

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

SPACETIME3D, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

)
)
) Case No. 6:22-cv-00149-ADA
)
)
)

JURY TRIAL DEMANDED
)
)
)

APPLE INC.'S OPPOSED MOTION TO STAY PENDING TRANSFER

I. INTRODUCTION

Apple respectfully moves to stay all case activity pending a decision on Apple’s pending Motion for Intra-District Transfer to the Austin Division of the Western District of Texas (Dkt. 34). Apple further requests an interim postponement of the *Markman* hearing scheduled for tomorrow, November 17, 2022, by at least 14 days, to allow for full briefing and a hearing on this motion for stay before any further substantive proceedings, including an order on claim construction, occur in this suit.

Both the Federal Circuit and the Fifth Circuit have instructed district courts to prioritize transfer motions and address transfer before addressing other substantive issues. Indeed, the Federal Circuit recently reinforced this directive in granting three mandamus petitions involving unresolved motions to transfer before this Court and “directed [the Court] to postpone fact discovery and other substantive proceedings until after consideration on Apple’s motion for transfer.” *In re Apple Inc.*, No. 2022-162, ___ F.4th ___, 2022 WL 16753325, at *3 (Fed. Cir. Nov. 8, 2022). This Court has subsequently stayed those cases pending resolution of those motions to transfer. *See Aire Tech. Ltd., v. Apple Inc.*, Case No. 6:21-cv-01101-ADA, Dkt. 71 (W.D. Tex. Nov. 8, 2022); *Scramoge Tech. Ltd. v. Apple Inc.*, Case No. 6:21-cv-01071-ADA, Dkt. 68 (W.D. Tex. Nov. 8, 2022); *XR Commc’ns LLC v. Apple Inc.*, Case No. 6:21-cv-00620-ADA, Dkt. 83 (W.D. Tex. Nov. 8, 2022). Although those cases involved inter-district transfer, the need to prioritize transfer motions applies equally to intra-district transfer; Apple is not aware of any rationale or precedent suggesting otherwise. *See In re Radmax, Ltd.*, 720 F.3d 285, 288 (5th Cir. 2013).

The need to stay this case is just as strong given the substantive matters soon approaching. Apple’s motion to transfer has been fully briefed since November 7, 2022, venue

discovery is complete¹, fact discovery only just opened this week, the *Markman* hearing is tomorrow, November 17, and final infringement and invalidity contentions will be due in less than two months. Despite the overwhelming Federal Circuit precedent, however, Plaintiff SpaceTime3D, Inc. (“SpaceTime”) is unwilling to consent to a stay to allow for resolution of Apple’s pending transfer motion. Instead, SpaceTime insists on expending resources of the parties and this Court on the *Markman* hearing, final contentions, and fact discovery. In view of the appellate mandate to make transfer a “top priority” and the prejudice associated with proceeding into merits discovery without resolution of the motion to transfer, any further proceedings should be stayed pending a decision on transfer. *In re Apple Inc.*, 979 F.3d 1332, 1337 (2020); *In re Horseshoe Entm’t*, 337 F.3d 429, 433 (5th Cir. 2003).

II. BACKGROUND

SpaceTime asserts that Apple’s iPhone, iPad, iPod touch, and Apple Watch devices infringe the three asserted patents because SpaceTime alleges, among other things, that these products display images of open applications or websites in a three-dimensional space and allow users to switch between those applications or websites. *See* Dkt 1 ¶¶ 46–55.

On July 14, 2022, Apple moved for intra-district transfer to the Austin Division of the Western District of Texas. Dkt. 34. On November 14, 2022, fact discovery opened for all purposes. Dkt. 31 at 3. The *Markman* hearing is scheduled for tomorrow, November 17, 2022. Dkt. 51. Final infringement and invalidity contentions will be due on January 5, 2023. Dkt. 31 at 3. On November 16, Plaintiff indicated by email that it opposes this motion for stay.

Earlier today, November 16, 2022, Apple received an email from this Court’s Law Clerk regarding the status of the Court’s consideration of Apple’s transfer motion. The Clerk’s email

¹ SpaceTime has not requested any additional venue discovery.

indicated that the Court will not be ruling on Apple’s motion for transfer prior to tomorrow’s *Markman* hearing in this case. Ex A at 1.

