

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

AGIS SOFTWARE DEVELOPMENT
LLC,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

CIVIL ACTION NO. 2:19-cv-361-JRG
(LEAD CASE)

JURY TRIAL DEMANDED

AGIS SOFTWARE DEVELOPMENT
LLC,

Plaintiff,

v.

WAZE MOBILE LIMITED,

Defendant.

CIVIL ACTION NO. 2:19-cv-359-JRG

JURY TRIAL DEMANDED

AGIS SOFTWARE DEVELOPMENT
LLC,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO. LTD.
and SAMSUNG ELECTRONICS
AMERICA, INC.,

Defendants.

CIVIL ACTION NO. 2:19-cv-362-JRG

JURY TRIAL DEMANDED

DEFENDANTS' MOTION TO STAY PENDING
RESOLUTION OF *IN RE GOOGLE* APPEAL

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I. INTRODUCTION

Google LLC (“Google”), Waze Mobile Limited (“Waze”), Samsung Electronics Co. Ltd., and Samsung Electronics America, Inc. (collectively, “Samsung,” and collectively with Google and Waze, “Defendants”) respectfully move for a stay of all proceedings pending the resolution of *In re Google*, No. Case No. 20-144 (Fed. Cir.), the Federal Circuit mandamus proceeding that is reviewing the Court’s venue decision in *Personalized Media Communications v. Google*, Case No. 2:19-cv-00090-JRG (“*PMC v. Google*”). On September 2, AGIS filed an unopposed motion for supplemental briefing on Google’s Rule 12(b)(3) motion to dismiss or transfer for improper venue in view of *PMC v. Google* and its supplemental brief, which simply regurgitated the Court’s findings in its *PMC v. Google* decision (Dkt. 117, 118). The outcome of *In re Google* is likely to be determinative of Google’s motion (Dkt. 28), which, in turn, also impacts pending motions to transfer filed by Waze and Samsung (Dkt. 35, 38).

This litigation remains in its early stages, and a stay is appropriate to allow venue-related issues to be decided before additional substantive proceedings take place. The stay Defendants seek is expected to be short—briefing is already complete in *In re Google*, suggesting that a decision will arrive in a few months. AGIS will not be prejudiced given the brief length of the stay and early stage of the cases, and because it is a non-practicing entity. Conversely, absent a stay, Defendants will be prejudiced significantly by being compelled to engage in several critical case events scheduled for the next three months, including the *Markman* hearing, close of fact discovery, expert discovery, and dispositive motions. Similarly, judicial economy will be served by waiting on the resolution of *In re Google*, which will inform the resolution of Defendants’ motions. Because all factors favor a stay, Defendants’ motion should be granted. In the alternative, Defendants request that the Court defer decision on their motions to dismiss and transfer pending the resolution of *In re Google*.

II. BACKGROUND

A. Defendants' Motions To Dismiss Or Transfer

On February 18, 2020, Google filed its motion to dismiss or transfer for improper venue under FRCP 12(b)(3) and 28 U.S.C. § 1406(a) on the basis that Google had no “regular and established place of business” in the District. Dkt. No. 25. On March 3, 2020, Samsung and Waze filed their motions to transfer based on convenience under 28 U.S.C. § 1404(a). Dkt. Nos. 35, 38. Briefing on these motions was completed by April 28, 2020.

With Defendants' motions still pending, on July 16, 2020, in *PMC v. Google*, this Court found venue proper over Google in the Eastern District of Texas, finding that Google had a “regular and established place of business” based on a facility owned by Communications Test Design, Inc. (“CTDI”) in Flower Mound, Texas. *See PMC v. Google*, Dkt. No. 291. Google filed a petition for a writ of mandamus on that decision on August 4, 2020, and briefing by the parties on the mandamus proceedings was completed on August 17, 2020. *See In re Google*, Dkt. No. 17. Based on prior proceedings, a decision is expected from the Federal Circuit in the next few months. *See, e.g., In re Google LLC*, No. 19-126 (oral argument set; four months between the conclusion of non-amicus briefing and order); *In re Google LLC*, No. 18-152 (no oral argument; one month between the conclusion of briefing and order).

Concurrently, in view of the Court's decision in *PMC v. Google*, on September 2, 2020, AGIS moved unopposed for supplemental briefing on Google's motion to transfer or dismiss. *See* Dkt. 117. That same day, AGIS filed its supplemental brief that presented the same grounds for venue as those addressed in this Court's *PMC v. Google*'s decision, namely a repair facility operated by CTDI in Flower Mound, Texas. Dkt. 118. Under AGIS's unopposed motion, Google may file a responsive supplemental brief before September 17, 2020. Dkt. 117. Thus, the outcome of the mandamus petition is expected to be determinative of Google's motion to

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