**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**MARSHALL DIVISION**

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|---|---|
| **MOJO MOBILITY, INC.,**<br><br>**Plaintiff,**<br><br>**vs.**<br><br>**SAMSUNG ELECTRONICS CO., LTD.; SAMSUNG ELECTRONICS AMERICA, INC.,**<br><br>**Defendant.** | **Civil Action No. 2:22-CV-00398-JRG-RSP**<br><br>**JURY TRIAL** |

**PLAINTIFF MOJO MOBILITY, INC.'S RESPONSE TO DEFENDANTS SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG ELECTRONICS AMERICA, INC.'S**
**MOTION TO STAY PENDING INTER PARTES REVIEW**

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## I. INTRODUCTION

Samsung asks the Court to do something it has not done before—grant an opposed pre-institution stay pending *inter partes* review ("IPR"). While Samsung has filed 18 IPR petitions against the asserted patents in this case, no petitions have been instituted and institution decisions may not be issued across the patents until February 2024. Samsung requests that the Court stay all proceedings in this case pending IPRs that may never be instituted, for purported benefits that may never be realized. As shown below, this Court has uniformly denied pre-institution stays including numerous pre-institution denials that Samsung has been a party to. Samsung makes no effort to distinguish ***any*** of the following denials:

1. *Garrity Power Services LLC v. Samsung Electronics Co., Ltd. et al.*, Case No 2-20-cv-00269, Dkt. 40 at 2 (E.D. Tex. Feb. 17, 2021) (Gilstrap, J.) ("Considering these circumstances, the Court concludes that Samsung's motion is premature, and a stay of these proceedings in advance of the PTAB's decision on whether or not to institute *inter partes* review of the Asserted Patent should be denied.")

2. *Kaist IP US LLC v. Samsung Electronics Co., Ltd. et al.* Case No. 2-16-cv-01314, Dkt. 56 at 2 (E.D. Tex. May 4, 2017) ("Indeed, the practice in this District is not to stay cases pre-institution").

3. *California Institute of Technology v. Samsung Electronics Co.*, No. 2:21-cv-00446, Dkt. 108 at 5 (E.D. Tex. Jan. 20, 2023) (Gilstrap, J.) ("[I]t is the Court's established policy that motions to stay pending IPR proceedings that have not yet been instituted are inherently premature.")

4. *Snik LLC v. Samsung Electronics Co.*, No. 2:19-cv-00387, Dkt. 57 at 2 (E.D. Tex. Oct. 5, 2020) (Gilstrap, J.) ("[T]his Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.")

5. *SpaceTime3D, Inc. v. Samsung Electronics Co.*, No. 2:19-cv-00372, Dkt. 63 at 2 (E.D. Tex. Sept. 23, 2020) (Gilstrap, J.) ("[T]his Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.")

6. *Acorn Semi, LLC v. Samsung Electronics Co.*, No. 2:19-cv-00347, Dkt. 72 at 3 (E.D. Tex. Sept. 14, 2020) (Gilstrap, J.) ("[T]his Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.")

7. *Solas OLED Ltd. v. Samsung Display Co.*, No. 2:19-cv-00152, Dkt. 69 at 1 (E.D. Tex. Feb. 4, 2020) (Gilstrap, J.) ("It is the Court's established practice to consider that motions to stay pending IPR proceedings that have not been instituted are inherently premature and should be denied as such.")

8. *Uniloc 2017, LLC v. Samsung Electronics America, Inc.*, No. 2:19-cv-00125, Dkt. 34

at 1 (E.D. Tex. Feb. 4, 2020) (Gilstrap, J.) ("It is the Court's established practice to consider that motions to stay pending IPR proceedings that have not been instituted are inherently premature and should be denied as such.")

9. *Greenthread, LLC v. Samsung Electronics Co.*, No. 2:19-cv-00147, Dkt. 43 at 1 (E.D. Tex. Feb. 4, 2020) (Gilstrap, J.) ("It is the Court's established practice to consider that motions to stay pending IPR proceedings that have not been instituted are inherently premature and should be denied as such.")

10. *Uniloc 2017, LLC v. Samsung Electronics America, Inc.*, No. 2:18-cv-00508, Dkt. 32 at 2 (E.D. Tex. July 25, 2019) (Gilstrap, J.) ("[T]his Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.")

11. *Barkan Wireless IP Holdings, LP v. Samsung Electronics Co.*, No. 2:18-cv-00028, Dkt. 121 at 3 (E.D. Tex. Mar. 15, 2019) (Gilstrap, J.) ("[T]his Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.")

