

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

MANUEL TIJERINO,

Plaintiff,

v.

SPOTIFY USA INC.,

Defendant.

Civil Action No.

2:24-cv-02290-ILRL-DPC

SECTION “B” (3)

Judge Ivan L.R. Lemelle

Magistrate Judge Donna Phillips Currault

**DEFENDANT SPOTIFY USA INC.’S MOTION TO STAY DISCOVERY PENDING
RESOLUTION OF SPOTIFY’S MOTION TO DISMISS**

NOW INTO COURT, through undersigned counsel, comes Defendant Spotify USA Inc. (“Spotify”), and respectfully moves this Honorable Court to Stay Discovery in this case pending resolution of Spotify’s Motion to Dismiss.

For reasons more thoroughly explained in Spotify’s accompanying Memorandum in Support, a limited stay pending resolution of Spotify’s Motion to Dismiss is appropriate for the following reasons. *First*, as a threshold matter, a stay is warranted in this case because Spotify has presented an issue of whether patent venue is statutorily proper in Louisiana. As the Federal Circuit has recognized, a party suffers prejudice when it is “forced to expend resources litigating substantive matters in an inconvenient venue.” *In re Google, Inc.*, No. 2015-138, 2015 WL 5294800, *1-2 (Fed. Cir. July 16, 2015) (ordering stay “pending completion of the transfer matter”). Here, Spotify’s Motion to Dismiss remains pending. Yet Plaintiff has failed to identify any arguable basis for patent venue in Louisiana. Under these circumstances, Spotify should not be “forced to expend resources litigating substantive matters” in an improper venue. *See In re Google, Inc.*, 2015 WL 5294800, at *2.

Second, a brief stay of proceedings pending resolution of the Motion to Dismiss will not unduly prejudice Tijerino. *See, e.g., Von Drake v. Nat'l Broad. Co.*, No. 04-cv-00652, 2004 WL 1144142, at *1 (N.D. Tex. May 20, 2004) (“the disposition of a motion to dismiss ‘might preclude the need for discovery altogether thus saving time and expense.’”).

Third, a stay may result in the simplification of issues in this case as Spotify’s Motion to Dismiss can resolve this case entirely or, at a minimum, trigger a transfer to a statutorily proper venue. *See, e.g., Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987) (stay of action appropriate where “preliminary questions that may dispose of the case” entirely).

Fourth, this case is at an early stage—Plaintiff’s Motion to Amend Pleadings is still pending, Plaintiff has not provided initial disclosures, and Spotify has not yet served any discovery requests on Plaintiff. These circumstances warrant a stay.

Finally, staying the case is also likely to save judicial resources. *See, e.g., In re Nintendo Co., Ltd.*, 544 Fed. Appx. 934, 941 (Fed. Cir. 2013) (citing *McDonnell Douglas Corp. v. Polin*, 429 F.2d 30, 30 (3d Cir. 1970) (“Judicial economy requires that [a] district court should not burden itself with the merits of the action until it is decided [whether] a transfer should be effected[.]”)).

WHEREFORE, Spotify respectfully requests that the Court grant its Motion to Stay Discovery Pending Resolution of Spotify’s Motion to Dismiss.

Respectfully submitted,

/s/ David L. Patrón

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**ATTORNEYS FOR DEFENDANT
SPOTIFY USA INC.**

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 9th day of April 2025 served a copy of the foregoing on counsel for all parties to this proceeding via e-mail, and on Plaintiff via certified U.S. mail and e-mail.

/s/ David L. Patrón

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RULE 26(c)(1) CERTIFICATE

Counsel for Defendant, Spotify USA Inc. (“Spotify”), hereby certifies that they attempted to confer with Plaintiff Manuel Tijerino concerning the substance of Spotify’s Motion to Stay Discovery. On April 4, 2025, Spotify's counsel indicated via email to Mr. Tijerino their intention to file a Motion to Stay Discovery and proposed a conference to discuss the matter and explore alternatives, such as deferring discovery until after the motion to dismiss is resolved. Mr. Tijerino, in response, refused to meet and confer. On April 6, 2025, counsel for Spotify sent another email restating its request to meet and confer, offering specific times to facilitate a telephone conference. Mr. Tijerino again refused to hold a conference with Spotify’s counsel, stating his preference to “continue the process by email so we can preserve a clear written record and avoid any confusion.” Thus, Spotify’s multiple efforts to confer have been rebuffed thereby necessitating the filing of this Motion.

Respectfully submitted,

/s/ David L. Patrón

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NOTICE OF SUBMISSION

PLEASE TAKE NOTICE that Defendant Spotify USA Inc. (“Spotify”) will bring for submission its Motion to Stay Discovery Pending Resolution of Spotify’s Motion to Dismiss before the Honorable Donna Phillips Currault, United States District Judge, Eastern District of Louisiana, 500 Poydras Street, New Orleans, Louisiana 70130, on the 30th day of April, 2025.

Respectfully submitted,

/s/ David L. Patrón

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/s/ David L. Patrón

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**DEFENDANT SPOTIFY USA INC.’S MEMORANDUM IN
SUPPORT OF ITS MOTION TO STAY DISCOVERY PENDING
RESOLUTION OF SPOTIFY’S MOTION TO DISMISS**

Spotify USA Inc. (“Spotify”) respectfully submits this Memorandum of Law in Support of its Motion to Stay Pending Resolution of Spotify’s Motion to Dismiss. *See* Rec. Doc. 13.

