

November 17, 2022. ECF No. 51. But on November 16, 2022, Apple filed the present Motion to stay the proceedings in this case pending the Court's ruling on Apple's motion for intra-district transfer. ECF No. 55. The Court postponed the Markman hearing in this case so that the parties could conduct full briefing on the Motion. *See* ECF Nos. 62, 66. The Court then heard oral argument on the Motion on January 30, 2023, ECF No. 74, in which the Court denied the Motion for the reasons explained during that hearing (ECF No. 75) and as explained in more detail below.

II. LEGAL STANDARDS

In determining whether to issue a stay of proceedings, courts consider four factors: (1) whether the movant has made a showing of likelihood of success on the merits; (2) whether the movant will suffer irreparable injury if the stay is not granted; (3) whether granting the stay would substantially harm the other parties; and (4) whether the stay would serve the public interest. *United States v. McKenzie*, 697 F.2d 1225, 1226 (5th Cir. 1983); *Nken v. Holder*, 556 U.S. 418, 434 (2009).

District courts possess an inherent power to manage their own docket, including the discretionary power to stay proceedings. *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *In re Ramu Corp.*, 903 F.2d 312, 318 (5th Cir. 1990). Stays are not awarded as a matter of right. *Nken*, 556 U.S. at 427. The “standard is a demanding one” because a stay “is an intrusion into the ordinary processes of administration and judicial review.” *Uniloc 2017 LLC v. Samsung Elecs. Am., Inc.*, No. 2:19-cv-00259-JRG-RSP, 2020 WL 1433960, at *2-3 (E.D. Tex. Mar. 24, 2020). The movant has the burden to “make out a clear case of hardship or inequity.” *Neodron Ltd. v. Dell Techs. Inc.*, No. 1:19-CV-819, 2019 WL 9633629, at *1 (W.D. Tex. Dec. 16, 2019). To meet this burden, “the moving party should show that its motion is supported by ‘genuine necessity.’ A court should not decide a motion to stay based on a party’s speculative concerns.” *Sierra Club v. Fed. Emergency Mgmt. Agency*, No. CIV. A. H-07-0608, 2008 WL 2414333, at *7 (S.D. Tex. June 11, 2008).

III. ANALYSIS

Apple's motion to stay is premised on an erroneous assumption that motions for inter-district and intra-district transfers should be treated no differently. That premise ignores caselaw affording district courts more discretion and deference in adjudicating intra-district transfers than inter-district transfers. *See, e.g., True Chem. Sols., LLC v. Performance Chem. Co.*, No. 7-18-CV-00078-ADA, 2021 WL 860009, at *1 (W.D. Tex. Mar. 8, 2021) ("It is well-settled that trial courts have even greater discretion in granting intra-district transfers than they do in the case of inter-district transfers."). Apple has not cited a single authority that instructs district courts to stay cases pending the resolution of intra-district transfer motions. Moreover, Apple has failed to show they will suffer *any* prejudice should this Court wait to rule on its motion to transfer until closer to trial. To be clear, the Court is not refusing to consider Apple's motion for intra-district transfer. Instead, the Court finds that it does not have to stay the proceedings or decide whether to transfer the case intra district until closer to trial since this Court has the power to retain this case on its trial docket regardless of whether the Court grants transfer or not—unlike in a motion for inter-district transfer.¹ Accordingly, the Court DENIES Apple's motion to stay for the following reasons.

A. Courts Treat Intra-District and Inter-District Transfer Motions Differently

In urging this Court to give "top priority" to its motion for intra-district transfer, Apple cites only to cases involving *inter*-district transfers and says, without legal support, that "the need to prioritize transfer motions applies equally to intra-district transfer." Motion at 1. Apple fails to identify a single case in which the Federal Circuit or Fifth Circuit instructed district courts to stay cases pending the resolution of intra-district transfer motions—or even merely to prioritize them

¹ Pursuant to the Standing Order for Discovery Hearings in Patent Cases; Standing Order Governing Proceedings 4.2 – Patent Cases ("OGP"), the Second Amended Standing Order Regarding Motions for Inter-District Transfer, and the Court's typical practice, the Court rules on pending motions to transfer venue *inter*-district prior to Markman hearing in all cases.

before addressing other substantive issues. Apple’s position further ignores caselaw from both the Fifth Circuit and this Court recognizing that trial courts enjoy greater discretion in deciding intra-district transfer motions than inter-district motions. This alone weighs against Apple’s motion to stay.

