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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RAVIN CROSSBOWS, LLC,

Plaintiff,

v.

HUNTER'S MANUFACTURING
COMPANY, INC. D/B/A TENPOINT
CROSSBOW TECHNOLOGIES,

Defendant.

Case No. 2:21-cv-02213-GMN-EJY

**DEFENDANT'S MOTION TO STAY
CLAIM CONSTRUCTION**

Defendant Hunter's Manufacturing Company, Inc. d/b/a TenPoint Crossbow Technologies ("TenPoint") respectfully moves for a stay of the claim construction proceedings pending resolution of its Motion to Transfer (ECF No. 17).

Hunter's Manufacturing Company, Inc.
Ex. 1021

1 **I. BACKGROUND**

2 Plaintiff Ravin Crossbows, LLC (“Ravin”) sued TenPoint in this District and eventually
 3 effectuated proper service of process. *See* ECF No. 16. Less than a week later, TenPoint moved
 4 to transfer this case to the Northern District of Ohio under 28 U.S.C. § 1404(a). *See* ECF No. 17
 5 (“Transfer Motion”). Concurrently, TenPoint also moved to defer the deadline for its responsive
 6 pleading, along with all subsequent actions triggered by it, until the Transfer Motion is resolved.
 7 *See* ECF No. 19 (“Deferral Motion”). Briefing on the Transfer Motion concluded in February
 8 2022. *See* ECF Nos. 21, 24.¹

9 The Court eventually denied TenPoint’s Deferral Motion (*see* ECF No. 30). The parties
 10 then submitted a proposed discovery plan and scheduling order that was disputed. *See* ECF No.
 11 34. In light of Ravin’s assertion of *six* patents with scores of claims and lengthy prosecution
 12 histories, TenPoint requested extending the default deadlines provided by the Local Patent Rules.
 13 *See id.* at 2-3, 6-10, 13-14. As a result of TenPoint’s proposed extended dates, the Court would
 14 also have had more time to decide the Transfer Motion (which TenPoint noted was pending, *id.*
 15 at 2-3) before the anticipated claim construction hearing.

16 The Court issued the Discovery Plan and Scheduling Order, acknowledging “that a fully
 17 briefed motion to transfer venue is pending before the Court.” *See* ECF No. 36 at 1. The dates
 18 set by the Court generally track the defaults provided by the Local Patent Rules.

19 The parties have since been proceeding along the set Plan. They have exchanged their
 20 respective contentions (*see* ECF No. 46) and their lists of disputed claim terms and proposed
 21 constructions thereof, and have filed the Joint Claim Construction and Prehearing Statement (*see*
 22 ECF No. 47). In the Joint Statement, TenPoint explained that it has a fully briefed Transfer
 23 Motion pending, that case law requires such a motion to be resolved before addressing any
 24 substantive portions of the case (including claim construction), and that TenPoint does not waive
 25 its right to have the Transfer Motion resolved prior to claim construction. *Id.* at 1.

26 ¹ *See also* ECF Nos. 26, 29 (briefing on Ravin’s motion to file a sur-reply to TenPoint’s Transfer
 27 Motion).

At this point, the next events on the schedule are claim construction briefing followed by the claim construction hearing. TenPoint thus files this motion to stay these claim construction procedures until the Transfer Motion is resolved.

II. APPLICABLE LAW

“[O]nce a party files a transfer motion, disposing of that motion should unquestionably take top priority.” *In re Apple Inc.*, 979 F.3d 1332, 1337 (Fed. Cir. 2020). Such a motion should be resolved before a court addresses any substantive portion of the case (including claim construction). *Id.* at 1337-38. The Federal Circuit has reiterated this requirement multiple times. *See, e.g., In re Tracfone Wireless, Inc.*, 848 F. App’x 899, 900-01 (Fed. Cir. 2021) (ordering district court to stay all proceedings until it decides motion to transfer); *In re SK Hynix Inc.*, 835 F. App’x 600, 600-01 (Fed. Cir. 2021) (ordering district court to stay case where court ordered the parties to engage in extensive discovery and has scheduled claim construction hearing, while transfer motion remained pending for eight months); *In re Google Inc.*, No. 2015-138, 2015 WL 5294800, at *1 (Fed. Cir. July 16, 2015) (criticizing district court for proceeding with discovery, ordering parties to exchange contentions, and holding claim construction hearing while transfer motion remained pending); *In re Nintendo Co.*, 544 F. App’x 934, 941 (Fed. Cir. 2013) (court must address transfer motion before addressing any substantive portion of the case).

