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The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MICROSOFT CORPORATION,

Plaintiff,

v.

TIVO INC.,

Defendant.

)
) No. 2:11-cv-00134 RSM

) **DEFENDANT’S MOTION TO STAY**
) **PURSUANT TO 28 U.S.C. § 1659 AND**
) **TO TRANSFER VENUE PURSUANT TO**
) **28 U.S.C. § 1404(a)**

) NOTE ON MOTION CALENDAR:
) FRIDAY, MARCH 18, 2011

MOTION TO STAY AND TO TRANSFER VENUE
(No. 2:11-cv-00134 RSM)

BYRNES • KELLER • CROMWELL LLP
38TH FLOOR
1000 SECOND AVENUE
SEATTLE, WASHINGTON 98104
(206) 622-2000

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INTRODUCTION

Defendant TiVo Inc. (“TiVo”) respectfully asks this Court to stay and transfer the current lawsuit. The Court should stay the lawsuit because it is duplicative of a co-pending ITC proceeding and therefore subject to the mandatory stay provisions of 28 U.S.C. § 1659. The Court should transfer this action to the Northern District of California, which is the more convenient forum and the appropriate court in which to litigate the case when the stay is ultimately lifted.

A stay is mandatory in these circumstances. Plaintiff Microsoft Corp. (“Microsoft”), has initiated parallel ITC proceedings against TiVo before the International Trade Commission (“ITC”). These ITC proceedings involve the same four Microsoft patents and TiVo products as the current case. Under 28 U.S.C. § 1659, at the request of an ITC respondent (like TiVo here) the district court “shall stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission” TiVo requests that this Court stay all substantive proceedings as the statute mandates.

In addition to requesting the mandatory stay, TiVo seeks to transfer the case to the Northern District of California for the simple reason that it is the more convenient forum and the locus of this dispute:

- Fundamentally, this case revolves around the software that TiVo uses in its set-top box digital video recorders (“DVRs”) – technology developed and maintained by TiVo in Northern California. TiVo is headquartered in Northern California and the majority of its employees work there. None of the TiVo employees involved in the allegedly infringing products reside in Washington. Nor do any TiVo documents. Third-party witnesses also reside in the Northern District of California (the business center of the interactive television industry), including inventors of key prior art.

Thus, the key witnesses and sources of proof are located in a small radius outside the

1 courthouse in the San Jose, California.

- 2 • To the extent that Microsoft practices the four asserted patents, it does so through its
3 Mediaroom software. Microsoft has itself maintained (in seeking to transfer another
4 dispute with TiVo to California) that it developed its Mediaroom software in
5 Northern California. Indeed, Microsoft moved its development of interactive
6 television technology to Northern California well over a decade ago. Microsoft's
7 Silicon Valley campus sits less than eight miles from TiVo's headquarters, and both
8 are located less than 15 miles from the courthouse. In contrast, the Western District
9 of Washington lies more than 800 miles away from both.
- 10 • Microsoft itself chose to file a similar lawsuit against TiVo in the Northern District of
11 California, and that lawsuit is currently pending there. The Northern District of
12 California lawsuit between Microsoft and TiVo involves the same products that
13 Microsoft accuses here. It also involves similar areas of technology. Patents in both
14 suits involve the area of viewer-friendly user interfaces and some share the same
15 inventors and claim terms. It makes no sense to have two courts in two different
16 jurisdictions litigate these two actions separately.

17 Indeed, Microsoft's decision to file in this Court – as opposed to the more convenient
18 Northern District of California where Microsoft itself had filed its first lawsuit against TiVo –
19 appears to be part of a strategic approach to make the parties' dispute more expensive and
20 burdensome for TiVo. Microsoft, which is larger and has more financial resources than TiVo,
21 seems to be engaged in a “war of attrition” against TiVo, multiplying lawsuits and expenses for
22 TiVo whenever possible. Thus, after Microsoft intervened in a lawsuit TiVo had filed against
23 AT&T in the Eastern District of Texas (Case No. 2:09-cv-0259-DF) (on a product Microsoft
24 claims implicates its software), Microsoft filed: (1) the action in the Northern District of
25 California (Case No. 5:10-cv-00240-LHK); (2) an action against TiVo in the ITC (Investigation
26 No. 337-TA-761); and (3) this lawsuit in the Western District of Washington. Microsoft's
27 choice of a different, inconvenient, forum for its latest district court action appears to be part and

1 parcel of this strategy of making the parties' disputes more wide-ranging and expensive. TiVo
2 respectfully requests that this Court transfer this lawsuit to California.

3 **BACKGROUND**

4 **A. TiVo Sues AT&T in Texas and Microsoft Intervenes.**

5 TiVo is a pioneer in home entertainment, creating the first commercially viable digital
6 video recorder, or DVR. TiVo has successfully partnered with the leading satellite television
7 company (DirecTV) and cable company (Comcast), both of which recognized the value of
8 TiVo's technology and compensated TiVo for it. Other major consumer electronics companies
9 have also compensated TiVo for its groundbreaking technology.

10 Some companies, however, have used TiVo DVR technology without permission or
11 compensation. For example, Echostar chose to infringe and suffered judgment of infringement
12 (affirmed on appeal) and a large damage award. Another company that decided to infringe
13 TiVo's DVR technology is AT&T. TiVo therefore brought suit against AT&T in the Eastern
14 District of Texas in August 2009 (the "Texas Action"), the same court that tried the EchoStar
15 case.

16 Microsoft moved to intervene in the Texas Action in January 2010, claiming that its
17 Mediaroom software ran the accused AT&T set-top boxes. TiVo did not oppose Microsoft's
18 motion to intervene.

19 **B. Microsoft Retaliates by Suing TiVo in (1) the Northern District of California 20 (2) the ITC and (3) the Western District of Washington.**

21 The current lawsuit is a *third* retaliatory lawsuit by Microsoft in response to TiVo's
22 AT&T lawsuit. The same month that Microsoft intervened in Texas, Microsoft filed a lawsuit
23 against TiVo in the Northern District of California (the "California Action"), asserting that TiVo
24 DVRs infringed two Microsoft patents related to interactive television technology. Later,
25 Microsoft added five additional patents for a grand total of seven Microsoft patents. Microsoft
26 and AT&T then moved to transfer TiVo's case, which is set for trial in October 2011, from the
27 Eastern District of Texas to the Northern District of California. Judge Folsom of the Eastern
District of Texas denied the motion.

1 Microsoft now has brought two additional lawsuits against TiVo in two other fora.
2 Microsoft filed a complaint on January 24, 2011 with the ITC, alleging the infringement by TiVo
3 DVRs of U.S. Patent Nos. 5,585,838 (the “’838 patent”) 5,731,844 (the “’844 patent”),
4 6,028,604 (the “’604 patent”), and 5,758,258 (the “’258 patent”). Microsoft also filed the current
5 companion suit in this Court asserting the same patents against TiVo products.

6 Microsoft has stated that its seven patents in the California Action are “directed to
7 interactive television technology.” Ex. A at 5.¹ More specifically, four of those patents “are
8 directed to viewer-friendly ways to present and navigate video programming on the television
9 screen.” *Id.*

10 Microsoft’s four patents asserted in this action involve similar technology. The ‘838
11 patent “generally relates to an electronic program guide that enables a user to view program
12 schedule information.” Ex. B, ¶ 28. The ’844 patent is “generally directed to a computer system
13 and method for providing a user with efficient selection of a television program or other content
14 to view or record.” *Id.* ¶ 37. The ’604 patent “generally relates to graphical user interfaces and
15 operating environments for controlling a computer through limited input devices such as a
16 remote control.” *Id.* ¶ 47. The ’258 patent “generally relates to associating TV programs with
17 varying viewing levels to assist in creating a more family-friendly interactive television viewing
18 environment.” *Id.* ¶ 56.

19 **C. TiVo Maintains Its Headquarters in the Northern District of California.**

20 TiVo maintains its principal place of business and headquarters in Alviso, in the Northern
21 District of California. Declaration of Pavel Kovar (“Kovar Decl.”) ¶ 3. TiVo currently employs
22 over 500 individuals, and the overwhelming majority of them work at TiVo’s Alviso, California
23 headquarters, including those who oversee technology issues, research and development, and
24 sales and marketing. *See id.* ¶ 4. Almost all of TiVo’s documents are centrally maintained at
25 TiVo’s California headquarters, including documents relevant to the development and
26 distribution of the software that runs the accused TiVo products. *See id.* ¶ 5. TiVo also

27 ¹ “Ex.” refers to Exhibits appended to the Joseph M. Lipner Declaration filed with this motion.

1 developed the source code of the software that runs the accused TiVo products in Alviso and
2 TiVo continues to maintain the software there. *See id.* ¶ 6. Indeed, Microsoft has been
3 reviewing this same source code in connection with the Texas Action and the California Action
4 in Menlo Park in California.

5 By contrast, TiVo does not have any meaningful connection to the Western District of
6 Washington. TiVo does not maintain any office or have employees located here. *See id.* ¶ 7.
7 TiVo has not developed any product in the Western District of Washington. *See id.* ¶ 8. TiVo
8 does not maintain any documents in Washington. *See id.* ¶ 9.

9 **D. Microsoft Maintains Its Mediaroom Business in the Northern District of
10 California.**

11 According to Microsoft, “Microsoft makes extensive use of the inventions claimed in the
12 [patents-in-suit] in its Mediaroom product/software.” Ex. B, ¶ 75. Microsoft itself has touted the
13 many connections between its Mediaroom software and the Northern District of California.

14 According to Microsoft, “Mediaroom software for client devices was developed and is tested and
15 maintained by a team of Microsoft engineers at Microsoft’s Silicon Valley campus in Mountain
16 View, California. Microsoft’s Silicon Valley campus is where the technical design information
17 for Mediaroom software is kept, such as the source safe archive for the Mediaroom source code.”
18 Ex. C, ¶ 4. Microsoft has also asserted: “The pace of Microsoft’s interactive television
19 development accelerated in the mid 1990s when Microsoft acquired WebTV, *a Silicon Valley*
20 *start-up* that was developing set-top boxes for digital video recording and connecting household
21 televisions to the Internet, and *opened a Silicon Valley campus devoted to interactive television*
22 *technologies.*” Ex. A at 5 (emphasis added).

23 In the Texas Action, Microsoft identified seven individuals with relevant knowledge of
24 the design and operation or marketing of Microsoft Mediaroom software – all of whom are
25 located in Mountain View, California, within the Northern District of California: Jim Baldwin,
26 David Alexander, David Clancy, Alan Merzon, Shannon Vosseller, Jim Long and Ben Huang.
27 Ex. D.

1 **E. Key Non-Party Witnesses Reside in the Northern District of California.**

2 Silicon Valley in Northern California appears to be a central location for third-party prior
3 art developers. While TiVo has by no means finished analyzing the Microsoft patents-in-suit,
4 the location of third-party prior art developers in Northern California appears likely.

5 The patents in the two suits are overlapping and therefore likely to have overlapping prior
6 art. For instance, Microsoft's Patent No. 5,654,748 (the "'748 patent"), asserted in the
7 California Action, shares figures, specifications, claim terms, an inventor and a prosecuting
8 attorney with the '838 patent that Microsoft asserts here. *Compare* Ex. E *with* Ex. F.

9 Prior art relevant to the '748 patent (and presumably the '838 patent) includes patents
10 owned by Rovi Corporation, which is headquartered in Santa Clara, a mere seven miles from
11 TiVo in California. For example, two prior art references name Patrick Young, the founder of
12 Starsight (an early leader in interactive program guides), as inventor. *See* Exs. G, H. One of
13 those also lists four other inventors, who resided in Pleasanton, Mountain View, Palo Alto, and
14 Los Gatos – all in the Northern California. Ex. H; *see* Lipner Decl. ¶¶ 8, 9. Starsight (itself
15 located in Northern California) was later acquired by Gemstar, which then merged with TV
16 Guide, and was later bought by Macrovision, which has changed its name to Rovi Corporation –
17 the current repository of these prior art patents located in Northern California.

18 Other prior art patents – for example, Patent Nos. 5,583,560 and 5,594,509 – name nine
19 California inventors, and are owned by Apple Computer, Inc., located in Cupertino, California
20 (about 15 miles from TiVo). Exs. I, J. TiVo believes that eight of these nine inventors reside in
21 the Northern District of California. Lipner Decl., ¶ 11. Prior art U.S. Patent No. 5,805,804 was
22 assigned to Oracle Corporation, based in Redwood Shores, California (about 22 miles from
23 TiVo). Ex. K.

24 Furthermore, TiVo has identified non-patent prior art located in the Northern District as
25 well. For instance, Frox Inc. offered a "user-friendly" television and home entertainment system
26 in the early 1990s with significant overlap of the technology allegedly invented by Microsoft.
27 Frox Inc. was located in Sunnyvale, California (about 10 miles from TiVo).

1 **ARGUMENT**

2 **I. THIS MATTER MUST BE STAYED UNDER 28 U.S.C. § 1659.**

3 TiVo seeks a stay pursuant to 28 U.S.C. § 1659, which provides:

4 In a civil action involving the parties to a proceeding before the International
5 Trade Commission under section 337 of the Tariff Act of 1930, at the request of a
6 party to the civil action that is also a respondent in the proceeding before the
7 Commission, the district court shall stay, until the determination of the
8 Commission becomes final, proceedings in the civil action with respect to any
9 claim that involves the same issues involved in the proceeding before the
10 Commission, but only if such request is made within - (1) 30 days after the party
11 is named as a respondent in the proceeding before the Commission, or (2) 30 days
12 after the district court action is filed, whichever is later.

13 28 U.S.C. § 1659.

14 This statute makes a stay mandatory on the facts of this case. TiVo is a party in this
15 action and also is a respondent in *In the Matter of Certain Set-Top Boxes, and Hardware and*
16 *Software Components Thereof*, Investigation No. 337-TA-761, instituted by the ITC at
17 Microsoft’s request and brought under Section 337 of the Tariff Act of 1930. The current action
18 involves the exact same issues as the proceeding before the ITC: Microsoft is asserting the same
19 patents against TiVo products. Microsoft itself has made clear that this is a companion lawsuit
20 to the ITC action. *See* Ex. B, ¶ 89. Accordingly, this Court should issue the mandatory stay of
21 all substantive proceedings in this action.

22 **II. THIS COURT SHOULD TRANSFER THIS MATTER TO THE NORTHERN DISTRICT OF CALIFORNIA.**

23 Under 28 U.S.C. 1404(a), “[f]or the convenience of parties and witnesses, in the interest
24 of justice, a district court may transfer any civil action to any other district or division where it
25 might have been brought.” There is no question that this suit might have been brought in the
26 Northern District of California, where TiVo’s headquarters are located. *See* 28 U.S.C. § 1400(b)
27 (patent lawsuit may be brought where defendant resides or sold accused product); 28 U.S.C.
§ 1391(c) (venue proper where defendant subject to jurisdiction). Courts consider a number of
“private interest” and “public interest” factors, delineated below. These factors weigh heavily in
favor of California, where Microsoft should have filed in the first place.

1 **A. The Private Interest Factors Favor of Transfer to the Northern District of**
2 **California.**

3 The following “private interest factors” may be considered in a transfer motion: “(1) the
4 location where the relevant agreements were negotiated and executed, (2) the state that is most
5 familiar with the governing law, (3) the plaintiff’s choice of forum, (4) the respective parties’
6 contacts with the forum, (5) the contacts relating to the plaintiff’s cause of action in the chosen
7 forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of
8 compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of
9 access to sources of proof.” *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir.
10 2000)); *see also Expeditors Int’l of Wash., Inc. v. Logitech International S.A.*, No. 2:10-cv-
11 000300RSM, 2010 WL 1903409 *2 (W.D. Wash. May 11, 2010) (Martinez, J.) (applying *Jones*
12 factors and transferring case). All applicable factors favor transfer.²

13 **1. Accessibility of Sources of Proof Favors Transfer.**

14 The relative ease of access to sources of proof is a “meaningful factor” in the transfer
15 analysis despite technological advances in electronic document storage and transmission. *See,*
16 *e.g., In re Volkswagen of Am., Inc.*, 545 F.3d 304, 316 (5th Cir. 2008); *In re Genentech Inc.*, 566
17 F.3d 1339, 1345-46 (Fed. Cir. 2009); *In re TS Tech*, 551 F.3d 1315, 1321 (Fed. Cir. 2008).
18 Courts have found that “[i]n patent infringement cases, the bulk of the relevant evidence usually
19 comes from the accused infringer. Consequently, the place where the defendant’s documents are
20 kept weighs in favor of transfer to that location.” *Genentech*, 566 F.3d at 1345.