In *Sundell v. Cisco Sys. Inc.*, 111 F.3d 892 (5th Cir. 1997) (per curiam), the Fifth Circuit affirmed the district court’s denial of an intra-district transfer motion and observed: “Under 28 U.S.C. § 1404(b), the district court has broad discretion in deciding whether to transfer a civil action from a division in which it is pending to any other division in the same district.” Indeed, citing *Sundell*, this Court has recognized that “[i]t is well-settled that trial courts have even greater discretion in granting intra-district transfers than they do in the case of inter-district transfers.” *True Chem.*, 2021 WL 860009, at *1. The greater discretion accorded to district courts makes sense “in light of the absence of a divisional filing requirement and given a district court’s discretion in deciding where court is to be held.” *Smith v. Michels Corp.*, No. 2:13-CV-00185-JRG, 2013 WL 4811227, at *2 (E.D. Tex. Sept. 9, 2013) (denying intra-district transfer motion and finding that the court “is allowed greater deference when considering § 1404(a) motions for intra-district change of venue as opposed to inter-district transfer”). For this reason, the Eastern District of Texas has repeatedly cautioned against motions for intra-district change of venue.²

Apple’s cited cases are not to the contrary. Apple primarily relies on the Fifth Circuit’s opinion in *In re Radmax, Ltd.*, 720 F.3d 285, 288 (5th Cir. 2013). Yet that decision merely held that “[t]he § 1404(a) factors apply as much to transfers between divisions of the same district as to transfers from one district to another.” *Id.* The Court does not disagree that the section 1404(a)

² See, e.g., *Rios v. Scott*, No. 1:02-CV-136, 2002 WL 32075775, at *4 (E.D. Tex. July 13, 2002); *Morrow v. City of Tenaha Deputy City Marshal Washington*, No. CIV.A. 2:08-CV-288, 2008 WL 5203843, at *2 (E.D. Tex. Dec. 11, 2008); *Liles v. TH Healthcare, Ltd.*, No. 2:11-CV-528-JRG, 2012 WL 3930616, at *6 (E.D. Tex. Sept. 10, 2012); *Verde v. Stone Ridge, Inc.*, No. 6:14-CV-157, 2014 WL 12489758, at *2 (E.D. Tex. Aug. 25, 2014).

factors apply as much to transfers between divisions of the same district as to transfers from one district to another. But nowhere in *In re Radmax* does the Fifth Circuit hold that a district court must prioritize resolution of a motion for intra-district transfer before a Markman hearing. Nor do the several Federal Circuit cases that Apple relies on in support of its Motion. *See, e.g., In re Apple Inc.*, 52 F.4th 1360, 1361 (Fed. Cir. 2022); *In re Apple Inc.*, No. 2022-163, 2022 WL 16754376 (Fed. Cir. Nov. 8, 2022); *In re Apple Inc.*, No. 2022-164, 2022 WL 16754153 (Fed. Cir. Nov. 8, 2022); *In re Apple Inc.*, 979 F.3d 1332, 1337 (2020). Each of these cases dealt with an *inter*-district motion to transfer venue—not *intra* district. Accordingly, the Court rejects Apple’s arguments that these cases compel the Court to prioritize intra-district transfer motions and stay this case.

B. Likelihood of Success Assumed

As to the first factor in the stay analysis, the Court does not substantively reach this factor because even if Apple’s motion for intra-district transfer is likely to succeed, the other three factors weigh strongly against a stay and collectively outweigh this factor. For purposes of this decision, the Court assumes this factor favors Apple.

C. Apple fails to show an irreparable injury if the stay is not granted

Apple will not suffer irreparable harm absent a stay. Apple puts forth two complaints about the hardship that it will purportedly suffer if this case were to proceed. Both are unpersuasive to the Court.

