

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

RFCYBER CORP.,

Plaintiff,

v.

VISA U.S.A. INC.,

Defendant.

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Case No. 6:22-cv-00697-ADA

**JURY TRIAL DEMANDED**

**PLAINTIFF RFCYBER CORP.'S RESPONSE IN OPPOSITION TO  
DEFENDANT VISA U.S.A. INC.'S OPPOSED MOTION  
TO STAY PENDING *INTER PARTES* REVIEW (DKT. 22)**

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Plaintiff RFCyber Corp. (“RFCyber” or “Plaintiff”), by and through its undersigned counsel, hereby submits this response in opposition to Defendant Visa U.S.A. Inc.’s Opposed Motion to Stay Pending *Inter Partes* Review (Dkt. 22) (the “Motion”).

## I. INTRODUCTION

The Court should deny Visa’s request for a stay “until the PTAB resolves the pending IPR proceedings on the ’787 and ’009 Patents.” Motion at 11. While Visa styles its request as seeking a stay only until July 2023 (Motion at 1), it asks the Court to “allow the parties to seek a further stay” after that time. *Id.* at 11. Presumably, Visa’s “further stay” would be until all appeals regarding the IPRs are complete.

Visa’s suggested stay would not simplify any issues in the case. Two of the four patents in this case are not subject to *any* IPRs, much less instituted IPRs. Indeed, the Board has denied institution of IPRs against the ’218 and ’855 patents multiple times. Thus, this case will progress with respect to the ’218 and ’855 Patents, regardless of the PTAB’s Final Written Decisions relating to the ’787 and ’009 Patents.

Moreover, the same Visa functionality infringes each of the four Patents-in-Suit. (Ex. A at 2-4.) Thus, the scope of discovery will not change, even if the PTAB finds all claims of the ’787 and ’009 Patents unpatentable.

Accordingly, the Court should deny Visa’s motion.

## II. BACKGROUND

RFCyber asserts four patents in this case, the ’218, ’855, ’787, and ’009 Patents. The Patents-in-Suit are all members of the same family and claim priority back to the ’218 Patent. These patents have been asserted in other cases, now settled, against Google, LG Electronics, and

Samsung.<sup>1</sup> These patents are also asserted in a pending case against Apple before this Court. *RF Cyber Corp. v. Apple Inc.*, No. 1:23-cv-00661-ADA (W.D. Tex.).

#### A. Proceedings in the Patent Office

Each of Google, Samsung, and Apple filed petitions for *inter partes* review against the four patents in this case.<sup>2</sup> Google's IPRs were terminated before institution due to settlement. Samsung's IPRs against the '218 and '855 Patents were denied institution, while its IPRs against the '009 and '787 Patents were terminated after institution due to settlement. Apple's IPRs against the '218 and '855 Patents were denied institution. *See Samsung Elecs. Am. Inc. v. RF Cyber Corp.*, IPR2021-00978, Paper No. 10 (P.T.A.B. Dec. 14, 2021) (denying institution of *inter partes* review on the '855 Patent); *Apple Inc. v. Shenzhen RF Cyber Asset Management, LLP*, IPR2022-01241, Paper No. 7 (P.T.A.B. Jan. 23, 2023) (same); *Samsung Elecs. Am. Inc. v. RF Cyber Corp.*, IPR2021-00979, Paper No. 10 (P.T.A.B. Dec. 14, 2021) (denying institution of *inter partes* review on the '218 Patent); *Apple Inc. v. Shenzhen RF Cyber Asset Management, LLP*, IPR2022-01240, Paper No. 7 (P.T.A.B. Jan. 23, 2023) (same). Its IPRs against the '787 and '009 Patents were instituted, with oral argument held on April 21, 2023.

Separately, in *ex parte* reexamination proceedings, the Board confirmed the patentability of all claims of the '218 and '855 Patents with no amendments to any claims. (Ex. B.)

In sum, the '218 and '855 Patents are not subject to any Patent Office proceedings, and indeed, have withstood multiple challenges. The '787 and '009 Patents are the subject of one pending IPR each, with Final Written Decisions expected in July 2023.

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<sup>1</sup> *RF Cyber Corp. v. Google LLC*, No. 2:20-cv-274 (E.D. Tex.); *RF Cyber Corp. v. LG Electronics, Inc.*, No. 2:20-cv-336 (E.D. Tex.); *RF Cyber Corp. v. Samsung Electronics Co., Ltd.*, No. 2:20-cv-335 (E.D. Tex.).

<sup>2</sup> U.S. Patent Nos. 8,118,218 (the "'218 Patent"), 8,448,855 (the "'855 Patent"), 9,189,787 (the "'787 Patent"), and 9,240,009 (the "'009 Patent").

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