

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

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|-------------------|---|-----------------------------------|
| RFCyber CORP., | § | Case No. 6:22-cv-00697-ADA |
| | § | |
| Plaintiff, | § | <u>JURY TRIAL DEMANDED</u> |
| | § | |
| v. | § | |
| | § | |
| VISA U.S.A. INC., | § | |
| | § | |
| Defendant. | § | |

CASE READINESS STATUS REPORT

Plaintiff RFCyber Corporation and Defendant Visa U.S.A. Inc., hereby provide the following status report.

SCHEDULE

A scheduling order has not yet been filed.

FILING AND EXTENSIONS

Plaintiff's Complaint was filed on June 28, 2022.

RESPONSE TO THE COMPLAINT

On November 11, 2022, Defendant filed a Motion to Dismiss RFCyber Corp.'s Complaint (D.I. 10). Defendant's Motion to Dismiss was denied on April 26, 2023.

PENDING MOTIONS

There are no pending motions. Visa's Motion to Dismiss was denied on April 26, 2023.

RELATED CASES IN THIS JUDICIAL DISTRICT

RFCyber Corp. v. Apple, Inc., Case No. WA:21-cv-00916-ADA.

IPR, CBM, AND OTHER PGR FILINGS

In *Apple, Inc. v. RFCyber Corp.*, IPR2022-00412, *inter partes* review was instituted against U.S. Patent No. 9,189,787. A Final Written decision is expected on or before July 2023.

Apple, Inc. v. RFCyber Corp., IPR2022-00413, *inter partes* review was instituted against U.S. Patent No. 9,240,009. A Final Written decision is expected on or before July 2023.

NUMBER OF ASSERTED PATENTS AND CLAIMS

Plaintiff has asserted 4 patents and a total of 71 claims. The asserted patent(s) are U.S. Patent No. 8,118,218, U.S. Patent No. 8,448,855, U.S. Patent No. 9,189,787, and U.S. Patent No. 9,240,009.

APPOINTMENT OF TECHNICAL ADVISOR

The parties defer to the Court on whether to appoint a technical advisor to the case to assist the Court with claim construction or other technical issues.

MEET AND CONFER STATUS

Plaintiff and Defendant met and conferred. Plaintiff has no pre-*Markman* issues to raise at the CMC. Defendant is contemplating seeking a stay of the case at least pending the final written decisions expected in July 2023 in the *inter partes* reviews initiated by Apple, because these IPRs could eliminate two of the Asserted Patents from this case. Indeed, resolution of the dispute between Apple and RFCyber should essentially eliminate the claims and damages in this suit since RFCyber has already resolved its patent claims against other major mobile device platform providers. *See RFCyber Corp. v. Google LLC*, No. 20-274-JRG-RSP, Dkt. 119 (stating RFCyber settled with Google); *id.* Dkt. 268 (E.D. Tex. March 25, 2022) (stating RFCyber settled its claims with Samsung); *RFCyber Corp. v. LG Electronics, Inc.*, No. 20-336, Dkt. 35 (E.D. Tex. Sept. 8, 2021) (stating RFCyber settled claims with LG). Defendant is also contemplating

seeking transfer to the Northern District of California where Defendant is headquartered.

Finally, Defendant reserves the right to file its own petitions for *inter partes* review.

Dated: May 1, 2023

Respectfully submitted,

/s/ Richard M. Cowell

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ATTORNEY FOR VISA U.S.A. Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing via electronic mail to all counsel of record. Any other counsel of record will be served by first class U.S. mail.

/s/ Richard M. Cowell

Richard M. Cowell