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

GINKO, LLC *Plaintiff*, v. APPLE INC., *Defendant*.	Case No. 1-24-cv-01279-DAE JURY TRIAL DEMANDED

APPLE INC.'S OPPOSED MOTION TO STAY
PENDING *INTER PARTES* REVIEW OR TRANSFER

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Defendant Apple Inc. ("Apple" or "Defendant") respectfully moves to stay this patent case, which has barely moved beyond the pleadings. Meanwhile, Apple has filed a petition for *inter partes* review ("IPR") at the Patent Trial and Appeal Board ("PTAB") challenging the validity of all three asserted claims of the single asserted patent. Given the early stage of this case and the potential for the PTAB to invalidate all asserted claims, a stay at this juncture would significantly preserve judicial and party resources before claim construction briefing, depositions (aside from venue discovery), expert discovery, and dispositive motion practice. Moreover, a stay will not prejudice either party as plaintiff Ginko LLC ("Ginko") does not compete with Apple and can be fully compensated with monetary damages should it ultimately prevail. Under materially similar facts, this Court has previously granted a stay pending IPR. *Rubin v. Kahoot! ASA et al.*, Case No. 1:23-CV-00031-DAE (W.D. Tex. Apr. 14, 2023), Dkt. 44 at 2, 6 (here "*Rubin*"). Apple submits that this case should likewise be stayed pending IPR.

Alternatively, Apple requests that this case be stayed until the Court has decided Apple's fully briefed motion to transfer to the U.S. District Court for the Northern District of California ("NDCA"). Dkt. 42. Apple's opening claim construction brief is due in just over a month. Dkt. 39 at 3. If this case is transferred to NDCA, Ginko, not Apple, would file the first claim construction brief, and the sequence, number of briefs, time between briefs, and page limits would all be different under the NDCA Patent Local Rules than under this Court's Scheduling Order. *Compare* Dkt. 39 at 3 *with* NDCA PLR 4-5. A short stay pending this Court's decision on transfer would thus preserve judicial and party resources by ensuring that claim construction will be briefed according to the procedure of the venue that will decide the merits of the parties' disputes and will not cause Ginko prejudice, as any delay would be immaterial to the overall case schedule.

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I. FACTS

A. The Case Is In Its Early Stages

Ginko filed this case on October 24, 2024, accusing the NameDrop functionality in Apple's iOS-enabled mobile devices of infringing claims 10, 11, and 14 of U.S. Patent No. 11,025,573 (the "'573 Patent" or the "Asserted Patent").[1] Dkt. 1; Dkt. 29 ¶¶ 1, 10, 26-30, 50. The single Asserted Patent is broadly directed to methods of sharing data between two devices, using location data and permission settings.[2] Dkt. 29 ¶¶ 35-39; Dkt 29-1. The accused NameDrop functionality allows a user to "share new contact information with a nearby iPhone or Apple Watch."[3]

The Court issued a Scheduling Order on May 14, 2025, setting deadlines through submission of the Joint Claim Construction chart on April 1, 2026. Dkt. 39 at 4. The Court has not yet set a *Markman* hearing date. *Id.* Fact Discovery does not open until one week after the claim construction hearing and the Court has not yet set a trial date. *Id.* at 4, 6.

B. Apple's IPR Challenges All Three Asserted Claims

On August 28, 2025 Apple petitioned for IPR of 12 claims of the '573 Patent, including all 3 asserted claims.[4] Ex. B (IPR Petition). Apple's petition requests cancellation of all challenged claims in light of U.S. Patent No. 8,380,796 ("Robertson"), which is "directed to a social networking system which allows a user to locate other users and establish contact relationships with other users," and published patent application U.S. 2010/0280904 ("Ahuja"), which

[1] Ginko's preliminary infringement contentions assert the same 3 claims. Ex. A (PICs) at 1.
[2] Apple filed a motion to partially dismiss the original complaint. Dkt. 22 (Motion to Dismiss). In response to that motion, Ginko filed a First Amended Complaint ("FAC"). Dkt. 29.
[3] https://support.apple.com/guide/iphone/namedrop-iphone-share-contact-info-iph1b6c664b7/ios
[4] Apple petitioned for review of claims 1, 3-4, 6-12, and 14-15 of the '573 Patent. Ex. B (IPR Petition) at 2. On November 10, 2025, Ginko filed a Request for Discretionary Denial, asking that the PTAB Director exercise discretion to deny institution of Apple's petition for IPR. Ex. C (POR for Discretionary Denial) at 1. Apple's response is due on December 10, 2025.