12. *Polaris PowerLED Technologies, LLC v. Samsung Electronics America, Inc.*, No. 2:17-cv-00715, Dkt. 92 at 2 (E.D. Tex. Sept. 5, 2018) (Gilstrap, J.) ("[T]his Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.")

13. *Uniloc USA, Inc. v. Samsung Electronics America, Inc.*, No. 2:16-cv-00642, Dkt. 206 at 2 (E.D. Tex. Apr. 4, 2017) (Gilstrap, J.) ("[T]his Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.")

14. *Image Processing Technologies, LLC v. Samsung Electronics Co.*, No. 2:16-cv-00505, Dkt. 91 at 2 (E.D. Tex. Feb. 17, 2017) (Gilstrap, J.) ("[T]his Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.")

15. *Viavi Solutions Inc. v. Zhejiang Crystal-Optech Co Ltd.*, No. 2-21-cv-00378, Dkt. 49 at 10 (E.D. Tex. Nov. 10, 2022) (Gilstrap, J.) ("It is the Court's established practice to consider that motions to stay pending IPR proceedings which have not been instituted are inherently premature and should be denied as such.")

16. *Intertrust Technologies Corporation v. Cinemark Holdings, Inc.*, No. 2-19-cv-00266, Dkt. 186 at 2 (E.D. Tex. Dec. 4, 2020) (Gilstrap, J.) ("Where a motion to stay is filed before the PTAB institutes proceedings, courts often withhold a ruling pending action on the petition by the PTAB or deny the motion without prejudice to refiling in the event that the PTAB institutes proceedings.")

17. *VARTA Microbattery GmbH v. Costco Wholesale Corp.*, No. 2-20-cv-00051, Dkt. 68 at 2 (E.D. Tex. Oct. 6, 2020) (Gilstrap, J.) ("Where a motion to stay is filed before the PTAB institutes any proceeding, courts often withhold a ruling pending action on the petition by the PTAB or deny the motion without prejudice to refiling in the event that the PTAB institutes a proceeding.")

18. *BoxCast Inc. v. Resi Media LLC*, No. 2-21-cv-00217, Dkt. 55 at 2 (E.D. Tex. Dec. 1, 2021) (Gilstrap, J.) ("[T]his Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.")

19. *Huawei Technologies Co. Ltd. v. Verizon Communications, Inc.*, No. 2-20-cv-00030, Dkt. 87 at 3 (E.D. Tex. Nov. 10, 2020) (Gilstrap, J.) ("[T]his Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.")

20. *Luminati Networks Ltd. v. Teso LT, UAB a/k/a UAB Teso LTD*, No. 2-19-cv-00395, Dkt. 157 at 2 (E.D. Tex. Oct. 30, 2020) (Gilstrap, J.) ("[T]his Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.")

21. *NCR Corporation v. Lighthouse Consulting Group, LLC*, No. 2-19-cv-00392, Dkt. 19 at 1 (E.D. Tex. Apr. 27, 2020) (Gilstrap, J.) ("[I]t is the Court's established policy that motions to stay pending IPR proceedings that have not been instituted are inherently premature.")

## II. SUMMARY OF THE IPR FILINGS

As summarized in the table below, Samsung has **18** IPRs on the Asserted Patents. The PTAB will likely begin issuing its Institution Decisions in mid-January 2024 and conclude in February.[1]

| PTAB Proceeding | Patent | Filing Date | Filing Date Accorded | Preliminary Response | Institution Decision |
|---|---|---|---|---|---|
| IPR2023-01086 | 7,948,208 | 6/27/2023 | None Currently Assigned | | |
| IPR2023-01087 | 9,577,440 | 6/27/2023 | 7/12/2023 | 10/12/2023 | 1/12/2024 |
| IPR2023-01088 | 9,577,440 | 6/27/2023 | 7/12/2023 | 10/12/2023 | 1/12/2024 |
| IPR2023-01089 | 11,292,349 | 6/27/2023 | 7/12/2023 | 10/12/2023 | 1/12/2024 |
| IPR2023-01090 | 11,292,349 | 6/27/2023 | 7/12/2023 | 10/12/2023 | 1/12/2024 |
| IPR2023-01091 | 11,201,500 | 6/28/2023 | 7/12/2023 | 10/12/2023 | 1/12/2024 |
| IPR2023-01092 | 11,201,500 | 6/28/2023 | 7/12/2023 | 10/12/2023 | 1/12/2024 |
| IPR2023-01093 | 11,201,500 | 6/28/2023 | 7/12/2023 | 10/12/2023 | 1/12/2024 |
| IPR2023-01101 | 11,342,777 | 6/29/2023 | 7/12/2023 | 10/12/2023 | 1/12/2024 |
| IPR2023-01102 | 11,342,777 | 6/29/2023 | 7/12/2023 | 10/12/2023 | 1/12/2024 |
| IPR2023-01098 | 11,462,942 | 6/30/2023 | None Currently Assigned | | |
| IPR2023-01099 | 11,462,942 | 6/30/2023 | None Currently Assigned | | |

[1] As of the filing on this Response, there are still IPR petitions with outstanding Notice of Filing Dates from the PTAB. Until the PTAB provided those notices, the Response and Institution Decision windows have not even open.

| PTAB Proceeding | Patent | Filing Date | Filing Date Accorded | Preliminary Response | Institution Decision |
|---|---|---|---|---|---|
| IPR2023-01100 | 11,462,942 | 6/30/2023 | None Currently Assigned | | |
| IPR2023-01124 | 11,462,942 | 6/30/2023 | None Currently Assigned | | |
| IPR2023-01094 | 11,316,371 | 6/30/2023 | 8/10/2023 | 11/10/2023 | 2/10/2023 |
| IPR2023-01095 | 11,316,371 | 6/30/2023 | None Currently Assigned | | |
| IPR2023-01096 | 11,316,371 | 6/30/2023 | None Currently Assigned | | |
| IPR2023-01097 | 11,316,371 | 6/30/2023 | None Currently Assigned | | |

## III. LEGAL STANDARD

The district court has the inherent power to control its own docket, including the power to stay proceedings. *Clinton v. Jones*, 520 U.S. 681, 706 (1997). How to best manage the court's docket "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936).

"District courts typically consider three factors when determining whether to grant a stay pending *inter partes* review of a patent in suit: (1) whether the stay will unduly prejudice the nonmoving party, (2) whether the proceedings before the court have reached an advanced stage, including whether discovery is complete and a trial date has been set, and (3) whether the stay will likely result in simplifying the case before the court." *NFC Techs. LLC v. HTC Am., Inc.*, Case No. 2:13-cv-1058-WCB, 2015 WL 1069111, at *2 (E.D. Tex. Mar. 11, 2015) (Bryson, J.). "Based on th[ese] factors, courts determine whether the benefits of a stay outweigh the inherent costs of postponing resolution of the litigation." *Id.*

Where a motion to stay is filed before the PTAB institutes any proceeding, courts often withhold a ruling pending action on the petition by the PTAB or deny the motion without

prejudice to refiling in the event that the PTAB institutes a proceeding. *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1316 (Fed. Cir. 2014) (citing *Checkfree Corp. v. Metavante Corp.*, No. 12- cv-15, 2014 W 466023, at *1 (M.D. Fla. Jan. 17, 2014)); *see also NFC Techs.*, 2015 WL 1069111, at *6. Indeed, this Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings. *Trover Group, Inc. v. Dedicated Micros USA*, No. 2:13-cv-1047-WCB, 2015 WL 1069179, at *6 (E.D. Tex. Mar. 11, 2015) (Bryson, J.) ("This Court's survey of cases from the Eastern District of Texas shows that when the PTAB has not yet acted on a petition for *inter partes* review, the courts have uniformly denied motions for a stay.").

## IV. ARGUMENT

It is well settled that courts of this District have "a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings." *Huawei Technologies Co. Ltd. v. Verizon Communications, Inc.*, 2020 WL 7134088, at *1 (E.D. Tex. Nov. 10, 2020). Since all of the factors considered weigh against a stay, the Court should not deviate from its "consistent practice" of denying pre-mature motions to stay.

### A. An indefinite stay will unduly prejudice Mojo.

As a preliminary matter, the requested stay is indefinite. Samsung unambiguously requested a stay through "exhaustion of all appeals." Mot. at 10. If institution is denied months from now, that decision could be subject to rehearing, appeals, and mandamus, resulting in a multi-year stay. If the IPR is instituted, a final written decision ("FWD") would not be expected for another year after institution (if not later with extensions). *See* 35 U.S.C. § 316(a)(11). Then, the FWD would be subject to appeal to the Federal Circuit, which could also last years. If the Federal Circuit remands, the cycle would continue. *ThinkOptics, Inc. v. Nintendo of Am., Inc.*,

No. 6:11-CV-455-LD, 2014 WL 4477400, at *1 (E.D. Tex. Feb. 27, 2014) (discussing the timeline of reexaminations and appeals). Mojo would be prejudiced by any stay—let alone a stay with no clear end.

