UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

APPLE INC. and NeXT SOFTWARE, INC. (f/k/a NeXT COMPUTER, INC.), Plaintiffs, v. MOTOROLA, INC. and MOTOROLA MOBILITY, INC. Defendants.	))))))))))))	Case No. 10-CV-662-bbc **JURY TRIAL DEMANDED**

OPPOSITION TO PLAINTIFFS'
<u>MOTION FOR A STAY PURSUANT TO FED. R. CIV. P. 19</u>

Defendants Motorola, Inc. d/b/a Motorola Solutions, Inc. and Motorola Mobility, Inc. (collectively, "Motorola") respectfully submit this Opposition to Plaintiffs Apple Inc. ("Apple") and NeXT Software, Inc.'s ("NeXT") (collectively, "Plaintiffs") Motion for a Stay Pursuant to Fed. R. Civ. P. 19 and supporting memorandum of law (the "Motion" or "Motion to Stay"). (D.I. 154, 155.)

<u>SUMMARY OF ARGUMENT</u>

Plaintiffs are yet again seeking to avoid Motorola's patents and have apparently even grown tired of pursuing their own claims. Less than one week before the exchange of expert reports on liability and just six weeks before the filing deadline for summary judgment motions, Plaintiffs moved to stay this case in its entirety, including Plaintiffs' own claims against Motorola. Plaintiffs argue that a stay is warranted because Motorola has temporarily afforded certain powers of consent to Google Inc. pursuant to the Agreement and Plan of Merger (the "Merger Agreement") causing Motorola to lose prudential standing, at least while the merger is pending. (D.I. 155, Mem. of Points and Authorities in Supp. of Mot. to Stay ("Pls. Br.") at 1-2.) Plaintiffs' allegations are baseless; the Merger Agreement does not affect Motorola's prudential standing. And, even if it somehow did, the standing issues would be transient and would likely resolve themselves long before judgment is entered in this case.

The concept of prudential standing is rooted in the notion that all parties with the right to sue must do so in a single action and is incorporated into the joinder requirements of Federal Rule of Civil Procedure 19 ("Rule 19"). Prudential standing issues arise in patent cases when more than one party has the right to exclude others from practicing the patented invention. When there are multiple parties with exclusionary rights, all parties must be joined to prevent the threat of multiple litigations and recoveries. Here, it is undisputed that Motorola is the only party with exclusionary rights in its patents. As Plaintiffs admit, even after the execution of the Merger Agreement, Google does not have any "exclusionary rights in the patent[s]" or any "contractual right to sue on the patents or license the patents." (Pls. Br. at 16.) Because Google does not have any independent right to sue, there is no risk of additional litigation or liability and, therefore, no defects in Motorola's prudential standing. Furthermore, the limited and temporary power of consent afforded to Google under the terms of the Merger Agreement was never intended to, nor did it, affect Motorola's rights with respect to its patents. The provisions in the Merger Agreement of which Plaintiffs complain were designed solely to preserve the value of Motorola's intellectual property while the merger is pending, not to diminish Motorola's ability to protect the same.

Even assuming *arguendo* that the provisions in the Merger Agreement somehow affect Motorola's standing, there is still no reason to stay this case. The complained of provisions are transient and will cease effect after the close of the merger or termination of the Merger

Agreement. Once the merger is complete, Motorola will maintain the same rights in its intellectual property as it had at the outset of the transaction. (Ex. 1, Attach. A ("M.A.") at §§ 1.03, 3.14(c).) Plaintiffs' assertions of ambiguity concerning patent ownership post-merger are ill founded and contrary to the Merger Agreement. Motorola is now, and will remain, the Patents' holder in title under the express terms of the Merger Agreement. (*See id*.) Plaintiffs' assertions to the contrary undermine Plaintiffs' purported purpose in seeking a stay. For, if Plaintiffs truly believe that Motorola's patent rights will be in flux at the end of the merger, then a stay will not cure the purported prudential standing defects and would serve only to unnecessarily postpone resolution of this case.

Accordingly, Plaintiffs' Motion to Stay should be denied.

STATEMENT OF FACTS

I. THE ADVANCED STAGE OF THIS LITIGATION

Plaintiffs filed their original complaint asserting three patents on October 8, 2010, and later amended to include twelve additional patents that were the subject of a suit pending in Delaware. (D.I. 1, 20.) Motorola counterclaimed and asserted six patents (the "Patents"). It is undisputed that Motorola had standing to assert its Patents at that time. Since the filing of the complaints and counterclaims, this case has progressed quickly. Currently, the parties are fully engaged in discovery, and claim construction briefing and argument is complete. (*See* D.I. 116; Ex. 1.) Most recently, on September 15, 2011, the parties exchanged expert reports on liability, and, in the next six weeks, the parties will exchange additional expert reports and submit motions for summary judgment. (*See* D.I. 27.) With this Motion, Plaintiffs seek to delay these proceedings and avoid resolution of this case.[1] This is not their first attempt. Plaintiffs also tried

[1] Dropping patent claims mid-case also seems to be a theme of late for Plaintiffs. In this action, Plaintiffs plan to seek voluntarily dismissal of their claim relating to Patent No. 5,969,705 (Count

to stay this case six months ago by filing a motion for preliminary injunction in another action pending before this court. (*Apple Inc. v. Motorola Mobility Inc.*, No. 11-cv-178, D.I. 6.) This Court rejected Plaintiffs' attempts to delay the case then and should do so again here. (*Id.* at D.I. 80.)

II. THE MERGER AGREEMENT AND THE LIMITED POWERS OF CONSENT AFFORDED TO GOOGLE

Plaintiffs' argument for a stay is based on the Merger Agreement executed by Motorola Mobility Holdings, Inc. ("Motorola Holdings") and Google on August 15, 2011. (M.A. § 1.01.) Plaintiffs assert that the limited and temporary rights of consent afforded to Google under the Merger Agreement cause defects, at least temporarily, in Motorola's prudential standing. (Pls. Br. at 1-3.) In relevant part, the Merger Agreement provides that, while the merger is pending, Motorola must obtain Google's consent, which Google may not unreasonably withhold, before initiating new lawsuits, amending or settling claims in existing suits, and granting assignments and licenses unless those licenses are non-transferable, non-sublicensable, non-exclusive standard licenses entered into in the ordinary course of business. (MA §§ 5.01(j), 5.01(v).) Other restrictions in the Merger Agreement expressly require that Motorola "conduct its business and operations according to its ordinary and usual course of business consistent with past practice and . . . use . . . its reasonable best efforts to preserve intact its business organization." (M.A. § 5.01.) At the close of the merger, the Merger Agreement further provides that Motorola will have the same rights in its intellectual property as it did at the outset of this transaction. (M.A. § 1.03.) When standing alone or taken together, the purpose of these provisions is clear.

VIII). (Ex. 1 ¶ 3.) They also dismissed claims relating to several patents in a pending case against HTC before the International Trade Commission, including claims relating four patents currently at issue in this case: RE Patent No. 39,486, Patent No. 5,929,852, Patent No. 5,915, 131, and Patent No. 5,566,337 (Counts IV, X, XI, and XII, respectively). (D.I. 12 ¶¶ 45-51, 87-107; Ex. 1 ¶ 3.)

They are meant to preserve the value of Motorola's intellectual property assets while the merge is pending, not to diminish Motorola's ability to enforce its Patents.

ARGUMENT

I. MOTOROLA HAS BOTH PRUDENTIAL AND CONSTITUTIONAL STANDING TO PURSUE THIS ACTION

Motorola has the necessary constitutional and prudential standing to pursue this action. As an initial matter, Plaintiffs' claim that Motorola lacks prudential standing without Google fails in light of their admissions that Google does not have any exclusionary rights or any other contractual right upon which it can sue to enforce the Patents.[2] (Pls. Br. at 2, 16.) If Google does not have any rights to sue, then there is no risk of multiple litigations or liabilities and, thus, no defects in Motorola's prudential standing. Furthermore, the temporary and limited rights of consent afforded to Google under the Merger Agreement were not intended to prevent Motorola from protecting its intellectual property right but rather to perverse the value of those rights while the merger is pending. Plaintiffs admit as much when they acknowledged that no exclusionary rights flowed to Google under the terms of the Merger Agreement. (Pls. Br. at 2, 16.) Because Motorola has not ceded any exclusionary rights to Google, Motorola may pursue this action in its name alone as it has done since the outset of this case. Accordingly, Plaintiffs' Motion to Stay based on a supposed lack of prudential standing should be denied.

[2] Notably, Plaintiffs' brief is full of contradictory statements and arguments. For example, Plaintiffs argue that Motorola has given up "critical" rights, but that Google's rights are unsubstantial. (Pls. Br. at 7, 16.) Plaintiffs acknowledge that the Merger Agreement provides that Motorola's intellectual property rights will be the same at the close of the merger as they were at the outset of the transaction, but then argue that ownership of those rights is unclear. (*Id*. at 3, 5.) Plaintiffs also argue that Motorola's patent rights are "central" to Google's interest in Motorola, but then claim that settlement may not be possible while the merger is pending, presumably because Google would not act on settlement proposals. (*Id*. at 2, 10.)

A. Standards for Constitutional and Prudential Standing in Patent Infringement Case

In order to sue for infringement, any party asserting a patent must establish both constitutional and prudential standing. *Morrow v. Microsoft Corp.*, 499 F.3d 1332, 1339 (Fed. Cir. 2007). To demonstrate constitutional standing "'[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'" *Id*. (quoting *Hein v. Freedom Religion Found. Inc.*, 551 U.S. 587 (2007).) In patent infringement cases, this constitutional standing is derived from the Patent Act. *Id*. The Patent Act provides that a patentee and his successors in title "shall have remedy by civil action for infringement of his patent" and bestows upon them the "legal right to exclude others from making, using, selling, or offering to sell the patented invention in the United States, or importing the invention." *Id*. (citing 35 U.S.C. §§ 100(d), 154, 271 & 281.) As the Federal Circuit has long recognized, the legal right created by these provisions is the right to exclude. *Id*. Thus, only the holder of exclusionary rights has constitutional standing to sue for patent infringement. *Id*.

Prudential standing concerns arise when multiple parties hold exclusionary rights in a patent and have constitutional standing to bring suit. *Id*. at 1340 (citing *Intellectual Prop. Dev. Inc. v. TCI Cablevision Cal., Inc.*, 248 F.3d 1333, 1347 (Fed. Cir. 2001). When this occurs, all parties holding exclusionary rights must be "joined for the purpose of avoiding the potential for multiple litigations and multiple liabilities and recoveries against the same alleged infringer." *Morrow*, 499 F.3d at 1340; *see also Vaupel Textilmaschinen KG v. Meccanica Euro Italia S.P.A.*, 944 F.2d 870, 875 (Fed. Cir. 1991). "This joinder analysis is incorporated in Federal Rule of Civil Procedure 19," which requires that a party be joined when failing to do so would "leave an existing party subject to substantial risk of incurring double, multiple, or otherwise inconsistent obligations . . ." *Morrow*, 499 F.3d at 1340; Fed. R. Civ. P. 19(a)(1)(B)(ii).

B. Plaintiffs' Acknowledgement that Google does not have any Exclusionary Rights in the Patents Dooms Their Prudential Standing Claims

Plaintiffs' claim that Google must be joined to this suit to satisfy prudential standing concerns necessarily fails because Plaintiffs admit that Google lacks the requisite exclusionary rights to be a necessary party. (Pls. Br. at 2, 16.) In Plaintiffs' own words:

> Google holds *no* exclusionary rights in the patents. There is no evidence that Google may practice the patents, much less to the exclusion of anyone else. Nor is there evidence that Google may grant licenses to the patents, such that it would suffer economic injury by uncompensated infringement. . . . There is no evidence that Google has the contractual right to sue on the patents or license the patents.

(Pls. Br. at 16 (emphasis in original).)

Without exclusionary rights, Google lacks constitutional standing and cannot bring any action based on the Patents. *Morrow*, 499 F.3d at 1339. Plaintiffs, therefore, are not facing any threat of multiple litigations or liabilities and have no basis to challenge Motorola's prudential standing. *See id*; *see also* Fed. R. Civ. P. 19(a)(1)(B)(ii). As the Federal Circuit recognized in *Morrow*, when "prudential concerns are not at play in a particular case, joinder of the [party] is not necessary." *Morrow*, 499 F.3d at 1340. Thus, in light of Plaintiffs' acknowledgement that Google does not have exclusionary rights or any other right to bring suit, it is clear that Google is not a necessary party and need not be joined to this action. Accordingly, Plaintiffs' Motion should be denied.

C. Because Google's Powers of Consent are not Significant Exclusionary Rights, Motorola Maintains the Requisite Standing to Bring this Action in its Name Alone

Motorola maintains standing to pursue this action solely in its name even while the Merger Agreement is in effect. With regard to standing, the Federal Circuit has identified three categories of plaintiffs: (1) those that can sue in their name alone, (2) those that can sue only if another party is joined to the suit, and (3) those that cannot even participate as a party in an infringement suit. *Morrow*, 499 F.3d at 1339. The scope of the parties' exclusionary rights determines the category into which it falls. Those in the first category hold all substantial exclusionary rights and can sue in their names alone; those in the second category hold some, but not all, exclusionary rights and must join others; and those in the third category hold no exclusionary rights and can never sue. *Id.* at 1339-41.

It is undisputed that Motorola fell into the first category at the outset of this litigation. However, Plaintiffs now assert that the limited powers of consent afforded to Google under the Merger Agreement transferred Motorola from the first to the second category. (Pls. Br. at 7.) The only way that Motorola could move from the first to the second category is by transferring exclusionary rights to Google. *Morrow*, 499 F.3d at 1340. Here, Plaintiffs admit that the Merger Agreement made no such transfer. (Pls. Br. at 2, 16.) Where there was no transfer of exclusionary rights to Google, it necessarily follows that Motorola has maintained *all* of its exclusionary rights in the Patents and can continue in this action alone.

Moreover, a review of the parties' intent in affording Google powers of consent and the limited and temporary nature of those powers confirms this conclusion. To determine whether a provision in an agreement transfers exclusionary rights, courts "must ascertain the intention of the parties and examine the substance of what was granted." *Vaupel*, 944 F.2d at 874. Here, the intent of the parties is clear. Motorola, the Patents' title holder, is engaged in a merger transaction with Google. As part of that transaction, Motorola afforded Google limited and temporary rights of consent designed to preserve the value of Motorola's intellectual property.

Such provisions are common in merger agreements and ensure that the purchaser receives the assets at the close of the transaction for which he bargained.

Turning then to the rights, the Federal Circuit considers the following factors in assessing whether a party's exclusionary rights are significant enough to allow the party to sue in its own name:

- whether the party has an exclusive right to sue for infringement;
- whether the party has an exclusive right to make, use, and sell products and services under the patent;
- whether the party has the ability to assign and sublicense the patent;
- whether the party can recover damages in infringement actions;
- whether a licensor can supervise and control the licensee;
- whether the party is obligated to continue paying patent maintenance fees;
- whether the party has reversion rights; and
- the duration of the existing rights.

Alfred E. Mann Found. for Scientific Research v. Cochlear Corp., 604 F.3d 1354, 1360 (Fed. Cir. 2010)

These factors weigh in favor of finding that Motorola, the Patents' title holder, maintains a more than sufficient bundle of exclusionary right to pursue this action in its name alone. Most importantly, nothing in the Merger Agreement divests Motorola of the exclusive rights to sue to enforce, assign and sublicense, or practice the Patents. The Merger Agreement merely requires that Motorola temporarily obtain Google's consent, which may not be unreasonably withheld, before initiating new lawsuits, amending or settling claims in existing suits, and granting certain assignments and licenses. (M.A. §§ 5.01(j), (v).) The Merger Agreement does not give Google any right to undertake these activities on its own, to be involved in or control these activities after Google gives its consent, or to share in the proceeds from these activities. Furthermore, even under the Merger Agreement, Motorola maintains the right to enter into non-transferable, non-sublicensable, non-exclusive standard licenses without Google's consent.

