

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

ROCKSTAR CONSORTIUM US LP)	
AND NETSTAR TECHNOLOGIES LLC,)	
)	
Plaintiffs,)	
)	Civil Action No. 13-cv-00893-RG
v.)	
)	JURY TRIAL DEMANDED
GOOGLE INC.)	
)	
Defendant.)	
)	
)	

**GOOGLE INC.'S REPLY IN SUPPORT OF MOTION FOR EXPEDITED BRIEFING
SCHEDULE ON PLAINTIFFS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL
BRIEF IN RESPONSE TO GOOGLE'S MOTION TO TRANSFER, AND, GOOGLE'S
REQUEST, IN THE ALTERNATIVE, TO STAY PENDING RESOLUTION OF
GOOGLE'S TRANSFER MOTION**

Preliminary Statement

Rockstar's opposition to Google's Motion to Expedite is unusual. It is unusual because it was Google that moved for an expedited briefing schedule on Rockstar's Motion for Leave, and Rockstar opposes expedited relief on its own motion. An expedited briefing schedule is warranted here because Google is concerned that, if Rockstar's Motion for Leave is granted, that will further delay resolution of the January 10 Transfer Motion. Given the upcoming claim construction deadlines in the case, the parties need an expedited resolution of Rockstar's Motion for Leave, so that if leave is granted, the supplemental briefing can be completed, and the Transfer Motion promptly resolved. None of Rockstar's arguments compel a different conclusion.

Argument

I. GRANTING GOOGLE'S MOTION TO EXPEDITE DOES NOT "REWARD" GOOGLE'S PURPORTED VIOLATION OF THE LOCAL RULES.

Rockstar argues that granting Google's Motion to Expedite would reward Google for purportedly violating L.R. CV-7(a). (Dkt. No. 101, at 5-8.) This argument, however, repeats the arguments Rockstar made for striking Google's Opposition to Rockstar's Motion for Leave. (See Dkt. No. 100, at 5-8.) As explained in Google's Motion to Expedite (Dkt. No. 98), and its Opposition to Rockstar's Motion to Strike filed concurrently herewith, it was proper for Google to include its alternative requested relief of a stay pending resolution of the Transfer Motion because "the availability of a continuance to cure such prejudice" is a relevant factor to the "good cause" determination under Federal Rule of Civil Procedure 16(b)). *Intel Corp. v. Commonwealth Scientific and Indus. Research Organisation*, 2009 WL 8590766, *1 (E.D. Tex. Apr. 9, 2009). In any event, the merits of whether or not Google's Opposition complied with the Local Rules have no bearing on whether Rockstar's Motion for Leave should be briefed on an expedited basis.

II. GOOGLE HAS NOT DELAYED RESOLUTION OF THE TRANSFER MOTION.

Rockstar next argues that Google delayed resolution of the Transfer Motion, and so Google's concerns about further delaying resolution of the Transfer Motion do not warrant entering an expedited briefing schedule on Rockstar's Motion for Leave. (Dkt. No. 101, at 8.) Initially, Rockstar repeatedly refers to its "three-page" proposed supplemental brief. (*Id.*) This is misleading. Rockstar's proposed supplemental brief includes 68 attached exhibits. (*See* Dkt. No. 92.) Exhibit 1 is a two page chart purporting to identify the location of inventors, authors, and assignees associated with prior art Google contends invalidates the asserted claims. (Dkt. No. 92-4.) Rockstar did not attach evidentiary support for its conclusions regarding the locations of these inventors, authors, and assignees; Google would therefore be required to conduct its own evidentiary investigation of Rockstar's conclusions.

Rockstar contends that it was "forced" to file its Motion for Leave because Google would not consent to Rockstar filing its supplemental "three-page brief" on transfer. (Dkt. No. 101, at 8.) This is incorrect. It is Rockstar that sought to re-open transfer briefing two and a half months after it closed. And Rockstar waited three and a half weeks after Google served its invalidity contentions before seeking to re-open transfer briefing. Nowhere does Rockstar explain the reason for this delay.

Moreover, the delay associated with Rockstar's Motion for Leave is not limited to the time it will take for the Court to review Rockstar's supplemental brief. If Rockstar's Motion for Leave is granted, Google will have to conduct a detailed factual analysis to respond to Rockstar's proposed supplemental brief. And, this Court will have to engage in its own factual analysis of the proposed supplemental brief and Google's response thereto in resolving the Transfer Motion if leave is granted. This will delay resolution of the Transfer Motion.

Rockstar next argues that Google delayed resolution of the Transfer Motion by asking the Court to consider, not only Rockstar's proposed supplemental brief, but Rockstar's Motion for Leave, Google's "Cross-Motion to Strike"¹, Rockstar's Motion to Strike Google's Opposition, and Google's Motion to Expedite. (Dkt. No. 101, at 8.) But again, Rockstar chose to seek to re-open briefing on transfer, requiring Google to oppose and to seek an expedited ruling on Rockstar's own motion. And, Rockstar chose to immediately file a Motion to Strike that is longer than the brief it sought to strike, rather than filing its Reply on the reasonable schedule proposed by Google. Any further delay associated with the present briefing was created by Rockstar, not Google.

III. DELAYING RESOLUTION OF THE TRANSFER MOTION IS PREJUDICIAL TO GOOGLE.

Rockstar also contends that Google will not be prejudiced by further delay in the resolution of the Transfer Motion based on upcoming claim construction deadlines because, if the case were transferred, the parties would need to go through claim construction in the Northern District of California too. (Dkt. No. 101, at 8-9.) It is not that claim construction, in and of itself, is prejudicial to Google. The prejudice lies in the fact that it is inefficient for the parties to go through claim construction following the Rules of this District, when ultimately the Rules of the Northern District of California will apply.

Rockstar further argues that the "claim construction deadlines have been known to Google all along" and Google could have filed a motion to stay earlier. In the first instance, the Court provided the parties with its proposed Docket Control Order on April 7 (a little over a week after briefing on the Transfer Motion was completed), and did not enter the Docket Control Order until May 13, 2014. (Dkt. No. 68.) Further, had Google filed a motion to stay earlier,

¹ Google assumes that Rockstar is referring to Google's Opposition, given that Google hasn't filed a motion to strike.

Rockstar would have surely opposed on the merits and argued that the Transfer Motion had not been pending long.

In any event, with the Transfer Motion fully briefed for less than three months, Google was hopeful that the Court would rule on the Motion in the near future. It was Rockstar's proposal to re-open briefing that necessitated suggesting the alternative relief of a stay at this time.

IV. EXPEDITED BRIEFING DOES NOT UNFAIRLY LIMIT ROCKSTAR'S ABILITY TO RESPOND TO GOOGLE'S OPPOSITION TO THE MOTION FOR LEAVE.

Lastly, Rockstar's brief includes the heading: "Expedited Briefing Would Unfairly Limit Plaintiffs' Ability to Respond to Google's Request to Stay the Case." (Dkt. No. 101, at 9.) The substance of that section of Rockstar's brief, however, discusses the merits of Google's alternative requested relief of a stay. (*Id.*, at 9-12.) The merits of whether a stay is appropriate in light of Rockstar's Motion for Leave have no bearing on whether briefing on Rockstar's Motion for Leave should be expedited. Rather, those arguments can and likely will be included in Rockstar's reply in support of its Motion for Leave.

Moreover, that Rockstar already responded substantively to Google's alternative requested relief of a stay pending resolution of the Transfer Motion illustrates that an expedited briefing schedule does not prejudice Rockstar. In one day, Rockstar drafted a twelve-page motion to strike that is longer than the opposition it seeks to strike and a twelve-page opposition to a page and half motion to expedite, and both of those briefs substantively address the merits of Google's alternative requested relief of a stay pending resolution of the Transfer Motion. That Rockstar has already submitted over twenty pages of briefing and did so even faster than it would be required to do under Google's proposed expedited briefing schedule shows that

Rockstar is capable of replying to Google's Opposition by Monday, June 30. There is no prejudice to Rockstar in doing so.²

Conclusion

For the foregoing reasons, this Court should order that Rockstar's reply in support of its Motion for Leave shall be due on Monday, June 30, and Google's sur-reply regarding Rockstar's Motion for Leave shall be due on Wednesday, July 2.

² Further, Google was prepared to file its Opposition only four days after Rockstar filed its Motion for Leave. Google's proposed expedited briefing schedule gives Rockstar more time—five days—to submit its reply.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on June 27, 2014.

/s/ Andrea Pallios Roberts _____

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