III. THE CASE SHOULD BE STAYED PENDING RESOLUTION OF APPLE’S MOTION TO TRANSFER

A. Just as with Other Cases Before This Court, Apple’s Motion for Intra-District Transfer Should Be Given Top Priority

“The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55, 57 S. Ct. 163 (1936). Both the Federal Circuit and the Fifth Circuit have instructed district courts to prioritize transfer motions and to address transfer before addressing other substantive issues. Indeed, in *In re Apple*, the Federal Circuit made clear that transfer should be handled before other substantive tasks—including *Markman*: “Although district courts have discretion as to how to handle their dockets, once a party files a transfer motion, disposing of that motion should unquestionably take top priority.” *In re Apple*, 979 F.3d at 1337; *Horseshoe*, 337 F.3d at 433 (“[I]n our view disposition of that [transfer] motion should have taken a top priority in handling of this case by the . . . District Court.”); *In re TracFone Wireless, Inc.*, 848 F. App’x 899, 900–01 (Fed. Cir. 2021) (citing *Horseshoe*, 337 F.3d at 433); *In re SK Hynix Inc.*, 835 F. App’x 600, 600–01 (Fed. Cir. 2021); *In re Google Inc.*, No. 2015-138, 2015 WL 5294800, at *1–2 (Fed. Cir. July 16, 2015); *see also In re EMC Corp.*, 501 F. App’x 973, 975–76 (Fed. Cir. 2013) (“Congress’ intent to prevent the waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense . . . may be thwarted where, as here, defendants

must partake in years of litigation prior to a determination on a transfer motion.” (internal quotation marks and citation omitted)).²

The Federal Circuit recently reinforced this directive in granting three mandamus petitions filed by Apple involving motions to transfer before this Court. *See In re Apple*, 2022 WL 16753325; *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 each of these cases, Apple had pending a fully briefed motion to transfer, yet was ordered to proceed to fact discovery without resolution of its motion. *See id.* The Federal Circuit found that “precedent entitles parties to have their venue motions prioritized,” that a “decision of a transfer motion must proceed expeditiously as the first order of business and that venue discovery must proceed immediately to enable such a prompt decision of the transfer motion.” *In re Apple*, 2022 WL 16753325, at *2. The Federal Circuit then instructed the Court to “postpone fact discovery and other substantive proceedings until after consideration of Apple’s motion for transfer.” *Id.* at *3. Following these orders, the Court proceeded to issue orders in each of the underlying cases staying all deadlines, including fact discovery, pending resolution of the motions to transfer. *See Aire Tech. Ltd. v. Apple Inc.*, Case No. 6:21-cv-01101-ADA, Dkt. 71 (W.D. Tex. Nov. 8, 2022); *Scramoge Tech. Ltd. v. Apple Inc.*, Case No. 6:21-cv-01071-ADA, Dkt. 68 (W.D. Tex. Nov. 8, 2022); *XR Commc’ns LLC v. Apple Inc.*, Case No. 6:21-cv-00620-ADA, Dkt. 83 (W.D. Tex.

² The Federal Circuit has recognized the importance of staying cases during the pendency of transfer motions as a means of upholding 28 U.S.C. 1404(a)’s intent to “prevent the waste ‘of time, energy, and money’ and protect litigants, witnesses and the public against unnecessary inconvenience and expense [. . .] when defendants are forced to expend resources litigating substantive matters in an inconvenient venue while a motion to transfer lingers unnecessarily on the docket.” *In re Google*, 2015 WL 5294800, at *1–2 (internal citation omitted) (granting writ of mandamus and ordering a magistrate judge in the Eastern District of Texas to stay proceedings pending final resolution of a transfer motion filed 8 months prior and issue a decision on transfer within 30 days).

Nov. 8, 2022). The need for a stay is just as strong here, given the soon-approaching *Markman* hearing, what is expected to be extensive fact discovery, and final contentions.

To the extent SpaceTime attempts to distinguish this case from those that were subject to mandamus on the basis that Apple here seeks *intra*-district versus *inter*-district transfer, such argument would lack merit. The need to prioritize transfer motions applies equally to intra-district transfer, and Apple is not aware of any rationale or precedent suggesting otherwise. *See In re Radmax*, 720 F.3d at 288 (noting that 1404(a) “appl[ies] as much to transfers between divisions of the same district as to transfers from one district to another”). In fact, on multiple occasions, this Court has stayed cases pending resolution of intra-district transfer motions. *See, e.g., Sonrai Memory Ltd. v. Oracle Corp.*, Case No. 6:21-cv-00116-ADA, Text Order (W.D. Tex. Jan. 02, 2022); *Sensor Elec. Tech., Inc. v. Lite-On Tech. Corp.*, Case No. 21-cv-00322-ADA, Dkt. 65 (W.D. Tex. Aug. 25, 2022); *Nitek, Inc. v. Lite-On Tech. Corp.*, 21-cv-00794-ADA, Dkt. 56 (W.D. Tex. Aug. 25, 2022).

B. All Relevant Factors Favor a Stay Pending a Decision on Transfer

In this District, courts typically consider three factors in determining whether a stay is warranted: (1) any potential prejudice to the non-moving party; (2) the hardship and inequity to the moving party if the action is not stayed; and (3) the judicial resources saved by avoiding duplicative litigation. *Yeti Coolers, LLC v. Home Depot U.S.A., Inc.*, 1:17-cv-342, 2018 WL 2122868, at *1 (W.D. Tex. Jan. 8, 2018); *B & D Produce Sales, LLC v. Packman1, Inc.*, No. SA-16-CV-99-XR, 2016 WL 4435275, at *1 (W.D. Tex. Aug. 19, 2016). Here, all three factors favor a stay.

1. Factor One: A Stay Will Not Prejudice SpaceTime

SpaceTime will not suffer any meaningful prejudice as a result of a stay pending a decision on transfer. The stay would not be indefinite or necessarily even lengthy; it would last

only until Apple’s motion for transfer is resolved by this Court. SpaceTime’s own long-delayed enforcement of its asserted patents demonstrates that it would not be prejudiced by a short stay. Indeed, SpaceTime’s asserted patents issued as early as 2014 and SpaceTime purports to accuse Apple products dating back to “at least” 2016, yet SpaceTime did not bring this suit until 2022—at least six years after it purports to have had an infringement claim against Apple. *See* Dkt. 1 ¶¶ 16, 46.

SpaceTime may argue that even a short stay will cause prejudice by delaying recovery of the damages SpaceTime is seeking. But this argument lacks merit for several reasons. First, a delay in recovering money damages cannot, of itself, constitute sufficient prejudice to deny a stay because a plaintiff will always face that possibility when a stay is ordered. *SanDisk Corp. v. Phison Elecs. Corp.*, 538 F. Supp. 2d 1060, 1067 (W.D. Wisc. 2008) (“plaintiff’s only real ‘injury’ is that it will have to wait for any money damages, which is always the case when a stay is imposed”). Second, SpaceTime does not compete with Apple in the market. Indeed, SpaceTime is not seeking an injunction in this case. *See* Dkt. 1. Third, SpaceTime apparently “does not . . . sell any product that practices the claimed invention [and i]t therefore is not in need of a quick resolution of this case because its position in the market is threatened.” *See In re Morgan Stanley*, 417 F. App’x 947, 950 (Fed. Cir. 2011). Fourth, Apple is seeking a stay limited to the time involved in the Court’s consideration of Apple’s Motion to Transfer, such that transfer issues are decided before other substantive issues are addressed and further fact and expert discovery is undertaken. *See In re Apple*, 2022 WL 16753325, at *2–3 (“decision of a transfer motion must proceed expeditiously as the first order of business . . . [;] the district court is directed to postpone fact discovery and other substantive proceedings until after consideration of Apple’s motion for transfer”). To the extent SpaceTime contends that it will suffer any

economic disadvantage from a stay, it has a simple remedy if ultimately successful on the merits in the form of prejudgment interest. *See Underwater Devices Inc. v. Morrison-Knudsen Co.*, 717 F.2d 1380, 1389 (Fed. Cir. 1983), *overruled on other grounds by In re Seagate Tech., LLC*, 497 F.3d 1360 (Fed. Cir. 2007); *see also Transmatic, Inc. v. Gulton Indus., Inc.*, 180 F.3d 1343, 1347–48 (Fed. Cir. 1999). Therefore, this factor strongly favors a stay.

2. Factor Two: Apple Will Suffer Hardship Absent a Stay

The Federal Circuit and Fifth Circuit agree that deciding transfer should be the Court’s top priority in handling the case. *In re Apple*, 2022 WL 16753325, at *2–3 (“decision of a transfer motion must proceed expeditiously as the first order of business”); *In re Apple*, 979 F.3d at 1337; *EMC*, 501 F. App’x at 975–76; *Horseshoe*, 337 F.3d at 433. Moving forward now with the *Markman* hearing and fact discovery will risk the very same “waste of time, energy and money” the Federal Circuit cautioned against in *EMC*, *Apple*, and *In re Google*. *See In re Apple*, 979 F.3d at 1337; *EMC*, 501 F. App’x at 975–76; *In re Google*, 2015 WL 5294800, at *1–2.