As discussed in Samsung's Motion, Mojo approached Samsung with wireless charging technology in 2013. Mot. at 6. A stay here—exacerbated by Samsung's willful infringement since it launched wireless charging products (*see* Dkt. 1, ¶¶ 13-18)—unduly prejudices Mojo's interest in "timely enforcing its patents." *ThinkOptics*, 2014 WL 4477400 at *1. Further, Mojo has identified and disclosed to Samsung witnesses who met with Mojo while working at Samsung. *See generally*, *id*. To the extent these witnesses are still employed by Samsung and living in Korea, they are subject to this Court's subpoena power. *See, e.g., Pers. Audio, LLC v. HowStuffWorks.com*, No. 2:13-CV-13-JRG-RSP, 2014 WL 12791024, at *4 (E.D. Tex. Mar. 31, 2014) ("The Court has plenary power to order the parties to produce its employees at trial."). However, if they were to leave Samsung (voluntarily or not) while a stay was in place, Mojo would lose the ability to compel testimony. Thus, this factor weighs against a stay.

**B. The case is advanced and a trial date has been set.**

Significant resources have already been invested in this litigation by the parties and the Court. This case has now been pending for over eleven months, since October of 2022. Mojo has used this time to prepare for discovery and its infringement case, among other things; Mojo has served its P.R. 3-1 and 3-2 infringement contentions and disclosures (Dkt. 21), as well as 22 discovery requests. Defendants have also used this time to prepare their case; they have filed an answer and counterclaims (Dkt. 35), their P.R. 3-3 and 3-4 invalidity contentions (Dkt. 36), and the 18 IPR petitions. The Court has also invested significant resources, issuing an order setting a scheduling hearing and certain deadlines (Dkt. 20), then holding the scheduling hearing on March 14, 2023, and issuing a draft docket control order. The Court has now entered the docket

control order, which sets (not movable without a Court order finding good cause) a *Markman* hearing for February 6, 2024 and trial for August 5, 2024, among other deadlines. This case is not in its infancy and certainly will not be by the time the PTAB makes any institution decision in the January and February of 2024. And, this case is scheduled to be tried to a verdict long before the PTAB issues a final written decision (estimated around late 2024 and into 2025). *See* 35 U.S.C. § 316(a)(11). While this case is well into discovery, the IPR remains in its infancy as the PTAB has not even decided whether to institute. Thus, this factor weighs against a stay.

### C. Any simplification of the case offered prior to institution is purely speculative.

It is well settled in this District that an assertion of simplification premised on an uninstituted IPR is speculative and insufficient. *See, e.g.*, *Clear Imaging v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.*, No. 2:19-CV-326-JRG Dkt. 127 at 4 ("At this nascent stage—before the PTAB has made any decision as to institution of the Petitions— it is impossible for the Court to determine whether the stay will likely result in simplifying the case before the court.") (quotations and citation omitted). Moreover, this Court has "stated that it is unwilling to adopt a per se rule that a patent case should be stayed because some relevant claims may be affected" by an IPR. *Intell. Ventures I LLC v. T Mobile USA, Inc.*, No. 2:17-CV-00577-JRG, 2018 WL 11363368, at *2 (E.D. Tex. Dec. 13, 2018). Rather, "the interests of justice will be better served by dealing with the contingency of a change in claim scope when and if it occurs, rather than putting this case on hold for an indefinite and lengthy period of time." *Id.* Thus, this factor weighs against a stay.

## V. CONCLUSION

For the reasons stated above, the Court should deny Samsung's meritless motion with prejudice.

Dated: August 11, 2023

**MCKOOL SMITH, P.C.**

/s/ *Steven S. Pollinger*
Steven J. Pollinger (SBN 24011919)
spollinger@mckoolsmith.com
George T. Fishback (SBN 24120823)
gfishback@mckoolsmith.com
303 Colorado Street Suite 2100
Austin, TX 78701
Telephone: (512) 692-8700
Telecopier: (512) 692-8744

Sam F. Baxter (SBN 01938000)
sbaxter@mckoolsmith.com
Jennifer L. Truelove (SBN 24012906)
jtruelove@mckoolsmith.com
104 East Houston, Suite 300
Marshall, TX 75670
Telephone: (903) 923-9000
Facsimile: (903) 923-9099

Ryan McBeth (SBN 24078955)
rmcbeth@mckoolsmith.com
600 Travis St., Suite 7000
Houston, TX 77002
Telephone: (713) 485-7300
Facsimile: (713) 485-7344

***ATTORNEYS FOR PLAINTIFF MOJO MOBILITY, INC.***

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via the Court's ECF system on August 11, 2023.

*/s/ Steven J. Pollinger*
Steven J. Pollinger