21 Here, information material to this case is concentrated heavily in the Northern District of
22 California. TiVo centrally maintains all or nearly all of its relevant documents at its headquarters
23 in Alviso, California. Kovar Decl. ¶ 5. Source code for the software that runs TiVo set-top
24 boxes and technical documents related to its development and operation are stored at TiVo
25 headquarters. *Id.* ¶ 6. Indeed, Microsoft has already begun reviewing TiVo’s source code for the

26 _____
27 ² The first two factors are not relevant: there is no applicable “agreement” and all district courts are
familiar with federal patent laws. *See In re TS Tech*, 551 F.3d 1315, 1321 (Fed. Cir. 2008).

1 accused products in connection with the Texas Action and the California Action in law offices in
2 the Northern District of California. Lipner Decl. ¶ 18.

3 Furthermore, evidence of whether Microsoft practices any of the asserted patents also
4 likely will reside almost solely within the Northern District of California, where Microsoft
5 moved its interactive television business over a decade ago. *See, e.g.*, Ex. C (statements from
6 Microsoft about the centrality of Microsoft’s California campus to the Mediaroom software).
7 Thus, that the vast majority of both TiVo’s and Microsoft’s relevant documents are located more
8 than 800 miles from the Western District of Washington. The concentration of evidence in
9 California – and the dearth of evidence in Washington – favors transfer.

10 **2. Availability of Compulsory Process in California Favors Transfer.**

11 The factor of compulsory process “will weigh more heavily in favor of transfer when
12 more third-party witnesses reside within the transferee venue.” *Fujitsu Ltd. v. Tellabs, Inc.*, 639
13 F. Supp. 2d 761, 767-768 (E.D. Tex. 2009). Here, key prior art inventors, as detailed above,
14 reside within the Northern District of California and are subject to the trial subpoena power of
15 the California court – and not this Court. Former TiVo and Microsoft employees who may have
16 information relevant to the issues in this case likely also still reside in the vicinity of the San Jose
17 courthouse. The issue of compulsory process favors transfer.

18 **3. Low Cost of Attendance for Witnesses in California Favors Transfer.**

19 The convenience for and cost of attendance of witnesses is an “important factor.”
20 *Genentech*, 566 F.3d at 1343. Northern California is a more convenient venue for a substantial
21 number of witnesses described above: nearly all relevant TiVo employees (who work in
22 Northern California), Microsoft witnesses relevant to Mediaroom (for example, the seven
23 individuals Microsoft has specifically identified as knowledgeable about Mediaroom), and prior
24 art witnesses described above. *See pp. 4-6, above.* As the Fifth Circuit noted, it is an “‘obvious
25 conclusion’ that it is more convenient for witnesses to testify at home Witnesses not only
26 suffer monetary costs, but also the personal costs associated with being away from work, family,
27 and community.” *Volkswagen*, 545 F.3d at 317. Rather than making the short commute to the

1 courthouse in San Jose (less than 15 miles from either TiVo's headquarters or the Microsoft
2 Silicon Valley campus), all of these key witnesses would need to travel approximately 800 more
3 miles to testify at trial in the Western District of Washington.

4 **4. The Relation of Parties and the Cause of Action to Venue Favors**
5 **Transfer.**

6 As explained above, TiVo has strong ties to the Northern District of California and
7 virtually no ties to Washington. Moreover, its development of the relevant products occurred in
8 California. Microsoft maintains its Mediaroom business in the Northern District of California.
9 While Microsoft does have a substantial corporate presence in the Western District of
10 Washington, its case-specific ties to the district are based on patents that are nearly 15 years old.
11 While the alleged inventions may have been conceived in Washington in the mid-1990s,
12 Microsoft's current business related to the technology at issue is tied to California.

13 **B. The Public Interest Factors Also Weigh in Favor of Transfer.**

14 Courts also look to public factors such as relative docket congestion, the local public and
15 jury pool's interest in the controversy, and issues relative to judicial economy. *Jones*, 211 F.3d
16 at 498-99; *Costco Wholesale Corp. v. Liberty Mut. Ins. Co.*, 472 F. Supp. 2d 1183, 1196 (S.D.
17 Cal. 2007). These favor transfer.

18 **1. Judicial Economy Weighs in Favor of Transfer.**

19 Microsoft itself chose the Northern District of California as a forum and sued TiVo there
20 asserting seven patents related to interactive television technology. In the California Action,
21 Microsoft is accusing the same TiVo products at issue in the ITC Action and, it appears, the
22 current companion case: TiVo Premiere, TiVo Premiere XL, TiVo HD, and TiVo HD XL. *See*
23 *Ex. B* ¶ 13; *Ex. L* at 4. Moreover, there are substantive similarities among the asserted patents.
24 For example, as noted, the '748 patent in California shares figures, specifications and claim
25 terms with the '838 patent asserted here. Various claim terms, including "head end," appear in
26 both patents. "Head end" is already the subject of claim construction briefing in California and
27 will be construed by the California court. It will also need to be construed in the current case.

1 Other similarities tie the current case to Microsoft’s pending California Action. For
2 example, one Microsoft inventor – James Matthews, III – who appears as an inventor on three of
3 the four patents-in-suit is also named on all four of the California Action patents that relate to
4 “viewer-friendly ways to present and navigate video programming on the television screen.”
5 Ex. A at 5. Other inventors (Messrs. Thorne and Lawler) also appear on patents asserted in both
6 cases. Exs. F, M-O.

7 Where, as here, one court will necessarily become intimately knowledgeable about a
8 technical subject matter, judicial economy will be best served if an additional case involving the
9 same issues is heard by the same court. *See, e.g., Regents of Univ. of Cal. v. Eli Lilly & Co.*, 119
10 F.3d 1559, 1565 (Fed. Cir. 1997) (“[I]n a case such as this in which several highly technical
11 factual issues are presented and the other relevant factors are in equipoise, the interest of judicial
12 economy may favor transfer to a court that has become familiar with the issues.”). The Federal
13 Circuit has explicitly stated that, in patent cases, “[c]onsideration of the interest of justice, which
14 includes judicial economy, may be determinative to a particular transfer motion, even if the
15 convenience of the parties and witnesses might call for a different result.” *Id.* (citations omitted).

16 The Northern District of California has already been litigating Microsoft’s first action,
17 which involves the same parties, products and general area of technology, since January 19,
18 2010.³ It is the correct forum for this case as well.

19 **2. Relative Court Congestion Is Neutral.**

20 The Federal Circuit has noted that the court congestion factor appears to be the “most
21 speculative” and that “case-disposition statistics may not always tell the whole story.”
22 *Genentech*, 566 F.3d at 1347. Recent statistics indicate that there is only a very small difference
23 in the time to trial between the two districts. *See* Ex. P (21.5 months in Northern District of
24 California; 18.3 months in Western District of Washington). Moreover, the instant suit

25
26 ³ TiVo has informed the Northern District of California that it expects to file reexaminations with respect
27 to the Microsoft patents asserted in California and to move for a stay. Such a schedule would be
consistent with the current case, which is subject to a mandatory stay.

1 necessarily will be stayed by statute. Statistics may change by the time the stay has lifted. This
2 factor militates neither for nor against transfer.

