

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

GEOTAG, INC.,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 2:10-CV-569
	§	
GEORGIO ARMANI S.P.A., et al.,	§	
Defendants.	§	
_____	§	
GEOTAG, INC.,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 2:10-CV-570
	§	
AROMATIQUE, INC., et al.,	§	
Defendants.	§	
_____	§	
GEOTAG, INC.,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 2:10-CV-571
	§	
GUCCI AMERICA, INC., et al.,	§	
Defendants.	§	
_____	§	
GEOTAG, INC.,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 2:10-CV-572
	§	
STARBUCKS CORP., et al.,	§	
Defendants.	§	
	§	
	§	
	§	
	§	
	§	

**GEOTAG, INC.,
Plaintiff,**

v.

**WHERE 2 GET IT, INC., et al.,
Defendants.**

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CIVIL ACTION NO. 2:11-CV-175

ORDER

Before the Court is the Moving Defendants’ (“Movants’”) Joint Motion to Stay, filed by the defendants set forth in Appendix I to the motion. No. 2:10-cv-569, Dkt. No. 48;¹ No. 2:10-cv-570, Dkt. No. 269; No. 2:10-cv-571, Dkt. No. 232; No. 2:10-cv-572, Dkt. No. 228; No. 2:10-cv-573, Dkt. No. 163; No. 2:10-cv-574, Dkt. No. 302; No. 2:10-cv-575, Dkt. No. 330; No. 2:10-cv-587, Dkt. No. 162; No. 2:11-cv-175, Dkt. No. 135. Also before the Court are Plaintiff GeoTag, Inc’s (“GeoTag’s”) response and Movants’ reply. The Court held a hearing on November 9, 2011. Having considered the briefing, oral arguments of counsel, and all relevant papers and pleadings, the Court finds that Movants’ motion to stay should be DENIED WITHOUT PREJUDICE.

I. DISCUSSION

GeoTag has filed suit in the Eastern District of Texas asserting U.S. Patent No. 5,930,474 (“the ’474 Patent”) in multiple civil actions against more than 500 defendants. The nine above-captioned cases are among them. The ’474 Patent relates to a “software interface” that may provide a “map of a selected geographical area” such that “information which is associated with particular geographic locations,” such as “goods and services,” “can be readily accessed.” ’474 Patent at Abstract. During oral argument, Movants’ counsel represented that 81 defendants in

¹ References to docket numbers herein shall be to Civil Action No. 2:10-cv-569 unless otherwise indicated.

the above-captioned cases are urging the present motion.

Movants request a stay pursuant to the “customer suit exception” to the first-to-file rule. *See, e.g., Tegic Commc’ns Corp. v. Bd. of Regents of the Univ. of Tex. Sys.*, 458 F.3d 1335, 1343 (Fed. Cir. 2006). Movants submit their cases should be stayed pending the outcome of later-filed declaratory judgment actions, filed by Microsoft, Google, and Where 2 Get It, Inc. (“W2GI”) in the District of Delaware, which Movants characterize as “manufacturer suits.” Movants argue that because they merely license the relevant software from Microsoft, Google, or W2GI, the manufacturer suits may resolve the above-captioned cases, such as through findings of invalidity or unenforceability. Movants rely on declarations regarding the functionality of the systems at issue in the Delaware actions. *See, e.g.,* Dkt. No. 48 at Exs. C & D.

Movants urged during oral argument that a stay of the “customer” suits would address, as Movants put it, Plaintiff’s “goal of leveraging these unmanageable [customer] lawsuits into cost-of-defense settlements.” Finally, Movants cited the recent decision by the Court of Appeals for the Federal Circuit in *Spread Spectrum Screening LLC v. Eastman Kodak Co.* for the proposition that “the manufacturer’s case 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.” 657 F.3d 1349, 1358 (Fed. Cir. 2011) (citation omitted).

GeoTag responds that Movants fail to provide evidence that they are “customers” of Google, Microsoft, or W2GI or that those entities have been “providers” of the accused methods and systems during the potential damages period. Dkt. No. 51 at 1. Movants purportedly admit that some of the named defendants in cases pending in this Court are “providers,” and GeoTag argues “[i]t would make no sense to stay these cases under the ‘customer exception’ if the alleged

‘Provider’ is already a party to these cases.” *Id.* at 5. In sum, GeoTag argues that “Movants make sweeping allegations without factual support.” *Id.* at 6.

During oral argument, Plaintiff stated it is not accusing use of, for example, the products of Microsoft, Google, and W2GI. Instead, Plaintiff submitted, it accuses each defendant’s specific implementation of a “locator” or “finder” database management system that involves “geographical hierarchies,” a search engine, and results sorted according to the geographical hierarchies. Plaintiff urged that the customer suit exception is designed to apply to “mere resellers” of manufactured goods, not to the unique systems and methods of each putative “customer.” Plaintiff also noted, as Movants stated during argument, that Microsoft will be indemnifying its customers and will therefore be involved in the above-captioned cases.

Movants reply that “GeoTag’s response is based solely on the claimed lack of evidence provided by Movants.” Dkt. No. 62 at 3. Movants emphasize the “survey conducted by Movants to show that 64% of the total number of Defendants across all the Texas actions are customers of the Providers [(Microsoft, Google, and W2GI)] and use the Providers’ web-mapping and location-based services.” *Id.* at 4. As to what is accused, Movants reply that “[n]owhere in GeoTag’s pleadings in Texas or Delaware . . . does it allege that its infringement contentions may include more than the locator services on Defendants’ websites. Tellingly, Geotag is thereafter silent on just *what else* is being accused.” *Id.* at 5. Finally, Movants reiterate that “if the stay is granted, Movants agree to be bound by the final determination of validity or invalidity in the pending Declaratory Judgment Action” in Delaware. *Id.* at 9.

On balance, Movants’ motion is premature, as evidenced by the parties’ disagreement about the scope of GeoTag’s infringement allegations. The Local Patent Rules provide for

infringement contentions as a mechanism to avoid or resolve this type of dispute. *See* P.R. 3-1 (“Disclosure of Asserted Claims and Infringement Contentions”). Because the above-captioned cases are at an early stage, GeoTag has not yet been required to serve infringement contentions.

Also, by contemporaneous Order, the Court is ordering all parties in the above-captioned cases (as well as two other cases filed by GeoTag) to further meet and confer regarding case management issues and to file a case management proposal (or competing proposals). The Court can better address a motion to stay after the parties file a case management proposal.

Movants’ motion should therefore be **DENIED WITHOUT PREJUDICE** to re-filing, if desired, after Geotag has served infringement contentions for all of the above-captioned cases *and* the parties have submitted case management proposals.

II. CONCLUSION

Movants’ Joint Motion to Stay (No. 2:10-cv-569, Dkt. No. 48; No. 2:10-cv-570, Dkt. No. 269; No. 2:10-cv-571, Dkt. No. 232; No. 2:10-cv-572, Dkt. No. 228; No. 2:10-cv-573, Dkt. No. 163; No. 2:10-cv-574, Dkt. No. 302; No. 2:10-cv-575, Dkt. No. 330; No. 2:10-cv-587, Dkt. No. 162; No. 2:11-cv-175, Dkt. No. 135) is hereby **DENIED WITHOUT PREJUDICE** to re-filing, if desired, after Geotag has served infringement contentions for all of the above-captioned cases *and* the parties have submitted case management proposals.

IT IS SO ORDERED.

SIGNED this 14th day of November, 2011.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE