UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERVAL LICENSING LLC, Plaintiff, v. AOL, INC., Defendant. THIS ORDER RELATES TO: C10-1385 MJP, C11-708 MJP, C11-709 MJP, C11-710 MJP, C11-711 MJP, C11-712 MJP, C11-713 MJP, C11-714 MJP, C11-715 MJP, C11-716 MJP, C11-717 MJP.	CASE NO. C10-1385 MJP ORDER DENYING RECONSIDERATION

This matter comes before the Court on Plaintiff's motion for reconsideration. (Dkt. No. 254.) Having reviewed the motion and the response (Dkt. No. 256), the Court DENIES the motion. Plaintiff filed a reply brief, which the Court did not request. (Dkt. No. 257.) The Court

does not consider the matters set forth in the reply brief because the Court did not authorize the submission of the reply brief. See Local Rule CR 7(h)(3).

Analysis

Motions for reconsideration are disfavored in this District. Local Rule CR 7(h)(1). "The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence." Id. Plaintiff does not acknowledge this standard. Instead, Plaintiff argues more generally that certain "new facts warrant reconsideration." (Dkt. No. 254 at 3.)

The facts Plaintiff presents in its motion for reconsideration do not appear to be new facts that Plaintiff could not have raised when it filed its opposition to the motion to stay. When it filed its opposition brief to the motion to stay on June 6, 2011, Plaintiff chose to refer the Court to its March 28, 2011 brief to oppose the motion to stay. (Dkt. No. 246 (citing Dkt. No. 206).) Plaintiff now argues that it had engaged in substantially more work than it cited in its March briefing. Yet, nowhere does Plaintiff explain why it failed to bring those facts to the Court's attention on June 6, 2011, when it filed its opposition to the motion to stay. If this information is as critical as Plaintiff contends, Plaintiff should have presented it when presented the opportunity in June. Raising the matters now with no explanation as to why it could not have been raised earlier is no basis for obtaining reconsideration. This alone warrants denial of the motion for reconsideration.

Even if the Court considers the work expended on briefing the Markman issues and discovery, it does not find that time spent is a compelling reason to deny the stay. Crucially, Plaintiff has failed to show why any of the work will be lost pending the outcome of

reexamination. That some review work of source code may need to be repeated is not sufficient alone to warrant reconsideration. The additional expenditure of time now raised to the Court's attention does not convince the Court of any manifest error in its decision to stay the case.

Plaintiff also argues that its experts retained to review source code will be prejudiced by virtue of the stay because they have agreed to a patent prosecution bar until one year after resolution of the case. (Dkt. No. 254 at 5.) The Court is not convinced that this narrow patent prosecution bar merits reconsideration. First, the protective order was entered on April 14, 2011, and Plaintiff could have pointed to its restrictive clause when it filed its opposition to the motion to stay. This is not a new fact that could not have been brought to the Court's attention earlier. Second, the restriction itself does not convince the Court that the stay was improperly issued. That an expert faces a limited patent prosecution bar for the pendency of this litigation does factor into whether the Court should have issued the stay. Presumably, the restriction to which the experts choose to submit is more than offset by the benefit of generating substantial income by rendering expert services.

Plaintiff also quibbles with the Court's statement that "Defendants have presented a substantial body of prior art that they believe will reshape the four patents at issue in this litigation." (Dkt. No. 254 at 6 (quoting Dkt. No. 253 at 2).) Plaintiff admits that although the examiner has granted reexamination on fewer references than Defendants reported "the examiner is not precluded from relying on the other references." (Id.) This does not show any manifest error.

The Court DENIES the motion for reconsideration. Plaintiff has failed to show any manifest error in the order granting the stay or any new facts that could not have been brought to the Court's attention earlier that compel the Court to reconsider its order.

The clerk is ordered to provide copies of this order to all counsel.

Dated this 12th day of July, 2011.

Marsha J. Pechman
United States District Judge