

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

RAVIN CROSSBOWS, LLC,	)	CASE NO. 5:23-cv-598
	)	
Plaintiff,	)	
	)	JUDGE SARA LIOI
vs.	)	
	)	
HUNTER'S MANUFACTURING	)	MAGISTRATE JUDGE AMANDA M. KNAPP
COMPANY, INC. D/B/A TENPOINT	)	
CROSSBOW TECHNOLOGIES,	)	
	)	
Defendant.	)	

DEFENDANT'S MOTION TO STAY CASE
AND
MOTION TO POSTPONE CASE MANAGEMENT CONFERENCE

Shortly after Plaintiff Ravin Crossbows, LLC (“Ravin”) filed and served its patent infringement complaint, Defendant Hunter’s Manufacturing Company, Inc. d/b/a TenPoint Crossbow Technologies (“TenPoint”) moved to transfer the case from the District of Nevada to this District. While that motion was pending, TenPoint petitioned the U.S. Patent and Trademark Office’s (“USPTO”) Patent Trial and Appeal Board (“Board”) for an *inter partes* review (“IPR”). After the Nevada Court granted the transfer motion, this Court last month scheduled a case management conference for May 25. TenPoint moves to stay the case pending completion of the IPR, as a stay will allow the USPTO to lend its expertise to the claimed subject matter, which will simplify the relevant issues and reduce the burdens of litigation for both parties and the Court.

I. BACKGROUND

Ravin filed its Complaint in December 2021, accusing TenPoint of infringing U.S. Patent Nos. 9,354,015 (the “’015 Patent,” Doc. No. 1-2), 9,494,379 (the “’379 Patent,” Doc. No. 1-3), 9,879,936 (the “’936 Patent,” Doc. No. 1-4), 10,254,073 (the “’073 Patent,” Doc. No. 1-5), 10,712,118 (the “’118 Patent,” Doc. No. 1-7), and 11,085,728 (the “’728 Patent,” Doc. No. 1-8; collectively, the “patents-in-suit”). (Doc. No. 1 at 21-19.¹) Because litigating the case in Nevada would be inconvenient and not in the interest of justice, TenPoint moved to transfer the case to this District mere days after Ravin effectuated service of the Complaint. (Transfer Mot., Doc. No. 17.) To avoid the inefficiency and burden of litigating in an inconvenient forum, TenPoint concurrently moved to defer filing its answer (which would trigger all subsequent actions) until the Transfer Motion is resolved. (Mot. to Defer, Doc. No. 19.) The Nevada Court eventually denied TenPoint’s Motion to Defer, not wishing to delay the commencement of the case, and

¹ Page citations to the record in this case (including exhibits to this motion) are to the page numbers in the ECF header. (See Initial Standing Order, Doc. No. 81 at 4.)

issued a Scheduling Order that would govern “until that motion [i.e., the Transfer Motion] is decided.” (Order on Mot. to Defer, Doc. No. 30 at 2; Scheduling Order, Doc. No. 36 at 1.) Thus, as required by the Nevada Court, TenPoint engaged in the litigation, all the while maintaining its objection to having to litigate in an inconvenient forum. (*See* Disputed Disc. Plan, Doc. No. 34 at 2-3; Letter Regarding Transfer Mot., Doc. No. 45; Joint Claim Construction Statement, Doc. No. 47 at 2, 6; Mot. to Stay Claim Construction, Doc. Nos. 48, 51; Resp. Claim Construction Br., Doc. No. 56 at 12; Mot. for Leave to File Supplemental Authority, Doc. No. 58; Mot. to Amend Scheduling Order, Doc. No. 69 at 2-3.)