Google's limited and temporary powers of consent do not affect Motorola's exclusionary rights in the Patents. As the Federal Circuit found in *Vaupel*, veto powers are not substantial rights. 944 F.2d at 875. In *Vaupel*, the Federal Circuit held that a "sublicensing veto was a minor derogation from the grant of rights" that "did not substantially interfere with the full use by Vaupel of the exclusive rights under the patent." *Vaupel*, 944 F.2d at 875; *see also Speedplay, Inc. v. Bebop, Inc*., 211 F.3d 1245, 1251-52 (Fed. Cir. 2000) (explaining that consent provisions in licensing agreement did not significantly restrict scope of rights in patent). As with the veto power that existed in *Vaupel*, Google's powers of consent under the Merger Agreement do not substantially interfere with Motorola's exclusionary rights and do not affect Motorola's standing in this action.

The limited duration of Google's rights of consent also supports a finding that Motorola's exclusionary rights have not materially diminished. Here, Google's consent (which cannot be unreasonably withheld) is required only while the merger is pending. (M.A. §§ 5.01, 7.02.) After the merger closes or the Merger Agreement is otherwise terminated, Google's limited rights of consent will cease. (M.A. § 5.01.) Additionally, under certain circumstances, Motorola can unilaterally terminate the Merger Agreement and extinguish Google's already limited rights. (M.A. § 7.01.) Because the rights afforded to Google were both limited and transient, they do not substantially interfere with Motorola's exclusionary rights and, thus, should not affect Motorola's standing.

Furthermore, Plaintiffs have not identified any case in which a title holder in a patent was divested of standing based on temporary rights afforded to another party in a merger agreement. Instead, Plaintiffs seek to rely, in large part, on several cases dealing with exclusive licensees who were attempting to assert patents without joining the party holding title to the patents. *See Sicom Systems Ltd. v. Agilent Techs., Inc.*, 427 F.3d 971 (Fed. Cir. 2005); *TCI*, 248 F.3d 1333; *Propat Int'l Corp. v. RPost Ltd.*, 473 F.3d 1187 (Fed. Cir. 2007); *Abbott Laboratories v. Diamedix Corp.*, 47 F.3d 1128 (Fed. Cir. 1995). These cases are easily distinguishable because they deal with licensees, not holders in title, who were never vested with all substantial exclusionary rights such that they could sue in their own names.

Sicom, *Abbott*, and *TCI* are further distinguishable because, in each of those cases, multiple parties held the right to participate in litigation.[3] *See Sicom*, 427 F.3d at 979; *TCI*, 248 F.3d at 1342; *Abbott*, 47 F.3d at 1132. Loss of the exclusive right to sue is a primary consideration in the Court's analysis and a key differentiating factor here. In *Sicom* and *Abbott*, both the patentees and the parties licensing those patents maintained the right to bring actions to enforce the patents. *See Sicom*, 427 F.3d at 979; *Abbott*, 47 F.3d at 1132. And, in *TCI*, the patentee acknowledged in the licensing agreement that it would be a necessary party under certain circumstance. *TCI*, 248 F.3d at 1342. Motorola, on the other hand, is the only party with constitutional standing to sue for enforcement of the Patents, which precludes any concerns over prudential standing. Thus, these cases are not analogous.

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[3] *Propat*, another licensee case cited by Plaintiffs, is also distinguishable on its facts. 473 F.3d 1187. In *Propat*, the licensee, Propat, was granted rights to license patents, enforce those licensing agreements, and to sue infringers, all of which were subject to the patent holder's approval. *Id.* at 1190. Relying in large part on the fact that Propat could not practice the patents and had to seek approval for all of its activities relating to the patents, the Court held that Propat did not have sufficient exclusionary rights to establish constitutional standing. *Id.* at 1190-92. Here, there is no dispute that Motorola has sufficient exclusionary rights to establish constitutional standing. Unlike Propat, Motorola has the right to practice the Patents and grant certain licenses without seeking consent. Thus, Plaintiffs' reliance on *Propat* is misplaced.

