

**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**

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. BACKGROUND	2
A. This Case Is In The Initial Stages	2
B. Status Of Related Cases	2
C. IPR Proceedings Have Been Instituted, With An Anticipated Decision In Two Months	3
III. LEGAL STANDARDS	3
IV. ARGUMENT	4
A. A Stay Will Not Unduly Prejudice RFCyber.....	4
B. The Early Stage Of This Case Favors A Stay.....	6
C. A Stay Will Simplify The Issues	7
D. The Totality Of The Circumstances Weighs In Favor Of A Stay.....	10
V. CONCLUSION.....	11

TABLE OF AUTHORITIES**Page(s)****CASES**

<i>Advanced Micro Devices, Inc. v. Mediatek Inc.</i> , No. 19-70-CFC, 2019 WL 4082836 (D. Del. Aug. 29, 2019)	7
<i>Bell Semiconductor, LLC v. NXP Semiconductors, N.V.</i> , No. 1:20-CV-611-LY, 2022 WL 1447948 (W.D. Tex. Feb. 7, 2022)	8, 10
<i>Canon Inc. v. Avigilon USA Corp. Inc.</i> , No. 3:17-CV-2733-N, 2019 WL 13156692 (N.D. Tex. Jan. 3, 2019)	8
<i>Clinton v. Jones</i> , 520 U.S. 681 (1997)	3
<i>Coho Licensing LLC v. Glam Media</i> , No. C 14-01576 JSW, 2014 WL 4681699 (N.D. Cal. Sept. 17, 2014)	10
<i>Crossroads Sys., Inc. v. Dot Hill Sys. Corp.</i> , No. A-13-CA-800-SS, 2015 WL 3773014 (W.D. Tex. June 16, 2015)	5, 7, 10, 11
<i>e-Watch, Inc. v. ACTi Corp., Inc.</i> , No. SA-12-CA-695-FB, 2013 WL 6334372 (W.D. Tex. Aug. 9, 2013) <i>adopted</i> 2013 WL 6334304 (W.D. Tex. Aug. 26, 2013)	4, 8, 9
<i>E-Watch, Inc. v. Lorex Canada, Inc.</i> , No. H-12-3314, 2013 WL 5425298 (S.D. Tex. Sept. 26, 2013)	8
<i>Employment Law Compliance, Inc. v. Compli, Inc.</i> , No. 3:13-cv-3574-N, 2014 WL 3739770 (N.D. Tex. May 27, 2014)	6
<i>Evolutionary Intelligence, LLC v. Apple, Inc.</i> , No. C 13-04201 WHA, 2014 WL 93954 (N.D. Cal. Jan. 9, 2014)	8, 10
<i>Evolutionary Intelligence, LLC v. Facebook, Inc.</i> , No. C 13-4202 SI, 2014 WL 261837 (N.D. Cal. Jan. 23, 2014)	5
<i>Fairfield Indus. Inc. v. Seabed Geosolutions (US) Inc.</i> , No. H-17-1458, 2019 WL 212333 (S.D. Tex. Jan. 16, 2019)	9
<i>Keurig, Inc. v. Sturm Foods, Inc.</i> , 732 F.3d 1370 (Fed. Cir. 2013)	9
<i>Kirsch Rsch. and Dev., LLC v. Tarco Specialty Prods., Inc.</i> , No. 6:20-cv-00318- ADA, 2021 WL 4555804 (W.D. Tex. Oct. 4, 2021) (Albright, J.)	<i>passim</i>
<i>LifeScan Scotland, Ltd. v. Shasta Techs., LLC</i> , 734 F.3d 1361 (Fed. Cir. 2013)	9

Micrografx, LLC v. Google, Inc., No. 3:13-cv-3595-N,
2014 WL 12580455 (N.D. Tex. July 9, 2014).....4, 6

Murata Mach. USA v. Daifuku Co., Ltd.,
830 F.3d 1357 (Fed. Cir. 2016).....3

NFC Tech. LLC v. HTC Am., Inc., No. 2:13-cv-1058-WCB,
2015 WL 1069111 (E.D. Tex. Mar. 11, 2015)4

PSC Inc. v. Symbol Techs
26 F. Supp. 2d 505, 510 (W.D.N.Y.1998).9

Select Comfort Corp. v. Tempur Sealy Int’l, Inc., No. 14-245,
2014 WL 12600114 (D. Minn. Oct. 10, 2014)10

Sonrai Memory Ltd. v. Western Digital Techs., Inc., No. 6:21-CV-01168-ADA,
2022 WL 3108818 (W.D. Tex. Aug. 4, 2022) (Albright, J.)5

VirtualAgility Inc. v. Salesforce.com, Inc.,
759 F.3d 1307 (Fed. Cir. 2014).....5

Xylon Licensing LLC v. Lone Star Nat’l Bancshares-Texas, Inc., No. 6:21-CV-
00302-ADA,
2022 WL 2078030 (W.D. Tex. June 8, 2022) (Albright, J.).....6, 7, 8, 11

STATUTES

35 U.S.C. § 316(a)(11).....3

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).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.