No. 21-190

United States Court of Appeals for the Federal Circuit

In re: NETFLIX, INC.,

Petitioner.

On Petition For A Writ Of Mandamus
To The United States District Court for the Eastern District of Texas
In Case No. 2:21-cv-00080
United States District Judge Rodney Gilstrap

NETFLIX, INC.'S REPLY IN SUPPORT OF ITS PETITION FOR WRIT OF MANDAMUS

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October 7, 2021

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UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number 21-190

Short Case Caption In re Netflix, Inc.

Filing Party/Entity Netflix, Inc.

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box**. Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 10/07/2021

Signature: /s/ Mark A. Lemley

Name: Mark A. Lemley

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	**2. Real Party in Interest.** Fed. Cir. R. 47.4(a)(2).	**3. Parent Corporations and Stockholders.** Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. ☑ None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. ☑ None/Not Applicable
Netflix, Inc.		

☐ Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable ☑ Additional pages attached

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

☐ None/Not Applicable ☐ Additional pages attached

Netflix, Inc. v. CA, Inc., Case No. 3:21-cv-03649 (N.D. Cal.)		

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☑ None/Not Applicable ☐ Additional pages attached

CERTIFICATE OF INTEREST FOR NETFLIX, INC. (CONT'D)

Pursuant to Federal Circuit Rule 47.4(a) and Federal Rule of Appellate Procedure 26.1, counsel for Petitioner Netflix, Inc. certifies the following law firms, partners, and associates have appeared on its behalf before the district court:

From **Sheppard, Mullin, Richter & Hampton LLP**: Harper S. Batts, Christopher Scott Ponder.

From **Keker, Van Nest & Peters LLP**: Sharif E. Jacob, Christina Lee, David Justin Rosen, Edward A Bayley, Emily A. Hasselberg, Hinh D. Tran, Julia L. Greenberg, Katie Lynn Joyce, Leo L. Lam, Matthias Andreas Kamber, Neha Sabharwal, Paven Malhotra, Robert A. Van Nest.

From **Gillam & Smith LLP**: Melissa Richards Smith.

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I. INTRODUCTION

Plaintiffs fail to rebut Netflix's showing that mandamus is appropriate here. First, Plaintiffs have not contested most of the evidence supporting a stay. They make no effort to defend Judge Payne's recommendation on the merits of the venue and transfer motions beyond the bald statement that they disagree with Netflix's arguments. Nor do they even attempt to show they would be prejudiced from a stay. And they blithely declare the public interest irrelevant. As a result, three of the four factors this Court considers for a stay are not in dispute, and all support Netflix. While Plaintiffs dispute the prejudice to Netflix, calling it speculative, the past and continuing prejudice to Netflix is real. Netflix has therefore shown an entitlement to relief on the merits of its mandamus petition.

Plaintiffs also do not dispute that Netflix has no alternative other than mandamus, since the district court has refused repeated requests to even rule on its motion for a stay. Finally, a grant of mandamus is appropriate under these circumstances. Plaintiffs do not address repeated decisions from this Court requiring that district courts decide venue and transfer at the early stages of the case—not at the close of discovery, after claim construction, or just a few months from trial. The district court here has not done so.

Instead, Plaintiffs put all their eggs in a single basket: the fact that after Netflix filed its motion, Judge Payne issued a Report and Recommendation on the

venue and transfer motions. But the Report and Recommendation is just that—a recommendation. While Plaintiffs express their hope that there will soon be a ruling on the motion to dismiss from the district judge, history suggests any such ruling is still months away, after the claim construction hearing, the close of fact discovery, and perhaps after the due date for summary judgment motions.

The relief Netflix seeks here is constrained: a short stay of merits proceedings until the district court rules on its motion to dismiss or transfer and Netflix has an opportunity to seek mandamus of that ruling if necessary. If Plaintiffs are right and the district court accelerates that ruling, the stay will be short-lived and will do no harm. But if the district court doesn't rule quickly, the stay will prevent the district court from proceeding still further down the road to substantive decisions in a case that has no business in the Eastern District of Texas in the first place.