I. INTRODUCTION

A limited stay pending resolution of Spotify’s Motion to Dismiss is appropriate. In view of the Supreme Court’s decision in *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 581 U.S. 258, 266 (2017), venue over this patent infringement case is statutorily improper in Louisiana. *See* Rec. Doc. 13-2. Further, despite receiving multiple opportunities, Plaintiff Manuel Tijerino (“Tijerino”) has failed to plausibly allege any basis for accusing Spotify of infringing the asserted patent. *See id.* The Fifth Circuit and Federal Circuit have repeatedly recognized in cases where there are preliminary dispositive questions, a brief stay of proceedings pending resolution of a motion to dismiss is appropriate to conserve judicial and party resources.

A stay is particularly warranted here given Tijerino’s aggressive and wasteful approach to the litigation. Despite failing to articulate any basis for patent venue and accusing Spotify of infringing a patent that is, on its face, inapplicable to Spotify’s business, Tijerino has demanded

more than \$1 billion in damages. Tijerino has repeatedly ignored this Court’s rules, filed a motion that cites apparently nonexistent cases and seeks relief that is legally unsustainable (*see* Doc. Recs. 33, 34, 36), served expansive and unjustified discovery requests, refused to meet-and-confer over those requests, and, instead, threatened to file a motion to compel against Spotify. Under these circumstances, staying this proceeding pending resolution of the dispositive issues raised in Spotify’s Motion to Dismiss will conserve judicial and party resources and limit the harm to Spotify from litigating in a venue that is statutorily improper.

II. RELEVANT BACKGROUND

A. Spotify Moves to Dismiss Tijerino’s Complaints.

On September 18, 2024, Tijerino filed a Complaint accusing Spotify of infringing U.S. Patent No. 9,146,925 (the ’925 patent). *See* Rec. Doc. 1. On January 14, 2025, Spotify moved to dismiss the Complaint on two grounds. Rec. Doc. 13. First, patent venue is improper in Louisiana because Spotify does not have a regular and established place of business in the State. Rec. Doc. 13-2 at 3-6 (citing *Andra Grp., LP v. Victoria’s Secret Stores, L.L.C.*, 6 F.4th 1283, 1287 (Fed. Cir. 2021)). Second, the Complaint fails to state a claim for infringement because Tijerino did not allege any facts plausibly showing that Spotify “automatically calculat[es], by a processor, amounts **earned by** an artist and **a venue playing the new media**,” which is a requirement of every claim of the ’925 patent. Rec. Doc. 13-2 at 7-10 (emphasis added).

On January 28, 2025, Tijerino filed a First Amended Complaint (“FAC”). Rec. Doc. 19. Despite increasing the page count from 8 to 63 pages, the FAC did not address the deficiencies identified in the Motion to Dismiss. Rather than identifying a regular and established physical place of business of Spotify in Louisiana, the FAC asserted that venue is proper because Spotify allegedly “committed acts of infringement in Louisiana” and “generat[ed] substantial revenue from services offered in the state.” Rec. Doc. 19-1 at 2. The FAC asserted that Spotify “automatically

calculat[es] . . . amounts earned by . . . a venue playing the new media” because Spotify calculates royalties earned by copyright holders (not venues) based on the geographic region where users listen to music. Rec. Doc. 19-1 at 30. Despite its length, the FAC did not provide any plausible allegations as to how a geographic region qualifies as a **venue** that **earns** royalties **by playing “new media.”** See Rec. Doc. 19-1. Spotify did not oppose Tijerino’s Motion for Leave to File the FAC. See Rec. Doc. 21 (Notice of Non-Opposition). Instead, Spotify re-asserted the Motion to Dismiss and addressed the FAC in its reply brief. See Rec. Doc. 25.

On February 27, 2025, Tijerino filed a Motion for Leave to File a Second Amended Complaint (“SAC”). Rec. Doc. 29. Rather than amending the FAC, the five-page SAC makes a series of assertions punctuated with citations to Tijerino’s other filings. See Rec. Doc. 29-1. Like prior filings, the SAC does not identify any regular and established place of business of Spotify in Louisiana. See Rec. Doc. 29-1 at 2-3. The SAC re-alleges infringement (*id.*, 3-4), but does not provide any plausible allegations that Spotify automatically calculates royalties that venues earn by playing music. On March 28, 2025, Spotify filed an opposition to Tijerino’s Motion for Leave to File the SAC. See Rec. Doc. 35. Spotify argued that the Motion for Leave should be denied as futile because the SAC does not address the deficiencies in the Complaint or the FAC. See *id.*

B. Tijerino Presses for Broad Discovery.

On March 3, 2025, Tijerino served interrogatories, requests for admission, and requests for production. See Rec. Doc. 30-3. The discovery requests seek a broad swath of highly confidential information from Spotify—e.g., all “internal communication records related to employees involved in royalty tracking and reporting”; all agreements with performing rights organizations (PROs) and “third-party aggregators”; all records related to “business operations in Louisiana”;

and all “internal communications” related to the operation of Spotify’s royalty tracking system.¹ *See id.* at 4-9.