3 **3. California’s Interest in Deciding This Case Favors Transfer.**

4 “[I]f there are significant connections between a particular venue and the events that gave
5 rise to a suit, this factor should be weighed in that venue’s favor.” *In re Hoffman-La Roche*, 587
6 F.3d 1333, 1338 (Fed. Cir. 2009). Here, the presence of both TiVo headquarters and Microsoft’s
7 Mediaroom business in California gives California a compelling local interest. *See Orinda*
8 *Intellectual Props. USA Holding Group v. Sony*, Case No. 2:08-CV-323, 2009 WL 3261932 at
9 *4 (Sept. 29, 2009, E.D. Tex.) (finding a “substantial connection of the plaintiff and defendants
10 to the transferee district” where defendant SCEA and plaintiff Orinda had their principal places
11 of business in the transferee Northern District of California). Most dramatically, this litigation
12 calls into question the work and reputation of TiVo employees who work and live in the
13 Northern District. Under such circumstances, courts have found a “strong” local interest. *See*
14 *Hoffman-La Roche*, 587 F.3d at 1336 (noting that the transferee district’s “local interest in this
15 case remains strong because the cause of action calls into question the work and reputation of
16 several individuals residing in or near that district and who presumably conduct business in that
17 community”). In short, the case belongs in California.

18 **III. THIS COURT MAY BOTH STAY AND TRANSFER.**

19 Section 1659 provides that a district court stay “proceedings in the civil action with
20 respect to *any claim that involves the same issues involved in the proceeding before the*
21 *Commission.*” 28 U.S.C. § 1659(a) (emphasis added). A motion to transfer is not “a claim that
22 involves the same issues involved” in the ITC proceedings, and a court may therefore resolve
23 such a motion while a stay is in place. *See, e.g., Broadcom Corp. v. Qualcomm Inc.*, No. 05-468-
24 JVS (C.D. Cal. Dec. 5, 2005) (ordering transfer under Section 1404(a) after imposing stay
25 pursuant to Section 1659). Accordingly, this Court may both stay and transfer.

1 **CONCLUSION**

2 Microsoft should have filed this lawsuit in the Northern District of California in the first
3 place. TiVo respectfully asks the Court to stay the case and transfer it to California.

4 DATED: March 3, 2011

Respectfully submitted,

5 BYRNES KELLER CROMWELL LLP

6 /s/ Jofrey M. McWilliam

7 Bradley S. Keller, WSBA #10665
8 Jofrey M. McWilliam, WSBA #28441
9 1000 Second Avenue, Suite 3800
10 Seattle, WA 98104-4082
11 Phone: (206) 622-2000
12 Fax: (206) 622-2522
13 Email: bkeller@byrneskeller.com
14 jmcwilliam@byrneskeller.com

15 IRELL & MANELLA LLP

16 /s/ Joseph Lipner

17 Joseph Lipner (pro hac vice)
18 CA State Bar No. 155735
19 1800 Avenue of the Stars, Suite 900
20 Los Angeles, CA 90067
21 Phone: (310) 277-1010
22 Fax: (310) 203-7199
23 Email: jlipner@irell.com

24 **ATTORNEYS FOR DEFENDANT TIVO INC.**

1 **CERTIFICATE OF SERVICE**

2 The undersigned attorney certifies that on the 3rd day of March, 2011, I electronically
3 filed the foregoing with the Clerk of the Court using the CM/ECF system which will send
4 notification of such filing to the following:

5 Arthur W. Harrigan, Jr. (arthurh@dhl.com)
6 Christopher Wion (chrisw@dhl.com)
7 Shane P. Cramer (shanec@dhl.com)
8 Danielson Harrigan Leyh & Tollefson LLP
9 999 Third Avenue, Suite 4400
10 Seattle, WA 98104

11 T. Andrew Culbert (andycu@microsoft.com)
12 Stacy Quan (stacy.quan@microsoft.com)
13 Microsoft Corporation
14 One Microsoft Way
15 Redmond, WA 98052

16 Mark Davis (Mark.davis@weil.com)
17 Weil, Gotshal & Manges LLP
18 1300 Eye Street NW, Suite 900
19 Washington, DC 20005-3314

20 Tim DeMasi (Tim.DeMasi@weil.com)
21 Weil, Gotshal & Manges LLP
22 767 Fifth Avenue
23 New York, NY 10153

24 *Counsel for Microsoft Corporation*

25 /s/ Jofrey M. McWilliam
26 Jofrey M. McWilliam
27 1000 Second Avenue, Suite 3800
Seattle, WA 98104-4082
Telephone: (206) 622-2000
Facsimile: (206) 622-2522
Email: jmcwilliam@byrneskeller.com