Here, Apple will suffer hardship if a stay is not granted: being unnecessarily “forced to expend resources litigating substantive matters in an inconvenient venue while a motion to transfer” is pending. *See In re Google*, 2015 WL 5294800, at *1. For example, Apple is suffering continued prejudice given that it has been preparing for an imminent *Markman* hearing and is now embarking on what is expected to be intensive fact discovery. SpaceTime already named 31 Apple employees in its Initial Disclosures earlier this week, and just served 20 interrogatories and 59 requests for production on Apple this evening. Apple now must respond to those discovery requests in writing, and will have a continuing obligation to supplement its responses and productions. *See Fed. R. Civ. P.* 33, 34, 26(e). Additionally, the parties’ final infringement and invalidity contentions will be due on January 5, 2023, after which leave of Court will be required for any amendments. *See In re Apple*, 2022 WL 16753325, at *1. But if

this case is transferred to the Austin Division, that Division has its own procedures for cases that can differ significantly from those employed by this Court. In addition, denying a stay would result in the scheduled *Markman* hearing going forward, while a transferee court may wish to conduct its own claim construction analysis, thus causing additional burden and expense. Appellate courts have indicated that these are the very types of activities that should not proceed pending a transfer decision. *See In re Apple*, 2022 WL 16753325, at *3 (“direct[ing] [the Court] to postpone fact discovery and other substantive proceedings until after consideration on Apple’s motion for transfer”); *see also EMC*, 501 F. App’x at 975–76; *In re Google*, 2015 WL 5294800, at *1–2.

3. Factor Three: A Stay Will Conserve Judicial Resources

A stay pending a decision on transfer will also conserve judicial resources as it minimizes the need for duplicative proceedings in both the transferor and transferee courts. *See In re Apple*, 2022 WL 16753325, at *2. Several significant events in the litigation are soon approaching, including the imminent *Markman* hearing and final infringement and invalidity contentions, and fact discovery just opened this week. As the Federal Circuit explained, “judicial economy requires that another district court should not burden itself with the merits of the action until it is decided that a transfer should be effected and such consideration additionally requires that the court which ultimately decides the merits of the action should also decide the various questions which arise during the pendency of the suit instead of considering it in two courts.” *Id.* A stay will also avoid a situation where the parties proceed under this Court’s Order Governing Proceedings only to have different rules and procedures apply in the transferee forum.

IV. THE COURT SHOULD POSTPONE THE *MARKMAN* HEARING BY 14 DAYS TO ALLOW SPACETIME THE OPPORTUNITY TO RESPOND TO THIS MOTION

In view of the questions to be resolved by this stay motion, including whether the Federal Circuit's recent mandamus orders apply equally to motions for *intra*-district transfer as Apple has filed here, and to avoid the prejudice of *Markman* being decided prior to the resolution of Apple's transfer motion, Apple respectfully proposes that tomorrow's *Markman* hearing be postponed until after this motion for stay has been fully briefed to, and heard by, the Court. Specifically, Apple proposes that SpaceTime be given one week, until November 23, to file an opposition to this motion for stay. Apple further proposes that, in lieu of Apple filing a reply, the Court hold a hearing on this motion for stay early the week of November 28, in advance of a postponed *Markman* hearing.

V. CONCLUSION

For the foregoing reasons, the Court should stay all case activity until a decision on Apple's motion for intra-district transfer has been rendered. In addition, Apple respectfully requests that the Court issue an interim postponement of tomorrow's *Markman* hearing by at least 14 days, allow SpaceTime until November 23 to file an opposition to this motion for stay, and hold a hearing on this motion for stay early the week of November 28 in advance of the postponed *Markman* hearing.

Dated: November 16, 2022

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Attorneys for Defendant Apple Inc.

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(i), counsel for Apple has conferred with counsel for SpaceTime in a good-faith effort to resolve the matter presented herein. Plaintiff Space Time opposes the relief sought. Accordingly, the motion is presented to the Court for resolution.

/s/ J. Stephen Ravel
J. Stephen Ravel

CERTIFICATE OF SERVICE

The undersigned certifies that on this 16th day of November, 2022, all counsel of record are being served with a copy of this document through the Court's CM/ECF system.

