

**IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

SHENZHEN HAPPY VAPING
TECHNOLOGY LTD.,

Plaintiff,

v.

LOGIC TECHNOLOGY DEVELOPMENT
LLC, and
JAPAN TOBACCO INTERNATIONAL
U.S.A., INC.,

Defendants.

Case No. 0:22-cv-61407-RS

**DEFENDANTS' MOTION TO STAY DISCOVERY AND OTHER
DEADLINES AND INCORPORATED MEMORANDUM OF LAW**

Defendants, Logic Technology Development LLC (“Logic”) and Japan Tobacco International U.S.A., Inc. (“JTI USA”), through their undersigned counsel, hereby file this Motion to Stay Discovery and Other Deadlines, and incorporated memorandum of law, and state as follows:

1. Given the procedural posture of this case, Defendants request a stay of discovery and all other deadlines, until this Court has ruled upon Defendants’ Motion to Dismiss for Improper Venue or to Transfer Venue (ECF 13), which is currently pending and case-dispositive.

2. Plaintiff filed its original Complaint (ECF 1) on July 28, 2022, alleging patent infringement of U.S. Patent No. 9,924,744 (the ’744 patent”) by the “Logic Pro.” ECF 21 at ¶¶ 23-44. The original Complaint alleged patent venue based on several addresses in Florida, none of which constitutes a “regular and established place of business” of either Defendant, which is required to show patent venue. *See* ECF 13 and 25.

3. On December 15, 2022, Defendants filed a Motion to Dismiss for Improper Venue or to Transfer Venue (“Defendants’ Motion to Dismiss”) (ECF 13) because venue is improper in this Court.

4. On December 29, 2022, Plaintiff filed a Response, opposing Defendants’ Motion to Dismiss (“Response”) and, for the first time, “request[ing] limited venue-related discovery to investigate the related corporate entities of Defendants.” *See* ECF 17 at 11.

5. On January 5, 2023, Plaintiff filed an Amended Complaint (ECF 21) in this action, continuing to allege that the same addresses in Florida relied on in the original Complaint establish venue in this Court. *See* ECF 21.

6. Defendants opposed Plaintiff’s informal request for jurisdictional discovery in its Reply supporting its Motion to Dismiss on January 17, 2023. *See* ECF 25.

7. On February 6, 2023, Plaintiff served its first set of requests for production on Defendants, including jurisdictional discovery it informally requested in its Response on December 29, 2022, but that the Court has not yet ruled on.

8. Because Defendants’ Motion to Dismiss (ECF 13) is meritorious and case dispositive, and Plaintiff never sought leave to serve jurisdictional discovery, Defendants respectfully request a stay of all discovery and pending deadlines in this case until after this Court has ruled on Defendants’ Motion to Dismiss.

9. A stay is reasonable under the circumstances to protect Defendant from the burden and unnecessary expense that will result from Plaintiff’s attempt to establish venue in this Court, where it does not exist. A stay will also avoid the burden and expense on the Court of sorting through discovery disputes between the parties related to unnecessary jurisdictional discovery.

MEMORANDUM OF LAW

While Defendants’ Motion to Dismiss based on improper venue is pending, and before a Rule 26(f) discovery conference occurred, Plaintiff served 43 separate requests for production on Defendants¹, seeking documents covering a period of over 10 years and physical samples of Defendants’ products. *See, e.g.*, Ex. 1 at RFPs 36, 37, 39. Merely responding to these grossly overbroad, untimely requests is unduly burdensome, time-consuming, and expensive. Moreover, many of the requests are irrelevant to the underlying cause of action—patent infringement—and reflect a transparent attempt by Plaintiff to embark on a futile fishing expedition for facts to support a non-existent basis for venue in this District. *See, e.g.*, Ex. 1 at RFPs 1-10 (seeking documents related to the duties of certain individuals), RFPs 12-15 (seeking documents related to the corporate relationship between JTI USA and Logic). These requests are outside the scope of Federal Rule of Civil Procedure 26(b)(1), as the information sought is not “relevant to any party’s claim or defense,” and premature, as the Court has not yet ruled on Defendants’ Motion to Dismiss and Plaintiff’s informal request for jurisdictional discovery in its Response. *See* ECF 17 at 11 (requesting jurisdictional discovery for the first time in Plaintiff’s Response).

Moreover, because Plaintiff’s request for jurisdictional discovery was raised for the first time in its Response to Defendants’ Motion to Dismiss, it is procedurally improper. *See United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1280-81 (11th Cir. 2009) (affirming district court’s denial of jurisdictional discovery where the plaintiff never formally moved the district court for jurisdictional discovery, but, instead, buried such requests in its briefs as a proposed alternative to dismissal). Defendants should not bear the burden and expense of responding to unnecessary jurisdictional discovery requests before the Court has ruled on Defendants’ Motion to Dismiss.