Finally, the cases that Plaintiffs cite where the holders in title of the patents lost standing to sue, either on their own or at all, are distinguishable for the same reason as those above—the holder in title conveyed the right, either in part or in whole, to sue to another party. *See Enhanced Security Research, LLC v. Cisco Systems, Inc.*, No. 09-390-JJF, 2010 WL 2573953, at *4 (D. Del. June 25, 2010); *Zenith Elecs. Corp. v. Exzec Inc.*, 876 F.Supp. 175 (N.D. Ill. 1995). In *Enhanced Security Research*, ESR granted another party "the exclusive right to: initiate, maintain, manage, resolve, conclude and settle all arrangements and activities in connection with any and all licensing or litigation enforcement efforts." *Enhanced Security Research*, No. 09-390-JJF, 2010 WL 2573953, at *4. Similarly, in *Zenith*, the patent holder granted an exclusive licensee the express right to "initiate legal action in its own name." *Zenith*, 876 F. Supp. at 179. These cases are inapplicable to the instant case because Motorola has not conveyed any right to sue for enforcement to another party, including Google. Accordingly, Plaintiffs' Motion should be denied.

II. EVEN ASSUMING THAT THE MERGER AGREEMENT AFFECTED MOTOROLA'S STANDING, THE COURT STILL NEED NOT STAY THIS ACTION

Even if this Court finds that Google's rights under the Merger Agreement create standing defects, this case still need not be stayed. Any such issues are transient and will likely resolve themselves before any judgment is entered in this case. After the close of the transaction or the termination of the Merger Agreement, Motorola's rights with respect to the Patents will return to their original condition and any existing defect will be cured. (M.A. § 3.14(c).) This case can continue even with a temporary loss of standing so long as the standing defect is cured before judgment is entered. *See Schreiber Foods, Inc v. Beatrice Cheese, Inc.* 402 F.3d 1198, 1202-04 (Fed. Cir. 2005).

Plaintiffs' claims that Motorola's post-merger rights are in flux and that "there is no way of knowing how the patent rights will be distributed" is contrary to the terms of the Merger Agreement. (Pls. Br. at 3.) The Merger Agreement is clear on this point; it provides that Google's limited powers of consent will cease at the close of the merger or termination of the Merger Agreement. (M.A. §§ 5.01, 7.02.) According to the Merger Agreement, Motorola will then have the same rights in the Patents that it had at the outset of this litigation. (M.A. § 3.14(c).) Because the natural resolution of the transaction would cure any alleged standing issues, the Court need not derail this entire case.[4]

Further, Plaintiffs' claim that patent rights post-merger "is a matter of sheer speculation" casts doubt on the purpose of their Motion. If the same uncertainty will remain, then nothing is gained by staying this case. The only purpose that a stay will serve is to unnecessarily delay the case, which seems to be Plaintiffs' actual intent as opposed to any legitimate concern regarding standing.

Moreover, granting Plaintiffs' unnecessary stay would set a dangerous precedent. Plaintiffs complain of terms in the Merger Agreement that require Motorola to seek consent before initiating new lawsuits, amending or settling claims in existing suits, and granting assignments and licenses for the limited period while the merger is pending. (M.A. § 5.01.) Such terms are common in merger agreements and serve the stated purpose of "preserv[ing] intact [Motorola's] business organization." (*Id.*) Interfering with the ability of potential acquirers to obtain and assert such protections between signing and closing would have a chilling

[4] Additionally, Motorola retains the right to sue for infringement that occurred prior to the alleged loss in standing. It is well-settled that a party possessed of the legal title to a patent at the time of infringement may bring suit to recover past damages. *See Mas-Hamilton Grp. v. LaGrad, Inc.*, 156 F.3d 1205, 1210 (Fed. Cir. 1998). Thus, even assuming that the Merger Agreement somehow affected Motorola's standing, which it did not, it would not affect Motorola's ability to recover damages for infringement prior to August 15, 2011.