Given these overly broad requests, and the pendency of Tijerino’s Motion for Leave to File a SAC, on March 5, 2025, Spotify requested a 30-day extension to respond to the discovery requests. Rather than responding to the extension request, however, and without any factual or legal basis, Tijerino raced to the court and filed a motion asking the Court to stay ruling on Spotify’s Motion to Dismiss while Tijerino takes discovery. *See* Rec. Docs. 30, 33. Spotify opposed Tijerino’s stay motion on March 28, 2025, explaining that there is no legal basis to allow Tijerino to take discovery to oppose the Motion to Dismiss. Rec. Doc. 34.

On April 2, 2025, Spotify served written responses and objections to Tijerino’s initial discovery requests, providing preliminary information and specific objections to many vague, broad, and irrelevant requests. On April 3, 2025, Tijerino served Spotify with a “meet-and-confer letter,” seemingly generated by an artificial intelligence program, that demanded supplemental responses to every interrogatory, request for production, and request for admission and stated his intent to file a motion to compel if those supplemental responses were not received by April 10, 2025. *See* Exhibit A, Declaration of Christopher Ponder (“Ponder Decl.”), Ex. 1. Despite the title of the letter, however, Tijerino did not propose a meet-and-confer to discuss Spotify’s objections. *See id.* Rather than conferring, Tijerino asserted that discovery would proceed in due course absent Court intervention.

On April 4, 2025, Spotify responded to Tijerino’s letter, highlighting its concern that “pursuing discovery (and litigating disputes over discovery) is premature at this stage given the

¹ If this action is not dismissed or transferred, Spotify reserves the right to seek the entry of an appropriate protective order prior to any production of confidential documents.

pending Motion to Dismiss.” Ponder Decl., Ex. 2 at 4-6. Spotify thus notified Tijerino of its intent to file a motion to stay discovery. *Id.* In the same email, Spotify requested a meet-and-confer with Tijerino regarding a stay of discovery, as well as “other options to address our concerns short of filing a motion for a stay, such as the parties agreeing to hold-off on any further discovery and discovery disputes until after the motion to dismiss has been decided. [Spotify] do[es] not want to bother the Court with another motion at this time if the parties can simply agree to defer any further discovery and discovery disputes.” *Id.*

On April 5, 2025, Tijerino **rejected** Spotify’s request for a meet-and-confer, claiming he had already “made a good-faith effort to meet-and-confer under Rule 37 regarding Spotify’s objections and responses.” *See* Ponder Decl., Ex. 2 at 4. Tijerino stated that he did not object to Spotify filing a Motion to Stay Discovery, but indicated that he would oppose the motion. *Id.*

C. Tijerino Repeatedly Disregards Court Rules in Aggressively Litigating Case.

From the outset of this case, even taking into account his status as a *pro se* plaintiff, Tijerino has disregarded Court rules that he finds to be inconvenient or unnecessary. Tijerino has yet to serve his initial disclosures as required under Rule 26 (serving instead a “response” to Spotify’s initial disclosures). Tijerino twice filed amended pleadings without adhering to Local Rule 7.6. *See* Rec. Docs. 19, 29. Tijerino filed a legally baseless Motion to Stay resolution of Spotify’s Motion to Dismiss that cited two apparently nonexistent cases. *See* Rec. Doc. 33 (Tijerino’s stay motion); Rec. Doc. 34 (Spotify’s opposition). When Spotify identified the error, Tijerino did not take responsibility for citing fictitious cases. Instead, Tijerino accused Spotify of trying to “distract” the Court from the “underlying legal principles” by focusing on “one allegedly incorrect

case citation.”² See Rec. Doc. 36 at 3.

In the latest example, Tijerino has threatened to file yet another motion—to compel discovery under Rule 37—but refused to adhere to the meet-and-refer requirements under Rule 37, all while refusing to provide his own initial disclosures. See Ponder Decl., Ex.2 at 1.

III. ARGUMENT

A. Legal Standard

“Trial courts possess broad discretion to supervise discovery.” *Landry v. Air Line Pilot Ass’n Int’l AFL-CIO*, 901 F.2d 404, 436 n.114 (5th Cir. 1990). In particular, “[a] trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined.” *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987); accord *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 804 (Fed. Cir. 1999) (“When a particular issue may be dispositive, the court may stay discovery concerning other issues until the critical issue is resolved.”) (citing 8 Charles Alan Wright & Richard L. Marcus, *Federal Practice & Procedure* § 2040, at 521 (2d ed. 1994)).

Management of a court’s docket “calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). The party seeking the stay bears the burden of showing that the stay is appropriate under the particular circumstances. *Id.* at 255. Four factors generally govern whether a stay should be granted: (1) whether the stay would unduly prejudice or present a clear tactical disadvantage to the nonmoving party; (2) whether a stay will simplify the issues in question and trial of the case; (3) whether discovery is complete and a trial date has been set; and (4) whether a stay will reduce the

² Tijerino cited two apparently fictitious cases, not one. See Rec. Doc. 34 at 6-9. Moreover, the “underlying legal principles” for which Tijerino cited those nonexistent cases—that courts permit merits discovery to respond to a motion to dismiss—also do not exist. See *id.*

burden of litigation on the parties and the burdens on the Court. *See NFC Tech. LLC v. HTC Am., Inc.*, No. 13-CV-01058, 2015 WL 1069111, at *2 (E.D. Tex. Mar. 11, 2015).

B. A Stay Is Warranted to Allow Time for Resolution of the Venue Motion.

As a threshold matter, a stay is warranted in this case because Spotify has presented an issue of whether patent venue is statutorily proper in Louisiana. Venue is a threshold requirement for a lawsuit and fundamental to ensuring a fair and reasonable litigation process. As the Federal Circuit has recognized, a party suffers prejudice when it is “forced to expend resources litigating substantive matters in an inconvenient venue.” *In re Google, Inc.*, No. 2015-138, 2015 WL 5294800, *1-2 (Fed. Cir. July 16, 2015) (ordering stay “pending completion of the transfer matter”). This principle applies with even greater force where venue is improper, not merely inconvenient. *See In re TracFone Wireless, Inc.*, 848 Fed. Appx 899, 901 (Fed. Cir. 2021) (ordering stay pending decision on motion to transfer for improper and inconvenient venue).

Given the threshold nature of venue determinations, the Federal Circuit and the Fifth Circuit have long held that venue issues should be decided at the outset of a case and given top priority. *See e.g., Google*, 2015 WL 5294800, at *1; *In re SK Hynix Inc.*, 835 Fed. Appx. 600, 601 (Fed. Cir. 2021); *In re EMC Corp.*, 501 Fed. Appx. 973, 975 (Fed. Cir. 2013); *In re Horseshoe Entm’t*, 337 F.3d 429, 433 (5th Cir. 2003). As the Federal Circuit has stated, “a trial court must first address whether it is a proper and convenient venue before addressing any substantive portion of the case.” *In re Nintendo Co., Ltd.*, 544 Fed. Appx. 934, 941 (Fed. Cir. 2013); see also *Secure Axxess, LLC v. Nintendo of Am. Inc., et al.*, No. 13-cv-00032, 2014 WL 12951781, at*1 (E.D. Tex. Feb. 10, 2014) (staying case pending resolution of venue transfer motion).

Despite having multiple opportunities, Tijerino has yet to identify any arguable basis for patent venue in Louisiana given that Spotify (i) is not incorporated in Louisiana; and (ii) does not maintain a regular and established physical place of business in Louisiana. *See Rec. Doc. 13-2 at*

3-6. Under these circumstances—where a Motion to Dismiss is pending and Tijerino has provided no grounds to oppose the motion—Spotify should not be “forced to expend resources litigating substantive matters” in an improper venue. *See In re Google, Inc.*, 2015 WL 5294800, at *2.

C. A Stay Will Not Prejudice Tijerino or Place Tijerino at a Clear Tactical Disadvantage.

A brief stay of proceedings pending resolution of the Motion to Dismiss will not unduly prejudice Tijerino. The '925 patent issued in September 2015 (*see* Rec. Doc. 1-3 at 1) and Tijerino alleges that Spotify infringed the '925 patent as early as 2018 (*see* Rec. Doc. 19-1 at 2). Tijerino nonetheless waited until September 2024—**six years** after the alleged infringement—to file this case. Tijerino’s actions demonstrate that he has no urgent need for relief. Further, a brief stay will not alter any relief that is available to Tijerino. While a stay could theoretically delay resolution of the case, such a delay alone is not sufficient to constitute undue prejudice. *See Enhanced Sec. Research, LLC v. Cisco Sys., Inc.*, No. 09-cv-00571, 2010 WL 2573925, at *3 (D. Del. June 25, 2010) (“[A] stay may delay resolution of the litigation, but this alone does not warrant a finding that Plaintiffs will be unduly prejudiced.”); *see also NFC Tech.*, 2015 WL 1069111, at *2 (delay 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”).

Far from placing Tijerino at a tactical disadvantage, a stay will arguably **benefit** Tijerino by saving him the time and expense associated with discovery that is likely to be futile. *See, e.g., Von Drake v. Nat’l Broad. Co.*, No. 04-cv-00652, 2004 WL 1144142, at *1 (N.D. Tex. May 20, 2004) (“the disposition of a motion to dismiss ‘might preclude the need for discovery altogether thus saving time and expense.’”). As noted above, Tijerino has not identified any viable basis for patent venue. *See also* Rec. Docs. 13, 25. Tijerino has also failed to identify any plausible basis to accuse Spotify of infringing the '925 patent. *See id.* These are preliminary questions that may

dispose of the case entirely and, as such, it is in both parties' interest to conserve resources pending resolution of such potentially dispositive issues.

D. A Stay May Result in the Simplification of Issues.

The second factor also offers strong support for a stay. Spotify's Motion to Dismiss can resolve this case entirely or, at a minimum, trigger a transfer to a statutorily proper venue. This is precisely when a stay is warranted. *Petrus*, 833 F.2d at 583 (stay of action appropriate where "preliminary questions that may dispose of the case" entirely).

E. A Stay Is Warranted at this Early Stage of the Case.

The third factor also supports a stay because this case is at an early stage. *See, e.g., Constellation IP, LLC v. The Allstate Corp.*, No. 07-cv-00132, 2008 WL 4767625, at *3 (E.D. Tex. May 12, 2008) (holding that early stage of litigation favored stay pending ruling from PTO on patent validity). Tijerino's motion to amend the pleadings is still pending. Tijerino has served initial discovery requests, but the disputes concerning those first requests are not ripe. Tijerino has not provided initial disclosures, and Spotify has not yet served any discovery requests on Tijerino. This matter is a perfect example of an "early stage" case warranting a stay.