¹ Plaintiff’s requests for production are attached hereto as Exhibit 1.

Moreover, the Court should not be burdened with adjudication of discovery disputes between the parties in an action for which the Court may ultimately find venue is not proper. Good cause exists for a stay pending resolution of Defendants' Motion to Dismiss to avoid the burden and expense on the parties and the Court of unnecessary jurisdictional discovery.

Binding precedent and the applicable rules of civil procedure authorize abating all or part of proceedings pending adjudication of case dispositive motions. A district court has "broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997). This discretion includes the power to stay discovery pending resolution of a case dispositive motion. *See, e.g., Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1368 (11th Cir. 1997) ("If the district court dismisses a non-meritorious claim before discovery has begun, unnecessary costs to the litigants and to the court system can be avoided."). Indeed, "any legally unsupported claim that would unduly enlarge the scope of discovery should be eliminated before the discovery stage, if possible." *Id.*

In addition, Rule 26(c) of the Federal Rules of Civil Procedure provides that upon good cause shown, the Court may "issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . forbidding the disclosure or discovery . . . [or] specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery." "To stay discovery under Rule 26(c) due to a pending dispositive motion, 'good cause and reasonableness' must exist." *United States v. Med-Care Diabetic & Med. Supplies, Inc.*, No. 9:10-cv-81634, 2014 WL 12284078, at *1 (S.D. Fla. June 17, 2014) (citing *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006)). This determination requires "the Court to take a 'preliminary peek' at the merits of the motion to dismiss to see if it appears to be clearly meritorious and truly case dispositive." *Id.*

In situations, like the present one, where a motion to dismiss will likely dispose of the case, district courts grant motions to stay discovery. *Id.* (granting motion to stay discovery pending ruling on motion to dismiss); *Tradex Glob. Master Fund SPC Ltd. v. Palm Beach Capital Mgmt., LLC*, No. 1:09-cv-21622, 2009 WL 10664410, at *1 (S.D. Fla. Nov. 24, 2009) (stay of discovery was appropriate pending ruling on motion to dismiss); *Allmond v. City of Jacksonville*, No. 3:07-cv-01139, 2008 WL 2704426, at *3 (M.D. Fla. July 8, 2008) (granting motion to stay discovery pending resolution of motions to dismiss). This is particularly true when a motion to dismiss is directed to the type of procedural improprieties, such as a lack of venue or jurisdiction, present in this case. *See Lewis v. Mercedes-Benz USA, LLC*, No. 9:19-cv-81220, 2020 WL 4923640, at *3-4 (S.D. Fla. Mar. 25, 2020) (granting stay because defendants “should not be forced to expend substantial resources answering discovery given the jurisdictional and facial challenges pending before the Court”); *see also Gillier v. Servicios Agecom, LLC*, No. 1:17-cv-23155, 2017 WL 6994217, at *1 (S.D. Fla. Nov. 27, 2017) (“[W]ithout the benefit of Gillier’s response to the motions to dismiss, the Court’s ‘preliminary peek’ nonetheless reveals a strong likelihood of the motions’ being granted.”).

The procedural posture of this case, as well as the merits of Defendants’ Motion to Dismiss, weigh in favor of this Court exercising its discretion to grant a stay of all discovery and other deadlines until after the Court has ruled upon the motion to dismiss currently pending before the Court. *See TRADEX GLOBAL MASTER FUND SPC LTD., the Abl Segregated Portfolio 3, et al. v. PALM BEACH CAPITAL MANAGEMENT, LLC, et al.*, 2009 WL 4727552 (S.D. Fla. 2009) (noting that “courts routinely stay discovery where, as here, a motion to dismiss raises threshold jurisdictional issues such as improper venue.”); *see also Med-Care Diabetic &*

Med. Supplies, 2014 WL 12284078 at *1; *Tradex Glob. Master Fund*, 2009 WL 10664410 at *1; *Allmond*, 2008 WL 2704426 at *3.

Defendants have moved to dismiss or transfer on the threshold jurisdictional issue of whether Plaintiff brought this case in an improper venue. Defendants' Motion to Dismiss demonstrates why venue is not proper before this Court as to either Defendant and was supported by several sworn declarations of corporate officers and directors of the Defendants. Defendants' motion is particularly likely to succeed on the merits because "[o]n a motion to dismiss based on improper venue, the plaintiff has the burden of showing that venue in the forum is proper," which Plaintiff has not done here. *See Wai v. Rainbow Holdings*, 315 F. Supp. 2d 1261, 1268 (S.D. Fla. 2004). Indeed, Plaintiff's Amended Complaint relies on the same Florida addresses as its original Complaint to try to establish venue, even after Defendants explained why none of those addresses constitute a "regular and established place of business" of either Defendant—a requirement to show patent venue. *See* ECF 13 at 1; ECF 25 at 5-7; *see also TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1517-21 (2017); 28 U.S.C. § 1400(b).