As TenPoint explained, Ravin’s Complaint accused over a dozen of TenPoint’s crossbows of infringing 103 claims from 6 patents. (Disputed Disc. Plan, Doc. No. 34 at 6.) Those patents have different priority dates (thus encompassing different prior art) and lengthy prosecution histories (e.g., over 500 references were submitted in the ‘728 Patent). (*Id.* at 6, 13.) This complexity required a considerable amount of effort and time for proper analysis. (*Id.*)

Ravin’s Complaint labels the alleged innovation captured by the patents-in-suit the “HeliCoil® technology.” (Compl., Doc. 1 at 5-9 (¶¶ 12-17).) It is this HeliCoil technology that allegedly made Ravin’s crossbows “revolutionary” and enabled them to “break barriers and redefine the industry.” (Compl. 5 (¶¶ 12-13); Opening Claim Construction Br., Doc. No. 50 at 6.) It is the HeliCoil technology that allegedly made Ravin’s crossbows better than traditional crossbows, with “increasing arrow speeds and longer operating distances.” (Compl. 5-6, 9 (¶¶ 14, 16); Opening Claim Construction Br. 6-7.) What is this HeliCoil technology, one might ask? It turns out that it is just a fancy way of saying that cams on Ravin’s crossbows have helical grooves (called “journals” in the patents-in-suit) for power cables, as opposed to grooves that are non-

helical (i.e., planar in parallel with the bowstring grooves). (*Compare* Compl. 5-6 (¶14) with Compl. 7-8 (¶15); *see also* Compl. 17-18 (¶30); Opening Claim Construction Br. 6-7.)

And it also turns out that helical grooves on archery cams are nothing new, as the prior art discloses *multiple* such cams. (Resp. Claim Construction Br., Doc. No. 56 at 13 (citing multiple references).) Thus, after completing the required analysis, TenPoint prepared and filed its IPR Petition with the Board on December 21, 2022 (attached herein, without its accompanying exhibits, as Exhibit A). To avoid distractions from tangential, unimportant issues, the Petition focuses on claim 1 of the ‘015 Patent, which recites a standard reverse-draw crossbow having cams with helical grooves for power cables. (Ex. A at 18-19.) Underscoring the unpatentability of Ravin’s claimed HeliCoil technology, the Petition presents no less than 12 detailed grounds why the claim is neither novel nor unobvious. (Ex. A at 22, 32-66.)

Ravin filed its Preliminary Response to the Petition on April 11, 2023 (Vernyuk Decl. ¶4), so the Board will render its decision on whether to institute the IPR no later than July 11, 2023, and will render a final written decision on the IPR within a year after institution (i.e., by July 2024). *See* 35 U.S.C. §§ 314(b), 316(a)(11). Because the Board’s review of the asserted HeliCoil technology will be of great help to the parties and the Court, TenPoint moves to stay the case pending such review.

II. APPLICABLE LAW

An IPR, created in 2011, allows the USPTO, on request, to re-examine the claims of an already-issued patent and cancel any that the agency finds to be unpatentable in light of prior art. *Cuozzo Speed Techs. v. Lee*, 579 U.S. 261, 265 (2016). The IPR procedure, replacing the former *inter partes* reexamination, is a streamlined adjudicative process, meant to help establish a more efficient and streamlined patent system by improving patent quality and limiting unnecessary and

counterproductive litigation costs. *Id.* at 278-80; *Think Prods. v. ACCO Brands Corp.*, No. CV 14-6659 (KAM) (SIL), 2015 U.S. Dist. LEXIS 196129, at *3-4 (E.D.N.Y. June 19, 2015). The Board must decide whether to institute an IPR within six months after a petition is filed, and if instituted, the Board must render a final written decision generally within one year of institution. *Intellectual Ventures II v. Huntington Bancshares, Inc.*, No. 2:13-CV-00785, 2014 U.S. Dist. LEXIS 78753, at *5 (S.D. Ohio Jun. 10, 2014). An instituted review must address all the grounds included in the petition. *BioDelivery Scis. Int'l v. Aquestive Therapeutics, Inc.*, 898 F.3d 1205, 1208-09 (Fed. Cir. 2018).

A district court has the inherent power to stay a case where appropriate, including pending an IPR. *Murata Mach. USA v. Daifuku Co.* 830 F.3d 1357, 1361 (Fed. Cir. 2016). In deciding whether to grant a stay, courts commonly consider factors such as: (1) whether a stay would unduly prejudice or tactically disadvantage the non-movant, (2) whether a stay will simplify the issues in question, (3) whether discovery is complete and whether a trial date has been set, and (4) whether a stay would potentially reduce the burden of litigation for the parties and the court. *Id.* at 1361-62; *see also Cybergenetics Corp. v. Inst. of Env'tl. Sci. & Research*, No. 5:19-CV-1197, 2020 U.S. Dist. LEXIS 20305, at *5 (N.D. Ohio Jan. 27, 2020); *Intellectual Ventures II*, 2014 U.S. Dist. LEXIS 78753, at *7 (applying the reexamination-based stay analysis to an IPR-based stay request).

Courts have identified various benefits from allowing the IPR to proceed first, including: (1) the USPTO will consider and provide its expert views on the asserted prior art; (2) the USPTO's examination can alleviate many discovery problems relating to prior art; (3) where the IPR results in effective invalidity of the patent, the suit will likely be dismissed; (4) the IPR may encourage settlement without further burdening the court; (5) the IPR record would likely be entered at trial and thus reduce the complexity and length of litigation; (6) issues, defenses, and evidence will be

more easily limited in pre-trial conferences after the IPR; and (7) costs will likely be reduced for the court and the parties. *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-CV-1058-WCB, 2015 U.S. Dist. LEXIS 29573, at *12-13 (E.D. Tex. Mar. 11, 2015). Thus, there is a liberal policy in favor of granting stays of litigation pending the outcome of USPTO proceedings. *Golden Rule Fasteners v. Oatey Co.*, No. 1:19CV341, 2019 U.S. Dist. LEXIS 91752, at *4 (N.D. Ohio May 31, 2019).

III. DISCUSSION

A. This Case Should Be Stayed at least Until the Board's Institution Decision.

As a preliminary matter, this case should be stayed until the Board issues its institution decision on TenPoint's IPR Petition, which will occur no later than July 11, 2023. *See* 35 U.S.C. § 314(b). That deadline is approximately two months away. A short preliminary stay will conserve resources while confirming whether the Board will institute the IPR, which is very likely based on the Board's statistics (excerpts of Board's latest Trial Statistics attached herein as Exhibit B, showing institution rates close to 70%). *See Capriola Corp. v. LaRose Indus.*, No. 8:12-cv-2346-T-23TBM, 2013 U.S. Dist. LEXIS 65754, at *7 (M.D. Fla. Mar. 11, 2013) (granting stay at least until Board's institution decision); *Ralph Gonnocci Revocable Living Trust v. Three M Tool & Mach.*, No. 02-74796, 2003 U.S. Dist. LEXIS 24423, at *12 n.6 (E.D. Mich. Oct. 7, 2003) (same). The Board's institution decision will provide further confirmation that the applicable factors favor staying this case until TenPoint's requested IPR has concluded, as further explained below.

B. No Trial Date Has Been Set, and Discovery Has Not Closed.

No trial date has ever been set in this case, not even in the Nevada Court's preliminary Scheduling Order. (*See* Scheduling Order, Doc. No. 36.) Neither has discovery closed. The Nevada Court set the fact discovery cutoff at May 23, 2023, and the expert discovery cutoff at June 23, 2023, neither of which has yet elapsed. (*See id.* at 1-2.) Additionally, before the Transfer

Motion was granted, TenPoint moved to modify the Scheduling Order, including extending the discovery dates, showing good cause for the extension in light of the fact that a claim construction hearing had not even been scheduled yet. (*See* Mot. to Amend Scheduling Order, Doc. No. 69.²) Moreover, the Scheduling Order entered by the Nevada Court was intended to govern only “until [the Transfer Motion] is decided.” (Doc. No. 36 at 1.) Now that the Motion was granted and the case transferred, the Nevada Court’s Scheduling Order, by its own terms, no longer applies, and a new one has not yet been entered by this Court.

