UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

LONGITUDE LICENSING LIMITED, Plaintiff, v. DELL TECHNOLOGIES, INC., *et al.*, Defendants.	Case No. 8:22-cv-02312-JWH-DFM **ORDER REGARDING MOTION TO STAY CASE AGAINST DOWNSTREAM DEFENDANTS [ECF Nos. 23]**
LONGITUDE LICENSING LIMITED, Plaintiff, v. ASUSTEK COMPUTER, INC., *et al.*, Defendants.	Case No. 8:23-cv-00033-JWH-DFM **ORDER REGARDING MOTION TO STAY CASE AGAINST DOWNSTREAM DEFENDANTS [ECF Nos. 27]**
LONGITUDE LICENSING LIMITED, Plaintiff, v. LENOVO GROUP LIMITED, *et al.*, Defendants.	Case No. 8:23-cv-00035-JWH-DFM **ORDER REGARDING MOTION TO STAY CASE AGAINST DOWNSTREAM DEFENDANTS [ECF Nos. 23]**

LONGITUDE LICENSING LIMITED, Plaintiff, v. ACER, INC., *et al.*, Defendants.	Case No. 8:23-cv-00036-JWH-DFM **ORDER REGARDING MOTION TO STAY CASE AGAINST DOWNSTREAM DEFENDANTS [ECF Nos. 26]**
LONGITUDE LICENSING LIMITED, Plaintiff, v. HP INC, Defendants.	Case No. 8:23-cv-00038-JWH-DFM **ORDER REGARDING MOTION TO STAY CASE AGAINST DOWNSTREAM DEFENDANTS [ECF Nos. 21]**
LONGITUDE LICENSING LIMITED, Plaintiff, v. AMAZON.COM, INC., Defendants.	Case No. 8:23-cv-00039-JWH-DFM **ORDER REGARDING MOTION TO STAY CASE AGAINST DOWNSTREAM DEFENDANTS [ECF Nos. 32]**

I. INTRODUCTION

Longitude Licensing Limited filed patent infringement actions against Dell Technologies, Inc., *et al.* ("Dell"), ASUSTek Computer, Inc., *et al.* ("ASUS"), Lenovo Group Limited, *et al.* ("Lenovo"), Acer, Inc., *et al.* ("Acer"), HP Inc. ("HP"), and Amazon.com, Inc. ("Amazon") (collectively, "Defendants"). This Order addresses motions to stay filed in each of these six actions, as summarized below:

Case No.	Defendant	Motion	Opposition	Reply
22-2312	Dell	ECF No. 23	ECF No. 26	ECF No. 27
23-0033	ASUS	ECF No. 27	ECF No. 30	ECF No. 32
23-0035	Lenovo	ECF No. 23	ECF No. 26	ECF No. 27
23-0036	Acer	ECF No. 26	ECF No. 30	ECF No. 31
23-0038	HP	ECF No. 21	ECF No. 24	ECF No. 25
23-0039	Amazon	ECF No. 32	ECF No. 36	ECF No. 37

Based upon a review of these filings, the Court determines that the issues presented are appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78, L.R. 7-15. For the reasons stated in this Order, the Court **GRANTS** each motion.

II. BACKGROUND

Longitude alleges that Defendants infringe U.S. Patent Nos. 7,697,369 (the "'369 patent"); 9,379,233 (the "'233 patent"); and RE43,539 (the "'539 Patent") (collectively, the "Asserted Patents").[1] The Asserted Patents are directed to semiconductor and computer memory components.[2] Longitude

[1] Compl. [ECF No. 1] at ¶¶ 29, 55, & 90. All citations to electronically filed documents refer to Case No. 23-0039 unless otherwise specified, given the similarity in pleadings and motion papers among these six actions. Longitude also alleges that Amazon, but no other defendant, infringes U.S. Patent No. 9,207,701 (the "'701 patent"). *Id.* at ¶ 120.

[2] Longitude's Opposition to Defendants' Motion (the "Opposition") [ECF No. 36] 2:23-25.

Western Digital Exhibit 1011

alleges that Defendants' activities involving computers, laptops, tablets, and other devices infringe the Asserted Patents because these accused products include infringing solid state drives ("SSDs") and memory chips.[3] Longitude asserts that Intervenor Western Digital Technologies, Inc. ("WD") makes these allegedly infringing SSDs and memory chips and supplies them to Defendants.[4] Defendants allegedly infringe the Asserted Patents only because Defendants incorporate these SSDs and memory chips into the accused products.[5]

In sum, Longitude's infringement allegations with respect to Defendants rely entirely upon WD SSDs and memory chips.[6] In light of these circumstances and the manufacturer-customer relationship between WD and Defendants, WD moved to intervene in Longitude's action against Amazon, Case No. 23-0039 (the "Amazon Action").[7] Defendants now move to stay these six actions under the customer-suit exception, pending the resolution of Longitude's infringement claims with respect to WD in the Amazon Action.