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"discloses embodiments in which…mobile devices communicate in a peer-to-peer manner for purposes of identifying potential contacts." Ex. B (IPR Petition) at 5, 28, 62.

On October 10, 2025, Apple stipulated to the PTAB that "[i]f IPR is instituted" Apple "will not pursue" in this district court litigation (Civil Action No. 1:24-cv-01279):

> (i) the specific grounds asserted in IPR2025-01388, (ii) any other ground that was raised or could have been reasonably raised in an IPR (*i.e.*, any ground that could be raised under §§ 102 or 103 on the basis of prior art patent or printed publications), (iii) any ground based on a combination of system prior art (*i.e.*, prior art that is neither a patent or printed publication) and the references that form the basis of any ground raised in IPR2025-01388, or (iv) any ground that could be raised under §§ 102 or 103 on the basis of system art corresponding to a reference that that forms the basis of any ground raised in IPR2025-01388. Thus, there will be ***no*** overlap between the issues raised in the Petition and the district court, and this IPR will serve as a "true alternative" to the district court proceeding.

Ex. D (Sotera Stip.) at 1. The deadline for the PTAB to issue its institution decision is February 28, 2026—just over two months from now. Ex. E (Ntc. of Filing Date Accorded).

II. LEGAL STANDARD

A. Stay Pending *Inter Partes* Review

"Courts have the inherent power to manage their dockets, including the authority to order a stay." *THL Holding Co., LLC v. Apple Inc.*, No. 1:23-cv-0548-DAE-SH, 2024 WL 4846765, at *2 (W.D. Tex. Nov. 15, 2024) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426-67 (Fed. Cir. 1988)).

When deciding if a stay is appropriate, courts consider: (1) whether a stay will simplify the issues in question; (2) whether a stay would unduly prejudice or present a clear tactical disadvantage to the nonmoving party; and (3) the status of the litigation at the time a stay is requested. *See id.* (citing *MiMedx Grp., Inc. v. Tissue Transplant Tech. Ltd.*, No. SA-14-CA-719, 2015 WL 11573771, at *2 (W.D. Tex. Jan. 5, 2015)). In addition, courts also consider "the totality of the circumstances." *Id.* (citing *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936)).

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B. Stay Pending Transfer

Courts typically consider three factors in determining whether a stay is warranted while a motion to transfer is pending: (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. *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).

III. THIS CASE SHOULD BE STAYED PENDING *INTER PARTES* REVIEW OR TRANSFER

A. All Factors Favor A Stay Pending *Inter Partes* Review

1. A Stay Of This Action Will Simplify The Issues And Reduce The Burden On This Court And The Parties

This first factor weighs in favor of granting a stay because Apple has challenged the validity of all three asserted claims from the only asserted patent on multiple grounds at the PTAB. Ex. B (IPR Petition) at 2; *UMBRA Techs. Ltd. (UK) v. Cisco Sys., Inc.*, No. 1:23-CV-903-DII, 2024 WL 2155274, at *1 (W.D. Tex. Apr. 25, 2024) ("[T]he PTAB could find that all or some of the claims [asserted from the '680 and '246 Patents] are unpatentable," at which point "the issues in this case could be greatly simplified."). If the PTAB finds all three asserted claims invalid, the IPR will dispose of the case entirely. Even if only the asserted independent claim (*i.e.*, claim 10) is invalidated, a stay would cut the number of terms at issue for claim construction in half, as one of the two terms proposed for construction appears in only that claim. Ex. F (Apple's proposed terms for construction); *Bell Semiconductor, LLC v. NXP Semiconductors, N.V.*, No. 1:20-CV-611-LY, 2022 WL 1447948, at *2 (W.D. Tex. Feb. 7, 2022) ("The standard is simplification of the district court case, not complete elimination of it by the PTAB.") (internal citation omitted).

In the unlikely event that the PTAB institutes the IPRs but declines to cancel the claims, the proceedings would still simplify the district court case in multiple ways. First, Apple has

stipulated that it will not raise any grounds for invalidity that was raised or could have been reasonably raised in an IPR in this case if IPR is instituted—as a result, mere institution of Apple's IPR will simplify the issues in this case by limiting the invalidity arguments that Apple can raise in the district court, should any asserted claims survive IPR. Ex. D (Sotera Stip.); *SunPower Corp. v. PanelClaw, Inc.*, No. 12-1633-GMS, 2014 WL 12774919, at *2 (D. Del. May 16, 2014) ("[T]he estoppel that would attach to issues that [the IPR petitioner] raised or could have raised would also further simplify the court's proceedings after the PTAB's review." (citing 35 U.S.C. § 315(e)(2)). And second, determinations made by the PTAB and any statements made by the parties or PTAB during the IPR proceeding become part of the intrinsic record and may inform claim construction. *See Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1362 (Fed. Cir. 2017); *Advanced Electrolyte Techs. LLC v. Samsung SDI Co., Ltd*, No. A:17-CV-0030-LY, 2018 WL 2770648, at *4 (W.D. Tex. June 8, 2018) (claim construction included in PTAB's order to deny request for IPR proceeding aided claim construction in district court).

Even where IPR petitions have not yet been instituted by the PTAB, judicial economy still weighs in favor of a stay because the benefit of potential case narrowing outweighs the brief delay prior to an institution decision.[5] *Nobots LLC v. Google LLC*, No. 1:22-cv-00585-RP, Dkt. 53 at 2 (W.D. Tex. July 13, 2022) (herein "*Nobots*"); *Blephex LLC v. Pain Point Med. Sys., Inc.*, No. 3:16-CV-0410-N, 2016 WL 7839343, at *1-2 (N.D. Tex. Nov. 3, 2016) (short stay prior to decision to institute will not prejudice plaintiff and promotes judicial efficiency). As this Court has found, "should the PTAB decide not to initiate *inter partes* review—a short stay of the proceedings will not unduly prejudice [Plaintiff]." *Nobots* at 2. As a result, courts in this District routinely stay

[5] The deadline for the PTAB to issue its institution decision is February 28, 2026—just over two months from now. Ex. E (Ntc. of Filing Date Accorded).

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cases where IPRs have been filed but not yet instituted. *See, e.g.*, *Rubin* at 2, 6 (granting stay prior to institution); *Meetrix IP, LLC v. Zoho Corp.*, No. 1:22-cv-00588-LY, Dkt. 43, slip op. at 3 (W.D. Tex. Feb. 28, 2023) (same) (herein "*Meetrix*"); *Nobots*, Dkt. 53 at 2 (same); *Anza Tech., Inc. v. Avant Tech., Inc.*, 2018 WL 11314191, at *2 (W.D. Tex. Nov. 15, 2018) (same).

Because the validity of all asserted claims has been challenged at the PTAB, staying the case pending IPR could save substantial judicial and party resources. As a result, this factor weighs in favor of a stay. *Rubin* at 2, 6; *Meetrix* at 3; *Nobots* at 2; *Anza Tech.*, 2018 WL 11314191, at *2.

2. A Stay Would Not Cause Ginko Any Prejudice

Ginko cannot credibly claim that it would suffer undue prejudice or tactical disadvantage if the Court grants a stay. Ginko has not alleged that it markets any products or services related to the '573 Patent or even licenses the '573 Patent to anyone who does. Dkt. 29 (FAC). As a result, Ginko does not compete with Apple and cannot lose market share or revenue to any alleged infringement of the asserted patent. Monetary relief would therefore be sufficient to compensate Ginko should it ultimately prevail in this case. *See NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-CV-1058-WCB, 2015 WL 1069111, at *3 (E.D. Tex. Mar. 11, 2015). The Federal Circuit has found that a "stay will not diminish the monetary damages to which [Plaintiff] will be entitled if it succeeds" and courts in this District have concluded that "mere delay in having one's claim adjudicated does not constitute undue prejudice." *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1317-18 (Fed. Cir. 2014); *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); *Bell Semiconductor*, 2022 WL 1447948, at *4-5.

By the same token, delay in adjudicating a plaintiff's claims does not constitute undue prejudice sufficient to deny a request for a stay. *See, e.g.*, *e-Watch, Inc. v. ACTi Corp., Inc.*, No. SA-12-CA-695-FB, 2013 WL 6334372, at *9 (W.D. Tex. Aug. 9, 2013), *R&R adopted*, 2013 WL

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6334304 (W.D. Tex. Aug. 26, 2013) ("'[T]he mere fact and length of any delay . . . does not demonstrate prejudice sufficient to deny [a] request for a stay.'"); *NFC Tech.*, 2015 WL 1069111, at *2 (finding that delay "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"); *Papst Licensing GmbH & Co., KG v. Apple, Inc.*, 2017 WL 11638426, at *3 (E.D. Tex. June 16, 2017) ("[C]oncerns such as timely enforcement of patent rights are generally too generic, standing alone, to defeat a stay motion." (internal citations omitted)).