/s/ J. Stephen Ravel
J. Stephen Ravel

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

SPACETIME3D, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

Civil Action No. 6:22-cv-00149-ADA

JURY TRIAL DEMANDED

**DECLARATION OF J. STEPHEN RAVEL IN SUPPORT OF APPLE INC.'S OPPOSED
MOTION TO STAY PENDING TRANSFER**

I, J. Stephen Ravel, hereby declare as follows:

1. I am an attorney with Kelly, Hart & Hallman LLP and a member of the Texas state bar. I represent Defendant Apple Inc. in the above-captioned case.

2. I submit this declaration in support of Apple Inc's Opposed Motion to Stay Pending Transfer in the above-captioned litigation. I make this Declaration of my own personal knowledge, and I could and would testify competently thereto if called as a witness.

3. Attached hereto as Exhibit A is a true and correct copy of an email I received from this Court's Law Clerk at 9:55 am central standard time on November 16, 2022.

Executed this 16th day of November, 2022. /s/ J. Stephen Ravel

J. Stephen Ravel

EXHIBIT A

From: Nolan McQueen
To: [Cai, Wendy W.](#); [Steve Ravel](#); [Adam Tisdall](#)
Cc: [Jalali, Neema](#); [Meng Xi](#); [Matthew R. Berry](#); MTRIBBLE@SusmanGodfrey.com; [SSCHULZE@SusmanGodfrey.com](mailto:sschulze@SusmanGodfrey.com); [Tammie DeNio](#); [Gloria Park](#); [Calvin Capshaw](#); [*** Apple-Spacetime3D](#)
Subject: RE: Spacetime3D v. Apple, Case No. 6:22-cv-00149
Date: Wednesday, November 16, 2022 9:55:38 AM
Attachments: [image001.png](#)

[WARNING: External Email]

Counsel:

Pursuant to the OGP, the Second Amended Standing Order Regarding Motions for Inter-District Transfer, and the Court's typical practice, the Court will not be ruling on Apple's pending Motion for Intra-District Transfer prior to the *Markman* hearing in the above captioned case. Please let me know if you have any questions or concerns. Thank you.

Best regards,

Nolan



Nolan McQueen
Law Clerk to the
Hon. Alan D Albright
U.S. District Court
Western District of Texas
Office: **254-750-1517**

From: Cai, Wendy W. <WCai@gibsondunn.com>
Sent: Tuesday, November 15, 2022 9:13 PM
To: Steve Ravel <steve.ravel@kellyhart.com>; Adam Tisdall <ATisdall@susmangodfrey.com>; TXWDml_LawClerks_WA_JudgeAlbright <TXWDml_LawClerks_WA_JudgeAlbright@txwd.uscourts.gov>
Cc: Jalali, Neema <NJalali@gibsondunn.com>; Meng Xi <MXi@susmangodfrey.com>; Matthew R. Berry <mberry@susmangodfrey.com>; MTRIBBLE@SusmanGodfrey.com; SSCHULZE@SusmanGodfrey.com; Tammie DeNio <tdenio@susmangodfrey.com>; Gloria Park <GPark@susmangodfrey.com>; Calvin Capshaw <ccapshaw@capshawlaw.com>; *** Apple-Spacetime3D <Apple-Spacetime3D@gibsondunn.com>
Subject: RE: Spacetime3D v. Apple, Case No. 6:22-cv-00149

CAUTION - EXTERNAL:

To the Court's Law Clerks:

The Markman hearing in *SpaceTime3D v. Apple* is scheduled for this Thursday, November 17. Apple provides a status update regarding its Motion for Intra-District Transfer (Dkt. 34), which has been

fully briefed as of November 7, and is pending in front of the Court.

Sincerely,

Wendy W. Cai*

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From: Cai, Wendy W. <WCai@gibsondunn.com>

Sent: Thursday, November 10, 2022 5:49 PM

To: Steve Ravel <steve.ravel@kellyhart.com>; Adam Tisdall <ATisdall@susmangodfrey.com>;
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Subject: Re: Spacetime3D v. Apple, Case No. 6:22-cv-00149

To the Court's Law Clerks:

The Markman hearing in *SpaceTime3D v. Apple* is scheduled for one week from today. The parties jointly provide a status update regarding Apple's Motion for Intra-District Transfer (Dkt. 34), which is fully briefed and pending in front of the Court.

Sincerely,

Wendy W. Cai*

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On Nov 7, 2022, at 8:58 PM, Cai, Wendy W. <WCai@gibsondunn.com> wrote:

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