

EXHIBIT A

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I. INTRODUCTION

In light of Google Inc.’s (“Google”) Northern District of California (“NDCAL”) action for declaratory judgment, that its Android Operating System (“Android OS”) does not infringe the seven patents asserted here (the “Google Action”), Defendants Pantech Co., Ltd. and Pantech Wireless, Inc. (collectively, “Pantech”) hereby request that the Court stay this action (the “Pantech Action”) pursuant to the Court’s inherent authority and the “customer-suit” exception. In the present action, Rockstar Consortium US LP, Inc. and Mobilestar Technologies, LLC (collectively, “Rockstar”) assert that Pantech’s mobile devices’ use of the same Android OS, developed by Google, infringes the same patents-in-suit involved in the Google Action. A stay of this action will provide Google the opportunity to eliminate the threat Rockstar’s claims pose and to vindicate its interest in defending its technology—an interest that Google is by far best suited to defend. The Google Action will provide for the efficient resolution of Rockstar’s claims against Google (and Google’s customers) in a single forum, thereby likely mooted this action and promoting judicial and party economy.¹ In contrast, Rockstar’s multi-defendant and multi-action litigation strategy maximizes the burden on the defendants and the courts, risks the unnecessary duplication of effort and inconsistent results, and is further inconsistent with the “just, speedy, and inexpensive” resolution of Rockstar’s claims. *See* Fed. R. Civ. P. 1. Alternatively, the Court should transfer this action to the NDCAL because the private/public

¹ Rockstar has brought *six* other separate actions in this District against *nineteen* defendants for infringement of the *same* seven patents asserted against Pantech based on defendants’ sale of only devices that use Google Android OS. *See Rockstar Consortium US LP v. ASUSTeK Computer, Inc.*, No. 2:13-cv-00894, Dkt. No. 22 ¶ 14; *Rockstar Consortium US LP v. Rockstar Consortium US LP v. HTC Corp.*, No. 2:13-cv-00895, Dkt. No. 23 ¶ 15; *Rockstar Consortium US LP v. Huawei Inv. & Holding Co., Ltd.*, No. 2:13-cv-00896, Dkt. No. 1 ¶ 22; *Rockstar Consortium US LP v. LG Electronics, Inc.*, No. 2:13-cv-00898, Dkt. No. 16 ¶ 15; *Rockstar Consortium US LP v. Samsung Electronics Co., Ltd.*, No. 2:13-cv-00900, Dkt. No. 46 ¶¶ 25, 27; and *Rockstar Consortium US LP v. ZTE Corp.*, No. 2:13-cv-00901, Dkt. No. 29 ¶ 15.

interest factors heavily weigh in favor of transfer.

II. STATEMENT OF FACTS

A. The Pantech Action

On October 31, 2013, Rockstar sued Pantech for infringement of six U.S. patents. (*See* Dkt. No. 1 ¶ 14.) On November 13, 2013, Rockstar filed an amended complaint asserting infringement of an additional U.S. patent, thereby suing Pantech for infringement of seven patents: U.S. Patent Nos. 5,838,551; 6,037,937; 6,128,298; 6,333,973; 6,463,131; 6,765,591; and 6,937,572 (the “patents-in-suit.”). (*See* Dkt. No. 9 ¶15.) Rockstar alleges that Pantech infringes the patents-in-suit by “making, using, selling and offering to sell . . . certain mobile communication devices having a version (or an adaptation thereof) of *Android operating system* [*sic*] (“Pantech Mobile Communication Devices.”)” (*Id.* ¶ 15 (emphasis added).) By Rockstar’s express definition of the accused products, the only accused Pantech Mobile Communication Devices are devices using the Android OS. (*Id.* ¶¶ 15, 16.) Pantech is an Original Equipment Manufacturer (“OEM”) of mobile devices incorporating the Android OS. (Declaration of YongJin Kim (“Kim Decl.”), Ex. 1 ¶¶ 3-4.) Pantech does sell other mobile devices that do not incorporate the Android OS (*Id.* ¶ 3), but those devices are not accused in this case. (*see id.*)

B. The Google Action and Rockstar’s Subsequent Claims Against Google

On December 23, 2013, Google filed an action against Rockstar in the NDCAL seeking a declaratory judgment that its Android OS does not infringe the *same* seven patents that Rockstar had previously asserted in this case against Pantech and other OEM defendants. (*See Google Inc. v. Rockstar Consortium US LP*, No. 4:13-cv-05933 (N.D. Cal. Dec. 23, 2013), Dkt. No. 1 ¶ 1; at Prayer for Relief (“Declaring that Google’s Android platform . . . does not infringe”). *After* Google brought its action in the NDCAL, Rockstar amended its complaint in the Eastern District

of Texas (“EDTX”) against Samsung Electronics (“Samsung action”) (originally filed on October 31, 2013)² to include allegations of infringement against Google on the exact same seven patents-in-suit. (See *Rockstar Consortium US LP v. Samsung Electronics Co., Ltd.*, No. 2:13-cv-00900, Dkt. Nos. 19 ¶ 27; 46 ¶ 27.)

III. LEGAL STANDARDS

A. A Court’s Inherent Authority to Stay a Case

A court has broad discretion to stay proceedings to avoid unnecessary effort and expense and to promote the interests of justice. *Clinton v. Jones*, 520 U.S. 681, 706 (1997). In deciding whether to stay a litigation, a court should consider: “(1) whether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party, (2) whether a stay will simplify the issues in question and trial of the case, and (3) whether discovery is complete and whether a trial date has been set.” *Rmail Ltd. v. Amazon.com, Inc.*, No. 2:10-cv-00258, 2014 U.S. Dist. Lexis 25597, *25-*26 (E.D. Tex. Jan. 30, 2014) (quoting *Soverain Software LLC v. Amazon.com, Inc.*, 356 F. Supp. 2d 660, 662 (E.D. Tex. 2005)).

B. The Customer-Suit Exception

The customer-suit exception allows a court to stay an action against customers when the manufacturer brings a declaratory judgment action. *Spread Spectrum Screening LLC v. Eastman Kodak Co.*, 657 F. 3d 1349, 1357 (Fed. Cir. 2011). In the interests of judicial efficiency and to guard against abuse, “litigation against or brought by the manufacturer of infringing goods takes precedence over a suit by the patent owner against customers of the manufacturer.” *Id.* (quoting *Katz v. Lear Siegler, Inc.*, 909 F.2d 1459, 1464 (Fed. Cir. 2011)). The manufacturer’s case need not resolve every issue in the customer suits; it “need only have the potential to resolve the

² See Compl., *Rockstar Consortium US LP v. Samsung Electronics Co., Ltd.*, No. 2:13-cv-00900 (E.D. Tex.), Dkt. No. 1 ¶¶ 9-17.

‘major issues’ concerning the claims against the customer—not every issue—in order to justify a stay of the customer suits.” *Id.* at 1358 (citing *Katz*, 909 F.2d at 1464).

C. Transfer Pursuant to 28 U.S.C. § 1404(a)

Section 1404(a) provides that “[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). Courts are authorized to transfer venue to prevent a waste of time, energy, and money, and to protect litigants and witnesses against inconvenience and expense. *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964).

A threshold determination is whether the suit could have been brought in the proposed transferee district. *In re Volkswagen AG (Volkswagen I)*, 371 F.3d 201, 203 (5th Cir. 2004). The court then weighs the relative conveniences of the current district against the transferee district by considering several “private” and “public” interest factors, none of which are given dispositive weight. *Id.* The “private” interest factors are: “(1) the cost of attendance for willing witnesses; (2) the relative ease of access to sources of proof; (3) the availability of compulsory process to secure the attendance of witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive.” *In re Volkswagen of Am., Inc. (Volkswagen II)*, 545 F.3d 304, 315 (5th Cir. 2008) (en banc); *In re Nintendo Co.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009). The public interest factors include: “(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws [in] the application of foreign law.” *Id.*

IV. ARGUMENT

A. The Court Should Stay This Action Pending The Resolution of Google's Declaratory Judgment Action in the Northern District of California

1. The Court Should Stay This Action Because It Will Simplify the Issues and Preserve the Parties' and the Court's Resources, Without Causing Any Prejudice to Rockstar

Considering the totality of factors that weigh on the ultimate goal of promoting efficiency, limiting costs, and preventing prejudice, the Court should stay this action pending the resolution of the Google Action. *See Rmail Ltd.*, 2014 U.S. Dist. Lexis 25597, at *25-*26. A stay will not unduly prejudice or present a clear tactical disadvantage to Rockstar, and Rockstar cannot credibly argue otherwise. The Google Action was filed after Rockstar filed *seven separate lawsuits* in this District against *22 separate defendants*, including Pantech, based on the defendants' use of the accused Google Android OS in their mobile communication devices—but before Rockstar asserted independent infringement claims against Google. Directing Rockstar to first litigate its claims against Google, the developer of the Android OS, will simplify and streamline the issues, and will present no undue prejudice to Rockstar. Further, because Rockstar is an entity (*see Samsung Action, Madigan Decl., Dkt. No. 52-1 Ex. 10*), that “does not manufacture or sell any products, or otherwise practice the patent, there is no risk of customer losses or of injury to market share during a stay.” *Microline, LLC v. Intel Corp.*, No. 2:07-CV-488-TJW, 2010 WL 3766655, *2 (E.D. Tex. Sept. 20, 2010) (staying patentee's infringement claims pending reexamination proceedings). A stay would also not significantly delay Rockstar from litigating its patent rights, as Google filed its declaratory judgment action less than two months after Rockstar filed this action.

The second factor also weighs in favor of a stay. A resolution in the Google Action, which involves all of the patents-in-suit and the same accused Android OS developed and

provided by Google, will simplify the issues for trial in, or likely obviate, the Pantech Action. There is simply no need for co-pending and duplicative litigations that will only unnecessarily exhaust judicial and party resources. *See Wolf Designs, Inc. v. Donald McEvoy, Ltd.*, 341 F.Supp. 2d 639, 645 (N.D. Tex. 2004) (holding that a stay was warranted “to prevent an extravagantly wasteful and useless duplication of the time and effort of the federal courts by the simultaneous trial of two complex and elaborate cases involving substantially the same factual issues.”). In addition, a stay would reduce the burden on the parties and the Court, particularly because Pantech and the other defendants sued by Rockstar in this District are customers of Google and only employ Google’s Android OS in their accused mobile devices. Rather than defending its accused Android OS in piecemeal fashion and having to exhaust resources seeking to intervene in six different infringement actions (one case has settled), Google can present a streamlined defense of the Android OS that will bear fruit in all of the customer actions.

The third factor also favors a stay because neither Rockstar nor Pantech has answered the complaint in the Google and Pantech Actions, discovery has not commenced, both cases are in their infancy, and trial dates have not been set. There has been no scheduling conference or discovery whatsoever in either the Google Action or this action, so there are no pending deadlines that would be disrupted. Further, none of the parties nor the Court has invested significant resources in the litigation of either action. In such a situation, a stay is favored because “the *Markman* hearing has not occurred, expert reports have not been exchanged, discovery is not completed, summary judgment motions have not been filed, and the Court has not begun its claim construction.” *Southwire Co. v. Cerro Wire, Inc.*, 750 F. Supp. 2d 775, 780 (E.D. Tex. 2010).

2. The Court Should Also Stay This Action Pursuant to the Customer-Suit Exception

Separately, because the Google Action will determine “major issues” regarding Rockstar’s claims, the Court should also stay this action pursuant the customer-suit exception. *Spread Spectrum*, 657 F.3d at 1358.³ Courts in this Circuit have recognized the benefits of staying infringement suits against a manufacturer’s customers in favor of an action between the manufacturer and the patent holder. *See Wolf Designs*, 341 F.Supp. 2d at 645; *see also Ciena Corp. v. Nortel Networks Inc.*, No. 2:05 CV 14, 2005 WL 1189881 (E.D. Tex. May 19, 2005) (finding “the reasons to enjoin the action against [the customer] under the customer suit basis far outweigh [plaintiff’s] arguments against doing so.”). Because Google developed and provides the specific technology that Rockstar has accused in this action, *i.e.*, the Android OS, Google is the party in the best position to fully defend the Android OS against Rockstar’s claims. Indeed, Google admits it is the true party in interest and has filed a similar motion to stay and transfer. (*See Samsung Action*, Dkt. No. 52.) Because Rockstar has accused only Pantech’s mobile devices employing the Google Android OS (*see* Dkt. No. 9 ¶ 15), a judgment in the Google Action “will efficiently dispose of the infringement issues” presented here. *Ricoh Co., Ltd. v. Aeroflex Inc.*, , 279 F. Supp. 2d 554, 558 (D. Del. 2003). At a minimum, the Google Action will resolve claim construction, validity issues, and whether the accused Android OS infringes.

³ An exact overlap of issues is not required. To the extent certain issues might be left unresolved, a stay is still the correct course of action by this Court because the Google Action “need only have the potential to resolve the ‘major issues’ concerning the claims against the customer—not every issue—in order to justify a stay of the customer-suits.” *Spread Spectrum*, 657 F. 3d at 1358. Even where “there may be additional issues involving defendants,” the substantial benefits of granting a stay prevail. *Katz*, 909 F. 2d at 1464 (Fed. Cir. 1990).

Resolving Rockstar's claims in a single action—the Google Action—is the most efficient course and will greatly simplify this action, if not obviate it. *Spread Spectrum*, 657 F. 3d at 1358 (Fed. Cir. 2011); *DataTern, Inc., v. Staples, Inc.*, No. 2:10-CV-133, Slip Op., Dkt. No. 185 at 9 (E.D. Tex. Feb. 12, 2012) (staying customer suits in favor of declaratory judgment action brought by software developers in New York because “in all likelihood [the New York cases] will settle many [issues] and simplify them all.”) (quoting *Landis v. North American Co*, 299 U.S. 248, 256 (1936); citing *Katz*, 909 F.2d at 1464) (alterations in original). Pantech incorporates the accused Android OS as developed by Google on Pantech's mobile communication devices. (Kim Decl., **Ex. 1** ¶¶ 3-4.) Specifically, each of the Android OS features accused by Rockstar exclusively originates with Google. (*Id.*) Google is the true party in interest in this dispute because, as the primary developer of the Android OS, it “control[s] the design and production” of Android and is thus “in the best position to defend its own products.” *Delphi Corp. v. Auto. Tech.'s Int'l, Inc.*, No. 08-CV-11048, 2008 WL 2941116, *5 (E.D. Mich. July 25, 2008) (finding the customer-suit exception weighed against transferring manufacturer's declaratory judgment action to venue of first-filed suit against customers); *Microsoft Corp. v. Geotag Inc.*, 847 F. Supp. 2d 675, 681 (D. Del. 2012) (finding “the real dispute” was between the patentee and defendants Microsoft and Google, rather than customers who featured Microsoft and Google mapping services on their websites).

Importantly, Rockstar has also sued other customers of Google in five separately pending actions in this District for their use of the Android OS in their mobile devices. In addition to obviating or simplifying this case against Pantech, the Google Action will have a similar impact on all the other customers Rockstar has sued. The judicial efficiency of allowing one suit between Rockstar and the manufacturer to first run its course, rather than litigating a half dozen

lawsuits against Google's customers cannot be overstated. The Court should stay this case (and the other pending cases) to promote judicial economy by encouraging a "global" resolution, rather than "piecemeal litigation." *Delphi Corp.*, 2008 WL 2941116 at *5; *Ricoh*, 279 F. Supp. 2d at 557 ("[I]t is more efficient for the dispute to be settled directly between the parties in interest.").

B. Alternatively, this Action Should Be Transferred Pursuant to 28 U.S.C. § 1404(a) to the Northern District of California

1. Rockstar Could Have Brought This Action in the Northern District of California

Rockstar brought its patent infringement action against Pantech pursuant to 35 U.S.C. § 1 *et seq.*, and alleged that venue was proper pursuant to 28 U.S.C. §§ 1391 and 1400(b). (*See* Dkt. No. 9 ¶¶ 6-7.) In patent infringement cases, venue is proper in the judicial district "where the defendant resides," *see* 28 U.S.C. § 1400, and, a corporation "resides" in any district in which it was subject to personal jurisdiction at the time the action was filed. *See* 28 U.S.C. § 1391 (c); 28 U.S.C. § 1391 (d) (for foreign corporations). The relevant inquiry is whether "such defendant is subject to the [transferee] court's personal jurisdiction with respect to the civil action in question." *See* 28 U.S.C. § 1391(c)(2). Based on Rockstar's alleged assertions supporting personal jurisdiction and venue in this District (*see* Dkt. No. 9 ¶ 7 (premised on placing mobile devices into stream of commerce in this District)), to the extent this action could have been brought in this District, it could also have been brought in the NDCAL for the very same reasons. (*See* Kim Decl., Ex. 1 ¶ 7.) The Pantech-branded mobile communication devices having an Android operating system ("Android OS") that are accused by Plaintiffs in this case ("Pantech-branded Android Products") are sold in the Northern District of California. (*Id.*) In fact, Pantech is a party to a patent infringement lawsuit pending in the NDCAL that involves these same

products. *See Map Tool Inc. v. Pantech Co., Ltd.*, No. 4:13-cv-04945-YGR (N.D. Cal. Oct. 24, 2013). As a result, Pantech is subject to personal jurisdiction in the NDCAL, and this action could have been brought there initially.

2. The Private and Public Interest Factors Strongly Favor Transfer

To date, five motions to transfer venue have been filed with this Court.⁴ To minimize the amount of briefing and to promote judicial economy, Pantech adopts and hereby incorporates by reference the facts and arguments related to the private and public interest factors considered in the 1404(a) analysis that are set forth in LG Electronics' Motion to Stay or, in the Alternative, Motion to Change Venue ("LG's Motion"). *See* Mot. to Stay or, in the Alternative, Mot. to Change Venue, *Rockstar Consortium US LP v. LG Electronics, Inc.*, No. 2:13-cv-00898 (E.D. Tex. Mar. 25, 2014). Indeed, as set forth in LG's Motion, those factors weigh heavily in favor of transfer, and the location of Pantech's witnesses further support transfer to the Northern District of California ("NDCAL").

In particular, Pantech sets forth the following facts as they relate to Pantech:

- As set forth above, based on Rockstar's alleged assertions supporting personal jurisdiction and venue in this District (*see* Dkt. No. 9 ¶ 7), to the extent this action could have been brought in this District, it could also have been brought in the NDCAL for the very same reasons. (*See* Kim Decl., Ex. 1 ¶ 7.)

⁴ Mot. to Stay or, Alternatively, to Transfer to the Northern District of California, *Rockstar Consortium US LP v. ZTE Corp.*, 2:13-cv-00901 (E.D. Tex. Mar. 28, 2014); Mot. to Transfer or, in the Alternative, to Stay, *Rockstar Consortium US LP v. HTC Corp.*, 2:13-cv-00895 (E.D. Tex. Mar. 28, 2014); Mot. to Stay or, in the Alternative, Mot. to Change Venue, *Rockstar Consortium US LP v. LG Electronics, Inc.*, No. 2:13-cv-00898 (E.D. Tex. Mar. 25, 2014); Mot. to Transfer or, in the Alternative, to Stay, *Rockstar Consortium US LP v. ASUSTeK Computer, Inc.*, No. 2:13-cv-00894 (E.D. Tex. Mar. 25, 2014); Mot. to Stay or, in the Alternative, to Transfer to the Northern District of California, *Rockstar Consortium US LP v. Samsung Electronics Co., Ltd.*, 2:13-cv-00900 (E.D. Tex. Mar. 21, 2014).

- Pantech Co., Ltd. (“PCT”) is based in South Korea, and Pantech Wireless, Inc. (“PWI”) is based in Atlanta, Georgia. (*Id.* ¶ 2.)
- PCT manufactures the Pantech-branded Android Products. To the extent PCT has relevant witnesses including research and development engineers, those employees reside in Korea. (*Id.* ¶ 5.) For the reasons stated in LG’s Motion, travel to the NDCAL will be more efficient and less burdensome than to this District. (*Id.* ¶ 5); *see* Mot. to Stay or, in the Alternative, Mot. to Change Venue, *Rockstar Consortium US LP v. LG Electronics, Inc.*, No. 2:13-cv-00898, 9 (E.D. Tex. Mar. 25, 2014).
- PWI, which again is based in Atlanta, Georgia, is involved in marketing and selling the Pantech-branded Android Products. (*Id.*) For PWI employees residing in Atlanta, Georgia, it will be more cost effective and less burdensome for them to travel to NDCAL than to this District. *See* Mot. to Stay or, in the Alternative, Mot. to Change Venue, *Rockstar Consortium US LP v. LG Electronics, Inc.*, No. 2:13-cv-00898, 11-12 (E.D. Tex. Mar. 25, 2014).
- Pantech-branded Android Products are sold in the NDCAL. (Kim Decl. ¶ 7.)
- There are no Pantech employees or facilities relating to the research and development of the Pantech-branded Android Products located in this District or within 100 miles of Marshall, Texas. (*Id.* ¶ 6.)
- If Pantech’s witnesses were required to travel to this District, Pantech would incur greater expense for airfare, meals, lodging and productivity loss that would be avoided if this matter were transferred to the NDCAL. (*See id.* ¶¶ 2, 5, 6.)
- The allegedly infringing devices are “sold throughout the United States, and thus the citizens of the Eastern District of Texas have no more or less of a meaningful connection

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed.R.Civ.P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy via email transmission, facsimile and/or U.S. Mail this 8th day of April, 2014.

/s/ Lance Lee
Lance Lee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on April [REDACTED], 2014, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

[PLEASE INSERT NAME]

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel has complied with the meet and confer requirement of Local Rule CV-7(h) and that the motion is opposed. [REDACTED], on behalf of counsel for Pantech Defendants, conferred in good faith with [REDACTED], counsel for Plaintiffs by [REDACTED] on [REDACTED]. The parties reached an impasse when Plaintiffs' Counsel stated that it opposes Defendants' Motion to Transfer, or in the Alternative to Stay, leaving an open issue for the Court to resolve.

[PLEASE INSERT NAME]