

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

DODOTS LICENSING SOLUTIONS LLC,

Plaintiff,

v.

APPLE INC., BEST BUY STORES,
L.P., BESTBUY.COM, LLC, AND
BEST BUY TEXAS.COM, LLC,

Defendants.

Case No. 6:22-cv-00533-ADA-DTG

**DEFENDANTS' REPLY IN SUPPORT OF MOTION TO SEVER AND STAY
CLAIMS AGAINST BEST BUY UNDER THE CUSTOMER-SUIT EXCEPTION**

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I. INTRODUCTION

DoDots' opposition fails to rebut Defendants' showing that the three customer-suit exception factors compel staying the claims against Best Buy. DoDots makes the meritless (and irrelevant) argument that it should be permitted to recover from Apple and Best Buy twice for sales of the same products, which obviously is contrary to the law. DoDots also speculates about future difficulty in obtaining discovery of Best Buy's business activities related to the accused products (*see* Opp. at 6-8), but DoDots' speculation does not change the result of this motion. DoDots also focuses on repair services offered by a Best Buy subsidiary that have nothing to do with DoDots' infringement claims against Best Buy. Because each factor favors severing and staying DoDots' claims against Best Buy, the Court should grant Defendants' motion.

DoDots' opposition also largely ignores the decisions Defendants cite—including ones from this District—that have severed and stayed claims against customers under the customer-suit exception in factually similar circumstances. At the same time, DoDots wrongly argues that the customer-suit exception does not apply to “a single action against a customer and manufacturer where there is not, nor should there be, a separate action against the customer.” Opp. at 1, citing *In re Dell In.*, 600 Fed. Appx. 728, 730 (Fed. Cir. 2015) (“*Dell*”). The *Dell* decision does not stand for that proposition; on the contrary, the *Dell* court suggested that the case could have been “simplified by a stay of some aspects of the proceedings,” but deferred to the district court’s “considerable discretion.” *Id.* DoDots also claims the customer-suit exception does not apply to “a single action alleging direct infringement against the customer, and indirect infringement against the manufacturer.” Opp. at 1, citing *Erfindergemeinschaft UroPep GbR v. Eli Lilly & Co.*, No. 2:15-CV-1202-WCB, 2016 U.S. Dist. LEXIS 55205 (E.D. Tex. Apr. 26, 2016) (“*UroPep*”). *UroPep* does not support that proposition either; on the contrary, *UroPep* involved the assertion of method claims where the infringement proof was different for the

customer (the direct infringer) versus the manufacturer (the indirect infringer). Here, DoDots asserts only apparatus claims for the two patents asserted against Apple and Best Buy, so *UroPep* does not apply. Setting aside DoDots' misreading of the law, it has no rebuttal to Defendants' request that the claims against Apple customer Best Buy be severed and stayed.

II. ARGUMENT

A. The Customer-Suit Exception Factors Favor Severing And Staying The Claims Against Best Buy.

The customer-suit exception factors favor a stay because (a) Best Buy merely resells the Apple accused products; (b) Best Buy has agreed to be bound by the outcome against Apple; and (c) Apple is the only source of the accused products. *See* Mot. at 6-8. DoDots does not address the decisions from this District applying the customer-suit exception factors to sever and stay claims against customers. Rather than addressing these factors, DoDots focuses on the *Dell* and *UroPep* decisions, neither of which support DoDots' position.

1. The Three Customer-Suit Exception Factors Apply To Best Buy.

DoDots halfheartedly argues that the three customer-suit exception factors do not even apply to Best Buy. Opp. at 1-5. Yet there is no legitimate dispute that the factors not only apply to Best Buy, but favor severing and staying the claims against it. On the first factor, DoDots concedes that Best Buy purchases the accused products from Apple and resells them. *See* Opp. at 2-3 (“Best Buy, the customer in this case, is located in this district and purchases the accused Apple devices from Apple in this district.”). DoDots' amended complaint alleges that Best Buy's “infringing activities” are offering for sale and selling the accused Apple products. *See* FAC at ¶¶ 105-108. DoDots' infringement contentions similarly focus on Best Buy's offers for sale and sales of the Apple accused products. In fact, DoDots' infringement contentions for Best Buy on

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