

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

CONCURRENT VENTURES, LLC AND
XTREAMEDGE, INC.,

Plaintiffs,

v.

ADVANCED MICRO DEVICES, INC. AND
PENSANDO SYSTEMS, INC.,

Defendants.

Civil Action No. 1:24-cv-335-DII

**Defendants Advanced Micro Devices, Inc. and Pensando Systems, Inc.'s
Opposed Motion to Stay Pending Resolution of Motion to Transfer**

I. INTRODUCTION

Defendants respectfully move to stay all case activity pending resolution of their Motion to Transfer this case to the Northern District of California. Dkt. 33. Defendants’ Motion to Transfer was filed on August 9, 2024 and has been fully briefed as of September 26, 2024. The need to stay this case is strong because important, substantive deadlines are quickly approaching. In particular, claim construction deadlines begin in early January and, absent a stay, the Court and the parties will soon be burdened with claim construction disclosures, briefing, and oral argument—even though that work may be moot upon transfer. These efforts should be postponed until the Court has ruled on the Motion to Transfer.

All relevant factors favor staying this matter. *First*, Plaintiffs will not be prejudiced by a stay because they do not compete with Defendants and any delay in collecting the alleged monetary damages cannot constitute undue prejudice. *Second*, Defendants will be harmed without a stay, as they will need to invest significant resources to litigate in an inconvenient venue. *Finally*, judicial resources will be wasted without a stay, especially if this case progresses and is later transferred to NDCA, the clearly more convenient venue. Thus, any further proceedings should be stayed pending a decision and written opinion on transfer.

II. THIS CASE SHOULD BE STAYED PENDING RESOLUTION OF DEFENDANTS’ MOTION TO TRANSFER

A. The Resolution of Defendants’ Motion to Transfer Should Take “Top Priority”

Appellate courts’ precedent, this District’s standard practice, and recent mandamus law all support staying this case pending Defendants’ transfer motion. “[D]isposition of a [§ 1404(a)] motion should [take] a top priority in the handling of a case.” *In re TikTok, Inc.*, 85 F.4th 352, 362 (5th Cir. 2023) (citing *In re Horseshoe Ent.*, 337 F.3d 429, 433 (5th Cir. 2003) (internal quotation marks omitted)); *see also, e.g., In re Apple Inc.*, No. 2023-120, 2023 WL 2359699, at *2

(Fed. Cir. Mar. 6, 2023) (granting petition for mandamus and directing the WDTX Court to “timely decide the transfer motion before proceeding to further substantive matters” and noting that “once a party files a transfer motion, disposition of that motion should unquestionably take top priority”); *In re Apple Inc.*, 979 F.3d 1332, 1337 (Fed. Cir. 2020) (making clear that transfer should be handled before other substantive tasks—including *Markman*); *In re Apple, Inc.*, 52 F.4th 1360, 1363 (Fed. Cir. 2022) (“direct[ing] [the district court] to postpone fact discovery and other substantive proceedings until after consideration of Apple’s motion for transfer”); *In re TracFone Wireless, Inc.*, 848 F. App’x 899, 900–01 (Fed. Cir. 2021) (similar); *In re SK Hynix Inc.*, 835 F. App’x 600, 600–01 (Fed. Cir. 2021) (similar); *In re Google Inc.*, No. 2015-138, 2015 WL 5294800, at *1–2 (Fed. Cir. July 16, 2015) (similar).

It is therefore this District’s well-established practice to stay proceedings pending resolution of a transfer motion. *See, e.g.*, Text Order Granting Motion to Stay Case, *KOSS Corp. v. Plantronics, Inc.*, No. 6:20-cv-00663-ADA (W.D. Tex. Apr. 8, 2021); Text Order Granting Motion to Stay Case, *NewFlux LLC v. Best Buy Co.*, No. 6:20-cv-00732-ADA (W.D. Tex. Apr. 13, 2021); Order Staying Case, *Red Rock Analytics, LLC v. Apple Inc.*, No. 6:21-cv-00346-ADA, Dkt. 130 (W.D. Tex. June 13, 2022); *see also Alto Dynamics, LLC v. Wayfair LLC*, No. 1:22-cv-829-RP, Dkt. 39, at 3, 5 (February 27, 2023) (except for venue discovery, staying all discovery and pretrial proceedings pending defendant’s motion to transfer) (Pitman, J.). The fundamental purpose of the transfer statute—“to protect litigants, witnesses and the public against unnecessary inconvenience and expense”—is “thwarted” if protracted litigation occurs in a clearly inconvenient venue before transfer is resolved. *Cont’l Grain Co. v. The Barge FBL-585*, 364 U.S. 19, 27 (1960); *Apple*, 52 F.4th at 1361; *see also Google*, 2015 WL 5294800, at *1–2 (explaining that lengthy delays in deciding transfer motions can “frustrate 28 U.S.C. § 1404(a)’s

intent” when “a motion to transfer lingers unnecessarily on the docket” (internal citation omitted)).

With substantive deadlines for *Markman* briefing fast approaching under the Court’s Scheduling Order, the Federal Circuit’s directives require prioritizing the resolution of the pending transfer motion and staying this case to avoid the undue and unnecessary burdens on the parties and this Court.

