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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

j2 GLOBAL, INC., and)	Case No. CV 12-03439 DDP (PLAx)
ADVANCED MESSAGING)	
TECHNOLOGIES, INC.,)	ORDER GRANTING DEFENDANT'S MOTION
)	TO DISMISS PURSUANT TO RULE
Plaintiffs,)	12(B)(3)
)	
v.)	[Docket No. 26]
)	
INTEGRATED GLOBAL CONCEPTS,)	
INC.,)	
)	
Defendant.)	
)	
_____)	

I. Background

j2 Global, Inc. ("j2") has sued Integrated Global Concepts, Inc. ("IGC") for patent infringement. (See generally Compl., Docket No. 1.) In response, IGC brought a suit against j2 in the Northern District of California (the "Northern District action") to determine the enforceability of a forum selection clause in a contract between the parties that IGC states implicates the instant case. (Order Granting in Part Defendant's Motion to Dismiss or Stay Proceedings ("Order"), Docket No 23 at 2:15-17.) Pursuant to IGC's request, this Court stayed the instant case, pending the

1 determination by the Northern District whether it would enforce the
2 forum selection clause. (See generally Order at 4:1-8.) After the
3 stay and in response to IGC's suit, j2 brought counterclaims in the
4 Northern District consisting of the same patent infringement claim
5 made in the present case. (See generally Heiser Decl. Ex. 4;
6 Docket No. 28 ("On April 12, 2013, j2 asserted the same Patent
7 Claims that are in this case . . . in the Northern District
8 action.") Because of these counterclaims, IGC has filed the
9 present Motion to Dismiss Pursuant to Rule 12(b)(3) ("Motion").
10 (See generally Docket No. 26.) On the same day that IGC filed its
11 reply brief in this case, j2 filed a Motion to Dismiss Counts IV,
12 V, and Prayer for Punitive Damages of Plaintiff Integrated Global
13 Concepts, Inc.'s ("IGC") Counterclaims Pursuant to Rule 12(b)(6) in
14 the Northern District action. (Integrated Global Concepts, Inc. v.
15 J2 Global, Inc. et al., No. 12-cv-3434-RMW, Docket No. 47.)¹

16 **II. Legal Standard for Lifting a Stay**

17 A district court has discretionary power to stay proceedings
18 in its own court. See Landis v. North American Co., 299 U.S. 248
19 (1936). When the circumstances have changed such that the reasons
20 for imposing the stay are nonexistent or inappropriate, a court has
21 the inherent power and discretion to lift the stay. Canady v. Erbe
22 Elektromedizin GmbH, 271 F. Supp. 2d 64, 74 (D.D.C.2002); Indep.
23 Living Ctr. of S. Cal. v. Douglas, No. CV 08-3315, 2012 WL
24 1622346, at *2 (N.D. Cal. 2012).

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27 ¹The Court takes judicial notice of this filing. Fed. R.
Evid. 201.

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1 Comity is "a discretionary doctrine which permits one
2 district to decline judgment on an issue which is properly before
3 another district." Church of Scientology v. United States Dep't of
4 the Army, 611 F.2d 738, 749 (9th Cir. 1979). "In its classic
5 formulation, the comity doctrine permits a district court to
6 decline jurisdiction over a matter if a complaint has already been
7 filed in another district." Id. (discussing what is sometimes
8 called the "first to file" rule). However, in light of concerns
9 for scarce judicial resources, comity demands a "flexible approach"
10 to allow a district court to choose not to exercise jurisdiction
11 over an earlier filed case when a later case before a different
12 court is further along in the proceedings. Id. Comity allows a
13 district court to "transfer, stay, or dismiss" a case "involving
14 the same parties and issues" as another case. See Cedars-Sinai
15 Med. Ctr. v. Shalala, 125 F.3d 765, 769 (9th Cir. 1997). Dismissal
16 should not be granted when a party will suffer prejudice.
17 Alltrade, Inc. v. Uniweld Products, Inc., 946 F.2d 622, 629 (9th
18 Cir. 1991).

19 **III. Analysis**

20 Because conditions have changed since the Court ordered the
21 stay, lifting it is appropriate. Canady, 271 F. Supp. 2d at 74.
22 Most notably, since the Court ordered the stay, in the Northern
23 District action j2 has counterclaimed the same patent claims at
24 issue here and has moved to dismiss various IGC counterclaims.
25 Thus the Court will decide the dismissal issue.

26 Dismissal initially seems appropriate, as the Northern
27 District action is further along and it involves the same patent

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1 infringement claims. See Church of Scientology, 611 F.2d at 749.
2 Additionally, j2's patent infringement counterclaims in the
3 Northern District action trigger disclosures that the parties must
4 quickly provide each other. See N.D. Cal. Patent Rule 3-1.
5 Further, after IGC filed this motion, j2 filed a motion to dismiss
6 various IGC counterclaims in the Northern District action: IGC's
7 declaratory relief claims for exhaustion and implied license, and
8 IGC's claim for punitive damages. (See generally Docket No. 47 in
9 the Northern District action.) Since j2 has asserted the same
10 patent claims in the Northern District action, the counterclaims it
11 is seeking to dismiss would likely be involved in this action.²
12 Accordingly, dismissal seems appropriate.

13 j2's brief states, but does not provide evidence to support,
14 that IGC plans to "bring a motion to bifurcate the Northern
15 District action." Docket No. 28 at 2 :19-20. An "unsworn
16 statement in [a party's] briefing is not evidence." J & J Sports
17 Prods., Inc. v. Jimenez, No. 11-CV-5435-LHK, 2012 WL 4713716, at *2
18 (N.D. Cal. Oct. 1, 2012) (citing United States v. Zermeno, 66 F.3d
19 1058, 1062 (9th Cir.1995).) j2 then states that, "[i]f the
20 Northern District action is bifurcated and then j2 prevails on
21 IGC's Contract Claim, then the reason for litigating j2's Patent
22 claims in the Northern District . . . will no longer exists." Id.
23 at 3:27-4:2. But j2's argument is based on speculation of what
24 might happen.

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27 ²It appears that, because of the stay, IGC has not filed an
28 answer or any counterclaims in this case.

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1 j2 states that dismissal would cause prejudice. See Alltrade,
2 Inc. v. Uniweld Products, Inc., 946 F.2d at 629. j2 states that
3 because it is only entitled to damages for infringement for the six
4 years' preceding the filing of its complaint, it will lose damages
5 because the instant case was filed before the Northern District
6 action's counterclaims. Docket No. 28:9-17. However, j2 provides
7 no calculations or figures to explain how much, if any, it stands
8 to lose in damages. This is insufficient. See J & J Sports
9 Prods., 2012 WL 4713716 at *2.

10 j2 also states that IGC's Motion is actually a motion for
11 reconsideration, and that it should, thus, be analyzed under the
12 framework of Local Rule 7-18. This is IGC's second motion to
13 dismiss. Although some district courts will treat renewed motions
14 as motions for reconsideration, they generally do so when nothing
15 material has changed between the two motions' filings. See Jadwin
16 v. Cnty. of Kern, 767 F. Supp. 2d 1069, 1108 (E.D. Cal. 2011)
17 (treating as motions for reconsideration two motions in limine and
18 a motion made at a Rule 51 conference, when plaintiff had
19 previously filed a motion to strike, motion for reconsideration,
20 and a motion for summary judgment on the same issue); Sabra v.
21 Clark, No. C06-1832-RSL-JPD 2007, U.S. Dist. LEXIS 11032, at *2-3
22 (W.D. Wash. January 30, 2007) (treating a second motion for a stay
23 that was filed 22 days after the first one was denied as a motion
24 for reconsideration). However, when new facts develop, courts
25 generally have discretion to permit a second motion, and will not
26 treat it as a motion for reconsideration. See Hoffman v.
27 Tonnemacher, 593 F.3d 908, 911 (9th Cir. 2010) (holding that a

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1 district court does not abuse its discretion when it allows a
2 successive motion for summary judgment that is supported by an
3 expanded factual record). In light of the new facts discussed,
4 this Court will not analyze the Motion under a motion for
5 reconsideration standard.

6 Finally, j2 states that this case should be transferred,
7 instead of dismissed, but its reasons are not persuasive because it
8 has not shown that dismissal would cause prejudice.

9 **IV. Conclusion**

10 For the reasons stated herein, the Court GRANTS IGC's Motion.
11 IT IS SO ORDERED.

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14 Dated: June 27, 2013

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DEAN D. PREGERSON
United States District Judge

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