

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

RFCYBER CORP.,
Plaintiff

v.

VISA U.S.A. INC.,
Defendants

Case No. 6:22-cv-697-ADA

JURY TRIAL DEMANDED

ORDER SEVERING AND STAYING CLAIMS OF THE '009 PATENTS

Before the Court is Plaintiffs RFCyber Corp. and Defendant Visa U.S.A. Inc.'s Joint Motion to Stay Litigation of the '009 Patent Pending Any Appeals of Inter Partes Review Decisions (ECF No. 42).

In the Joint Motion to Stay (ECF No. 42), the Parties note that in July 2022, the Patent Trial and Appeal Board ("PTAB") instituted inter partes review ("IPR") on two of the four asserted patents in this case. *See Apple Inc. v. RFCyber Corp.*, IPR2022-00412 (IPR of U.S. Patent No. 9,189,787 ("787 Patent")); *Apple Inc. v. RFCyber Corp.*, IPR2022-00413 (IPR of U.S. Patent No. 9,240,009 ("009 Patent")). On July 18, 2023, the PTAB found all claims of the '009 Patent unpatentable under 35 U.S.C. § 103(a). On the same day, the PTAB held that petitioner Apple Inc. did not meet its burden to demonstrate that claims of the '787 Patent were unpatentable. Plaintiff RFCyber Corp. has indicated it intends to appeal to the Federal Circuit the PTAB's decision finding the '009 Patent unpatentable.

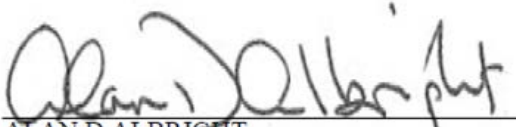
Noting that the Motion is joint, the Court is of the opinion it should be **GRANTED**. However, in order to promote judicial efficiency and to effectively distribute Court resources, the Court also believes the case should be severed with respect to litigation of the '009 Patent. The

Court has informed both parties of its intention to sever the case via e-mail, and both parties informed the Court that neither had objections to this course of action.

Therefore, the Clerk of Court is directed to sever all infringement claims of U.S. Patent No. 9,240,009 against Visa U.S.A. Inc. In the severed case, the Clerk of Court is also directed to include all docket entries that existed on the original case. Further, in the severed case, litigation of the '009 Patent is hereby stayed pending RFCyber's appeal to the Federal Circuit of the PTAB's July 18, 2023 decision finding the '009 Patent unpatentable.

The parties are further **ORDERED** to file a joint status report concerning their respective positions on whether any of the severed and stayed claims should be reinstated within 14 days from the latter of either (1) the completion of the last appeal (including any petitions for certiorari), or (2) the expiration of the period within which RFCyber Corp. must seek any such appeal. *Id.*

SIGNED this 13th day of October, 2023.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE