

REDACTED

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RAVIN CROSSBOWS, LLC,

Plaintiff,

V.

HUNTER'S MANUFACTURING
COMPANY, INC. d/b/a TENPOINT
CROSSBOW TECHNOLOGIES,

Defendant.

Case No. 5:23-cv-00598-SL

JUDGE SARA LIOI

RAVIN CROSSBOWS, LLC'S
OPPOSITION TO DEFENDANT'S
MOTION TO STAY CASE AND
MOTION TO POSTPONE CASE
MANAGEMENT CONFERENCE

REDACTED

TenPoint's contemplated stay – of indefinite duration – is the latest ploy to delay resolution of Ravin's extensive patent infringement claims against its direct competitor, TenPoint. (*See* Doc. Nos. 19, 30, 34, 36, 48, 69.) At this point, TenPoint's IPR is only speculative, and even if it is instituted, a stay should still be denied. A stay will unduly prejudice and tactically put Ravin at a disadvantage. In addition, a stay will not simplify the issues. TenPoint's IPR challenge is limited to a single claim in one of the six patents-in-suit, leaving 102 other asserted claims unchallenged. And, given the limited nature of the IPR, a stay will not reduce the burden of litigation for the parties or the Court.

The only claim subject to TenPoint's IPR is claim 1 of the '015 patent. Even if TenPoint ultimately proves successful and the Board cancels this one claim, the remaining 102 asserted claims across the six patents-in-suit will be unscathed. These unchallenged claims are still presumed valid and enforceable:

Each claim of a patent (whether in independent, dependent, or multiple dependent form) **shall be presumed valid independently of the validity of other claims.**

35 U.S.C. § 282(a) (emphasis added).

Under the particular circumstances of this case, including the significant progress of the litigation, TenPoint's Motion to Stay Case, (Doc. No. 86), should be denied.

I. TENPOINT'S IPR IS LIMITED BY THE BOARD'S STATUTORY DIRECTIVE

On December 21, 2022, just over one year after Ravin filed its patent infringement claims across the six asserted patents against TenPoint, TenPoint filed a single IPR Petition challenging one of the twenty claims in the '015 patent. (Doc. No. 60 at 2; Doc. No. 86-1.) In its Petition, TenPoint made the strategic decision to limit its challenge to a single claim – claim 1 – despite Ravin asserting fourteen additional claims in the '015 patent, which according to TenPoint, purportedly overlap with claim 1. (Doc. No. 86 at 9-10.) TenPoint had ample space in its Petition

REDACTED

to challenge additional claims of the '015 patent, yet it elected not to do so citing efforts “[t]o avoid distractions from tangential, unimportant issues.” (*Id.* at 4; *see also* Doc. No. 86-1 at 67 (certifying that the TenPoint Petition only spans 11,407 words, which is well below the 14,000 word limit (*see* 37 C.F.R. § 42.24(a)(1)(i)).) TenPoint also chose not to file any IPRs challenging any of the asserted claims from the remaining five patents-in-suit. It is now too late for TenPoint to file any other IPRs challenging any additional claims or patents. *See* 35 U.S.C. § 315(b).

Ravin opposes the IPR and TenPoint’s laundry list of alleged grounds for unpatentability. On April 11, 2023, Ravin timely filed its Patent Owner Preliminary Response, which explains why the Board should deny the Petition because it lacks a reasonable likelihood of success in demonstrating unpatentability of claim 1 of the '015 patent. (Ex. A.) More specifically, Ravin details the fatal deficiencies with TenPoint’s Petition, including missing limitations in the cited prior art, failure to demonstrate any motivation to combine or to modify the references, as well as why the Board should exercise its discretion to deny the Petition in view of the limited nature of the IPR challenge. (*Id.* at 9-70.) While TenPoint suggests that institution of its IPR is likely based on USPTO statistics and therefore, a stay is warranted, (Doc. No. 86 at 6), TenPoint is careful to avoid any discussion regarding the ultimate success (or the lack thereof) of IPRs. For example, in IPRs that go to a final written decision, the Board has found that only 29% of challenged claims are unpatentable by a preponderance of the evidence, which is a lower burden of proof than that required to contest the validity of any claims before this Court. (Ex. D at 13.)