II. LEGAL STANDARD

Plaintiffs assert, without support, that Netflix applies an improper legal standard. Not so. Plaintiffs and Netflix agree on the legal standard for mandamus: has Netflix shown entitlement to the relief it seeks, does it have other alternatives to mandamus, and would a grant of mandamus be appropriate under the circumstances.

But the question of whether a petitioner is entitled to relief necessarily

depends on the legal standard for the relief it requests. Where, as here, the relief requested is a stay, this Court has set out four factors that determine whether a stay is proper. *Standard Havens Prods., Inc. v. Gencor Indus., Inc.*, 897 F.2d 511, 512 (Fed. Cir. 1990). The four stay factors are: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* Plaintiffs have failed to address three of the four stay factors.

III. NETFLIX HAS ESTABLISHED ITS RIGHT TO RELIEF

The first prong in the test for mandamus is whether Netflix has clearly established its right to relief. Because the relief in question is a stay, the right to relief is governed by the four stay factors. Each favors Netflix, and three of the four are undisputed.

A. Netflix Has Made a Strong Showing that It Will Succeed on the Merits of Its Venue Motion

As explained in Netflix's Petition, this case does not belong in the Eastern District of Texas because it is indistinguishable from *In re Google LLC*, 949 F.3d 1338 (Fed. Cir. 2020). In that case, this Court rejected the same venue allegations advanced by Plaintiffs here: (1) Netflix contracts with ISPs to connect servers to residents of the district, Appx047 ¶ 13; (2) Netflix confirms that the ISPs meet

certain network requirements, Appx047 ¶ 15; (3) Netflix performs maintenance activities, Appx047 ¶ 15; and (4) the ISPs connect servers to the Internet to deliver cached content to residents in this district, Appx047 ¶¶ 16-17. Plaintiffs simply cannot establish that Netflix has a "regular and established place of business" in the Eastern District of Texas or that the ISPs Netflix contracts with are Netflix's agents without flatly contradicting *In re Google*. Netflix exercises even less control over the contracting ISPs than Google did over the Google ISPs. *In re Google*, 949 F.3d at 1345-46. Plaintiffs do not meaningfully dispute Netflix's argument except to simply point to the magistrate judge's Report and Recommendation denying Netflix's motion.

Likewise, for the reasons discussed in Netflix's Petition, even if venue were proper in the Eastern District of Texas, the facts of this case warrant transfer to the Northern District of California. Pet. 16-18. Plaintiffs CA and Avago, their parent company Broadcom, and Netflix are all based in the Northern District of California. Plaintiffs are not even registered businesses in Texas. Appx166, Appx173-178. Netflix has no office in the Eastern District of Texas, and employs only a handful of people in the district who work from home, although they are not required to live or work in the district, and they have no relevant information. Potential trial witnesses and evidence are located almost entirely in California. Netflix maintains no documentation, hard copy or electronic, in the Eastern District

of Texas. Appx182-184 ¶¶ 6-7. And there is another pending case in the Northern District of California involving overlapping plaintiffs, the same defendant, and the same accused products. *Broadcom Corp. v. Netflix, Inc.*, No. 3:20-cv-04677-JD (N.D. Cal. filed July 14, 2020). This Court recently granted mandamus ordering transfer on a case with highly comparable facts. Order at 7-10, *In re Google LLC*, No. 2021-171 (Fed. Cir. Oct. 6, 2021), ECF No. 15.[1]

Plaintiffs are correct that the merits of the venue and transfer motions are not yet before the Court. But assessing the merits is important to the first factor in considering a stay—the likelihood of success on the underlying merits. Plaintiffs, having chosen not to defend the magistrate judge's Report and Recommendation on its merits, cannot plausibly claim that Netflix has not made a strong showing it is likely to succeed on the underlying merits.

[1] In that decision, this Court found that the district court had "no sound basis" for weighing the source-of-proof factor against transfer where, as here, the defendant provided a declaration stating that "source code and technical documents relating to the accused activities, as well as a significant number of documents relating to [defendant's] marketing, finances, and sales, were created and are maintained in the Northern District of California." *Id.* at 14. The Court likewise found the district court's reasoning regarding the convenience of witnesses "near" the district but not in the district unpersuasive, taking note of the district court's failure to consider differences in witnesses' travel time as opposed to travel distance. *Id.* at 9. This Court also rejected the district court's finding, as the magistrate judge has found here, that the local interests factor weighed against transfer based solely on the defendant's generalized commercial activity within the district. *Id.* at 11.

B. Netflix Will Suffer Continued Prejudice From Continued Litigation of the Merits in the Eastern District of Texas

Netflix continues to be prejudiced by the district court's failure to issue a stay. Having timely asserted improper venue, Netflix faces prejudice from the very fact of being forced to actively litigate on a compressed schedule the merits of a case that cannot be heard in the Eastern District of Texas in the first place. *See* 14D Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 3801 (4th ed. 2008) ("If the statutory provisions on venue are not followed, and the defendant makes a timely objection on that basis, the case cannot be heard in that district, even if that court has subject matter jurisdiction over the case and personal jurisdiction over the defendant.").

Netflix has suffered significant prejudice from the discovery already completed in this case, including discovery that does not occur as a matter of course in the Northern District of California, where this case belongs. For example, the district court here requires production of documents without requests for production of documents, patentable-subject-matter contentions, and additional disclosures, all of which have already occurred in this case. RAppx35-58, RAppx71; Standing Order Regarding Subject Matter Eligibility Contentions

¶ b (E.D. Tex. July 25, 2019).[2] The district court's procedural discovery rules and aggressive case schedule have forced Netflix to expend significant resources participating in discovery that may ultimately be irrelevant to the case. With the accelerated schedule set by the district court, this case is less than four weeks from the *Markman* hearing, only seven weeks from the close of fact discovery, and less than three months from the close of expert discovery, all without a ruling from the district court on the threshold issues of venue or transfer asserted at the very beginning of the case in a motion to dismiss. Appx302, Appx010 (after ECF No. 107).

And, with the *Markman* hearing now less than one month away, even a prompt ruling by the district court would be tantamount to announcing a venue ruling alongside claim construction, leaving Netflix without the opportunity to obtain review of the threshold venue decision before substantive (and potentially case-dispositive) proceedings occur. This violates this Court's precedent by forcing the court and the parties to expend resources litigating substantive proceedings before they know where the case belongs. *See In re Nintendo Co.*, 544 F. App'x 934, 941 (Fed. Cir. 2013) ("Judicial economy requires that [a] district court should not burden itself with the merits of the action until it is

[2] https://www.txed.uscourts.gov/sites/default/files/judgeFiles/EDTX%20Standing%20Order%20Re%20Subject%20Matter%20Eligibility%20Contentions%20.pdf.

decided [whether] a transfer should be effected. . . . [I]t is not proper to postpone consideration of the application for transfer under § 1404(a) until discovery on the merits is completed." (quoting *McDonnell Douglas Corp. v. Polin*, 429 F.2d 30, 30 (3d Cir. 1970) (first and second alterations in original))).

Absent a stay from this Court, Netflix will incur substantial costs for imminent claim construction proceedings and expert discovery (including reports and depositions) that should be conducted, if at all, in the Northern District of California. With the *Markman* hearing fast approaching, Netflix will have to pay for the technical advisor appointed by the district court to evaluate claim construction briefing, Appx331, in service of substantive proceedings that should have been stayed months ago and which would not have required a technical advisor in the Northern District of California.

These are not "speculative" harms. They are actual costs Netflix has incurred and is continuing to incur by being forced to litigate a case that "cannot be heard" in the Eastern District of Texas. Wright & Miller, *supra*, § 3801.

C. Plaintiffs Do Not Even Claim They Will Suffer Prejudice and the Balance of Hardships Therefore Favors a Stay

The third factor in evaluating a stay is whether plaintiffs will suffer prejudice if a stay is granted. A twenty-eight day stay following the district court's merits ruling, whenever it issues, will not prejudice Plaintiffs, who have neither requested a preliminary injunction nor asserted any particular commercial need for

quick resolution of this suit. Indeed, Plaintiffs have not even attempted to argue that they would be prejudiced by a stay. As a result, the balance of hardships necessarily tips in favor of a stay. The third factor therefore unambiguously favors Netflix.

D. The Public Interest Favors a Stay

Plaintiffs spend much of their brief declaring that it is irrelevant what other judges have done or what effects the district court's actions might have on PTAB proceedings. But those facts bear directly on the public interest factor in considering a stay, which Plaintiffs do not directly address at all.

The law requires the district court to concretely prioritize motions regarding venue and transfer by issuing final decisions on those motions before entertaining other substantive proceedings. The practice in certain Texas district courts to push off ruling on motions to dismiss until substantive proceedings are well underway only encourages forum shopping. The widespread nature of this practice is a reason the public interest supports mandamus relief. This court should make clear that practice is inappropriate.

Nor should this Court ignore the effect of the district court's practice on IPR proceedings. The fact that the district court's actions interfere with the intended operation of the PTAB is not, as Plaintiffs would have it, an issue for the legislature. The problem is not with the statute or the PTAB's rules; it is with the

district court's failure to comply with this Court's orders and stay substantive proceedings until after venue and transfer issues have been resolved. The fact that this prevalent practice affects a substantial number of meritorious PTAB petitions is another reason the public interest favors the grant of a stay and makes mandamus appropriate in this case.

This Court should issue a stay of all substantive proceedings until twenty-eight days from the district court's final determination on venue to reinforce that this Court's precedent on venue and transfer motions must be followed. Early and final resolution of threshold venue and transfer issues is crucial to ensuring that the district court and the parties do not needlessly expend resources on proceedings that become irrelevant when a case is dismissed or transferred to a proper venue. The public interest supports the grant of a stay.

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In short, all four factors this Court considers in deciding whether to grant a stay strongly support Netflix, and most are not even in dispute. Netflix has established its clear entitlement to relief.

IV. NETFLIX HAS NO ALTERNATIVE BUT MANDAMUS TO OBTAIN RELIEF

The second prong of this Court's test for mandamus is whether Netflix has alternative means of relief. Judge Payne has refused to rule on multiple stay requests, as Netflix amply documented in the mandamus Petition. Pet. 18-21.

Indeed, Judge Payne's Report and Recommendation did not even rule on the pending stay motion. Having been unable to even get a ruling on its motion despited repeated efforts, Netflix has no other recourse but mandamus. Plaintiffs have not contested that aspect of Netflix's Petition.

V. MANDAMUS IS APPROPRIATE UNDER THE CIRCUMSTANCES

It is settled law that "a trial court must first address whether it is a proper and convenient venue before addressing any substantive portion of the case." *Nintendo*, 544 F. App'x at 941. Indeed, Judge Payne himself has been ordered by this Court not to conduct substantive proceedings while the parties await a ruling on whether the case even belongs in his court. *In re Google Inc.*, No. 2015-138, 2015 WL 5294800, at *2 (Fed. Cir. July 16, 2015). And this Court has warned against "forcing defendants 'to expend resources litigating substantive matters in an inconvenient venue while a motion to transfer lingers unnecessarily on the docket.'" *In re TracFone Wireless, Inc.*, 848 F. App'x 899, 900 (Fed. Cir. 2021) (quoting *In re Google*, 2015 WL 5294800, at *1). To that end, this Court has regularly ordered district courts to stay all substantive proceedings—not just *Markman* hearings—pending resolution of venue and transfer motions. *In re SK hynix Inc.*, 835 F. App'x 600, 601 (Fed. Cir. 2021) (directing district court to "stay all proceedings concerning the substantive issues of the case," including the *Markman* hearing, "until such time that it has issued a ruling on" the pending

motion to transfer); *TracFone*, 848 F. App'x at 901 (ordering the district court to "stay all proceedings until such time that it issues a ruling on the motion to transfer. . . .").

Plaintiffs ignore all these cases. Instead, they assert that the fact that Judge Payne has now issued a Report and Recommendation—on the heels of Netflix's Petition—means he treated the motion as a "top priority" and that this Court requires no more. But that is not what the cases say. They direct the district courts to resolve the motion to transfer "at the outset of litigation." *In re EMC Corp.*, 501 F. App'x 973, 975 (Fed. Cir. 2013), and not to "address[] any substantive portion of the case," *Nintendo*, 544 F. App'x at 941, until there is a ruling on the motion to transfer—something that, as we discuss below, has not yet happened and may not happen for months.

Contrary to Plaintiffs' assertions, Judge Payne's entry of a Report and Recommendation does not support denying Netflix's Petition. Netflix filed its Petition on Friday, September 24, seeking a stay of substantive proceedings pending a final ruling on its motion to dismiss or transfer the case. The following Monday, Judge Payne issued a Report and Recommendation recommending denial of Netflix's motion to dismiss or transfer. RAppx1. Judge Payne's Report and Recommendation is not a final ruling on Netflix's motion to dismiss or transfer. Pet. 13-14, 23. And while Netflix has on multiple occasions requested that Judge

Payne stay substantive proceedings until the venue and transfer issues were resolved, the Report and Recommendation does not rule on that stay request.

Netflix has sought review of Judge Payne's Report and Recommendation by filing objections with the district court, Def.'s Objs. R. & R. Denying Mot. Dismiss, ECF No. 114 (Oct. 5, 2021), but does not expect a final ruling before the *Markman* hearing set for November 2. Appx010 (after ECF No. 107). Netflix accelerated its objections to the report, filing them on October 5, well before the October 11 due date. *See* Def.'s Objs. R. & R. Denying Mot. Dismiss. But that does little to guarantee that Netflix will get a quick ruling on the merits. In his eleven most recent cases,[3] Judge Gilstrap has taken an average of eighty-three days

[3] *GREE, Inc. v. Supercell Oy*, No. 2:19-cv-00070-JRG-RSP (Nov. 22, 2019), ECF No. 91 (21 days); *Huang v. Huawei Techs. Co., Ltd.*, No. 2:16-cv-00947-JRG-RSP, 2019 WL 1239433 (E.D. Tex. Mar. 18, 2019) (66 days); *KAIST IP US LLC v. Samsung Elecs. Co.*, No. 2:16-cv-01314-JRG-RSP (June 6, 2018), ECF No. 457 (170 days); *Fundamental Innovation Sys. Int'l LLC v. LG Elecs., Inc.*, No. 2:16-cv-1425-JRG-RSP, 2018 WL 837711 (E.D. Tex. Feb. 13, 2018) (41 days); *Armor All/STP Prods. Co. v. Aerospace Commc'ns Holdings Co.*, No. 6:15-cv-00781-JRG-RSP, 2016 WL 5338715 (E.D. Tex. Sept. 21, 2016) (103 days); *Raytheon Co. v. Cray, Inc.*, No. 2:15-cv-01554-JRG-RSP, 2016 WL 5338714 (E.D. Tex. Sept. 21, 2016) (84 days); *iFLY Holdings LLC v. Indoor Skydiving Ger. GmbH*, No. 2:14-cv-0108-JRG-RSP (Nov. 5, 2015), ECF No. 86 (34 days); *Core Wireless Licensing, S.A.R.L. v. Apple, Inc.*, No. 6:14-cv-751-JRG-JDL, 2015 WL 11145816 (E.D. Tex. Oct. 22, 2015) (52 days); *Rockstar Consortium US LP v. Google Inc.*, No. 2:13-cv-893-JG-RSP, 2014 WL 6480772 (E.D. Tex. Nov. 18, 2014) (56 days); *Personalized Media Commc'ns, L.L.C. v. Zynga, Inc.*, No. 2:12-cv-00068-JRG-RSP, 2013 WL 12147661 (E.D. Tex. July 22, 2013) (178 days).

to issue a ruling on review of a magistrate judge's recommendation on a motion to transfer. Accordingly, while it is possible a ruling will come sooner, history suggests Netflix cannot expect a ruling from Judge Gilstrap for nearly three months. In the meantime, this case will continue barreling through substantive proceedings that should not be occurring in Texas to begin with.

This argument is not, as Plaintiffs assert, based on "assumption and speculation." Opp'n 3.[4] Where a petitioner seeks mandamus to stay proceedings pending a final decision on venue or transfer, it is always the case that the district judge might or might not change course and take prompt action following the petition. Nonetheless, this Court has granted such petitions with increasing regularity. *See, e.g.*, Order, *In re Nintendo of Am., Inc.*, No. 2014-132 (Fed. Cir.

In *MyMail, Ltd. v. Yahoo!, Inc.*, the parties filed a joint motion for a stay and notice of settlement 104 days after Judge Payne issued his Report and Recommendation, at which point Judge Gilstrap still had not issued a final decision. No. 2:16-cv-01000-JRG-RSP, ECF Nos. 129 & 163. Judge Gilstrap similarly failed to rule on a pending motion to dismiss in *Personalized Media Commc'ns, LLC v. Google LLC*, until the eve of trial 311 days later. No. 2:19-cv-00090-JRG (E.D. Tex.).

[4] The cases Plaintiffs cite for support on this point are both non-precedential and easily distinguished from the facts of this case. This Court in *In re Taiwan Union Technology Corp.* rejected as too speculative the petitioner's argument that it faced a risk of irreparable harm because the opposing party might spoil evidence. 587 F. App'x 638, 641 (Fed. Cir. 2014). And in denying the petition in *In re Salomon S.A.*, this Court noted, among other things, that the petitioner's assertion that the district court would review its motions for summary judgment under the wrong standard of review was speculative. 983 F.2d 1085 (Table), 1992 WL 350865, at *3 (Fed. Cir. 1992). Neither is remotely like this case.

May 29, 2014) (per curiam), ECF No. 34; *SK hynix Inc.*, 835 F. App'x at 601; *TracFone*, 848 F. App'x at 901.

Here, the evidence shows that it is unlikely that the district court will rule quickly on the objections. Moreover, in the event that it does rule quickly, this Court's stay will merely be shortened, providing Netflix time to seek this Court's review of the district court's merits decision if necessary. Plaintiffs fail utterly to respond substantively to these arguments, dismissing them as irrelevant, and instead rest on the speculative premise that Judge Gilstrap will issue a final decision with uncharacteristic haste.

Plaintiffs suggest that mandamus is not appropriate because the district court has not abused its discretion. But the district court has exercised no discretion; it has not ruled on the motion to stay at all. "Failure to exercise discretion is not exercising discretion; it is making a legal mistake." *Munoz-Pacheco v. Holder*, 673 F.3d 741, 745 (7th Cir. 2012); *Miller v. Hambrick*, 905 F.2d 259, 262 (9th Cir. 1990) ("A district court's failure to exercise discretion constitutes an abuse of discretion."); *Faircloth v. Lamb-Grays Harbor Co.*, 467 F.2d 685, 697 (5th Cir. 1972) ("[F]ailure to exercise discretion, or an abuse of it, may be corrected." (citation omitted)).

Finally, Plaintiffs do not dispute that if Netflix is entitled to a stay, it should be in effect until twenty-eight days after the district court rules on the venue and

transfer motions, allowing this Court time to review that ruling on mandamus if necessary.

VI. CONCLUSION

Netflix respectfully requests that the Court direct the district court to stay all substantive proceedings in this case until twenty-eight days after Judge Gilstrap's ruling on the magistrate judge's Report and Recommendation regarding Netflix's motion to dismiss or transfer.

Dated: October 7, 2021

Respectfully submitted,

DURIE TANGRI LLP

By: */s/ Mark A. Lemley*

Mark A. Lemley
Attorney for Petitioner

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July 2020

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

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In re Netflix, Inc.

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Dated: October 7, 2021 DURIE TANGRI LLP

By: */s/ Mark A. Lemley*

Mark A. Lemley
Attorney for Petitioner