

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ADVANCED MARKETING SYSTEMS, LLC,	§	
	§	
Plaintiff,	§	Civil No. 6:15-cv-00134-JRG-KNM
	§	LEAD CASE
v.	§	
	§	
CVS PHARMACY, INC.,	§	
	§	JURY TRIAL DEMAND
Defendant.	§	
_____	§	

ADVANCED MARKETING SYSTEMS, LLC,	§	
	§	
Plaintiff,	§	Civil No. 6:15-cv-00137-JRG-KNM
	§	
v.	§	
	§	
WALGREEN CO.,	§	
	§	JURY TRIAL DEMAND
Defendant.	§	
_____	§	

ADVANCED MARKETING SYSTEMS, LLC,	§	
	§	
Plaintiff,	§	Civil No. 6:15-cv-00138-JRG-KNM
	§	
v.	§	
	§	
BROOKSHIRE GROCERY COMPANY,	§	
	§	JURY TRIAL DEMAND
Defendant.	§	
_____	§	

**DEFENDANTS' UNOPPOSED MOTION TO STAY DISCOVERY AND CONTINUE  
ALL DEADLINES PENDING RESOLUTION OF STATUTORY SUBJECT MATTER  
ISSUES**

Defendants CVS Pharmacy, Inc., Walgreen Co., and Brookshire Grocery Company (collectively, "Defendants") respectfully request that the Court stay all discovery and continue

all case deadlines pending the Court's resolution of statutory subject matter issues regarding the patents in suit. On July 23, 2015, Defendants filed a letter brief with this Court seeking leave to file a Motion for Judgment on the Pleadings for invalidity of the patents in suit under § 101. (Dkt. No. 16)<sup>1</sup> While Plaintiff Advanced Marketing Systems, LLC ("Plaintiff") plans to file an opposition to Defendant's letter brief, Plaintiff does not oppose staying the present case pending resolution of statutory subject matter issues. Defendants contend that given the nature of the patents in suit, it would be a waste of judicial resources and the resources of the parties to proceed with discovery or other matters prior to resolution of the statutory subject matter issues.

More specifically, Defendants request a stay of discovery and a continuance of all deadlines until resolution of the statutory subject matter issues as further explained in this paragraph. In the event the Court denies Defendants the right to file a motion for judgment on the pleadings, the stay would end at that point and the parties would request the Court issue a new scheduling order. If the Court allows Defendants to file a motion for judgment on the pleadings, then the stay would continue until the Court ruled on the motion. The proposed stay would focus the resources of the parties and the Court on resolving the statutory subject matter issue. While such a stay may not be appropriate in all cases involving a Rule 12 motion on statutory subject matter, Defendants believe a stay is merited here given the nature of the claimed subject matter, and Plaintiff's non-opposition.

Plaintiff filed suits alleging patent infringement against each of the three Defendants on February 20, 2015. On June 25, 2015, the Court consolidated the three cases for all pretrial issues except venue. (Dkt. No. 9 at 1) On July 30, 2015, the Court held a scheduling conference

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<sup>1</sup> All cited docket entries are in Case No. 6:15-cv-00134-JRG-KNM.

in which the Court set a Claim Construction Hearing for February 25, 2016, and a trial date for September 6, 2016.

If a stay is not granted, then over the next few months, each Defendant and the Plaintiff expects to spend hundreds of thousands of dollars in attorneys' and experts' fees and devote a significant amount of their employees' time and other resources to this patent dispute. The Court too will have to expend time and scarce judicial resources to address claim construction, discovery and other issues that may arise during this litigation. Expending all of these resources may be unnecessary, however, if the Court allows Defendants to file and then grants Defendants' case-dispositive Motion for Judgment on the Pleadings for failure to recite statutory subject matter.

Defendants respectfully request that the Court grant Defendants' Unopposed Motion to Stay Discovery and Continue All Deadlines Pending Resolution of Statutory Subject Matter Issues.

Dated: August 4, 2015

Respectfully submitted,

By: /s/ Joseph E. Palys (w/persmission)

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**CERTIFICATE OF SERVICE**

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this 4th day of August, 2015, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ David G. Wille

David G. Wille