IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BLUE SPIKE, LLC,	)
Plaintiff,	) No. 13-419 C
v.	) Judge Edward J. Damich
THE UNITED STATES,	)
Defendant.	)

DEFENDANT'S MOTION TO STAY

The government hereby moves the Court to stay the instant suit pending the resolution of Plaintiff's (Blue Spike) pending cases in the United States District Court for the Eastern District of Texas (E.D. Tex). Patent suits involving the manufacturers of the allegedly infringing equipment in this case have previously been filed and are pending in district court, and this Court should await the outcome of those suits before proceeding any further. Resolution of these suits will likely simplify, significantly alter, or even render moot many, if not all, of the issues in dispute in this case. The government, therefore, requests that this motion be granted in the interest of judicial efficiency and to avoid the potential waste of resources of the parties and this Court. Concurrently with this request, the government will be filing a motion for enlargement of time to answer the complaint, or otherwise respond, in the event that this Court denies the motion to stay.

Defendant's counsel has consulted with plaintiff's counsel and has been advised that plaintiff intends to oppose this motion.

Statement of Facts

Plaintiff Blue Spike filed this action pursuant to 28 U.S.C. § 1498(a) on June 25, 2013. Complaint at ¶¶ 1. Therein, it claims that agencies of the United States government infringed its patents – specifically, U.S. Patent Nos. 7,346,472, 7,660,700, 7,949,494, and 8,214,175 – for "signal abstracting" technology that improves the proficiency and speed of monitoring and analyzing systems. Complaint at ¶¶ 1-4, 11-12.[1] On August 9, 2012, Plaintiff filed the first of 100 actions in the E.D. Tex. Blue Spike, LLc v. Texas Instruments, Inc., No. 12-00499 (E.D. Tex.). Thereafter, the court consolidated ninety-nine cases with Civil No. 12-00499 for a total of 147 defendants. Of these, Blue Spike's cases against thirty-one defendants have been dismissed either by joint stipulation or voluntary dismissal. While the court has dismissed cases against thirty-one of the 147 defendants, sixteen other defendants have pending motions to dismiss for lack of jurisdiction. Texas Instruments, Inc. No. 12-00499 (docket entries: 327, 375, 518, 533, 539, 542, 558, 560, 576, 577, 594, 625, 626, 644, 645, 679). The court has yet to rule on these motions.

The outcome of those cases may have a substantial effect on this litigation. Indeed, the ultimate conclusion of those cases may result in complete or partial invalidation of the claims in Plaintiff's patents, thereby eliminating all or part of the infringement claims Plaintiff is asserting. This, in turn, will simplify and narrow the issues in this case. In addition, it is possible that one or more of the government's suppliers, who are also defendants in the Texas action, could settle with plaintiff, which would also narrow the issues in this case.

[1] Plaintiff has since filed an Amended Complaint on August 28, 2013 (Doc. # 10), which alleges that devices supplied to the government by a sixth company, which is also a defendant in the Texas case, infringe.

Argument

The Court Should Stay This Case

The power to stay proceedings "is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants," and is within the discretion of the Court. Landis v. North American Co., 299 U.S. 248, 255 (1936). This Court should weigh three factors when considering whether to stay a matter indefinitely. Cherokee Nation of Oklahoma v. United States, 124 F.3d 1413, 1416 (Fed. Cir. 1997). The Court "must first identify a pressing need for the stay." Id. The Court "must then balance interests favoring a stay against interests frustrated by the action." Id. Finally, the Court should "consider the interests of the federal court system, which interests include comity – the minimizing of conflicts between federal courts – and judicial economy." New York Power Authority v. United States, 42 Fed. Cl. 795, 799 (1999); see also Northrop Corp. v. United States, 27 Fed. Cl. 795, 801-802 (1993) (granting a stay because stay promoted judicial economy and comity). Overarching this analysis is the Court's "paramount obligation to exercise jurisdiction timely in cases properly before it." Id. (quoting Cherokee Nation, 124 F.3d at 1416, 1418).

In addressing a request for a stay, courts often try to "maximize the effective utilization of judicial resources and to minimize the possibility of conflicts between different courts." New York Power Authority, 42 Fed. Cl. at 799 (citing 5A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure, § 1360 (2d ed. 1990). The "rule of thumb is that where there is duplicative litigation in federal courts, i.e., where two courts have before them the same parties and issues, litigation should continue in the court in which the suit first began." New York Power Authority, 42 Fed. Cl. at 802. But this Court has also held that the deciding factor is not

which case was filed first, but which case has made the greatest progress. Id.; see also Truckee-Carson Irrigation District v. United States, 223 Ct. Cl. 684, 685-86 (1980) (suspending proceedings where disposition of district court suit "may very well have a profound effect on the instant case and may, indeed, make it unnecessary to try or dispose of the present suit as an independent matter.").

In patent cases, moreover, "litigation against or brought by the manufacturer of infringing goods takes precedence over a suit by the patent owner against customers of the manufacturer." Katz v. Lear Siegler, Inc., 909 F.2d 1459 (1990). This is the "customer suit" doctrine, and therefore this weighs in favor of staying an infringement case brought against a customer when the manufacturer has already been sued. Corning Glass Works v. United States, 220 Ct. Cl. 605, 606-07 (1979) (affirming a stay of proceedings in a customer suit filed the same day as a manufacturer suit); see also Kerotest Mfg. Co. v. C-O-Two Fire Equipment Co., 342 U.S. 180, 186 (1952) (noting that courts have the discretion to stay suits against a manufacturer's customers). Here, all six alleged suppliers of infringing devices to the government are defendants in the Texas action. Accordingly, this § 1498 action is a customer suit filed after plaintiff has already sued the manufacturers. And, while plaintiff has an interest in preserving its rights where manufacture of allegedly infringing devices was "for the government" with its authorization and consent, a grant of the requested stay will not prejudice plaintiff in pursuing relief under § 1498 after conclusion of the Texas action. Such a stay will preserve the resources of both this Court and the parties to this case by avoiding duplicative litigation over issues that are common to both actions. Accordingly, the government specifically seeks a stay of this case until such time as the E.D.Tex issues a final decision on the merits of Plaintiff's infringement claims.

Conclusion

For the reasons stated above, the government moves this Court to stay the instant suit pending the E.D. Tex's decision in the case of Blue Spike, LLc v. Texas Instruments, Inc., No. 12-00499 (E.D. Tex.).

Respectfully submitted,

STUART F. DELERY
Assistant Attorney General

/s/ John Fargo
JOHN FARGO
Director
Commercial Litigation Branch
Civil Division
Department of Justice
Washington, D. C. 20530

Telephone: 202.514.7223
Facsimile: 202.307.0345

GLADYS M. STEFFENS GUZMÁN
Of Counsel

September 13, 2013

Attorneys for the United States