

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

TEXTRON INNOVATIONS INC.,	§	
<i>Plaintiff,</i>	§	CIVIL ACTION 2:22-cv-0351-RWS-RSP
	§	
v.	§	
	§	
SZ DJI TECHNOLOGY CO., LTD., DJI	§	
EUROPE B.V., SZ DJI BAIWANG	§	
TECHNOLOGY CO. LTD., and	§	
IFLIGHT TECHNOLOGY COMPANY	§	
LTD.,		
<i>Defendants.</i>		

**PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION TO
STAY PENDING *INTER PARTES* REVIEW**

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Exhibit Number	Description
1	Oct. 5, 2022, Article and List from Department of Defense regarding Chinese Military Companies
2	Dec. 16, 2021, Article Listing DJI as a Sanctioned Company
3	Dec. 18, 2020, Department of Commerce Release Adding DJI to Entity List (2020-28031)
4	Excerpts of Trial Transcript from <i>Textron Innovations, Inc. vs SZ DJI Technology et al.</i> , W.D. Tex. Case No 6:21-CV-740-ADA
5	Excerpts of <i>inter partes</i> review Petition against U.S. Pat. No. 8,332,082 - PTAB-IPR2023-01105

DJI's Motion buries the lede: DJI is seeking a pre-institution stay pending IPRs. This Court's "universal" practice is to deny pre-institution motions to stay. DJI does not address that universal practice and instead relies on out-of-district cases and a lone in-district case where the parties *agreed* to the stay. Those cases, however, do not justify departing from the Court's practice of denying pre-institution motions to stay. And there are good reasons for following that practice here because each of the Court's three factors in analyzing stay motions weighs against a stay.

First, the advanced stage of this case relative to the IPRs weighs against a stay. Textron Innovations filed this case on September 9, 2022, and trial is set for July 2024. In contrast, DJI waited eleven months—near the statutory one-year bar—to file its last IPR petition in this case. As a result, this case will finish trial months before any PTAB final written decisions that will be due in February 2025 (assuming institution). Staying the case now, only ten months away from trial, would reward DJI for its delayed IPR filings.

Second, a stay would unduly prejudice Textron Innovations. There is a special need for timely enforcing Textron Innovations' infringement claims against DJI. The United States and local governments have taken various actions against DJI, including banning the export of certain technology to DJI and barring certain governmental use of DJI drones. These actions increase the risk that DJI will voluntarily or involuntarily exit the United States market. There is a special need to enforce Textron Innovations' patent rights now while DJI still is operating in the United States.

Third, DJI's arguments that a stay will simplify issues is speculative. The PTAB has not instituted any IPRs yet, so any potential simplification through cancellation of claims is uncertain. DJI overplays the potential simplification of claim construction; DJI asserted that a single claim term (a preamble) needed construction in the IPR. And DJI's IPR references all appear in DJI's invalidity contentions, yet DJI has not agreed to forego any invalidity challenges in this Court if

the PTAB declines to institute trial. Staying the case now will delay enforcement of Textron Innovations’ patent rights in the hopes of some uncertain simplification.

Because DJI’s Motion seeks a pre-institution stay that runs counter to this Court’s practice of not granting that relief, and all three stay factors weigh against a stay, Textron Innovations respectfully requests that the Court deny DJI’s Motion to Stay.

I. FACTUAL BACKGROUND: DJI’S IPRS ARE ALL PRE-INSTITUTION

The Court and the parties are now 12 months into this case. Despite the advanced nature of the case, DJI waited ten months to file its first of four IPRs. Those IPRs all are in a pre-institution state, and final written decisions will come well after the scheduled July 2024 trial date. The institution and final written decision dates are as follows:

IPR No.	Filing Date	Institution Decision Due	Final Written Decision Due
IPR2023-01106	July 27, 2023	Jan. 27, 2024	Jan. 27, 2025
IPR2023-01107	July 27, 2023	Jan. 27, 2024	Jan. 27, 2025
IPR2023-01105	July 28, 2023	Jan. 28, 2024	Jan. 28, 2025
IPR2023-01104	July 28, 2023	Jan. 28, 2024	Jan. 28, 2025
IPR2023-01227	Aug. 15, 2023	Feb. 15, 2024	Feb. 15, 2025

II. THE COURT SHOULD DENY DJI’S PRE-INSTITUTION MOTION TO STAY

A. DJI’s Motion Ignores the Court’s “Universal Practice” of Denying Pre-Institution Motions to Stay

DJI’s pre-institution Motion to Stay is contrary to this District’s practice of denying those types of motions. “[C]ourts usually deny motions for stay when the PTAB has not acted on a petition for inter partes review.” *Perdiemco LLC v. Telular Corp.*, No. 2:16-CV-01408-JRG-RSP, 2017 WL 2444736, at *2 (E.D. Tex. June 6, 2017) (citing *Trover Group, Inc. v. Dedicated Micros USA*, No. 1:13-CV-1047-WCB, 2015 WL 1069179, at *6 (E.D. Tex. Mar. 11, 2015) (Bryson, J.)).

“In this district, that is not just the majority rule; it is the ***universal practice.***” *Trover*, 2015 WL 1069179, at *6 (emphasis added); *see also Nanoco Techs. v. Samsung Elecs. Co.*, No. 2:20-CV-00038-JRG, 2021 WL 3027335, at *1 (E.D. Tex. Jan. 8, 2021) (“Indeed, this Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.”); *Luminati Networks v. Teso LT*, No. 2:19-CV-00395-JRG, 2020 WL 6803255, at *1 (E.D. Tex. Oct. 30, 2020) (same); *Snik LLC v. Samsung Elecs. Co.*, No. 2:19-CV-00387-JRG, 2020 WL 9076438, at *1 (E.D. Tex. Oct. 5, 2020) (same). DJI only recently filed its IPR petitions, and the PTAB has months to decide whether to institute them. DJI thus seeks a pre-institution stay of this case. But there are no unique facts here that warrant departing from the Court’s “universal” and “consistent” practice of denying pre-institution motions to stay.

Ignoring that practice, DJI relies on two out-of-district cases and a lone in-district case to argue that “[c]ourts in this Circuit have equally been willing to grant stays pre-institution.” Dkt. 84 at 4, 9 (citing *Uniloc 2017 LLC v. LG Elecs. U.S.A., Inc.*, No. 3:18-CV-3071-N, 2020 WL 374545, at *1 (N.D. Tex. Jan. 23, 2020); *Meetrix IP, LLC v. Zoho Corp.*, No. 1:22-cv-588-LY, Dkt. No. 43 at 3 (W.D. Tex. Feb. 28, 2023); *Spine Hldgs., LLC v. Orthofix Medical, Inc.*, No. 4:20-cv-77-SDJ, Dkt. No. 8 at 2 (E.D. Tex. June 8, 2020)). Those cases are distinguishable. The out-of-district cases do not apply because they run contrary to this Court’s “universal” and “consistent” practice of denying pre-institution motions. And the *Spine Holdings* case is distinguishable because, as DJI acknowledges, the parties agreed to a pre-institution stay. In contrast, here, the parties do not agree to a stay. Dkt. 84 at 4 (stating that the Court stayed the case “on party agreement”).

In sum, the Court should deny DJI’s Motion to Stay because it seeks a pre-institution stay, and the Court’s practice is not to grant that relief.

B. All Three Factors in the Court’s Motion to Stay Test Weigh Against a Stay

1. The Stage of the Case Weighs Against a Stay.

There is no reason to halt this case when the jury trial will conclude months ahead of the PTAB. The Court has set jury selection for July 15, 2024—a mere ten months from now. Dkt. No. 38 (Docket Control Order) at 1. Assuming that the PTAB institutes trial on all IPRs, final written decisions are not due until February **2025**. Trial in this Court thus will finish far ahead of the IPRs.

One of the reasons that the IPRs are so far behind this case is due to DJI’s delay in filing its IPRs. Courts in this District have found that a “pattern of delay on [defendant’s] part cuts against granting a stay.” *Freeny v. Apple Inc.*, No. 2:13-CV-00361-WCB, 2014 WL 3611948, at *2 (E.D. Tex. July 22, 2014). For example, this Court has found this factor weighing against a stay where “Defendants waited for nearly a year after the complaints were filed against them before filing their petition for inter partes review.” *Trover*, 2015 WL 1069179, at *3. Here, too, DJI waited nearly a year (a total of eleven months) from the filing date of the Complaint to file its last *inter partes* review petition. DJI’s delay in pursuing its IPRs is surprising given that DJI relies on the same references in the *inter partes* review proceedings that it relied upon in its invalidity contentions served months before the petitions were filed, which “cuts strongly against a stay.” *Id.* at *3 (“Even after the defendants filed their invalidity contentions in this case, they still delayed for months before filing their petition for *inter partes* review with the PTAB.”). Granting a stay would only reward DJI’s pattern of delay in pursuing its IPRs.

None of DJI’s arguments outweigh the advanced stage of this case relative to the IPRs. First, the stage of this case is not as DJI characterizes it. Contrary to DJI’s assertion that the “parties have not yet begun to exchange claim terms or constructions,” on September 8, 2023, the parties exchanged proposed claim terms in accordance with P.R. 4-1. Dkt. No. 84 at 4. The parties

will exchange proposed constructions one week after completing the briefing on DJI's Motion to Stay. And, while DJI's Motion generally declares that "[f]act discovery is in its early stages," the parties have spent significant resources pursuing that discovery. Both parties have served extensive written discovery. Textron Innovations has served 14 interrogatories, and DJI has served 14 interrogatories. DJI's interrogatory responses were deficient, and Textron Innovations has filed two pending motions to compel. *See* Dkt. Nos. 80 and 83. And, due to DJI's deficient technical document productions, Textron Innovations has taken a Rule 30(b)(6) deposition of Sumeng Chen, a representative from DJI, on August 30, 2023, specific to the existence of documents at DJI.

Second, DJI cites distinguishable cases for the proposition that this "Court regularly grants stays in cases where litigation is significantly more advanced." Dkt. No. 84 at 8. In each of those cases, the *inter partes* review petitions had already been instituted and the decision to grant a stay was not solely based on the stage of the case factor. *See Emed Techs. Corp. v. Repro-med Sys., Inc.*, No. 2:15-CV-1167-JRG-RSP, 2016 WL 2758112, at *2 (E.D. Tex. May 12, 2016) ("The Court finds that this factor is neutral."); *Scorpcast, LLC v. Boutique Media*, No. 2:20-CV-00128-JRG-RSP, 2021 WL 3514751, at *2 (E.D. Tex. June 8, 2021); *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-CV-1058-WCB, 2015 WL 1069111, at *4 (E.D. Tex. Mar. 11, 2015) ("In sum, the state of the proceedings is neutral or, at most, cuts slightly against the issuance of a stay.").

DJI only cites one case in this District as allegedly granting stays prior to an institution of an *inter partes* review. Dkt. No. 84 at 9 (citing *Spine Holdings*, Dkt. No. 8 at 2). But, as discussed above, in *Spine Holdings*, "the parties **jointly** ask[ed] the Court to stay the proceedings before [the] Court." *Spine Holdings*, Dkt. No. 8 at 2 at 1 (emphasis added). Here, Textron Innovations opposes a stay. DJI does not cite any cases within this District where an opposed motion to stay pending *inter partes* review was granted. That is because it is the Court's **universal practice** to deny them.

This factor weighs against a stay.

2. A Stay Will Unduly Prejudice Textron Innovations.

Contrary to DJI's assertions in its Motion, a stay will unduly prejudice Textron Innovations.

First, as this Court has long recognized, patent holders have an interest in the timely enforcement and vindication of their patent rights, an interest to which a stay would directly counteract. *See, e.g., Staton Techiya, LLC v. Samsung Elecs. Co.*, No. 2:21-CV-00413-JRG-RSP, 2022 WL 4084421, at *2 (E.D. Tex. Sept. 6, 2022). "To be sure, that interest is entitled to weight." *NFC Tech.*, 2015 WL 1069111, at *2 (citing cases). Although DJI argues that "TII has no special need for expeditious resolution" of its patent infringement claim, this case presents a unique fact on this point. Dkt. No. 84 at 6. The United States Department of Defense identified DJI as a "Chinese Military Compan[y]," the United States Treasury put DJI on an investment exclusion list, the United States Commerce Department has put DJI on an "entity list" that restricts U.S. companies from exporting technology to DJI, and federal and local government agencies are beginning to ban use of DJI's drones. Ex. 1 (Department of Defense); Ex. 2 (United States Treasury); Ex. 3 at 3.4, 3.28 (United States Department of Commerce). These governmental actions show that there is a risk that DJI will disappear from the market either on its own or through governmental action, making timely enforcement of Textron Innovations' patent rights important.

Second, a stay presents a strong opportunity for memories to fade and evidence to be lost. *See, e.g., Allvoice Developments US, LLC v. Microsoft Corp.*, No. 6:09-CV-366, 2010 WL 11469800, at *4 (E.D. Tex. June 4, 2010) (holding that a stay of ten months would "create a substantial delay that could cause prejudice by preventing Plaintiff from moving forward with its infringement claims and by risking the loss of evidence as witnesses become unavailable and memories fade"); *Allure Energy, Inc. v. Nest Labs, Inc.*, No. 9:13-cv-102, 2015 WL 11110606, at

*1 (E.D. Tex. Apr. 2, 2015) (“The stay also tactically disadvantages Plaintiff, as the longer this matter persists, the more likely it is that evidence and witnesses’ memories will disappear or deteriorate.”). This potential prejudice is heightened in this case. DJI already has used Chinese export control laws to shield relevant source code from production, depriving Textron Innovations of important evidence of DJI’s infringement. With most, if not all, of DJI’s witnesses and documents also residing in China, Textron Innovations expects DJI to continue using export control laws to limit the scope of available evidence in this case. Staying the case now increases the odds that DJI will further restrict its discovery under the guise of existing or new Chinese laws.

There also are practical problems that create the risk of loss of evidence unique to this case. Most, if not all, of DJI’s critical fact witnesses are in China. If any of those witnesses stops working for DJI during this case, Textron Innovations would not only be deprived of the ability to obtain that testimony via a Rule 30(b)(1) or Rule 30(b)(6) deposition notice, but Textron Innovations also would face the uncertain and time-consuming process of pursuing the discovery via the Hague Evidence Convention. Even assuming Textron Innovations successfully navigates the Hague Evidence Convention, that process may extend beyond the July 2024 trial setting.

None of DJI’s arguments tilt this factor in favor of a stay. DJI argues that Textron Innovations is a licensing entity that does not compete with DJI and, as a result, staying the case will not cause competitive harm to Textron Innovations. Dkt. No. 84 at 6. This argument rests on an inaccurate portrayal of Textron Innovations. As DJI’s Motion elsewhere recognizes, Textron Innovations is part of Textron, which is a United States aerospace technology company. *Id.* at 2. During the parties’ recent trial, James Runstadler, President of Textron Innovations, testified that as Textron’s subsidiary Bell Textron Inc. “gets more and more into the drone space and DJI’s drones become more and more sophisticated, if they are not [] direct competitor[s] today, it’s

highly likely they will be in the future.” Ex. 4 (Excerpts of W.D. Tex. Trial Tr.) at 101:1-20. At that same trial, John Wittmaak, a Bell Textron Inc. engineer, explained that Textron has been developing and selling drones for various customers and identified DJI as a direct competitor. Ex. 4 (Excerpts of W.D. Tex. Trial Tr.) at 147:6-149:4. This evidence shows that staying the case will allow DJI to enhance its market-leading position on the back of Textron Innovations’ patents and create a further impediment to Textron’s development of market share.

