

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

X.COMMERCE, INC.,
Plaintiff,

v.

EXPRESS MOBILE, INC.,
Defendant.

Case No. 17-cv-02605-RS

**ORDER GRANTING STAY AND
DENYING MOTION TO
CONSOLIDATE**

EXPRESS MOBILE, INC.,
Plaintiff,

v.

ADOBE INC., et al.,
Defendants.

Case No. 20-cv-08297-RS

**ORDER DENYING MOTION TO
CONSOLIDATE**

**Adobe Inc. v. Express Mobile, Inc.,
IPR2021-XXXXX
U.S. Pat. 9,063,755
Exhibit 1033**

1. In Case No. 17-cv-02605-RS, declaratory relief plaintiff X.Commerce, Inc. seeks a stay of the action pending reexamination by the Patent and Trademark Office (“PTO”) of the two patents in suit. While it would be premature at this juncture to enter a stay expressly extending through final conclusion of those reexamination proceedings, a confluence of circumstances support a temporary stay, subject to reevaluation of the situation in six months. Even though the advanced stage of the litigation ordinarily might weigh against a stay, there is no undue prejudice to the patent holder in this instance, particularly where it remains uncertain when a jury trial could

1 commence.

2 Express Mobile has opposed a stay *per se*. Nevertheless, it has suggested in the alternative
3 a “pause” of this action, to allow Case No. 20-cv-08297-RS (which it contends should be
4 formally consolidated herewith) to “catch up.” Even though formal consolidation is not warranted,
5 as discussed below, Express Mobile’s suggestion for such a “pause” further shows that this
6 temporary stay is appropriate.


7 Accordingly, Case No. 17-cv-02605-RS is hereby stayed through November 30, 2021.
8 Two weeks prior to the expiration of the stay the parties shall file a joint status update setting out
9 the status of the reexamination proceedings, and their respective positions on whether the stay
10 should be extended, and if so, for how long. For administrative purposes, all pending motions in
11 this action are deemed denied without prejudice. Once the stay is lifted, any or all of the motions
12 may be renewed simply by re-noticing them, although to the extent events in the reexaminations,
13 developments in the law, or other changed circumstances warrant supplemental briefing, the
14 parties should meet and confer to propose appropriate scheduling.

15 2. Pursuant to Civil Local Rule 7-1(b), the motion to consolidate Case No. 17-cv-02605-
16 RS and Case No. 20-cv-08297-RS is suitable for disposition without oral argument and the
17 hearing set for March 25, 2021 is vacated. Rule 42 of the Federal Rules of Civil Procedure permits
18 but does not define “consolidation” of cases. Here, Express Mobile is not proposing the filing of a
19 “consolidated complaint” or seeking any other relief that requires formal “consolidation” of the
20 two actions. Both cases are already pending before the same judge and, as this order reflects, are
21 subject to any appropriate case management procedures that serve judicial efficiency and the
22 interests of justice. Accordingly, the motion to consolidate is denied, but the parties will be
23 expected to continue cooperating to ensure the greatest efficiencies in how the two cases proceed.

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IT IS SO ORDERED.

Dated: March 5, 2021


RICHARD SEEBORG
Chief United States District Judge