Finally, a stay pending IPR would not tactically disadvantage Ginko because Ginko does not compete with Apple and Ginko will have a full and fair opportunity to defend the validity of its patent at the PTAB. *See Netlist, Inc. v. Micron Technology, Inc. et al.*, Case No. 1:22-cv-00134-LY, Dkt. 68 at 2 (W.D. Tex. May 11, 2022) (herein "*Netlist*") (stay pending PTAB's institution decision would not unduly prejudice or present a clear tactical disadvantage to plaintiff).

Because the requested stay will not cause Ginko to suffer undue prejudice or tactical disadvantage, this second factor weighs in favor of a stay.

3. A Stay Is Appropriate Given The Early Stage Of This Litigation

This case is still in its infancy. The parties have exchanged preliminary infringement and invalidity contentions and proposed terms for claim constructions, but opening claim construction briefs are not due until January 16, 2026 and the Court has not yet set a *Markman* hearing date. Dkt. 39 (Scheduling Order) at 3-4. Fact discovery will not open for at least five months, expert discovery will not begin until Fall 2026, and the Court has not yet set a trial date. *Id.* at 6.

A stay is particularly warranted in cases like this where little or no discovery has been conducted. *VirtualAgility*, 759 F.3d at 1317 (noting that a case "was still at its infancy" when "[d]iscovery had not yet begun and no trial date had been set"); *Nobots* at 2 (granting stay pending pre-institution IPR where no trial date was set and no fact discovery had taken place); *Netlist* at 4

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(same); *Anza Tech.*, 2018 WL 11314191, at *2 (same); *e-Watch*, 2013 WL 6334372, at *9 (granting stay pending pre-institution IPR); *Micrografx, LLC v. Google, Inc.*, No. 3:13-CV-3595-N, 2014 WL 12580455, at *2 (N.D. Tex. July 9, 2014) (same). The early stage of this case thus weighs in favor of a stay as there is far more work ahead of the parties and the Court than behind. *Polaris PowerLED Techs., LLC v. Dell Techs. Inc.*, No. 1:22-CV-973-RP, 2024 WL 1546973, at *4 (W.D. Tex. Mar. 5, 2024) ("Continuing to stay the case while it is in its early stages will best conserve the parties' and the Court's resources."); *Landmark Tech., LLC v. iRobot Corp.*, No. 6:13cv411 JDL, 2014 WL 486836, at *3 (E.D. Tex. Jan. 24, 2014) ("Staying a case at an early juncture can advance judicial efficiency and maximize the likelihood that neither the [c]ourt nor the parties expend their assets addressing invalid claims.") (internal quotation marks and citation omitted).

Because all three factors weigh in favor of a stay pending IPR, Apple respectfully requests a stay pending resolution of its petition for IPR.

B. All Factors Favor A Stay Pending A Decision On Transfer

Even if the Court is not inclined to grant a stay pending IPR at this time, Apple respectfully requests that the Court grant a short stay pending its decision on Apple's fully briefed motion to transfer. Dkt. 42. All three relevant factors favor a stay here.

1. Factor One: A Stay Will Not Prejudice Ginko

A stay pending resolution of Apple's motion to transfer will not prejudice Ginko because that motion is fully briefed and a short pause to allow the Court to decide it would be immaterial to the overall case schedule. Ginko filed this case over a year ago, fact discovery has not opened, and the Court has not yet set dates for the *Markman* hearing or trial. Given the early stage of the case and the deliberate pace at which it has progressed to date, a short stay would have an imperceptible impact. If anything, a brief stay now would benefit both parties by deciding which

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venue will decide claim construction before briefing starts—particularly important here in light of the material differences in the procedures for *Markman* briefing set forth in this Court's Scheduling Order and the NDCA Patent Local Rules (discussed immediately below). Because a stay would benefit both parties and would not prejudice Ginko, Factor One favors a stay.