First, Apple complains that it is “suffering continued prejudice” by preparing for a Markman hearing and “embarking on what is expected to be intensive fact discovery.” Motion at 7. But a Markman hearing is a fundamental component of any patent case no matter where a case is litigated, and discovery is also a fundamental component of any case. And Apple waited to file its motion to stay until only hours before the originally scheduled Markman hearing—after the Court had already expended its resources to issue preliminary constructions and after the parties had

already prepared for the hearing. The discovery requests that SpaceTime has served cover topics like infringement and validity of the asserted patents, Apple’s licensing practices, and Apple’s development of the accused functionalities. They are foundational discovery requests to which Apple would have to respond no matter the division in which the case was litigated. In short, the fact that Apple will have participate in a Markman hearing and in discovery hardly shows that it will suffer hardship, let alone “a clear case of hardship or inequity.” *WSOU Invs. LLC v. ZTE Corp.*, No. 6:20-CV-00487-ADA, 2022 WL 479131, at *1 (W.D. Tex. Feb. 16, 2022) (quoting *Neodron*, 2019 WL 9633629, at *1).

That is all the more so where the Waco Division and the Austin Division are both within the Western District of Texas and share the same local rules that govern discovery. *See* Rule CV-26, 30, 33, 36, Civil Rules, Local Court Rules for the Western District of Texas; *accord Hogan v. Ford New Holland, Inc.*, No. 95 C 53, 1995 WL 360466, at *3 (N.D. Ill. June 15, 1995) (observing that while different federal districts have their own local rules that “lend them their own brands of ‘jurisdiction,’” that is not the case for two divisions within the Northern District of Illinois). Tellingly, although Apple generally and noncommittedly observes that the Austin Division “has its own procedures for cases that can differ significantly from those employed by this Court,” Motion at 8, it fails to pinpoint what exact procedures it refers to and how, if at all, such procedures would impact the discovery proceedings in this case.

Apple’s one example of supposed prejudice—that because certain judges in the Austin Division of the Western District of Texas may have different procedures—is unavailing. According to Apple, it is prejudiced because each Austin Division Judge has its own Proposed Scheduling Order, which includes different rules regarding discovery. According to Apple, these differences have wide implications for cost, time, and resources in pursuing discovery disputes through the course of extensive fact discovery. Apple cites various supposed differences between this Court and

two of the Judges in the Austin division. ECF No. 66 at 5. According to Apple, Judge Yeakel includes in his order that “there will be no intervention by the Court except in extraordinary circumstances” for discovery matters, and that “no trial setting will be vacated because of information obtained in post-deadline discovery.” *Id.* (citing Proposed Scheduling Order for Judge Yeakel at 3). But then Apple concedes that “Judge Pittman [sic], on the other hand, has no such language in his Scheduling Order.” *Id.* (citing Proposed Scheduling Order for Judge Pitman). Thus, Apple argues that it is somehow prejudiced because “this Court also has its own discovery procedures, which significantly differ from both Judge Yeakel and Judge Pittman’s [sic] procedures.” *Id.* (citing Standing Order for Discovery Hearings in Patent Cases; Standing Order Governing Proceedings 4.2 – Patent Cases). Apple fails to understand that it is highly speculative, which Judge it will be assigned in the Austin Division and that I may still be the Judge assigned to this case. And Apple fails to recognize that both Judge Yeakel and Pitman routinely transfer cases assigned to them to two other Senior U.S. District Court Judges in the Western District of Texas, Judge Ezra and Judge Nowlin. Apple presents no analysis of any differences between the procedures of these judges and this Court that would require the conclusion that it is prejudiced by not staying this case.

Although Apple notes different procedures for discovery with certain judges in the Austin division, Apple fails to articulate any particularized prejudice it will suffer because of these differences. Apple merely states that these differences will have generic implications on “cost, time, and resources in pursuing discovery disputes.” ECF No. 66 at 5. But that is sheer speculation on Apple’s part, and “[a] court should not decide a motion to stay based on a party’s speculative concerns.” *Sierra Club*, 2008 WL 2414333, at *7. Moreover, Apple fails to even recognize that this Court has held many patent and non-patent trials in the Austin Division of the U.S. District Court for the Western District of Texas. Whether I am presiding over the instant Action or another Judge

would be assigned to this case is of no moment—it is a decision that is committed to the discretion of the Judges within the Western District of Texas—not Apple. Apple is not entitled to a transfer at this point in the case because it thinks it has a right to be assigned to a particular judge in Austin. Apple’s attempt to gamify the law of intra-district transfer is unpersuasive, and the Court finds that this heavily weighs against stay

Second, Apple says that “a transferee court may wish to conduct its own claim construction analysis, thus causing additional burden and expense.” Motion at 8. But that is sheer speculation on Apple’s part, and “[a] court should not decide a motion to stay based on a party’s speculative concerns.” *Sierra Club*, 2008 WL 2414333, at *7. This factor also weighs against a stay.