F. Staying the Case Will Conserve Judicial Resources.

Staying the case is also likely to save judicial resources. As noted above, Tijerino has refused to meet-and-confer over Spotify's objections to his discovery requests and has stated that he will file a motion to compel. Forcing the Court to address and resolve such discovery disputes when Tijerino has failed to identify a valid basis for venue and failed to state a plausible claim for relief is a waste of judicial resources. For this reason, the Federal Circuit has stressed the importance of addressing venue "before addressing any substantive portion of the case." *In re Nintendo*, 554 Fed. Appx at 941 (citing *McDonnell Douglas Corp. v. Polin*, 429 F.2d 30, 30 (3d Cir. 1970) ("Judicial economy requires that [a] district court should not burden itself with the

merits of the action until it is decided [whether] a transfer should be effected[.]’)). Granting a stay in this case will allow the Court to “avoid[] duplicative efforts ... [and] evade ‘needlessly expending its energies familiarizing itself with the intricacies of a case that the transferee judge may have to duplicate[.]’” *Sparling v. Doyle*, No. 13-cv-00323, 2014 WL 12489985 at *4 (W.D. Tex. Mar. 3. 2014).

IV. CONCLUSION

For all of the foregoing reasons, Spotify respectfully requests that the Court stay discovery pending resolution of Spotify’s Motion to Dismiss (Doc. Rec. 13).

Respectfully submitted,

/s/ David L. Patrón

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/s/ David L. Patrón

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Judge Ivan L.R. Lemelle

Magistrate Judge Donna Phillips Currault

**DECLARATION OF CHRISTOPHER PONDER IN SUPPORT OF DEFENDANT
SPOTIFY USA INC.’S MOTION TO STAY DISCOVERY**

I, Christopher Ponder, hereby declare and state as follows:

1. I am a partner with the law firm of Sheppard, Mullin, Richter & Hampton, LLP, and counsel of record for Defendant Spotify USA Inc. in this matter. I am familiar with the facts set forth herein.

2. Attached as **Exhibit 1** is a true and correct copy of a letter titled “MEET-AND-CONFER LETTER PURSUANT TO FRCP 37 AND LOCAL RULES,” which was served by Plaintiff Tijerino on April 3, 2025.

3. Attached as **Exhibit 2** is a true and correct copy of the email correspondence between Spotify and Plaintiff Tijerino. On April 3, 2025, Plaintiff Tijerino served his meet-and-confer letter. Spotify responded to the letter on April 4. On April 5, Plaintiff Tijerino replied to Spotify. On April 6, Spotify sent a follow-up response, and Plaintiff Tijerino responded on the same day.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 9, 2025 at Menlo Park, California.

/s/ Christopher Ponder
CHRISTOPHER PONDER

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

Manuel Tijerino	)	CIVIL ACTION NO
Plaintiff,	)	
	)	2:24-cv-02290-ILRL-DPC
	)	SECTION "B" (3)
	)	
Versus	)	DISTRICT JUDGE
	)	HON. JUDGE IVAN L.R.LEMELLE
	)	
Spotify USA Inc. ET, AL.	)	MAGISTRATE JUDGE
	)	HON. MAGISTRATE JUDGE DONNA
	)	PHILLIPS CURRAULT
	)	
_____	)	

MEET-AND-CONFER LETTER PURSUANT TO FRCP 37 AND LOCAL RULES

April 3, 2025

To: Counsel for Defendant Spotify USA Inc.

From: Manuel Tijerino, Pro Se Plaintiff

Dear Counsel,

I am writing pursuant to Fed. R. Civ. P. 37 and this Court's Scheduling Order (Doc Rec. 22), to address your objections and responses served on April 2, 2025, to Plaintiff's Interrogatories, Requests for Production, and Requests for Admission.

Background

On **February 25, 2025**, both parties exchanged Rule 26(a)(1) initial disclosures, in accordance with the Court's Scheduling Order. That order, entered on February 4, 2025, clearly sets forth that:

"No special discovery limitations beyond those established in the Federal Rules or Local

Rules of this Court are established.”

Therefore, formal discovery under Rule 26 has already commenced, and Spotify's objections claiming discovery is “premature” are procedurally improper.

Objections Are Procedurally Improper

Despite the above, your responses uniformly object to all discovery requests as premature, citing the absence of a Rule 26(f) conference or a protective order. However:

- A Rule 26(f) conference is **not a prerequisite** when the Court has already issued a Scheduling Order and set deadlines.
- Your position is contrary to Rule 26(d)(1), which defers to the Court’s scheduling authority.
- The existence of pending motions (such as the Motion to Stay and Motion to Dismiss) does not stay discovery unless and until ordered by the Court.
- If you have specific confidentiality concerns, you may propose a protective order under Rule 26(c)—but that is not a valid excuse to withhold all responses.

Rule 36(a)(3) Admission Warning

Additionally, under Fed. R. Civ. P. 36(a)(3), failure to respond to Requests for Admission within 30 days results in those matters being deemed admitted. Please consider this a formal notice that any unanswered or inadequately objected-to requests may be treated as admitted by default after April 3, 2025, under the Federal Rules.

This letter further requests that Spotify supplement all responses by April 10, 2025, to avoid a motion to compel under Rule 37.

Request to Supplement Discovery Responses

Accordingly, I respectfully request that you **supplement your responses** to Plaintiff's:

- Interrogatories Nos. 1–14,
- Requests for Production Nos. 1–14,
- Requests for Admission Nos. 1–22,

by **April 10, 2025**, with full and complete answers in compliance with the Federal Rules of Civil Procedure. Boilerplate objections without specificity and categorical refusals to respond are not permissible under Rule 34(b)(2)(B) and Rule 33(b)(4).

If I do not receive a satisfactory response by that date, I will have no choice but to move to compel under Rule 37 and request appropriate relief, including sanctions if warranted.

Please advise whether you intend to comply, or if you are available to confer regarding this issue.

Respectfully submitted,



3 April 2025

MANUEL TIJERINO, *Pro Se*

2141 Leslie Street, Gretna, LA 70056

515-803-8907

ManuelTijerino@Hotmail.com

CERTIFICATE OF SERVICE

Pursuant to Federal Rules of Civil Procedure 5(b)(2)(E) and 26(g), I, Manuel Tijerino, hereby certify that on April 3, 2025, I served the following document:

Plaintiff's Meet-and-Confer Letter to Defendant Spotify USA Inc. via email upon registered counsel of record for Defendant Spotify USA Inc. at the following addresses:

David Patron

Phelps Dunbar LLP

365 Canal St., Suite 2000, New Orleans, LA 70130

Email: patrond@phelps.com

Christopher Scott Ponder

Sheppard Mullin Richter & Hampton LLP

1540 El Camino Real, Suite 120, Menlo Park, CA 94025

Email: cponder@sheppardmullin.com

Harper Batts

Sheppard Mullin Richter & Hampton LLP

1540 El Camino Real, Suite 120, Menlo Park, CA 94025

Email: hbatts@sheppardmullin.com

Lindsay J. Calhoun

Phelps Dunbar LLP

365 Canal St., Suite 2000, New Orleans, LA 70130

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Mark Ackal

Phelps Dunbar LLP

365 Canal St., Suite 2000, New Orleans, LA 70130

Email: mark.ackal@phelps.com

Service was made in good faith and in accordance with the Federal Rules of Civil Procedure.

Dated: April 3, 2025

Respectfully submitted,

A handwritten signature in blue ink that reads "Manuel Tijerino". The signature is written in a cursive, flowing style.

Manuel Tijerino, Pro Se Plaintiff

From: [Manuel Tijerino](#)
To: [Chris Ponder](#); [Harper Batts](#)
Cc: [patrond@phelps.com](#); [lindsay.calhoun@phelps.com](#); [mark.ackal@phelps.com](#); [David Patron](#); [Holly Zhang](#); [Jonathan DeFosse](#)
Subject: Re: Meet-and-Confer Letter re: Discovery Responses – Tijerino v. Spotify USA Inc., Case No. 2:24-cv-02290-ILRL-DPC
Date: Sunday, April 6, 2025 8:16:06 PM

Dear Mr. Ponder,

Thank you for your message. I appreciate your agreement on moving forward with a protective order and look forward to reviewing your draft.

Regarding the meet-and-confer, I respectfully prefer to continue the process by email so we can preserve a clear written record and avoid any confusion. I am fully committed to working with you to resolve the discovery concerns in good faith.

1. Clarification on “Spotify for Business” Reference

To clarify, the reference to “Spotify for Business” was not intended to identify a formal product name, but rather to refer to Spotify’s commercial-facing services that facilitate public performance of music in businesses or venues. The intent of this request is not to suggest infringement through a separate product, but to establish facts relevant to **patent venue** under 28 U.S.C. § 1400(b). Specifically, discovery into Spotify’s commercial licensing activities, business relationships with Louisiana-based entities, and public performance services is directly relevant to whether Spotify has a regular and established place of business in this district.

If Spotify uses another designation for this category of services (e.g., venue licensing, public performance platforms, or third-party integrations), I am happy to revise the terminology to match. However, the goal of these requests is to demonstrate Spotify’s **business activity within the forum**, not to expand the scope of the accused infringing system beyond Spotify for Artists.

Furthermore, I would like to clarify that “Spotify for Business” was defined once in the instructions section of the discovery solely to ensure clarity in case commercial licensing was relevant to Spotify’s public performance activities. The defined term was **not used** in any of the actual Interrogatories, Requests for Production, or Requests for Admission. The entire discovery set focuses on **Spotify for Artists** and the server-based royalty tracking system described in the claims of U.S. Patent No. 9,146,925.

While Spotify for Business was mentioned to address general commercial use cases, the intent was never to suggest infringement through that platform. Rather, commercial licensing activity — whether through Spotify for Artists or other offerings — is relevant to whether Spotify maintains a **regular and established place of business** in this district under **28 U.S.C. §**

1400(b). The **Spotify for Artists user agreement**, which governs business use by artists, studios, and record labels, further reinforces that Spotify conducts commercial operations in Louisiana that support venue.

2. Relevance of Discovery Requests

Each of my interrogatories, RFAs, and RFPs were carefully drafted to align with the claim elements of U.S. Patent No. 9,146,925. Specifically:

- The claims refer to **automatic calculations** of “amounts earned,” but the patent explains that this refers to **metadata-based tracking**—a count or tally of media plays—used for royalty reporting compliance.
- The term “venue” as used in the claims can refer to **physical locations or performance territories** (e.g., country-based reporting through ASCAP or GEMA), and is not limited to literal bars or commercial properties.