2. Factor Two: The Parties Would Waste Resources By Undertaking Claim Construction Before A Transfer Decision

The Fifth and Federal Circuits have both found that "lengthy delays in resolving transfer motions can frustrate the intent of § 1404(a) by forcing defendants 'to expend resources litigating substantive matters in an inconvenient venue while a motion to transfer'" remains unresolved. *In re TracFone Wireless, Inc.*, 848 F. App'x 899, 900 (Fed. Cir. 2021) (citing *In re Google Inc.*, No. 2015-138, 2015 WL 5294800, at *1 (Fed. Cir. July 16, 2015)); *cf. In re TikTok, Inc.*, 85 F.4th 352, 363 (5th Cir. 2023) (finding long delay in resolving transfer motion was "a plain violation of our instruction to give § 1404(a) motions 'a top priority in the handling of a case.'"). In this case, material differences between the procedures for claim construction set forth in this Court's Scheduling Order and the NDCA Patent Local Rules could require a re-do of some or all briefs, absent a stay. The table below illustrates the key differences:

Event	Scheduling Order (Dkt. 39)	NDCA Patent L.R. 4-5, L.R. 7
Opening CC Brief	Filed by Apple, limited to 20 pages	Filed by Ginko (*i.e.*, the party claiming patent infringement), limited to 25 pages
Responsive CC Brief	Filed by Ginko 4 weeks later, limited to 20 pages	Filed by Apple 14 days later, limited to 25 pages
Reply CC Brief	Filed by Apple 3 weeks later, limited to 10 pages	Filed by Ginko 7 days later, limited to 15 pages
Sur-reply CC brief	Filed by Ginko 3 weeks later, limited to 10 pages	N/A

The party that files the opening claim construction brief, the sequence of briefs that follows, the time between briefs, and the page limits all differ between this Court's Scheduling Order and the

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NDCA Patent Local Rules. It would thus be a waste of the parties' resources to begin claim construction briefing before this Court decides Apple's motion to transfer, only to have to re-start that briefing under the NDCA Patent Local Rules should the Court grant Apple's motion. *See In re Apple Inc.*, 979 F.3d 1332, 1337 (Fed. Cir. 2020); *In re EMC Corp.*, 501 F. App'x 973, 975-76 (Fed. Cir. 2013); *In re Google*, 2015 WL 5294800, at *1-2. The current deadline for Apple's opening claim construction brief is fast approaching on January 16, 2026, so a stay is needed now to avoid the waste of resources that would be caused by switching procedures for claim construction mid-stream. Dkt. 39 at 3. Factor Two thus weighs in favor of a stay.

3. Factor Three: A Stay Will Conserve Judicial Resources

Staying this case until the Court decides Apple's motion to transfer will likewise conserve judicial resources by ensuring that the parties brief claim construction according to the procedure of the Court that decides the merits of claim construction. As the Federal Circuit has explained, "[j]udicial 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." *In re Apple Inc.*, 52 F.4th 1360, 1363 (Fed. Cir. 2022) (internal citation omitted). In light of the material differences between the procedures for claim construction briefing in this Court's Scheduling Order and the NDCA Patent Local Rules, it would be a waste of judicial resources to begin one court's procedure before this Court decides which venue will ultimately address the merits of claim construction. As a result, Factor Three also weighs in favor of a stay.

IV. CONCLUSION

For the foregoing reasons, Apple respectfully requests that the Court stay this case pending Apple's Petition for *Inter Partes* Review and/or Apple's Motion To Transfer (Dkt. 42).

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Dated: December 9, 2025

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CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Defendant conferred with Plaintiff's counsel on December 4, 2025 and that Plaintiff's counsel opposes the relief requested in this motion.

/s/ Melissa L. Hotze
Melissa L. Hotze

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon counsel for the Plaintiff via the CM/ECF electronic noticing system on December 9, 2025.

/s/ Melissa L. Hotze
Melissa L. Hotze

APPLE
EXHIBIT 1010 - 0016

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

GINKO, LLC *Plaintiff*, v. APPLE INC., *Defendant*.	Case No. 1-24-cv-01279-DAE JURY TRIAL DEMANDED

ORDER GRANTING APPLE INC.'S OPPOSED MOTION TO STAY PENDING *INTER PARTES* REVIEW OR TRANSFER

BEFORE THE COURT is Defendant Apple Inc.'s Opposed Motion to Stay Pending *Inter Partes* Review or Transfer. Having reviewed the Motion, the court hereby **GRANTS** the Motion to Stay.

SIGNED this _____ day of _____, 2025.

_____
DAVID ALAN EZRA
SENIOR UNITED STATES DISTRICT JUDGE

APPLE
EXHIBIT 1010 - 0017