reexamination is identical to an original claim, the patent cannot be enforced against infringing activity that occurred before issuance of the reexamination certificate." (quoting *Bloom Eng'g Co., Inc. v. N. Am. Mfg. Co., Inc.*, 129 F.3d 1247, 1250 (Fed. Cir. 1997))).

More importantly, MMI's attempt to assert amended claims still pending before the PTO further demonstrates why a stay of this case is warranted. Staying this case pending reexaminations will allow for narrowing and simplifying the issues in a very unwieldy sixteen-patent case. *See Premier Int'l Assocs. LLC v. Hewlett-Packard Co.*, 554 F. Supp. 2d 717, 724 (E.D. Texas 2008) ("[T]he fact that [the patent owner] has filed several amendments and that the PTO has issued an Office Action rejecting all 210 claims in both patents indicates that there is a large amount of uncertainty regarding the scope of the claims.") Accordingly, MMI's own actions demonstrate why a stay pending reexamination is necessary and appropriate here.

For the foregoing reasons, and for the reasons set forth in its August 26, 2011 Motion to

Stay and its November 15, 2011 Reply Brief, RIM respectfully moves the Court to stay this litigation pending final resolution of reexamination of the patents-in-suit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2012, a copy of the foregoing was electronically filed. Notice of this filing will be sent to all counsel of record by operation of the Court's Electronic Filing System.

/s/ John R. Emerson