

Judge Albright Denies Google's Motion To Waive Bond, Grants 28-Day Stay

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Earlier this spring in *EcoFactor, Inc. v. Google LLC*, 6:20-cv-00075 (ADA), a jury awarded EcoFactor approximately \$20 million in damages for Google's infringement of one of its patents. The parties have exhausted their post-trial remedies and now have each filed notices of appeal. In November, Google moved to Stay Execution of Judgment Pursuant to Rule 62(b) and for Waiver of Bond.

Under Rule 62(b), "[a]t any time after judgment is entered, a party may obtain a stay by providing a bond or other security." However, a Court can depart from the bond requirement, but the burden is on the moving party to show the reasons for departure. The moving party must "objectively demonstrate[] a present financial ability to facilely respond to a money judgment" and "a financially secure plan for maintaining that same degree of solvency during the period of appeal."

Here, Google argued that it was entitled to a stay because it is a "large, well-established, financially strong company," and that because it is publicly traded, all of its finances are publicly available for EcoFactor to monitor during a stay. The Court held that such an argument fails to fulfill Google's burden to show that it has "a financially secure plan for maintaining that same degree of solvency during the period of appeal" because requiring EcoFactor to monitor Google's financial position via public filings impermissibly shifts the burden of this requirement from Google to EcoFactor.

Google also argued that it should not be required to post a bond to secure a stay of execution because EcoFactor is also appealing the judgment, but the Court held that because EcoFactor is only seeking additional damages, a bond is still appropriate.

The Court granted a limited 28-day stay to allow Google time to make arrangements to post its bond.

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