In sum, Apple has failed to demonstrate that it would suffer any prejudice should the Court deny its Motion to stay. Thus, this factor weighs against stay.

D. Granting the stay would harm SpaceTime

Apple argues that granting the stay will not prejudice SpaceTime because SpaceTime has not adequately shown that the stay requested would interfere with “timely enforcement of its patent right.” ECF No. 66 at 4. The Court disagrees.

It is not SpaceTime’s burden to prove Apple’s Motion. *Neodron*, 2019 WL 9633629, at *1. Indeed, as shown below, the Court finds that Apple has not met its burden to show that SpaceTime would not be prejudiced. In its reply to SpaceTime’s response, Apple argues that SpaceTime will not be prejudiced by a stay merely because SpaceTime relies on case law on stay motions pending inter partes examination. ECF No. 66 at 4. According to Apple, those motions require a different analysis. *Id.* Apple argues that it merely seeks a brief stay for this Court to resolve its transfer motion. *Id.* But that is sheer speculation on Apple’s part, and “[a] court should not decide a motion to stay based on a party’s speculative concerns.” *Sierra Club*, 2008 WL 2414333, at *7.

Instead, the Court finds that SpaceTime has shown that it will suffer a particularized harm because any stay would interfere with its ““interest in the timely enforcement of its patent right.”” *MiMedx Grp., Inc. v. Tissue Transplant Tech. Ltd.*, No. SA-14-CA-719, 2015 WL 11573771, at *2 (W.D. Tex. Jan. 5, 2015); *see also VideoShare, LLC v. Meta Platforms Inc.*, No. 6-21-CV-00254-ADA, 2022 WL 2718986, at *2 (W.D. Tex. July 12, 2022), *reconsideration denied*, No. 6-21-CV-00254-ADA, 2022 WL 3142622 (W.D. Tex. Aug. 5, 2022); *see also Intell. Ventures I LLC v. T Mobile USA, Inc., et al.*, No. 2:17-cv-00577-JRG, 2018 WL 11363370, at *2 (E.D. Tex. Dec. 13, 2018) (“It is well established that Plaintiff’s timely enforcement of its patent rights is entitled to some weight, even if that factor is not dispositive.”). This recognition of a patent owner’s interest in timely enforcements of its patent rights is consistent with the Federal Circuit’s long-held recognition of the “strong public policy favoring expeditious resolution of litigation.” *Kahn v. GMC*, 889 F.2d 1078, 1080 (Fed. Cir. 1989). This factor weighs against a stay.

E. Granting the stay would not serve the public interest

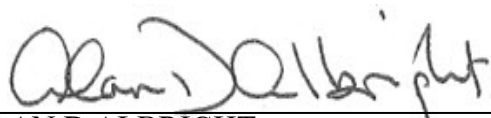
A stay here would greatly disserve the public interest, and Apple has not met its burden to show otherwise. Apple regurgitates the same assertions about “duplicative proceedings” and “different rules and procedures [] in the transferee forum” to argue that a stay will conserve judicial resources. Not so. First, Apple has no substantive basis for its speculation that there may be “duplicative proceedings in both the transferor and transferee courts.” Motion at 8. Likewise, as explained above, while Apple gestures at some differences between rules and procedures in this Court versus those of two judges in the Austin Division, it fails to specify what difference would disserve the public interest or judicial efficiency. As the movant, Apple cannot rely on conjecture to meet the “demanding” standard to show that a stay is necessary. *WSOU Invs.*, 2022 WL 479131, at *1. Moreover, Apple has already wasted judicial resources in this proceeding by playing games with this Motion. As discussed above, Apple waited to file this Motion to stay until only hours

before the originally scheduled Markman hearing—after the Court had already expended its resources to issue preliminary constructions and after the parties had already prepared for the hearing. Accordingly, this factor also weighs against a stay.

IV. CONCLUSION

For the foregoing reasons and the reasons stated by the Court during oral argument (ECF No. 75), the Court **DENIES** Apple's Motion to stay pending this Court's decision on its motion to transfer to the Austin Division of the U.S. District Court for the Western District of Texas.

SIGNED this 2nd day of February, 2023.



ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE