

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

FLYPSI, INC., (D/B/A FLYP),

Plaintiff,

v.

GOOGLE LLC,

Defendant.

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CIVIL ACTION NO. 6:22-cv-00031-ADA

JURY TRIAL DEMANDED

**DEFENDANT GOOGLE LLC’S OPPOSED MOTION TO STAY
PROCEEDINGS PENDING MANDAMUS REVIEW**

This litigation is currently proceeding in two places: this Court and the Federal Circuit. After this Court denied Defendant Google LLC’s (“Google”) motion to transfer (ECF No. 74), Google filed its Petition for Writ of Mandamus to the Court of Appeals for the Federal Circuit (“the Mandamus Petition”). *In re Google LLC*, No. 23-112 (Fed. Cir. Dec. 22, 2022). Until that process concludes, Google and Plaintiff Flypsi, Inc. (“Flyp”) will litigate in two separate forums. A stay pending resolution of the Mandamus Petition will respect this Court’s judicial resources by eliminating that inefficiency and will conserve both parties’ resources. Flyp also will not be prejudiced by the relatively short stay necessary to allow resolution of the Mandamus Petition. And this is an appropriate stage of the case for a stay: fact discovery is underway, which will likely lead to discovery disputes, and the February 3 deadline for Final Infringement and Invalidity Contentions is fast approaching. ECF No. 85. Google therefore respectfully requests that the Court stay all proceedings pending the resolution of the Mandamus Petition. Flyp opposes the requested stay.

I. BACKGROUND

Flyp filed this case in January 2022. ECF No. 1. Google moved to transfer to the Northern District of California in July of that year. ECF No. 42. This Court denied transfer approximately one and a half months ago on November 21, concluding that “even with [the compulsory process and local interest] factors favoring transfer, the Court finds that Google has failed to meet its burden of showing that the NDCA is a clearly more convenient forum.” ECF No. 74 at 29. Google filed a Mandamus Petition requesting that the Federal Circuit vacate the transfer order on December 22, 2022. *In re Google LLC*, No. 23-112 (Fed. Cir. Dec. 22, 2022). In the meantime, there is much substantive work being done and to be done, including the majority of fact discovery, expert discovery, and preparation of Final Infringement and Invalidity Contentions.

II. LEGAL STANDARD

The “power to stay proceedings” is part of a district court’s “inherent power ‘to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.’” *United States v. Colomb*, 419 F.3d 292, 299 (5th Cir. 2005) (citation omitted). It is well-established that “[i]f the district court or the court of appeals finds it appropriate to stay proceedings while a petition for mandamus relief is pending, such a stay may be granted in the court's discretion.” *Woodson v. Surgitek, Inc.*, 57 F.3d 1406, 1416 (5th Cir. 1995).

In deciding whether to stay litigation, courts consider: “(1) whether the stay will unduly prejudice the nonmoving party, (2) whether the proceedings before the court have reached an advanced stage, including whether discovery is complete and a trial date has been set, and (3) whether the stay will likely result in simplifying the case before the court.” *Kirsch Rsch. & Dev., LLC v. IKO Indus., Inc.*, No. 6:20-cv-00317-ADA, 2021 WL 4555610, at *2 (W.D. Tex. Oct. 4, 2021) (citation omitted). It may be appropriate to grant a stay when the petition for mandamus will determine whether the case will be transferred to a different court. *See Motion Offense, LLC, v.*

Google LLC, No. 6:21-cv-00514-ADA, ECF No. 77 (W.D. Tex. Sept. 15, 2022) (ordering a stay after transfer was granted while plaintiff's petition for mandamus regarding transfer under 28 U.S.C. § 1404(a) had yet to be filed).

III. A STAY PENDING RESOLUTION OF THE MANDAMUS PETITION IS WARRANTED

A. A Stay Would Not Unduly Prejudice Flyp or Present a Clear Tactical Disadvantage to Flyp

In this case, the Mandamus Petition will be fully briefed on January 9. A relatively short stay to fully resolve the issue regarding the correct venue will not prejudice, let alone *unduly* prejudice, Flyp. Nor would it present Flyp with any tactical disadvantage. *See Nobots LLC v. Google LLC*, No. 1-22-cv-00585-RP, ECF No. 53 (W.D. Tex July 13, 2022) (“[A] short stay of the proceedings will not unduly prejudice [Plaintiff].”). Flyp itself has demonstrated a lack of urgency in pursuing a remedy from Google. For example, Flyp delayed nearly seven months to bring this action against Google after asserting four of the same five patents against another party in another suit, *Flypsi, Inc. v. Dialpad, Inc.*, No. 6:21-cv-00642-ADA, ECF No. 1 (W.D. Tex. June 21, 2021). A stay will not exclude any legal remedy currently available to Flyp. In the event that Flyp prevails in its claims of infringement, Flyp will be fully compensated by monetary damages. “[M]ere delay in collecting those damages does not constitute undue prejudice.” *Crossroads Sys., Inc. v. Dot Hill Sys. Corp.*, No. 13-cv-01025-SS, 2015 WL 3773014, at *2 (W.D. Tex. June 16, 2015). Further favoring a stay is the fact that Flyp has not asked this Court for a preliminary injunction. *See, e.g., QSPX Devs. 5 Pty Ltd. v. Cinea Corp.*, No. 2:07-cv-118-CE, 2009 WL 8590964, at *2 (E.D. Tex. Aug. 27, 2009) (granting a stay where the plaintiff had not sought a preliminary injunction).

B. A Stay Simplifies the Issues and Trial of the Case

Permitting the Federal Circuit to settle the issue of venue before proceeding would simplify the issues in this case. The Court's local rules differ in important ways from those of the Northern District of California. For example, there are material differences in the respective districts' contention requirements, including the timing of contentions. *See* NDCA Patent Local Rules 3-1 and 3-3, at *4–6 (Exhibit 1); *See also* Standing Order Governing Proceedings (OGP) 4.2 – Patent Cases at 2–3, 12. Specifically, the OGP in this court provides for Final Infringement and Invalidity Contentions; the Northern District of California Patent Local Rules contain no such requirement. The parties should not engage in potentially unnecessary activity while the Federal Circuit examines the proper venue. A stay would avoid this inefficiency.

C. Discovery Is Accelerating and the Contention Deadline Is Approaching

This case is leaving the beginning stages of fact discovery, and that process will soon accelerate: Defendant and Plaintiff have recently provided responses to the other's initial interrogatories and requests in the past month. The February 3 Final Infringement and Invalidity Contentions deadline is approaching, ECF No. 85, and the March 8 deadline to amend pleadings is following close behind, ECF No. 73. In the coming months the parties will conduct extensive fact and, subsequently, expert discovery, including depositions, all of which will consume considerable party resources. *Bell Semiconductor, LLC v. NXP Semiconductors, N.V.*, No. 1-20-cv-00611-LY, 2022 WL 1447948, at *2 (W.D. Tex. Feb. 7, 2022) (granting a stay when “[t]he parties have yet to complete a substantial amount of discovery—including depositions”). That discovery should be conducted under the local rules of the court that will preside over the trial, and the trial court should resolve any arising discovery disputes. And the fact that the Court has set a trial date favors a stay; as trial approaches, the circumstances will increasingly favor staying the case to avoid mooted the issues presented in the Mandamus Petition. *See In re Volkswagen of*

America, Inc., No. 07-40058 (5th Cir. 2008) (ordering a stay while a petition for mandamus to transfer under 28 U.S.C. § 1404(a) was pending).

IV. CONCLUSION

The Mandamus Petition, together with the current stage and upcoming deadlines of this case, warrant a stay. The parties and Court should not spend valuable time and resources conducting extensive discovery, resolving disputes, or otherwise litigating a case that may be soon transferred. Defendant therefore requests that the Court stay all proceedings pending the Mandamus Petition's resolution.

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