While some time has passed since Ravin filed its Complaint (primarily due to the Nevada Court’s delay in ruling on the Transfer Motion), and the parties have exchanged their respective initial patent contentions and conducted some discovery, the case procedurally is still at an early stage with much remaining to be done. Ravin’s nonresponsive validity contentions (and counterclaim answer), coupled with Ravin’s failure to follow the Nevada Court’s rules regarding preliminary claim constructions, resulted in 43 disputed terms that need to be construed. (*See* Resp. Claim Construction Br., Doc. No. 56 at 10-12; Mot. to Exceed Page Limits, Doc. No. 53.) Because the Nevada Court’s rules on claim construction briefing differ materially from this Court’s, the parties’ claim construction briefs would need to be redone, as previously explained (*see* Mot. to Stay Claim Construction, Doc. No. 48 at 4; Reply in Supp. of Mot. to Stay Claim Construction, Doc. No. 51 at 6), especially in light of the unwieldy number of disputed terms.

After claim construction briefing, a hearing, and an order, the parties would then need to prepare and serve their final patent contentions (L. P. R. 3.10(b)-(d)) and any advice-of-counsel discovery (L. P. R. 4.8), finish up fact discovery (L. P. R. 4.7), conduct non-claim construction

² The Nevada Court denied this Motion as moot in light of granting the Transfer Motion. (Doc. No. 74 at 2 & n.3.)

expert discovery (L. P. R. 5.1-5.2), and brief dispositive motions (L. P. R. 6.1) before the case could be ready for trial. *See Versata Software, Inc. v. Callidus Software, Inc.*, 771 F.3d 1368, 1371-72 (Fed. Cir. 2014) (noting that a stay would save the burden of “completing both fact and expert discovery, resolving summary judgment motions, completing the *Markman* process, and preparing for trial”),³ *vacated as moot*, 780 F.3d 1134 (Fed. Cir. 2015).⁴ Clearly, the case is closer to its beginning than to its end, and the Board will most likely issue its final written decision in the IPR (which, by statute, it must do by July 2024) before a trial can occur in this case. *See Allied Erecting & Dismantling Co. v. Genesis Equip. & Mfg.*, No. 4:08CV589, 2010 U.S. Dist. LEXIS 92851, at *10-11 (N.D. Ohio Aug. 16, 2010) (citing cases that granted a stay even where claim construction order had issued, discovery closed, case had been pending for five years, or trial was two months away); *Wayne-Dalton Corp. v. Amarr Co.*, No. 5:06CV01768, 2008 U.S. Dist. LEXIS 143540, at *29 (N.D. Ohio Jan. 23, 2008) (Lioi, J.) (granting stay even after discovery closed and parties filed summary judgment motions); *NFC Tech.*, 2015 U.S. Dist. LEXIS 29573, at *10 (while discovery closes in one month, the bulk of the parties’ expenses would be the future pretrial and trial work, which might be avoided if the stay simplifies the issues).

As far as discovery, TenPoint has produced over 600,000 pages (!) of documents, while Ravin’s latest batch in its rolling production brings the total to just over 8,000 pages. (Vernyuk Decl. (¶¶ 5-6).) Because the parties are fairly equivalent competitors, it is safe to assume that Ravin’s production should be at least within the same ballpark as TenPoint’s, so Ravin still has a

³ While *Versata Software* involved the Covered Business Method Patents program, which is a cousin of an IPR, the stay factors are essentially the same. *NFC Tech.*, 2015 U.S. Dist. LEXIS 29573, at *5-6, 15-16.

⁴ Although the Federal Circuit vacated its opinion in *Versata Software* due to the parties’ settlement and stipulated dismissal, its reasoning still remains valid. *Cf. Moore v. United States*, No. 2022-1475, 2023 U.S. App. LEXIS 10389, at *8 n.2 (Fed. Cir. Apr. 28, 2023).

long way to go. On depositions, while Ravin has taken several, it still has others that it noticed but not yet taken, including one under Rule 30(b)(6) of TenPoint. (Vernyuk Decl. (¶7).) Mindful of the limits of Fed. R. Civ. P. 30(a)(2)(A) and (d)(1), TenPoint prefers to wait until after the claim construction order issues before taking depositions, so that they can effectively and efficiently utilize the proper constructions in questioning. Because this case is still at an early stage, this factor supports granting a stay.

C. A Stay Will Result in Simplification of the Issues.

As explained above, the heart of the patents-in-suit, by Ravin's own admission, is the alleged HeliCoil technology, which is just archery cams that have helical grooves (called journals) for power cables. The patentability of this technology is front and center in TenPoint's requested IPR. Thus, allowing the Board to conduct the IPR and provide its expert view on the HeliCoil technology will greatly facilitate the Court's resolution of TenPoint's invalidity counterclaims directed to the very same issue. *See Allied Erecting*, 2010 U.S. Dist. LEXIS 92851, at *9 (whether the challenged claims are cancelled or survive, the expert view of the USPTO can assist the court in determining patent validity, thus simplifying trial); *NFC Tech.*, 2015 U.S. Dist. LEXIS 29573, at *12, 16 (IPR process was designed to give the expert agency that issued the patent an opportunity to determine in the first instance whether it is valid in light of the cited prior art and to simplify district court infringement proceedings).

Should the Board agree with TenPoint and invalidate Ravin's claim in the IPR as unpatentable, that decision will resolve the overwhelming majority of the asserted claims. Each patent-in-suit includes at least one asserted independent claim that recites helical power cable journals, with additional asserted claims dependent on it and mostly reciting further limitations that are well-known or insignificant. (*See* '015 Patent (independent claim 1 and dependent claims

2-9); ‘379 Patent (independent claim 11 and dependent claims 12-18); ‘936 Patent (independent claim 11 and dependent claims 12-18); ‘073 Patent (independent claim 1 and dependent claims 2-6, 8-10, 28-29, and 31-34); ‘118 Patent (all three independent claims 1, 11, and 19 and dependent claims 2-6, 8-10, and 12-15); ‘728 Patent (sole asserted independent claim 10 and dependent claims 11-13 and 15).) Most of the remaining asserted independent claims (that do not recite helical journals) recite even broader scope, such that a power cable that wraps helically within a helical journal will readily meet those broader claim limitations (e.g., power cable journals that comprise paths that are not co-planar or that extend around and along the axis of cam rotation). (See ‘015 Patent (independent claim 11 and dependent claims 12-16); ‘379 Patent (independent claim 1 and dependent claims 2-7 and 9-10); ‘936 Patent (independent claim 1 and dependent claims 2-7 and 9-10); ‘073 Patent (independent claim 11 and dependent claims 12-14 and 23-27).) Several claims that depend on such broader independent claims expressly recite helical journals, confirming that helical power cable journals will meet those broader claim limitations. (See ‘015 Patent (claim 15); ‘379 Patent (claim 2); ‘936 Patent (claim 2); ‘073 Patent (claim 12).)

The prosecution history further confirms the centrality of the helical journals, as Ravin focused on them to overcome the USPTO’s rejections. (See ‘015 Patent Prosecution History, excerpts attached herein as Exhibit C, at 2-3, 6; ‘379 Patent Prosecution History, excerpts attached herein as Exhibit D, at 2-3, 5; ‘073 Patent Prosecution History, excerpts attached herein as Exhibit E, at 2, 5, 7-15, 18-19; ‘118 Patent Prosecution History, excerpts attached herein as Exhibit F, at 2-3, 5-6; ‘728 Patent Prosecution History, excerpts attached herein as Exhibit G, at 2, 5-8.)

