

Miscellaneous Docket No. 22-164

IN THE
United States Court of Appeals for the Federal Circuit

IN RE APPLE INC.,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Western District of Texas
No. 6:21-cv-01071-ADA, Hon. Alan D Albright

**APPLE INC.'S EMERGENCY MOTION FOR A STAY OF
PROCEEDINGS IN THE DISTRICT COURT PENDING
RESOLUTION OF APPLE'S MANDAMUS PETITION**

Steven D. Moore
KILPATRICK TOWNSEND &
STOCKTON LLP
Two Embarcadero Center
Suite 1900
San Francisco, CA 94111

Melanie L. Bostwick
Jonas Q. Wang
ORRICK, HERRINGTON &
SUTCLIFFE LLP
1152 15th Street NW
Washington, DC 20005
(202) 339-8400

Mansi Shah
KILPATRICK TOWNSEND &
STOCKTON LLP
1302 El Camino Real, Suite 175
Menlo Park, CA 94025

Alton L. Absher III
KILPATRICK TOWNSEND &
STOCKTON LLP
1001 West Fourth Street
Winston-Salem, NC 27101

Counsel for Petitioner

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
LIST OF EXHIBITS.....	iv
RULE 27(A)(2) STATEMENT.....	v
INTRODUCTION.....	1
BACKGROUND	4
Apple promptly moves to transfer this case pursuant to § 1404(a), leading to venue discovery	4
The district court sua sponte orders the parties to complete fact discovery and “re-brief” Apple’s transfer motion before it will consider whether to transfer venue	9
Apple files a petition for writ of mandamus and moves in the district court to stay proceedings pending this Court’s decision on the mandamus petition.....	11
LEGAL STANDARD	11
ARGUMENT	12
I. Apple’s Petition Makes A Compelling Case For Mandamus.....	13
II. Absent A Stay, Apple Would Be Irreparably Harmed By Participating In Substantive Proceedings In Texas.	16
III. A Brief Stay Would Not Harm Scramoge.....	18
IV. The Public Interest Favors A Stay.	19
CONCLUSION.....	20
CERTIFICATE OF INTEREST	
EXHIBITS	
CERTIFICATE OF SERVICE	
CERTIFICATE OF COMPLIANCE	

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Am. Dredging Co. v. Miller</i> , 510 U.S. 443 (1994).....	20
<i>In re Apple Inc.</i> , 979 F.3d 1332 (Fed. Cir. 2020)	1, 14
<i>Cont’l Grain Co. v. The Barge FBL-585</i> , 364 U.S. 19 (1960).....	14
<i>E-Watch, Inc. v. Lorex Can., Inc.</i> , No. H-12-3314, 2013 WL 5425298 (S.D. Tex. Sept. 26, 2013)	18
<i>In re EMC Corp.</i> , 501 F. App’x 973 (Fed. Cir. 2013)	14
<i>In re Google Inc.</i> , No. 2015-138, 2015 WL 5294800 (Fed. Cir. July 16, 2015) ...	14, 16, 18
<i>Hilton v. Braunskill</i> , 481 U.S. 770 (1987).....	12, 16, 18
<i>In re Horseshoe Ent.</i> , 337 F.3d 429 (5th Cir. 2003).....	14, 16
<i>In re Lloyd’s Register N. Am., Inc.</i> , 780 F.3d 283 (5th Cir. 2015).....	17
<i>In re Morgan Stanley</i> , 417 F. App’x 947 (Fed. Cir. 2011)	19
<i>In re Nintendo Co.</i> , 544 F. App’x 934 (Fed. Cir. 2013).....	14
<i>Nken v. Holder</i> , 556 U.S. 418 (2009).....	12, 16, 18, 19

In re SK hynix Inc.,
835 F. App'x 600 (Fed. Cir. 2021) 2, 14, 17, 18

Standard Havens Prods., Inc. v. Gencor Indus., Inc.,
897 F.2d 511 (Fed. Cir. 1990) 12, 13

In re TracFone Wireless, Inc.,
848 F. App'x 899 (Fed. Cir. 2021) 2, 14, 16, 17, 18

VirtualAgility Inc. v. Salesforce.com, Inc.,
759 F.3d 1307 (Fed. Cir. 2014) 19

In re Volkswagen of Am., Inc.,
545 F.3d 304 (5th Cir. 2008) 17

Weingarten Realty Inv'rs v. Miller,
661 F.3d 904 (5th Cir. 2011) 20

In re WMS Gaming Inc.,
564 F. App'x 579 (Fed. Cir. 2014) 19

Statutes

28 U.S.C. § 1404(a) 5, 14

Rules and Regulations

Fed. R. Civ. P. 30(b)(6) 5

Other Authorities

Discovery and Scheduling Order, *Aire Tech. Ltd. v. Apple, Inc.*, No. 6:21-cv-01101-ADA, Dkt. 54 (W.D. Tex. Aug. 22, 2022) 11

Discovery and Scheduling Order, *XR Commc'ns v. Apple Inc.*, No. 6:21-cv-00620-ADA, Dkt. 72-1 (W.D. Tex. Sept. 9, 2022) 10

Discovery and Scheduling Order, *XR Commc'ns v. Asustek Comput. Inc.*, No. 6:21-cv-00622-ADA, Dkt. 55 (W.D. Tex. Aug. 25, 2022) 11

LIST OF EXHIBITS

- Exhibit 1:** Petition for Writ of Mandamus, *In re Apple Inc.*, No. 22-164, Dkt. 2-1 (Fed. Cir. Sept. 8, 2022)
- Exhibit 2:** Discovery and Scheduling Order, *Scramoge v. Apple Inc.*, No. 6:21-cv-01071-ADA, Dkt. 56 (W.D. Tex. Aug. 26, 2022)
- Exhibit 3:** Apple's Opposed Motion to Stay Proceeding[s] Pending Mandamus Review, *Scramoge v. Apple Inc.*, No. 6:21-cv-01071-ADA, Dkt. 58 (W.D. Tex. Sept. 8, 2022)
- Exhibit 4:** Discovery and Scheduling Order, *XR Commc'ns LLC v. Apple, Inc.*, No. 6:21-cv-00620-ADA, Dkt. 72-1 (W.D. Tex. Sept. 9, 2022)

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.