With any institution decision speculative and ultimate success far from a given, TenPoint stretches further in pressing for its stay. In lieu of filing multiple petitions challenging each of the asserted claims in each of the asserted patents, likely in an effort to avoid the corresponding attorney, expert, and USPTO filing fees associated with the same, TenPoint contends that its

REDACTED

single Petition “will resolve the overwhelming majority of the asserted claims.” (Doc. No. 86 at 9-10.) TenPoint is wrong. The Board will not expand TenPoint’s IPR directed to claim 1 of the ’015 patent to encompass either the unchallenged claims of the ’015 patent or any of the claims in the ’379, ’939, ’073, ’118, or ’728 patents.

TenPoint’s IPR Petition directed to claim 1 of the ’015 patent – and any decision by the Board to institute the proceedings (or not) – is limited **by statute** to the specific challenged claims and no others. *See* 35 U.S.C. § 312(a)(3) (“A petition filed ... may be considered only if ... the petition identifies in writing and with particularity, *each claim challenged*, the *grounds on which the challenge to each claim* is based, and the *evidence* that supports the grounds for the *challenge to each claim*”) (emphasis added); *id.* at § 314(a) (“The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented ... shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the *claims challenged in the petition*.”). Because TenPoint’s Petition is limited to claim 1 of the ’015 patent, any decision to institute an IPR (or not) and therefore, the proceedings, are limited to claim 1 of the ’015 patent on the specific grounds identified in the Petition, not anything to do with any of the unchallenged claims. Thus, any final written decision from the Board addressing patentability is similarly limited to the single challenged claim, no others. *See* 35 U.S.C. § 318 (“If an inter partes review is instituted ..., the ... *Board shall issue a final written decision with respect to the patentability of any patent claim challenged by the petitioner*”) (emphasis added). The Board will not be commenting generally on Ravin’s “HeliCoil technology,” which are marketing terms, not language appearing in claim 1 of the ’015 patent.

REDACTED

II. ALL FACTORS WEIGH AGAINST A STAY

Applying the three-factor test used in this District, the Court must consider: (1) whether a motion to stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether discovery is complete and whether a trial date has been set.” *Automated Packaging Sys., Inc. v. Free-Flow Packaging Int’l, Inc.*, No. 5:14CV2022, 2016 WL 9782345, at *2 (N.D. Ohio Apr. 15, 2016); *Kirsch Rsch. & Dev., LLC v. Owens Corning Roofing & Asphalt LLC*, No. 5:20-CV-0901, 2021 WL 4529280, at *1 (N.D. Ohio Apr. 1, 2021). TenPoint cites to a Federal Circuit decision from an appeal from the District of Utah that includes a fourth factor “whether a stay would potentially reduce the burden of litigation for the parties and the court,” (Doc. No. 86 at 5), which is not the standard used in this District. However, because this factor “dovetails” with the simplification factor, (Doc. No. 86 at 12), Ravin will address it.

Here, all factors weigh against a stay prior to any institution decision or thereafter.

A. Factor 1: Ravin Is Unduly Prejudiced by a Stay**1. TenPoint copied Ravin’s patented crossbow designs**

Ravin reset the high performance crossbow industry when it debuted its first crossbows – the R9 and R15 – in late 2016 and early 2017. (Doc. No. 1 at ¶ 12.) The R9 and R15, which were instantly recognized as groundbreaking, (Doc. No. 1-19 at 6), are covered by certain claims of the patents-in-suit which are not merely directed to “helical grooves (called journals) for power cables.”¹ (Doc. No. 86 at 9.) TenPoint knew just how successful Ravin’s crossbows were because at the time, Ravin was paying a per unit royalty to TenPoint under a patent licensing agreement between the parties. (*See Ravin Crossbows, LLC v. Hunter’s Mfg. Co.*, Case No. 5:18-

¹ While a helical power cable channel is part of the claimed inventions, it is the interrelation and interaction of these power cable journals with other parts of the crossbow, also elements in the asserted claims, that is novel and comprise the claimed inventions.

REDACTED

cv-01729-SL (N.D. Ohio), Doc. No. 104 at ¶ 8.)