Multiple courts have stressed the importance of addressing motions to transfer at the outset of litigation. *See Apple*, 979 F.3d at 1337-38 (citing *In re Horseshoe Entm’t*, 337 F.3d 429 (5th Cir. 2003) and *McDonnell Douglas Corp. v. Polin*, 429 F.2d 30 (3d Cir. 1970)); *see also Edwards Vacuum, LLC v. Hoffman Instrumentation Supply, Inc.*, No. 3:20-cv-1681-SI, 2021 WL 2355405, at *6 n.6 (D. Or. June 9, 2021). This is because lengthy delays in resolving such motions can frustrate “§1404(a)’s intent to ‘prevent the waste of time, energy, and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense.’” *Google*, 2015 WL 5294800, at *1 (quoting *Van Dusek v. Barrack*, 376 U.S. 612, 616 (1964)).

A court has the inherent power to stay proceedings in the cases before it, and a stay may be granted pending the outcome of other related legal proceedings. *Romoff v. Johnson &*

1 *Johnson Consumer Inc.*, No. 22cv00075-LL-WVG, 2022 WL 1122850, at *1 (S.D. Cal. Apr. 14,
2 2022) (citing *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979)).

3 This includes staying a case until resolution of a motion to transfer. *Id.* at *1-2.

4 **III. DISCUSSION**

5 As discussed above, TenPoint's Transfer Motion has been fully briefed for seven months.
6 Claim construction briefing is set to begin on September 27, 2022, with a claim construction
7 hearing contemplated to be held between October 25 and December 23. *See* ECF No. 36 at 2;
8 ECF No. 47 at 5; LPR 1-17. In light of this short timeframe and the above-discussed law,
9 TenPoint respectfully requests that the claim construction briefs and hearing be stayed until the
10 Transfer Motion is resolved.

11 Should the Transfer Motion be granted, the claim construction proceeding will be
12 conducted under the Local Patent Rules of the Northern District of Ohio (available at
13 <https://www.ohnd.uscourts.gov/local-patent-rules>). Under those rules, the parties must
14 contemporaneously file opening claim construction briefs and then contemporaneously file
15 responding briefs (i.e., each party files two briefs). *See* N.D. Ohio L. P. R. 4.4(a)-(b). In
16 contrast, this District's LPR 1-16 allows Ravin to file two claim construction briefs (one to set
17 forth its own position and another to respond to TenPoint and get in the last word) but permits
18 TenPoint to file only one brief, in which it must both set forth its own position and respond to
19 Ravin's. Therefore, to avoid the parties having to waste resources on briefing that would be
20 redone anyway, the most efficient path is to stay the claim construction briefing and hearing. *See*
21 *Romoff*, 2022 WL 1122850, at *2 (granting motion to stay in part because the case might be
22 transferred to another court which could have different filing rules).

23 In the Joint Claim Construction and Prehearing Statement, Ravin suggests that the Court
24 considered TenPoint's request to delay claim construction and rejected it. *See* ECF No. 47 at 2.
25 That is inaccurate. When the Court denied the Deferral Motion, it did so because it did not want
26
27

to “dela[y] the commencement of the case to no one’s benefit.” ECF No. 30 at 2.² And it set the dates in the Scheduling Order fully aware that the Transfer Motion is pending and presumably contemplating that it would be decided soon. *See* ECF No. 36 at 1; *see also* LR IA 7-1(a) (permitting parties to inquire about status of motions after 90 and 120 days of briefing, apparently contemplating they would be decided within that time frame). The case has since commenced, but unfortunately the Transfer Motion is taking longer than expected, which necessitates filing this motion to stay. And if Ravin is suggesting that the Court would exhibit “blatant disregard for precedent,” *SK Hynix*, 835 F. App’x at 600-01, and “barre[l] ahead on the merits,” *Apple*, 979 F.3d at 1338, with claim construction while the Transfer Motion is pending, then Ravin’s uncharitable view is hardly respectful of this Court.

IV. CONCLUSION

For the above reasons, TenPoint respectfully requests that the Court stay the claim construction proceedings until TenPoint’s Transfer Motion is resolved.

Dated: September 9, 2022

Respectfully submitted,

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² The Court also contemplated that the parties may wish to stay discovery and invited the parties to bring such requests to the Court. *Id.*