

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNIVERSAL SECURE REGISTRY, LLC,

Plaintiff,

vs.

APPLE INC., VISA INC., and VISA U.S.A., INC.,

Defendants.

C.A. No. 17-585-CFC-SRF

DEFENDANT APPLE INC.'S NOTICE OF SUBSEQUENT AUTHORITY

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Dated: August 30, 2018

Pursuant to D. Del. LR 7.1.2(b), Defendant Apple Inc. submits supplemental authority in support of its Motion to Stay (D.I. 90).

First, in the recent decision in *Qualcomm Inc. v. Apple Inc.*, No. 3:17-cv-2402-CAB-MDD, D.I. 172 (S.D. Cal. Aug. 29, 2018), attached as Ex. 1, Judge Bencivengo granted a motion to stay pending decision by the Patent Trial and Appeal Board (“PTAB”) on whether to institute Apple’s petitions for *inter partes* review (“IPR”) of the six patents at issue. *Id.* at 2. The court found that the simplification of the issues factor favors a stay because, as a result of *SAS Institute, Inc. v. Iancu*, 138 S. Ct. 1348 (2018), “for any petition on which the PTAB institutes IPR, each of the challenged claims will either (1) be confirmed, estopping Apple from asserting invalidity challenges in this case that it raised or could reasonably have raised in the IPR, or (2) be invalidated, reducing the number of issues before the Court.” *Id.* at 3. The court further reasoned that “[i]n this case with six patents and numerous claims at issue, the PTAB’s decisions whether to institute will impact the contours of the case. If the PTAB institutes and cancels all the asserted claims of any patent, it will remove that patent from the case, thereby significantly reducing the scope of this litigation. Alternatively, if the PTAB declines to institute or institutes and confirms any patent, statutory estoppel may simplify the assertion of invalidity defenses. This factor favors a temporary stay.” *Id.* at 4.

Second, in USR’s Patent Owner Preliminary Response to Apple’s CBM Petition for U.S. Patent No. 8,856,539, CBM2018-0023, attached as Ex. 2, USR disclaimed claims 5–8, 17–20, and 26–30 of the ’539 patent. All these claims were asserted in USR’s infringement contentions in this litigation. This is relevant to Apple’s argument in its pending Motion to Stay because it demonstrates that the PTAB proceedings are already simplifying this case and will likely continue to do so.

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