The law is clear that in considering Defendants' motion to dismiss, the "court must accept all allegations of the complaint as true, unless contradicted by the defendants' affidavits." *Wai*, 315 F. Supp. 2d at 1268. Since Plaintiff's factual allegations regarding the Florida addresses in its Amended Complaint are contradicted by Defendants' affidavits, those facts will not be accepted as true when the Court considers Defendants' Motion to Dismiss. Plaintiff thus lacks the factual support needed to support its opposition to Defendants' motion and is unlikely to prevail in its opposition. Therefore, a short stay of this case pending resolution of the meritorious case-dispositive motion on the threshold issue of venue is appropriate.

A short stay will not prejudice Plaintiff and prevents the unnecessary expenditure of the parties' and the Court's resources. Cases with the current procedural posture are particularly apt to be stayed for short periods of time because discovery "has the potential to consume vast resources." *In re Managed Care Litig.*, No. 1:00-md-01334, 2001 WL 664391, at *3 (S.D. Fla. June 12, 2001); *see also Gibson v. Lynn Univ., Inc.*, No. 9:20-cv-81173, 2020 WL 6700448, at *2 (S.D. Fla. Oct. 29, 2020) (granting stay after "having balanced the minimal harm produced by a brief delay in discovery in this case against the possibility that the Motion to Dismiss will be granted and eliminate the need for discovery"). Plaintiff has already served over 40 requests for production on Defendants, including requests seeking documents that are irrelevant to the substantive question of patent infringement that underlies Plaintiff's cause of action but aim to support for Plaintiff's baseless allegations of venue. *See, e.g.*, Ex. 1 at RFPs 1-15. A stay is particularly warranted under these facts to protect Defendants from Plaintiff's futile fishing expedition for facts to support a non-existent basis for establishing venue in this District. *See U.S. ex rel. Clausen v. Lab'y Corp. of Am.*, 290 F.3d 1301, 1313 n. 24 (11th Cir. 2002) (finding that permitting discovery where claims were not properly pled would allow plaintiffs to file baseless complaints in order to seek discovery to support a claim). Plaintiff should not be allowed to try to substantiate their unsupportable venue allegations at Defendants' expense before the Court has ruled that Plaintiff is even entitled to the jurisdictional discovery it seeks.

The burden of time and expense in responding to Plaintiff's discovery requests—before the Court has authorized them—disproportionately falls on Defendants and will require a significant expenditure by Defendants to search for, collect, review, and produce information responsive to Plaintiff's requests. Moreover, if venue is found to not be proper in this Court and

the case is dismissed or transferred, the costs Defendants will incur responding to this discovery would be wasted.

The Court would also be substantially burdened if discovery is not stayed, as it would be required to devote its judicial resources to addressing discovery disputes in an action for which the Court may ultimately find venue is not proper. A wide range of discovery disputes are common in, and unique to, patent litigation. *Suncast Techs., L.L.C. v. Patrician Prod., Inc.*, No. 9:07-cv-80414, 2008 WL 179648, at *9 (S.D. Fla. Jan. 17, 2008). Here, the parties already have a ripe discovery dispute over the due date for responding to Plaintiff's outstanding discovery requests, as the parties dispute whether a Federal Rule of Civil Procedure 26(f) conference and development of a discovery plan has occurred. Moreover, Defendants maintain that Plaintiff is not entitled to jurisdictional discovery as its request for such discovery was not timely raised and, in any event, their request is futile as Plaintiff wants to embark on a fishing expedition for documents to support a basis for patent venue where none plainly exists. Again, a short stay while the Court decides the Motion to Dismiss will reduce the burden on the Court's resources without harming Plaintiff. Even if discovery is stayed and the case proceeds after the motion to dismiss is decided, "Plaintiff will have ample opportunity to conduct discovery." *See Goldstein v. Costco Wholesale Corp.*, No. 9:21-cv-80601, 2021 WL 2827757, at *2 (S.D. Fla. July 8, 2021). Conversely, if Defendants' Motion to Dismiss is granted, Plaintiff will also benefit from a stay by avoiding Plaintiff's efforts propounding discovery requests and engaging in discovery disputes for a case that is ultimately dismissed.

WHEREFORE, Defendants respectfully request that this Court enter an Order staying discovery and all other pending deadlines in this case until this Court has ruled upon Defendants' Motion to Dismiss.

CERTIFICATE OF COMPLIANCE WITH S.D. FLA. L. R. 7.1(a)(3)(A)

Pursuant to Local Rule 7.1(a)(3)(A), we hereby certify that undersigned counsel for Defendants conferred with Plaintiff's counsel on February 13, 2023, in a good faith effort to resolve the issues raised herein, but the parties were unable to resolve the issues. Plaintiff opposes the relief requested herein.

Respectfully submitted,

**KLUGER, KAPLAN, SILVERMAN, KATZEN &
LEVINE, P.L.**

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