In 2018, following Ravin's launch of the R9 and R15, after offering crossbows that were markedly different for more than twenty years, TenPoint introduced crossbows that were remarkably similar to Ravin's crossbows. (Doc. No. 50-16 at 4.) [REDACTED]

[REDACTED]

[REDACTED]

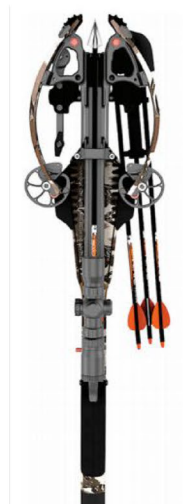
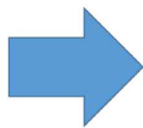
[REDACTED]

[REDACTED]

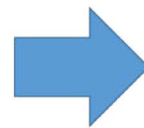


TenPoint Venom

October 2016



Ravin R9
October 2016



TenPoint Stealth NXT

April 2018

2. Ravin and TenPoint are direct competitors

TenPoint concedes that Ravin and TenPoint are direct competitors. (Doc. No. 86 at 8.)

REDACTED

Indeed, TenPoint's own website, where it offers for sale and sells the allegedly infringing crossbows, touts its competition with Ravin (referred to as "Brand R" in its "TENPOINT VS. THE COMPETITION" at right using Ravin's color scheme). See <https://www.tenpointcrossbows.com/tenpoint-advantage/>. Nevertheless, TenPoint fails to address how the parties' competitor status significantly undermines its Motion.

"Courts are generally reluctant to stay proceedings where the parties are direct competitors" due to the increased risk of undue prejudice. *VPR Brands, LP v. MONQ, LLC*, 599 F. Supp. 3d 714, 718 (M.D. Tenn. 2022); see also *Lincoln Elec. Co. v. Soluciones*, No. 1:15 CV 1575, 2016 WL 6909072, at *2 (N.D. Ohio June 17, 2016) ("[G]iven the fact that Lincoln and Seabery are direct competitors and the fact that Seabery's alleged infringement of the patents-in-suit is ongoing, the alleged harm and damages would be exacerbated by granting a stay and, thereby, unduly prejudice Lincoln."); *Everlight Elecs. Co. v. Nichia Corp.*, No. 12-CV-11758, 2013 WL 1821512, at *8 (E.D. Mich. Apr. 30, 2013) (same). Where the parties are direct competitors a

TENPOINT VS. THE COMPETITION

		
Fastest Crossbow in the World	✓ 505 FPS	500 FPS
Fastest Compact Crossbow in the World	✓ 460 FPS	400 FPS
Safe De-Cocking	✓ ACUslide and ACUdraw De-Cock (11 models)	(1 model)
Cocking Force Required	✓ 5 lbs.	12-17 lbs.
String Life (#of shots)	✓ more than 500 shots	less than 400 shots
Weight	7.5-7.8 lbs.	6.5-9.9 lbs.
Ability to Remain Cocked All Day	✓	less than 8 hours
Rest Life	✓ Unlimited	Subject to Breakage
Industry Leading Silence	✓	
Warranty	✓ Limited Lifetime	Limited 5 Year
Years of Crossbow Innovation	✓ 28 years	5 years

REDACTED

stay can cause prejudice to the patentee “because the patentee could lose market share-potentially permanently during the stay, while the alleged infringer continues to sell the competing product, and this loss of market share is an irreparable injury not compensable by money damages.” *A.R. Arena Prod., Inc. v. Grayling Indus., Inc.*, No. 5:11-CV-1911, 2012 WL 2953190, at *4 (N.D. Ohio June 25, 2012), *report and recommendation adopted*, No. 5:11CV01911, 2012 WL 12892200 (N.D. Ohio Oct. 10, 2012) (internal citations omitted) (collecting cases) (denying motion to stay); *Procter & Gamble Co. v. Team Techs., Inc.*, No. 1:12-CV-552, 2013 WL 4830950, at *2 (S.D. Ohio Sept. 10, 2013) (same).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This is exactly the situation where courts conclude that the patent owner would be unduly prejudiced by a stay [REDACTED] while Ravin is prohibited from enforcing its patent rights. *See Nogren Automation Sol., LLC v. PHD, Inc.*, No. 14-CV-13400, 2015 WL 1245942, at *2 (E.D. Mich. Mar. 18, 2015) (“It would be prejudicial to Plaintiff if Defendant was allowed to continue to increase its market share while simultaneously precluding Plaintiff from building its market share through the enforcement of its patent rights.”); *see also Eagle View Techs., Inc. v. Xactware Sols., Inc.*, No. CV 15-7025 (RBK/JS), 2016 WL 7165695, at *5 (D.N.J. Dec. 7, 2016)

REDACTED

(because the parties were “direct competitors with defendants’ express strategy to erode plaintiffs’ market share and ‘aggressively ... increase’ defendants’ market share” this weighed against a stay).

3. TenPoint’s excuses do not mitigate Ravin’s prejudice

TenPoint tries to distract from apparent prejudice to Ravin with a scattershot of arguments, all of which can be rejected. First, TenPoint exaggerates any burden associated with the litigation and the IPR proceeding in parallel; Ravin disagrees that it will “benefit” from any stay. (Doc. No. 86 at 14.) Given the limited scope of the IPR Petition, even if the IPR is instituted, Ravin has no objection to “litigat[ing] patentability on two fronts in parallel.” (*Id.*) This is especially true as Ravin considers reducing the number of asserted claims, which may include dropping claim 1 of the ’015 patent.

Second, TenPoint’s criticism of Ravin’s timing to pursue TenPoint’s infringement does not support a stay. Within three years of TenPoint coming to market with infringing crossbows, Ravin filed suit. As a start-up, Ravin had many demands on its capital and had to make choices as to how to deploy its resources. Further, there is no basis for TenPoint’s suggestion that Ravin should have added its unrelated patent infringement claims to the parties’ prior licensing dispute involving *TenPoint* patents which was filed shortly after TenPoint introduced a limited number of infringing crossbows. In 2018, TenPoint offered only three infringing models, and the bulk of its business revolved around traditionally designed crossbows. (*See* Doc. No. 50-16 at 11 (2018 TenPoint Catalog offering eight traditional crossbows along with three infringing crossbows).) As TenPoint expanded the scope of its infringement, it was clear that Ravin needed to take action and enforce its patents, which it did.

Third, whether Ravin moved for a preliminary injunction says nothing about lack of prejudice to Ravin. *See Procter & Gamble*, 2013 WL 4830950, at *2 (“The fact that Plaintiff did

REDACTED

not seek a preliminary injunction does not mean that it would not suffer prejudicial harm from its competitor's market activity during a lengthy delay in a case."); *Avanos Med. Sales, LLC v. Medtronic Sofamor Danek USA, Inc.*, No. 219CV02754JMPTMP, 2020 WL 7865959, at *3 (W.D. Tenn. Nov. 24, 2020) ("decision not to seek a preliminary injunction does not mean [the non-movant] would not suffer prejudicial harm from its competitor's market activity during a lengthy delay in the case"). The cases TenPoint relies on to the contrary do not relate to contested stay motions in the context of any parallel IPR proceedings where fewer than all asserted claims were challenged. Moreover, any preliminary injunction motion would have only led to additional motion practice by TenPoint, likely arguing that its preferred forum – this District – should decide these issues.

4. TenPoint is trying to unfairly leverage a tactical advantage

TenPoint's Motion presents a clear tactical disadvantage to Ravin. As much as TenPoint protests that it needed a year to prepare and file its IPR Petition because the "complexity" of addressing the six asserted patents and 103 asserted claims required "a considerable amount effort and time for proper analysis," (Doc. No. 86 at 3), TenPoint only filed a single IPR challenging one claim after knowing about Ravin's patents since at least 2017. (Doc. No. 1 at ¶ 36.) The timing of TenPoint's IPR Petition highlights that it was trying to unfairly leverage a tactical advantage. This is especially the case as TenPoint failed to timely disclose its intent to file any IPR as required by the Local Patent Rules in the District of Nevada by more than six months. (*Compare* Ex. E at 4 *with* Doc. No. 60.) With every passing day, Ravin invested more resources into this case, and to date its spend has exceeded \$1.8MM in support of this litigation. TenPoint's decision to wait until May 5, 2023, to file this Motion, without advance notice to Ravin and with the case management conference less than three weeks away, is pure

REDACTED

gamesmanship. TenPoint could have filed its Motion at any time after it filed its IPR, but instead, without any credible explanation, it waited nearly five months. (*See* Doc. No. 86 at 15.)