The Federal Circuit has confirmed that the Board’s decision in an IPR qualifies for issue preclusion. See *Google LLC v. Hammond Dev. Int’l*, 54 F.4th 1377, 1381 (Fed. Cir. 2022); *XY, LLC v. Trans Ova Genetics, L.C.*, 890 F.3d 1282, 1294 (Fed. Cir. 2018). “It is well established

that patent claims need not be identical for collateral estoppel to apply.” *Google*, 54 F.4th at 1381. It can apply even if the “claims ‘use slightly different language to describe substantially the same invention,’ so long as ‘the differences between the unadjudicated patent claims and adjudicated patent claims do not materially alter the question of invalidity.’” *Id.* (quoting *Ohio Willow Wood Co. v. Alps S., LLC*, 735 F.3d 1333, 1342 (Fed. Cir. 2013) (citing *Bourns, Inc. v. United States*, 537 F.2d 486, 493 (Ct. Cl. 1976))).

In *Google*, issue preclusion applied because the difference between the prior-invalidated claims and the unadjudicated claims was well-known and obvious, thus immaterial to the patentability analysis for collateral estoppel. *Id.* at 1381-82; *see also Soverain Software v. Victoria’s Secret Direct Brand Mgmt.*, 778 F.3d 1311, 1319 (Fed. Cir. 2015) (difference was known and not invented by patentee, and thus did not prevent application of issue preclusion). In *Ohio Willow Wood*, the Court found issue preclusion to apply because the involved claims were “substantially similar” and the patent owner “has not provided any explanation regarding how” the difference “is patentably significant.” 735 F.3d at 1342-43; *see also Bourns*, 537 F.2d at 493-95 (evaluating the differences between the involved claims under the *Graham* obviousness factors and finding that collateral estoppel applies because those differences relate to things known in the art); *cf. SimpleAir Inc. v. Google LLC*, 884 F.3d 1160, 1167-68 (Fed. Cir. 2018) (in related claim-preclusion context, patent claims are “essentially the same” if they are “patentably indistinct”); *Pfizer, Inc. v. Teva Pharms. USA, Inc.*, 518 F.3d 1353, 1363 (Fed. Cir. 2008) (if one claim anticipates or renders obvious another claim, the claims are not patentably distinct).

Thus, because the core of Ravin’s alleged innovation will be evaluated in the IPR, the Board’s decision will resolve the large majority of the asserted claims, which use slightly different language to describe substantially the same invention, especially as Ravin will be unable to

establish that any differences relate to more than well-known aspects that would materially alter the invalidity question. Even if not eliminating each and every one of the 103 (!) asserted claims, the IPR decision will, at very least, greatly reduce the number of claims remaining, thus streamlining the case. And even if *Ravin* is able to meet its burden to show that some claims are not precluded, the Board's input on the core issue (HeliCoil technology) will allow the Court to focus on those other aspects (i.e., the differences). *See Versata Software*, 771 F.3d at 1371-72 (stay can be warranted even if Board proceeding does not address all asserted patents, claims, or invalidity grounds); *Golden Rule*, 2019 U.S. Dist. LEXIS 91752, at *6-7 (where asserted claims depend on, or recite similar terms as, a claim under reexamination, this factor favors a stay).

In addition to simplifying issues from a claims perspective, a stay pending the IPR would also simplify issues from a prior art perspective. TenPoint's Petition asserted 12 invalidity grounds over a total of 8 prior art references. (Ex. A at 22.) Staying this case will allow the Court and the parties to take advantage of the Board's input regarding each of those references, which will need to be addressed in this suit.

In short, regardless of who wins the IPR, a stay will certainly result in simplification of the relevant issues in this case, which favors granting a stay. *See Golden Rule*, 2019 U.S. Dist. LEXIS 91752, at *7 ("Even if the related claims emerge from reexamination unscathed, the USPTO's expert impressions about the patents and the innovations will be valuable to the court in its own consideration of the related matters."); *Intellectual Ventures II*, 2014 U.S. Dist. LEXIS 78753, at *13 (either invalidation of at least some claims at issue, or a rejection of petitioners' arguments, "undoubtedly would simplify these proceedings").

D. A Stay Will Reduce the Burden of Litigation for Both Parties and the Court.

This factor dovetails with the preceding one. Because a stay would result in a significant

simplification of the issues, as explained, that result would lead to a corresponding reduction of the burden of litigation for both parties and the Court.

As explained, currently 103 asserted claims from 6 patents are at issue. This large amount of asserted claims, coupled with Ravin's deliberate decision to not follow the claim construction rules, resulted in 43 disputed claim terms that need to be construed. *See Eon Corp. IP Holdings LLC v. Silver Spring Networks, Inc.*, 815 F.3d 1314, 1318-19 (Fed. Cir. 2016) (if the parties raise a dispute regarding claim scope, it is the court's duty to resolve it). Proceeding through claim construction on 43 terms will be a considerable burden for both parties and the Court. Likewise, preparing expert reports (on invalidity and infringement) and final patent contentions on 103 claims will take a considerable amount of time and resources. And dispositive motions on 103 claims, which will surely need an enlargement of page limits, will also require significant effort from the parties, and then the Court.

But if the IPR can eliminate a large portion of the asserted claims, as the preceding section explained is likely, then these litigation activities will necessarily be reduced in scope, thus easing their burden. With less claims at issue, less claim terms will be disputed, and patent contentions, expert reports, and dispositive motions will be shorter. *See Versata Software*, 771 F.3d at 1375 (a stay can potentially save the substantial resources that would be expended through completing discovery and trial). With the core of Ravin's alleged innovation addressed, much less ink will need to be spilled on it. Instead of this Court and the Board proceeding on the same invalidity issues in parallel, a stay would essentially result in a phased approach, where the Board addresses the patentability of Ravin's HeliCoil technology, and the Court then picks up with what is left, if anything. *See Zillow, Inc. v. Trulia, Inc.*, No. C12-1549JLR, 2013 U.S. Dist. LEXIS 144919, at *26 (W.D. Wash. Oct. 4, 2013) (a stay would relieve both parties of the burden of litigating in

multiple fora); *Wayne-Dalton Corp.*, 2008 U.S. Dist. LEXIS 143540, at *28 (same). And because the IPR procedure was intended to be a cost-effective alternative to litigation, *Cuozzo Speed*, 579 U.S. at 278, a stay would reduce the parties' burden of litigating the patentability issues.

Furthermore, during the IPR, the parties would have the opportunity to settle the case. *See* 35 U.S.C. § 317. If they are able to find a mutually workable solution, that would eliminate any further burden for the Court in this case. Thus, this factor, like the preceding ones, favors a stay.

E. A Stay Will Not Unduly Prejudice or Disadvantage Ravin.

Because a stay will reduce the litigation burden on the parties, Ravin will not be unduly prejudiced by a stay pending the IPR. Instead, it will *benefit* from a stay by not needing to litigate patentability on two fronts in parallel.