These discovery requests seek to determine whether Spotify’s platform, particularly Spotify for Artists, includes systems that match these features. This is directly relevant to infringement, claim construction, and potentially to venue.

3. Response to Spotify’s Objections

Regarding your objections, many appear to be **boilerplate** and therefore improper under the Federal Rules. Under Rule 33(b)(4) and Rule 34(b)(2)(B), objections must be stated with **specificity** and cannot be conclusory or general. Objections such as “vague,” “irrelevant,” or “not proportional” that are not tied to any particular term or explanation do not meet this standard. To date, Spotify has not provided sufficient detail as to why the information sought is not discoverable under Rule 26(b)(1).

If Spotify can identify specific discovery requests where a clarification of language would resolve an objection, I am open to considering refinements. However, across-the-board refusals based on generalized objections do not satisfy the discovery rules.

Please feel free to point out any specific discovery request that you believe is unclear, and I will be happy to refine the language if necessary. I remain committed to resolving these issues collaboratively under Rule 37.

Best regards,

Manuel Tijerino

Pro Se Plaintiff

manueltijerino@hotmail.com

(515) 803-8907

From: Chris Ponder <CPonder@sheppardmullin.com>

Sent: Sunday, April 6, 2025 3:39 PM

To: Manuel Tijerino <manueltijerino@hotmail.com>; Harper Batts <HBatts@sheppardmullin.com>

Cc: patrnd@phelps.com <patrnd@phelps.com>; lindsay.calhoun@phelps.com <lindsay.calhoun@phelps.com>; mark.ackal@phelps.com <mark.ackal@phelps.com>; David Patron <David.Patron@phelps.com>; Holly Zhang <HZhang@sheppardmullin.com>; Jonathan DeFosse <JDeFosse@sheppardmullin.com>

Subject: RE: Meet-and-Confer Letter re: Discovery Responses – Tijerino v. Spotify USA Inc., Case No. 2:24-cv-02290-ILRL-DPC

Dear Mr. Tijerino,

The assertion that you made “a good-faith effort to meet and confer under Rule 37 regarding Spotify’s objections and responses” is not correct.

We understand your position concerning the general objection that discovery is premature. In response, we have proposed requesting a stay of discovery. We understand that you oppose the stay.

With respect to the confidentiality issues, we agree with you that entry of a protective order will likely address those objections. We are thus preparing a draft for your consideration.

You have not addressed any of the specific objections Spotify has raised to the discovery requests, including the objections to vague requests and relevance. For example, you seek discovery concerning “Spotify for Business.” As we have pointed out, those requests are ambiguous because there is no service with that name and we do understand which service, if any, is the focus of those requests.

To adequately meet-and-confer, we need your position on whether our specific objections are valid and, if so, how you will modify the requests to address those objections. Preferably, we would have a telephone call to walk through the objections to understand your positions, including why you believe many of the requests seek relevant information.

Until you have made a good faith effort to explain your positions and give Spotify the opportunity to consider and respond to those positions, you have not made a “good-faith effort to meet and confer.”

We are available for a telephone call tomorrow at 2 pm, 2:30 pm, 3 pm, 3:30 pm, 4 pm or 4:30 pm central time to have the meet-and-confer. Please let us know if you would like to do so.

Best Regards,

Chris Ponder

From: Manuel Tijerino <manueltijerino@hotmail.com>
Sent: Saturday, April 5, 2025 8:51 PM
To: Harper Batts <HBatts@sheppardmullin.com>
Cc: patrnd@phelps.com; Chris Ponder <CPonder@sheppardmullin.com>;
lindsay.calhoun@phelps.com; mark.ackal@phelps.com; David Patron <David.Patron@phelps.com>;
Holly Zhang <HZhang@sheppardmullin.com>
Subject: Re: Meet-and-Confer Letter re: Discovery Responses – Tijerino v. Spotify USA Inc., Case No.
2:24-cv-02290-ILRL-DPC

Dear Mr. Batts,

Thank you for your response. I appreciate your desire to avoid burdening the Court and welcome a collaborative approach.

However, the Court entered a Scheduling Order on February 4, 2025 (Doc. 22), which permits discovery to proceed. Both parties exchanged Rule 26(a)(1) Initial Disclosures on February 25, 2025, and I served discovery requests on March 3, 2025. No court-ordered stay is in effect, and Rule 26(d)(1) allows discovery once a scheduling order has issued.

I've made a good-faith effort to meet and confer under Rule 37 regarding Spotify's objections and responses. While I understand your concern regarding confidentiality, a protective order can be proposed and entered if necessary — but that does not excuse non-responsiveness.

If Spotify wishes to file a motion to stay discovery, I do not object to your right to do so, but I will oppose the motion. Meanwhile, I am proceeding with my Rule 37 motion to preserve my rights under the current discovery schedule.

