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

RFCyber CORP.,

Plaintiff,

v.

VISA U.S.A. Inc.,

Defendant.

CASE NO.: 6:22-cv-00697-ADA

JURY TRIAL DEMANDED

DEFENDANT VISA U.S.A. INC.'S OPPOSED MOTION TO STAY PENDING INTER PARTES REVIEW



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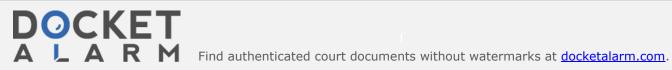


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I. INTRODUCTION

The Court should enter a stay in this case in furtherance of judicial economy and because it would not prejudice Plaintiff. The Patent Trial and Appeal Board ("PTAB") instituted *inter partes* review ("IPR") of two of the asserted patents in this case, finding there is a reasonable likelihood that claims asserted here are invalid. This case has not entered discovery, and the PTAB's final written decision is expected in under two months. As such, Defendant Visa U.S.A. Inc. ("Visa") respectfully requests a stay of this action pending final disposition of *Apple Inc. v. RFCyber Corp.*, IPR2022-00412 (IPR of U.S. Patent No. 9,189,787) and *Apple Inc. v. RFCyber Corp.*, IPR2022-00413 (IPR of U.S. Patent No. 9,240,009) (collectively, "the IPR proceedings"), expected in July 2023. As set forth below, factors considered by this Court when deciding whether to exercise discretion and stay a case weigh in favor of staying this action.

First, granting the requested stay will not prejudice Plaintiff RFCyber Corp. ("Plaintiff" or "RFCyber") or result in any tactical disadvantage. RFCyber could still seek monetary damages, and there is no "undue prejudice" associated with any such delay. Kirsch Rsch. and Dev., LLC v. Tarco Specialty Prods., Inc., No. 6:20-cv-00318-ADA, 2021 WL 4555804, at *2 (W.D. Tex. Oct. 4, 2021) (Albright, J.). Second, this case is still in its infancy. Because the parties are still at the pleading stage, no trial date has been set, and no scheduling order entered, granting the requested stay will not disrupt the litigation or create inefficiencies. Third, the IPR proceedings (instituted in connection with an earlier-filed related case asserting the same patents¹) are likely to simplify the issues in this case as the PTAB already determined there is a reasonable likelihood that claims

¹ In *RFCyber Corp. v. Apple, Inc.*, 6:21-cv-00916-ADA (W.D. Tex. Sept. 7, 2021) ("*Apple Litigation*"), RFCyber is asserting the same patents asserted against Visa and seeking damages for many of the same transactions at issue here. *Compare Apple Litigation*, Dkt. 18 (12/2/21 Am. Compl. against Apple) *with* Dkt. 1 (Compl. against Visa).



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