Ravin previously argued that any delay would prejudice it. (Opp'n to Mot. to Stay Claim Construction, Doc. No. 49 at 5.) But such arguments are undercut by its own actions. Three of Ravin's patents-in-suit had issued by January 2018. (Compl., Doc. No. 1 at 3 (¶¶ 6-8).) TenPoint contacted Ravin "seeking a potential license to Ravin's helical cam patents" back in November 2017. (*Id.* at 20 (¶36).) From the allegedly infringing models of TenPoint's crossbows (*see id.* at 10 (¶21)), Nitro X, Stealth NXT, and Shadow NXT were introduced in TenPoint's 2018 catalog (*see* Doc. No. 50-16 at 11). Ravin itself admits that it and TenPoint regularly and routinely attend the same archery trade shows since at least 2018. (Opp'n to Mot. to Transfer, Doc. No. 21 at 8-9.) Thus Ravin assuredly was aware of the alleged infringement more than five years ago, yet chose to do nothing about it until the very end of 2021. Ravin even sued TenPoint in this District in a case that was pending before this very Court from 2018 to 2021, *Ravin Crossbows, LLC v. Hunter's Mfg. Co.*, No. 5:18-cv-1729, 2019 U.S. Dist. LEXIS 132562 (N.D. Ohio Aug. 7, 2019); 2020 U.S. Dist. LEXIS 134200 (N.D. Ohio July 29, 2020), and could have asserted its

infringement claims there, but it intentionally decided not to. *See VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1319 (Fed. Cir. 2014) (weighing against patentee the fact that it “waited nearly a year after the [patent] issued before it filed suit against Defendants”); *Zillow*, 2013 U.S. Dist. LEXIS 144919, at *23-24 (patentee’s delay in bringing suit undermines claims of undue prejudice).

Additionally, Ravin chose not to move for a preliminary injunction in this case, which belies any claim of undue prejudice in the market from any alleged infringement, and monetary damages would be more than “adequate to compensate for [any] infringement.” 35 U.S.C. § 284; *VirtualAgility*, 759 F.3d at 1318-19; *Wayne-Dalton Corp.*, 2008 U.S. Dist. LEXIS 143540, at *31 (infringement can be remedied by money damages); *Zillow*, 2013 U.S. Dist. LEXIS 144919, at *21-23 (patentee’s attempts to argue undue prejudice are undermined by failure to seek preliminary injunction (collecting cases)). While some prejudice is inherent in any delay, that alone is insufficient to prevent a stay. “If it were, few if any patent cases would be stayed pending reexamination by the PTO. That is clearly not the case.” *Allied Erecting*, 2010 U.S. Dist. LEXIS 92851, at *6-7; *see also Pac. Bioscience Labs. v. Pretika Corp.*, 760 F. Supp. 2d 1061, 1066 (W.D. Wash. 2011) (“Courts have repeatedly held that the delay inherent in the reexamination process does not, by itself, constitute undue prejudice.”).

Nor would Ravin suffer any undue tactical disadvantage from a stay. As soon as TenPoint was served with process, it moved to transfer this case out of the inconvenient forum in Nevada and maintained its objection to litigating there, as explained above. Mindful of the statutory deadline for requesting an IPR, *see* 35 U.S.C. § 315(b), TenPoint conducted the required analysis and prepared and filed its Petition as soon as it was ready. Now, with the grant of the Transfer Motion and the case properly transferred to this forum, TenPoint moves for a stay pending the IPR.

There simply is no undue tactical advantage to TenPoint or disadvantage to Ravin. Thus, this factor also favors a stay.

F. Postponing the Case Management Conference Would Allow the Court to Efficiently Resolve this Stay Motion.

A case management conference (“CMC”) is currently scheduled for May 25, and in preparation for it, the parties are to meet and confer on a variety of topics and propose a detailed plan for going forward. (Doc. Nos. 84, 84-1.) The parties have begun this preparation but are in considerable disagreement regarding the path forward. Should the Court grant a stay, those detailed plans will need to be redone, and the effort in preparing them would have been wasted. Thus, in the interest of efficiency, TenPoint respectfully requests a short postponement of the CMC until the Court rules on this motion to stay.

IV. CONCLUSION

Because all of the relevant factors favor a stay, TenPoint respectfully requests that the Court stay this case until the Board’s institution decision on TenPoint’s IPR Petition, and if instituted, then until completion of the requested IPR. TenPoint also respectfully requests that the CMC be postponed pending a ruling on this motion to stay.

Dated: May 5, 2023

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