

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

Aatrix Software, Inc.,

Plaintiff,

Case No. 3:15-cv-00164-HES-MCR

v.

Green Shades Software, Inc.,

Defendant.

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**DEFENDANT’S MOTION TO STAY DISCOVERY UNTIL THE COURT RULES
UPON DEFENDANT’S DISPOSITIVE MOTION TO DISMISS AMENDED
COMPLAINT UNDER 35 U.S.C. § 101**

Defendant Green Shades Software, Inc. (“**Defendant**”), by and through its undersigned counsel and pursuant to Rules 26(c) and (d) of the Federal Rules of Civil Procedure (“**FRCP**”), Local Rules 3.01(a) and (g), and this Court’s inherent authority, hereby submits this Motion to Stay Discovery until the Court rules upon Defendant’s Dispositive Motion to Dismiss Amended Complaint Under 35 U.S.C. § 101, and in support thereof, states as follows:

(1) Plaintiff and Defendant are direct competitors in the business of selling software for the preparation and filing of certain tax returns (*e.g.*, the Internal Revenue Service’s Form 941 for the payment of quarterly employment taxes).

(2) On May 15, 2015, Plaintiff Aatrix Software, Inc. (“**Plaintiff**”) filed its Amended Complaint (Doc. 7) in this case, asserting infringement of two patents owned by Plaintiff, copies of which are attached as exhibits to the Amended Complaint, and which consist of U.S. Patent Nos. 7,171,615 and 8,984,393 (the “**Asserted Patents**”).

(3) Even when construed in a manner most favorable to the Plaintiff, the claims of the Asserted Patents are really just the application of a generic computer and a generic network to a fundamental human activity: filling out tax forms by hand with information from a ledger using a pen and paper, and then filing those tax forms with the appropriate agency.

(4) On July 15, 2015, Defendant filed its Dispositive Motion to Dismiss Amended Complaint Under 35 U.S.C. § 101 (Doc. 20) (the “**Motion to Dismiss**”).

(5) As more fully explained in the Motion to Dismiss, patentability under 35 U.S.C. § 101 is a threshold legal issue which should be addressed at the onset of litigation; furthermore, the subject matter of the Asserted Patents falls squarely within the category of abstract ideas, implemented using generic computer functionality, that *Alice Corp. Pty. v. CLS Bank Int’l*, 134 S. Ct. 2347, 189 L. Ed. 2d 296 (2014) instructs is not patent-eligible, and that numerous other courts now have found unpatentable with regard to similar patents.

(6) FRCP 26(c) and the inherent powers of this Court permits the stay of discovery for good cause. *See Landis v. North American Co.*, 299 U.S. 248, 254 (1936).

(7) The grounds of the Motion to Dismiss are such that Plaintiff will not be able to cure the Amended Complaint by filing an amended pleading. Any discovery conducted on the merits prior the Court’s ruling on the Motion to Dismiss will be a needless waste of Defendant’s time, money, and other resources.

(8) Furthermore, Plaintiff and Defendant are direct competitors in the tax software field. Defendant should not have to broadly disseminate its confidential

materials to a competitor absent a compelling reason to do so. There is no compelling, urgent need for Plaintiff to begin discovery immediately as this case has only recently been commenced.

(9) Finally, Plaintiff's access to documents and personnel will not change over time, and therefore will not affect Plaintiff's ability to pursue the case in the unlikely event that the Motion to Dismiss is denied.

(10) In light of the nature and strength of Defendant's Motion to Dismiss, a stay should be granted regarding discovery in this matter until the Court has ruled on the Motion to Dismiss, sparing Defendant the concerns, expense and rigors of disruptive discovery.

(11) The undersigned certifies, in accordance with Local Rule 3.01(g) of this Court, that he has conferred with opposing counsel and has been advised that Plaintiff opposes this motion.

WHEREFORE, Defendant respectfully requests that the Court:

- a. Grant this motion;
- b. Enter an order staying all discovery in this case until the Court has ruled on the Motion to Dismiss; and,
- c. Grant all such further relief as this Court deems just and appropriate.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STAY DISCOVERY

In accordance with Local Rule 3.01, Defendant submits this memorandum of law in support of its Motion to Stay Discovery under the Court rules upon Defendant's Dispositive Motion to Dismiss Amended Complaint Under 35 U.S.C. § 101 (the "**Motion to Dismiss**").

I. INTRODUCTION

Plaintiff and Defendant are direct competitors in the business of selling tax preparation and reporting software (*e.g.*, the Internal Revenue Service's Form 941 for the payment of quarterly employment taxes). The Amended Complaint (Doc. 7), filed May 15, 2015, alleges that Defendant infringes U.S. Patent Nos. 7,171,615 and 8,984,393 (collectively, the "**Asserted Patents**"). The Asserted Patents claim "a tool which has been developed to facilitate the rapid production of 'on screen' computer forms, which allow users to print out the forms for physical filing or electronically file the information." '615 Patent, col. 1, ll. 6-10 (Doc. 7-1) and '393 Patent, col. 1, ll. 14-17 (Doc. 7-2). In reality, even when construed in a manner most favorable to the Plaintiff, the claims of the Asserted Patents are really just the application of a generic computer and a generic network to a fundamental human activity: filling out tax forms by hand with information from a ledger using a pen and paper, and then filing those tax forms with the appropriate agency.