B. Factor 2: A Stay Does Not Simplify the Issues

Courts across the country have found limited opportunity for simplification when an accused infringer, like TenPoint, does not challenge all of the asserted patents or claims in an IPR or series of IPRs. *See, e.g., Camelbak Prod., LLC v. Zak Designs, Inc.*, No. 5:21-CV-05109, 2022 WL 2348676, at *3 (W.D. Ark. June 29, 2022); *Nat’l Prod. Inc. v. Innovative Intelligent Prod., LLC*, No. 2:20-CV-00428-RAJ, 2021 WL 2636101, at *2 (W.D. Wash. June 25, 2021); *Jiaxing Super Lighting Elec. Appliance Co. v. MaxLite, Inc.*, No. CV194047PSGMAAX, 2020 WL 5079051, at *3 (C.D. Cal. June 17, 2020); *Malibu Boats, LLC v. Nautique Boat Co.*, No. 3:13-CV-656-TAV-HBG, 2014 WL 3866155, at *4 (E.D. Tenn. Aug. 6, 2014). Courts also routinely deny stays for lack of simplification where all asserted claims are not under review in an IPR even though the petitioner had requested such review. *See, e.g., Staton Techiya, LLC v. Samsung Elecs. Co.*, No. 221CV00413JRGRSP, 2022 WL 4084421, at *2 (E.D. Tex. Sept. 6, 2022); *Siemens Indus., Inc. v. Westinghouse Air Brake Techs. Corp.*, No. CV 16-284-LPS, 2018 WL 3046511, at *1 (D. Del. June 20, 2018); *Procter & Gamble Co. v. Team Techs., Inc.*, No. 1:12-CV-552, 2014 WL 533494, at *4 (S.D. Ohio Feb. 11, 2014). Here, TenPoint’s decision to challenge only one claim in one of the six asserted patents weighs against a stay. The reasons for this are simple. Part “of the quid pro quo of any stay pending [IPR] is the promise of simplification Where the IPR will address some, but not all, claims asserted in the district court, relative to the quo the value of the quid shrinks considerably.” *Adaptix, Inc. v. HTC Corp.*, No. 5:14-cv-02359-PSG, 2015 WL 12839246, at *1 (N.D. Cal. Aug. 5, 2015).

REDACTED

1. TenPoint’s litigation tactics and the limited IPR Petition minimize potential for simplification

That the outcome of TenPoint’s IPR holds so little value is a direct result of TenPoint’s decision making. First, TenPoint made the strategic decision to limit its IPR efforts to one of the 103 asserted claims across the six patents-in-suit. Second, TenPoint limited its validity challenges in the District Court to six claims – one from each asserted patent – leaving it with no theory of invalidity for the other 96 asserted claims. (Ex. E at 2-4.) Simply transferring the dispute to this District does not give TenPoint any reprieve. This District’s Local Patent Rules require specific disclosures for invalidity contentions that overlap with those from the District of Nevada’s Local Patent Rules, mandating identification, theories, and evidence corresponding to “**each asserted claim.**” *Compare* N.D. Ohio LPR 3.5 (a-c) *with* D. Nev. LPR 1-8 (b-d). Regardless of which District Rules are considered, TenPoint cannot demonstrate that its IPR will simplify any analysis of the Court:

Patent	Claims	Prior Art Asserted in District Court	Prior Art Asserted in IPR	Prior Art Estoppel in District Court
'015	1	U.S. Patent Pub. No. 2012/0125302, (“Stanziale 302”)	• Stanziale '302 • Int'l Pub. No. WO 2011/158062 • Int'l Pub. No. WO 2011/141771 • U.S. Patent App. Pub. No. 2011/0030666 • U.S. Patent No. 7,578,289 • U.S. Patent App. Pub. No. 2012/0312287 • U.S. Patent No. 7,836,871 (“Kempf '871”) • U.S. Patent No. 7,578,289 • U.S. Patent App. Pub. No. 2011/0308508 (“Islas”)*	YES
'015	2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16	NONE	NONE	NO
'379	1	Stanziale '302	NONE	NO
'379	2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19	NONE	NONE	NO
'936	1	Stanziale '302	NONE	NO

REDACTED

Patent	Claims	Prior Art Asserted in District Court	Prior Art Asserted in IPR	Prior Art Estoppel in District Court
'936	2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19	NONE	NONE	NO
'118	1	Stanziale '302	NONE	NO
'118	2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 19	NONE	NONE	NO
'728	10	Stanziale '302	NONE	NO
'728	11, 12, 13, 15	NONE	NONE	NO
'073	1	• Kempf '871 • U.S. Patent No. 8,651,095 ("Islas I")* • U.S. Patent Pub. No. 2015/0168093	NONE	NO
'073	2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 34	NONE	NONE	NO

* Islas I asserted in the District Court case issued from Islas cited in the IPR.

