

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

RFCyber CORP.,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 6:21-cv-00916-ADA

JURY TRIAL DEMANDED

APPLE INC.'S OPPOSED MOTION TO STAY PENDING TRANSFER

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I. INTRODUCTION

Apple respectfully moves to stay all case activity pending a decision on Apple's pending Motion to Transfer to the Austin Division of the Western District of Texas (ECF No. 93). Both the Federal Circuit and the Fifth Circuit have instructed district courts to prioritize transfer motions and to address transfer before addressing other substantive issues. Indeed, the Federal Circuit recently reinforced this directive in granting three mandamus petitions involving unresolved motions to transfer before this Court and "directed [the Court] to postpone fact discovery and other substantive proceedings until after consideration of Apple's motion for transfer." *In re Apple Inc.*, No. 2022-162, --- F.4th ---, 2022 WL 16753325, at *3 (Fed. Cir. Nov. 8, 2022). This Court has subsequently stayed those cases pending resolution of those motions to transfer. *See Aire Tech. Ltd., v. Apple Inc.*, Case No. 6:21-cv-01101-ADA, ECF No. 71 (W.D. Tex. Nov. 8, 2022); *Scramoge Tech. Ltd. v. Apple Inc.*, Case No. 6:21-cv-01071-ADA, ECF No. 68 (W.D. Tex. Nov. 8, 2022); *XR Commc'ns LLC v. Apple Inc.*, Case No. 6:21-cv-00620-ADA, ECF No. 83 (W.D. Tex. Nov. 8, 2022).

The present case, in which the motion to transfer has been fully briefed since October 7 and all venue discovery has long been completed, is indistinguishable from these three recently stayed litigations. And precedent dictates that these principles apply equally to intra-district transfer. *See In re Radmax, Ltd.*, 720 F.3d 285, 288 (5th Cir. 2013) (noting that 1404(a) "appl[ies] as much to transfers between divisions of the same district as to transfers from one district to another."). Despite this overwhelming precedent, RFCyber is unwilling to agree to stay this case to allow for resolution of the pending transfer motion. Instead, RFCyber insists on continuing to expend resources of the parties and this Court on completing fact discovery and serving opening experts reports, due on January 17 and 24, 2023, respectively. In light of the appellate mandate to make transfer a "top priority" and the prejudice associated with proceeding

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