II. PROCEDURAL POSTURE

On May 15, 2015, Plaintiff filed its Amended Complaint, which it served on Defendant on May 26, 2015. In response to the Amended Complaint, Defendant filed its

Motion to Dismiss on July 15, 2015. Plaintiff's response to the Motion to Dismiss is due by August 12, 2015. On August 23, 2015, the parties submitted their Case Management Report (Doc. 23) which discloses Defendant's intention to file this Motion to Stay Discovery. The Court has yet to enter a scheduling order in this case.

III. ARGUMENT

A. The Court May Stay Discovery While Dispositive Motions Are Pending

“[T]he 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.” *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). Motions to stay discovery are governed by FRCP 26(c), which permits a court to control the sequence and timing of discovery. Courts have held that “good cause” to stay discovery under FRCP 26(c) exists wherein, as in this case, “resolution of a preliminary motion may dispose of the entire action.” *See, e.g., Nankivil v. Lockheed Martin Corp.*, 216 F.R.D. 689, 692 (M.D.Fla. 2003); *Patterson v. United States Postal Service*, 901 F.2d 927 (11th Cir. 1990) (holding district court did not abuse its discretion by staying discovery where pending dispositive motions gave court enough information to ascertain that further discovery was not likely to produce a genuine issue of material fact); *Feldman v. Flood*, 176 F.R.D. 651 (M.D.Fla.1997) (holding stay of discovery not appropriate unless pending dispositive motion would dispose of entire action); *Spencer Trask Software and Information Services, LLC v. Rpost International Limited*, 206 F.R.D. 367 (S.D.N.Y.2002) (holding good cause for discovery stay exists where dispositive motion has been filed and stay is for short time period that does not prejudice opposing

party); *Simpson v. Specialty Retail Concepts, Inc.*, 121 F.R.D. 261 (M.D.N.C.1988) (setting up balancing test for stays of discovery).

B. GOOD CAUSE EXISTS TO STAY DISCOVERY IN THIS CASE UNTIL THE COURT RULES UPON DEFENDANT’S DISPOSITIVE MOTION TO DISMISS THE AMENDED COMPLAINT UNDER 35 U.S.C. § 101

Weighing the likely costs and burdens of proceeding with discovery in this case, the Court should stay discovery until it rules on Defendant’s dispositive Motion to Dismiss. Taking a “preliminary peek” at the pending Motion to Dismiss as suggested by the *Feldman* court will show that patentability under 35 U.S.C. § 101 is a threshold legal issue which should be addressed at the onset of litigation and that the subject matter of the Asserted Patents falls squarely within the category of abstract ideas, implemented using generic computer functionality, that *Alice Corp. Pty. v. CLS Bank Int’l*, 134 S. Ct. 2347, 189 L. Ed. 2d 296 (2014) instructs is not patent-eligible, and that numerous other courts now have found unpatentable with regard to similar patents. *See Feldman* 176 F.R.D. at 652.

Furthermore, the grounds of the Motion to Dismiss are such that, if granted, Plaintiff will not be able to cure the Amended Complaint by filing an amended pleading. Thus, any discovery conducted on the merits prior the Court’s ruling on the Motion to Dismiss will be a needless waste of Defendant’s time, money, and other resources. Also, it is anticipated that the Court will rule on the Motion to Dismiss in a timely manner, making any delay relatively brief.

Finally, it is doubtful that Plaintiff can present a compelling reason not to grant this Motion to Stay. The passage of time will not hinder, impede, or otherwise affect

Plaintiff's ability to prepare its case. In the event that the requested stay lasts longer than the anticipated short period of time, the Court may amend any scheduling order to grant Plaintiff whatever time is appropriate for discovery. Accordingly, the lack of prejudice to Plaintiff favors granting a stay of discovery.

IV. CONCLUSION

There is no compelling, urgent need for Plaintiff to begin discovery immediately as this case has only recently been commenced; and in light of the nature and strength of Defendant's Motion to Dismiss, a stay should be granted regarding discovery in this matter until the Court has ruled on the Motion to Dismiss, sparing Defendant the concerns, expense and rigors of disruptive discovery. In the unlikely event that the Motion to Dismiss is denied, Plaintiff's access to documents and personnel will not change over time, and therefore, a stay will not affect Plaintiff's ability to pursue the case. In view of these arguments and authority, Defendant respectfully requests that the Court enter an Order staying discovery until such time as the Court rules on the pending Motion to Dismiss.

Dated: August 7, 2015

/s/ H. Timothy Gillis
H. Timothy Gillis, Trial Counsel
Florida Bar No. 133876
Ethan A. Way, Trial Counsel
Florida Bar No. 148199
Gillis Way Duncan & Campbell, LLP
1022 Park Street, Suite 209
Jacksonville, Florida 32204
Phone: (904) 647-6476
Fax: (904) 738-8640
eway@gillisway.com
tgillis@gillisway.com
*Attorneys for Defendant Green Shades
Software, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 7, 2015, I electronically filed the foregoing with the Clerk of Court pursuant to the Administrative Procedures for Electronic Filing in Civil and Criminal Cases of this Court by using the CM/ECF System which will send a notice of electronic filing to the following:

John B. Lunseth
Briggs and Morgan, P.A.
80 South Eighth Street
2200 IDS Center
Minneapolis, MN 55402-2157
jlunseth@briggs.com
Attorneys for Plaintiff Aatrix Software, Inc.

Joanne M. O'Connor
Jones, Foster, Johnston & Stubbs, PA
505 S Flagler Dr - Suite 1100
PO Box 3475
West Palm Beach, FL 33402-3475
joconnor@jones-foster.com
Attorneys for Plaintiff Aatrix Software, Inc.

/s/ H. Timothy Gillis

H. Timothy Gillis