Moreover, as shown above, with the exception of Stanziale '302 and Kempf '871, TenPoint chose to assert seven other references against claim 1 of the '015 patent in the IPR that have no bearing on any invalidity arguments TenPoint has raised in the District Court. And, if TenPoint is permitted to circumvent the requirements of the Local Patent Rules and now raise the IPR cited prior art in this case as applied to other unchallenged claims, it is not estopped from doing so because TenPoint has only stipulated "that it will not pursue in the parallel district court proceeding the same grounds in this Petition or any grounds that could have been raised as to **claim 1 in this Petition.**" (Doc. No. 86-1 at 10-11 (emphasis added).) Such a narrow stipulation regarding one out of 103 claims does not simplify the case.

2. TenPoint overstates the purported benefits from any Board ruling

The benefit to this Court regarding the PTAB's insight is limited because the Board and the Court apply different evidentiary standards – a critical fact that TenPoint carefully omits. In the IPR, TenPoint merely needs to show with a preponderance of the evidence that claim 1 of the '015 patent is unpatentable; in this Court, TenPoint must establish the higher standard – clear and

REDACTED

convincing evidence – that each asserted claim is invalid. *See Malibu Boats, LLC v. Nautique Boat Co.*, 122 F. Supp. 3d 722, 728 (E.D. Tenn. 2015) (“[T]he persuasiveness of PTAB’s final decision regarding invalidity may be limited because the Board adopted a significantly different definition of [a claim term], there is no presumption of validity in reexamination proceedings, and PTAB employs a preponderance, rather than civil litigation’s clear and convincing, evidence standard.”).

TenPoint’s discussion of issue preclusion is equally unavailing and emphasizes how speculative any simplification and purported reduction of burden of litigation for the Court and the parties there may actually be. In order for issue preclusion to apply, “the differences between the unadjudicated patent claims and adjudicated patent claims do not materially alter the question of invalidity.” *Google LLC v. Hammond Dev. Int’l*, 54 F.4th 1377, 1381 (Fed. Cir. 2022). Other than TenPoint’s say-so, there is no support that the differences between claim 1 of the ’015 patent and the other unchallenged 102 asserted claims “do not materially alter the question of invalidity.” *Ohio Willow Wood Co. v. Alps S., LLC*, 735 F.3d 1333, 1342 (Fed. Cir. 2013). And, importantly, any issue preclusion arguments TenPoint may want to try to raise are not addressed in the IPR. It is the Court – not the Board – who examines the extent to which differences between the unchallenged claims and any cancelled claim 1 of the ’015 patent “alter the invalidity determination.” *Id.* at 1343. This means that any Board decision will not “resolve the overwhelming majority of the asserted claims,” as TenPoint contends. (Doc. No. 86 at 9.) Each claim is presumed valid, independent of the validity of any other claim, 35 U.S.C. § 282(a), and TenPoint has yet to offer any theory of invalidity for at least 96 asserted claims. (Ex. E at 2-4.)

C. Factor 3: The Stage of the Litigation Weighs Against a Stay

The stage of litigation and the parties’ investment to date weighs against a stay. *See Procter & Gamble*, 2014 WL 533494, at *3 (collecting cases); *Universal Elecs., Inc. v.*

REDACTED

Universal Remote Control, Inc., 943 F. Supp. 2d 1028, 1031-32 (C.D. Cal. 2013). Contrary to TenPoint's arguments, this litigation is well underway and not in its infancy. Ravin filed the Complaint seventeen months ago, on December 17, 2021, and since then, notwithstanding TenPoint's steady stream of motion practice attempting to disrupt the Scheduling Order entered in Nevada, the parties have expended significant time and resources in litigating the dispute.

More specifically, the parties have served contentions,² which are designed to require the parties to provide early notice of their infringement/noninfringement and invalidity/validity and unenforceability contentions and to adhere to those theories once they have been disclosed – a shift in venue based on purported convenience should not change that. *See Automated Packaging Sys., Inc. v. Free-Flow Packaging Int'l, Inc.*, No. 5:14-CV-2022, 2018 WL 400326, at *5 (N.D. Ohio Jan. 12, 2018) (Lioi J.). As of the transfer, the parties also had made significant progress towards the May 23, 2023 fact discovery deadline, and at least Ravin was prepared to timely serve opening expert reports on infringement and damages on April 24, 2023. (Doc. No. 36 at 1-2.)

- Written discovery has been exchanged, including interrogatory responses and requests for admission.
- Documents have been produced with any cited difference in the volume of productions, (Doc. No. 86 at 7), attributable to TenPoint's large volume of duplicative email, which TenPoint elected to produce without Ravin propounding ESI discovery requests.
- Depositions have been taken. Ravin has deposed five TenPoint witnesses and issued notices for four others, which were served on November 17,

² Ravin detailed the bases for its infringement theories in its infringement contentions for each of the 103 asserted claims, which were served on May 23, 2022, and corrected on May 26, 2022. (Ex. F (excluding claim charts).) Following TenPoint's introduction of five new crossbows for 2023, which was announced in late December 2022, Ravin sought, (Doc. No. 63) – and the Nevada Court granted on good cause shown, (Doc. No. 65) – leave to supplement Ravin's infringement contentions, served on February 3, 2023. (Ex. G (excluding claim charts).) While TenPoint served its non-infringement, invalidity, and unenforceability contentions on July 7, 2022, TenPoint's efforts were far from robust and suffered from serious defects. (Ex. E at 2-4.) TenPoint's "nonresponsive" complaints about Ravin's response to the same, (Doc. No. 86 at 7), is belied by the evidence. (*See* Ex. H at 1-2.)

REDACTED

2022. (Declaration of Kadie M. Jelenchick at ¶ 4.) Ravin agreed to proceed with these four depositions the week of April 17, 2023, to accommodate the witnesses' cited limited availability, and but for the anticipated civil unrest in Akron the week of April 17, these depositions would have already occurred.³ (*Id.* at ¶¶ 5-6.)

Claim construction briefing is also complete. (Doc. Nos. 47, 50, 56, 57.) Ravin fully complied with its claim construction obligations, including District of Nevada's Local Patent Rule 1-14. The parties identify five terms that are most significant to the resolution of the case. (Doc. No. 47 at 5.) While TenPoint proposed constructions for 43 terms and phrases, Ravin opposed, arguing that these terms and phrases largely need not be construed by the Court – a position Ravin advanced throughout the parties' exchanges leading to claim construction briefing, which was then thoroughly briefed by both parties. While the briefing cycle in Nevada deviated from this District's typical cross-briefing approach, Ravin had 36 pages to detail its positions while TenPoint took 50 pages for its arguments after self-helping itself to a unilateral enlargement of its Responsive Brief, (Doc. No. 53). While TenPoint assumes claim construction briefing must be re-done, TenPoint offers no authority for this proposition because there is none – the principles of claim construction are the same regardless of venue.

Given the current posture of the case, proceedings should pick up where the Nevada Court left off. This means, with the "Complex Track" designation, (Doc. No. 84 at 2), under LR 16.2(a)(2)(C), it "should have a case completion goal of no more than twenty-four (24) months" from the filing of the Complaint or by December 2023, long before any final written decision regarding claim 1 of the '015 patent may issue.

³ TenPoint has not disclosed any experts, noticed any depositions, or subpoenaed any third-party witnesses identified in any Rule 26 disclosures. TenPoint's decision to wait until "a claim construction order issues before taking depositions," (Doc. No. 86 at 9) is its choice, but it is perplexing to understand how a claim construction order would impact fact witness depositions.

REDACTED

Dated: May 19, 2023

Respectfully submitted,

/s/ Kadie M. Jelenchick

Kadie M. Jelenchick, Esq.

(Wisconsin Bar #1056506)

Michelle A. Moran, Esq.

(*pro hac vice*)

FOLEY & LARDNER LLP

777 East Wisconsin Avenue

Milwaukee, WI 53202

Tel.: 414.319.7324

Fax: 414.297.4900

Email: kjelenchick@foley.com

mmoran@foley.com

Karen D. Adinolfi (0073693)

Stephen W. Funk (0058506)

Roetzel & Andress, LPA

222 South Main Street

Akron, OH 44308

Tel.: 330.376.2700

Email: kadinolfi@ralaw.com

sfunk@ralaw.com

Attorneys for Plaintiff RAVIN CROSSBOWS, LLC