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

Courts in this District typically consider three factors to determine 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 if a stay is granted. *Yeti Coolers, LLC v. Home Depot U.S.A., Inc.*, No. 1:17-CV-342-RP, 2018 WL 2122868, at *1 (W.D. Tex. Jan. 8, 2018); *B & D Produce Sales, LLC v. Packman I, 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. A Stay Will Not Prejudice Plaintiffs

A stay will not prejudice Plaintiffs. Defendants’ proposed stay is limited to the time necessary to resolve the pending transfer motion, which has been fully briefed since September. Any stay will likely be short, yet result in substantial judicial efficiencies. A “mere delay in collecting . . . [any alleged] damages does not constitute undue prejudice.” *Crossroads Sys., Inc. v. Dot Hill Sys. Corp.*, No. A-13-CA-1025-SS, 2015 WL 3773014, at *2 (W.D. Tex. June 16, 2015); *see also SanDisk Corp. v. Phison Elecs. Corp.*, 538 F. Supp. 2d 1060, 1067 (W.D. Wis. 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”); *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-CV-1058-WCB, 2015 WL 1069111, at *2 (E.D. Tex. Mar. 11, 2015) (“[D]elay in the vindication of patent rights . . . is present in every case in which a patentee resists a stay, and it is therefore not

sufficient, standing alone, to defeat a stay motion.”). Further, “[t]he weight of Plaintiff’s interest in timely enforcement is diminished here where a stay would merely delay Plaintiff’s potential monetary recovery.” *Kirsch Rsch. & Dev., LLC v. Tarco Specialty Prods., Inc.*, No. 6:20-CV-00318-ADA, 2021 WL 4555804, at *2 (W.D. Tex. Oct. 4, 2021). Here, Plaintiffs are non-practicing entities and cannot identify any specific undue prejudice. The Complaint does not allege Plaintiffs have competing products, but instead primarily seeks monetary damages. Compl. (Dkt. 1) ¶7. Nor have Plaintiffs moved for a preliminary injunction in this case. Plaintiffs were unable to identify any specific prejudice during the meet and confer aside from a delay in monetary damages. Thus, the impact of a stay, if any, will be limited to the timing of the monetary recovery, which, as discussed, cannot constitute undue prejudice on its own. *Crossroads Sys.*, 2015 WL 3773014, at *2.

When the ultimate remedy is monetary, as it is here, pre-judgment interest fully compensates for any potential harm from a delay (even if Plaintiffs are ultimately successful on the merits). *See, e.g., 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). Because a stay will not prejudice Plaintiffs, this factor favors granting a stay.

2. Defendants Will Suffer Hardship Absent a Stay

Absent a stay, this case will progress into substantial merits proceedings, which will impose significant hardship on Defendants and the Court. Under the Court’s scheduling order, Defendants’ invalidity contentions and accompanying production are due in less than a month, on December 20, 2024. The parties will then exchange proposed terms for construction on January 9, 2025, and a claim construction hearing is set for April 16, 2025. These “are not

merely rote, ministerial tasks”; instead, “a *Markman* hearing and claim construction order are two of the most important and time-intensive substantive tasks a district court undertakes in a patent case.” *Apple*, 979 F.3d at 1338. Thus, moving forward now will risk the very same “waste ‘of time, energy, and money’” that § 1404(a) is intended to prevent, and the Federal Circuit has cautioned against. *Google*, 2015 WL 5294800, at *1–2; *accord In re EMC Corp.*, 501 F. App’x 973, 975–76 (Fed. Cir. 2013); *Apple*, 52 F.4th at 1361–63. Such prejudice “cannot be put back in the bottle” and remedied after the fact. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 319 (5th Cir. 2008) (en banc); *accord In re Lloyd’s Register N. Am., Inc.*, 780 F.3d 283, 289 (5th Cir. 2015). However, it can be minimized, if not completely prevented, by granting the requested stay. Accordingly, the hardship factor also strongly favors a stay.

3. A Stay Will Conserve Judicial Resources

Finally, a stay will conserve judicial resources by minimizing the need for duplicative proceedings in the transferor and transferee courts. “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.” *Apple*, 52 F.4th at 1362–63 (quoting *McDonnell Douglas Corp. v. Polin*, 429 F.2d 30, 30 (3d Cir. 1970)). Any claim construction order issued prior to transfer is unlikely to bind the Northern District of California, and would be subject to revision in that District. *See, e.g., Rambus Inc. v. Hynix Semiconductor Inc.*, 569 F. Supp. 2d 946, 968 (N.D. Cal. 2008) (declining to give preclusive effect to claim construction order absent a final judgment); *Jack Guttman, Inc. v. Kopykake Enters., Inc.*, 302 F.3d 1352, 1361 (Fed. Cir. 2002) (acknowledging that district courts may engage in “rolling” claim

construction and “revisit[] and alter[] its interpretation” of the patentee’s claims throughout the litigation). In a case such as this, where the Court has not yet construed the claims or made any substantive rulings, a stay will preserve judicial resources and prevent any duplicative efforts. Thus, the judicial resources factor further favors a stay.

III. CONCLUSION

Because all relevant factors favor a stay pending resolution of the transfer motion, Defendants respectfully request that this motion be granted.

DATED: November 22, 2024

/s/ Christopher Ponder

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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2024 a true and correct copy of the foregoing was served on all counsel of record who have appeared in this case via the Court's CM/ECF system pursuant to Local Rule CV-5.

/s/ Christopher Ponder
Christopher Ponder

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies pursuant to Local Rules CV-7(g), that the relief requested in this motion is opposed. I conferred with Plaintiffs' counsel by telephone on November 21, 2024 and the parties could not agree to stay this case.

/s/ Christopher Ponder
Christopher Ponder