effect on the sale of entities with valuable intellectual property rights. This chilling effect is potentially prejudicial to such entities' owners (here, the public shareholders of Motorola, who serve to benefit by a substantially above-market sale price). Precedent for such a stay would also be potentially disruptive to an untold number of other patent suits. Essentially, Plaintiffs are proposing a rule that would require all pre-existing patent litigation be stayed between execution of any merger agreement and the close of the transaction. Such a rule would have wide-ranging application and would serve only to unnecessarily protract litigation and increase burdens both on litigants and the courts. Accordingly, Plaintiffs' Motion to Stay should be denied.

III. IN THE EVENT THAT THE COURT IS INCLINED TO GRANT A STAY, MOTOROLA REQUESTS AN OPPORTUNITY TO CURE ANY STANDING ISSUES

To grant a stay, this Court must find that, despite the express terms of the Merger Agreement and Plaintiffs' own admissions to the contrary, Motorola has ceded exclusionary rights to Google through the Merger Agreement such that Motorola cannot proceed in this action alone.[5] Should the Court so hold, Motorola respectfully requests a limited period of time before the entry of any such order so that Motorola can attempt to cure the defects in standing identified by the Court. *See Schreiber Foods*, 402 F.3d at 1202-04 (holding that the temporary loss of standing during a patent case can be cured before judgment).

CONCLUSION

For the foregoing reasons, Motorola respectfully requests that the Court deny Plaintiffs' Motion to Stay and allow this action to take its natural course.

[5] Plaintiffs' citation to several cases that stand for the unremarkable proposition that this Court has the authority to issue a stay does nothing to demonstrate that a stay is appropriate based on the facts of this case. (Pls. Br. at 19-21 (citing *Silicon Graphics, Inc. v. ATI Techs., Inc.* No. 06-c-611-C WL 5595952, at *9 (W.D. Wis. June 14, 2007); *Henri's Food Prods. Co., Inc. v. Home Ins. Co.*,474 F. Supp. 889, 893-93 (E.D. Wis. 1979); *Christian v. Monaco Coach Corp*., No. SA CV 08-00141-CJC, 2009 WL 1574553 (C.D. Cal. May 14, 2009).)

Dated: September 21, 2011

Respectfully submitted,

MOTOROLA MOBILITY, INC.
By: /s/ Scott W. Hansen

QUINN EMANUEL URQUHART & SULLIVAN, LLP
Edward J. DeFranco
Alexander Rudis
Richard W. Erwine
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100
Email: eddefranco@quinnemanuel.com
alexanderrudis@quinnemanuel.com
richarderwine@quinnemanuel.com

David A. Nelson
500 West Madison St., Suite 2450
Chicago, IL 60661
Telephone: (312) 705-7400
Facsimile: (312) 705-7401
Email: davenelson@quinnemanuel.com

Robert W. Stone
Brian Cannon
555 Twin Dolphin Drive, Suite 560
Redwood Shores, CA 94065
Telephone: (650) 801-5000
Facsimile: (650) 801-5001
Email: robertstone@quinnemanuel.com
briancannon@quinnemanuel.com

Charles K. Verhoeven
David Perlson
50 California Street, 22nd Floor
San Francisco, CA 94111
Telephone: (415) 875-6600
Facsimile: (415) 875-6700
Email: charlesverhoeven@quinnemanuel.com

Scott W. Hansen (1017206)
Lynn M. Stathas (1003695)
Lisa Nester Kass
REINHART BOERNER VAN DEUREN, S.C.
22 East Mifflin Street
P.O. Box 2018
Madison, WI 53701-2018
Telephone: (608) 229-2200
Facsimile: (608) 229-2100
Email: shansen@reinhartlaw.com
lstathas@reinhartlaw.com
lkass@reinhartlaw.com

Attorneys for Defendants Motorola Solutions, Inc. (f/k/a Motorola, Inc.) and Motorola Mobility, Inc.