Respectfully,
Manuel Tijerino
Pro Se Plaintiff
manueltijerino@hotmail.com
(515) 803-8907

From: Harper Batts <HBatts@sheppardmullin.com>
Sent: Friday, April 4, 2025 10:36 AM
To: Manuel Tijerino <manueltijerino@hotmail.com>
Cc: patrnd@phelps.com <patrnd@phelps.com>; Chris Ponder <CPonder@sheppardmullin.com>;
lindsay.calhoun@phelps.com <lindsay.calhoun@phelps.com>; mark.ackal@phelps.com
<mark.ackal@phelps.com>; David Patron <David.Patron@phelps.com>; Holly Zhang
<HZhang@sheppardmullin.com>
Subject: RE: Meet-and-Confer Letter re: Discovery Responses – Tijerino v. Spotify USA Inc., Case No.
2:24-cv-02290-ILRL-DPC

Mr. Tijerino,

We received the letter you sent early yesterday morning concerning the discovery responses Spotify provided the previous evening. Given the number of responses provided across the Requests for Production, Requests for Admission, and Interrogatories and the timing of your letter, it appears that rather than actually reviewing the specific objections and responses provided for each of the discovery requests, you are utilizing an AI tool to generate a formulaic and inaccurate letter. Please confirm whether you are using an AI tool for correspondence or brief writing.

As an example, your letter complains that Spotify failed to answer any of the Requests for Admission. Not so – Spotify answered each and every RFA with a specific response and objections, including denials and admissions. Spotify also properly objected to the Discovery Requests due to the absence of an appropriate Protective Order in this action. Many of the Discovery Requests are seeking Spotify's highly confidential information and/or trade secrets, as well as confidential information of third parties that Spotify is not authorized to disclose in the absence of a protective order.

More fundamentally, Spotify believes that pursuing discovery (and litigating disputes over discovery) is premature at this stage given the pending Motion to Dismiss. As such, we plan to file a motion to stay discovery. As outlined below, we believe requesting a stay is appropriate in this case. In particular, the Fifth Circuit and Federal Circuit have each approved the stay of cases pending resolution of a motion to dismiss. *See, e.g., Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987) ("A trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined."); *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 804 (Fed. Cir. 1999) ("When a particular issue may be dispositive, the court may stay discovery concerning other issues until the critical issue is resolved." (citing 8 Charles Alan Wright & Richard L. Marcus, *Federal Practice & Procedure* § 2040, at 521 (2d ed. 1994))). As courts have noted, "the disposition of a motion to dismiss 'might preclude the need for discovery altogether thus saving time and expense.'" *Von Drake v. Nat'l Broad. Co.*, No. 3-04-CV-0652-R, 2004 U.S. Dist. LEXIS 25090, at *1 (N.D. Tex. May 20, 2004) (citation omitted).

A stay is particularly appropriate where, as here, where the motion to dismiss challenges venue. The Federal Circuit and the Fifth Circuit have long held that venue issues should be decided at the outset of a case and given top priority. *See e.g., In re Google Inc.*, No. 2015-138, 2015 WL 5294800, at *1 (Fed. Cir. July 16, 2015); *In re EMC Corp.*, 501 Fed. Appx. 973, 975 (Fed. Cir. 2013); *In re Horseshoe Entm't*, 337 F.3d 429, 433 (5th Cir. 2003). As the Federal Circuit has stated, the determination of "a proper and convenient venue [should occur] before addressing any substantive portion of the case." *In re Nintendo Co., Ltd.*, 544 Fed. Appx. 934, 941 (Fed. Cir. 2013).

We would like to meet-and-confer with you to determine whether you would agree to stay discovery in this case. We would also be willing to discuss other options to address our concerns short of filing a motion for a stay, such as the parties agreeing hold-off on any further discovery and discovery disputes until after the motion to dismiss has been decided. We do not want to bother the Court with another motion at this time if the parties can simply agree to defer any further discovery and discovery disputes.

Please let us know when you are available to meet and confer on our stay motion and potential alternative solutions.

Thanks,

Harper

Harper Batts

+1 650-815-2673 | direct

HBatts@sheppardmullin.com | [Bio](#)

From: Manuel Tijerino <manueltijerino@hotmail.com>

Sent: Thursday, April 3, 2025 1:05 AM

To: patron@phelps.com; Chris Ponder <CPonder@sheppardmullin.com>; Harper Batts <HBatts@sheppardmullin.com>; lindsay.calhoun@phelps.com; mark.ackal@phelps.com; David Patron <David.Patron@phelps.com>

Subject: Meet-and-Confer Letter re: Discovery Responses – Tijerino v. Spotify USA Inc., Case No. 2:24-cv-02290-ILRL-DPC

Dear Counsel,

Please find attached Plaintiff's meet-and-confer letter pursuant to Fed. R. Civ. P. 37 and the Court's Scheduling Order (Doc Rec. 22), addressing Spotify's objections and responses served on April 2, 2025, to Plaintiff's Interrogatories, Requests for Production, and Requests for Admission.

As outlined in the letter, discovery is active under the Court's February 4, 2025 Scheduling Order, and both parties have exchanged initial disclosures. The letter addresses concerns regarding blanket objections and insufficient responses across all three categories of discovery.

Please note that under Fed. R. Civ. P. 36(a)(3), failure to respond to Requests for Admission within 30 days of service may result in the matters being deemed admitted by default. The letter further provides until April 10, 2025, to supplement responses to all discovery requests before Plaintiff seeks judicial intervention.

If you believe a phone conference would help resolve these issues, I am available and willing to discuss. Otherwise, please confirm in writing whether you intend to supplement the responses.

Sincerely,

Manuel Tijerino

Pro Se Plaintiff

515-803-8907

manueltijerino@hotmail.com

Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.