DJI also faults Textron Innovations for not moving for a preliminary injunction. However, that is not dispositive on this factor. DJI’s own cited case explains that not moving for a preliminary injunction is “not dispositive” and that a “specific reason to worry about evidentiary prejudice”—which is present here—can demonstrate undue prejudice. *SynQor, Inc. v. Vicor Corp.*, No. 2:14-CV-287-RWS-CMC, 2015 WL 12916396, at *4 (E.D. Tex. Nov. 24, 2015). Consistent with DJI’s cited case, other courts in this District have found undue prejudice and denied a motion to stay even though a party did not move for a preliminary injunction. See *Allvoice*, 2010 WL 11469800, at *4.

Although DJI has repeatedly attempted to argue that the Western District of Texas case between the parties’ is not relevant to this case, DJI now attempts to use that case as a sword that favors a stay. Dkt. No. 84 at 7. According to DJI, the jury’s \$278.9 million verdict against DJI in that case shows there is no “need for an expeditious resolution of its claim.” *Id.* But DJI brushes in broad strokes in portraying the two cases as involving the exact same issues. This case involves different accused features that infringe separate patents than what the parties tried in the Western District of Texas case, including, for example, Waypoints, Course Lock, Home Lock, and FlightHub 2. Textron Innovations has not been compensated for those infringing features, and as explained above, timely resolution of Textron Innovations’ infringement claims is important.

This factor weighs against a stay.

3. A Stay Is Unlikely to Simplify This Case

Defendants' assertions of simplification are speculative and contradict DJI's IPR positions.

First, the IPR petitions have not been instituted and thus there is not a meaningful potential for simplification. *Perdiemco*, 2017 WL 2444736, at *3 (E.D. Tex. June 6, 2017) (“[O]nly when the PTAB decides whether, and to what extent, to institute review will there be meaningful potential for simplification.”). And this Court has explained that the mere potential for institution, regardless of the number of patents and claims at issue, does not weigh in favor of a stay. *Id.*; *Freeny*, 2014 WL 3611948, at *2 (“[T]he ‘simplification’ issue does not cut in favor of granting a stay prior to the time the PTAB decides whether to grant the petition for inter partes review.”).

Second, DJI overstates the potential impact on claim construction that the IPRs will have. Across DJI's *five inter partes* review petitions, DJI only contends that *one* claim term, a preamble, requires construction. For each of the other claim terms, DJI states that it “does not believe any claims require construction to resolve the patentability disputes.” *See, e.g.*, Ex. 5 (IPR Petition against the '082 Patent) at 12. DJI's own statements in the IPRs are contrary to its position here that the PTAB will provide “construal of the claims in this technically complex case.” Dkt. No. 84 at 5-6.

Third, DJI has not committed to foregoing any aspects of its invalidity case if the PTAB does not institute. For example, DJI asserts invalidity in its invalidity contentions using the same prior art that it asserts in the IPRs. DJI has not agreed to forego those invalidity challenges if the PTAB declines to institute, so there may not be any simplification at all in DJI's invalidity case.

This factor weighs against a stay.

III. CONCLUSION

There are two overarching reasons to deny DJI's Motion to Stay. First, DJI's Motion seeks

a pre-institution stay, and the Court’s “universal practice” is to deny those types of motions. Second, each of the Court’s three factors in analyzing stay motions weighs against a stay. Respectfully, the Court should deny DJI’s pre-institution Motion to Stay.

Dated: September 18, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served on September 18, 2023, with a copy of this document via email.

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