III. LEGAL STANDARD

A. Customer-Suit Exception

"When a patent owner files an infringement suit against a manufacturer's customer and the manufacturer then files an action of non-infringement or patent invalidity, the suit by the manufacturer generally take[s] precedence." *In re Nintendo of Am., Inc.*, 756 F.3d 1363, 1365 (Fed. Cir. 2014). "This 'customer-suit' exception to the 'first-to-file' rule exists to avoid, if possible, imposing the burdens of trial on the customer, for it is the manufacturer who is generally the

---

[3] *See, e.g.*, Motion to Stay [ECF No. 23] (Case No. 22-2312) 3:10-20.

[4] *Id.*

[5] *Id.*

[6] Longitude indicates that it attempted to pursue WD for infringement in a previous arbitration, but that action was dismissed on jurisdictional grounds. Opposition 4:3-6.

[7] The Court granted WD's unopposed motion to intervene through an Order entered substantially contemporaneously herewith.

'true defendant' in the dispute." *Id.* (quoting *Codex Corp. v. Milgo Elec. Corp.*, 553 F.2d 735, 737–38 (1st Cir. 1977)); *see also WP Banquet, LLC v. Target Corp.*, 2016 WL 9450448, at *5 (C.D. Cal. Dec. 15, 2016) (summarizing evolution of the exception).

B. Requests to Stay

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). "This rule applies whether the separate proceedings are judicial, administrative, or arbitral in character, and does not require that the issues in such proceedings are necessarily controlling of the action before the court." *Levya v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 864 (9th Cir.1979).

The decision to grant a stay is within the Court's discretion. A stay is appropriate when it serves the interests of judicial economy and efficiency. *See Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997). Nonetheless, "[w]here it is proposed that a pending proceeding be stayed, the competing interests which will be affected by the granting or refusal to grant a stay must be weighed." *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). These competing interests include: (1) the possible damage or harm to the non-moving party that may result from granting a stay; (2) the hardship or inequity the moving party may suffer in being required to proceed with the case if the request for a stay is denied; and (3) "the orderly course of justice"—*i.e.*, the simplification or complication of the issues, proof, and questions of law expected to result from the stay. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (citing *Landis*, 299 U.S. at 268).

IV. DISCUSSION

Defendants request a stay of each of these actions pending the resolution of the action against WD—the provider of all the accused SSDs and memory chips—in the Amazon Action.

A. The Positions of the Parties

Defendants argue that the customer-suit exception applies because the SSDs and memory chips that WD supplies to Defendants—its customers—are the basis for Longitude's infringement claims.[8] All six actions involve the same asserted patents and the same accused technology. Longitude's infringement claims with respect to each Defendant depend on Defendants' alleged incorporation of WD's SSDs and memory chips into the accused products.[9] Thus, resolving whether the SSDs and memory chips infringe the Asserted Patents and resolving questions of patent validity in the Amazon Action, before moving forward on the claims as to the other Defendants, will greatly simplify the issues.[10]

Longitude argues that the customer-suit exception is not applicable here for several reasons. First, Longitude contends that the customer-suit exception does not apply to actions in the same forum in which the same counsel represents all defendants.[11] Next, Longitude asserts that the resolution of the claims against WD will not simplify the issues in these six actions because Defendants are not mere resellers.[12] Finally, Longitude maintains that Defendants have not agreed to be bound to any infringement or invalidity

---

[8] Motion to Stay (the "Motion") [ECF No. 32] 5:27-6:13.

[9] *Id.*

[10] *Id.* at 6:14-24.

[11] *See* Opposition 6:3-7:27.

[12] *Id.* at 8:1-9:27.

findings with respect to WD.[13] Defendants respond that Longitude is wrong on all counts.[14]

B. Analysis

1. Customer-Suit Exception

The customer-suit exception applies here. Longitude's infringement allegations turn on Defendants' incorporation of WD's SSDs and memory chips into the accused products.[15] Accordingly, because WD is the manufacturer, the resolution of WD's claims for declaratory judgment of noninfringement takes precedence over the Defendant actions. *See Nintendo*, 756 F.3d at 1365.

Longitude's argument that the customer-suit exception does not apply to actions pending in the same jurisdiction, when the same counsel represents all Defendants, is simply not correct. Longitude cites *Unilin Beheer B.V. v. Tropical Flooring*, 2014 WL 2795360, at *8 (C.D. Cal. June 13, 2014),[16] which quotes *Privasys, Inc. v. Visa Int'l*, 2007 WL 3461761, at *3 (N.D. Cal. Nov. 14, 2007), for the proposition that "[w]here, as here, plaintiff has brought suit against both the supplier and its customers in the same suit and in the same district, the 'customer suit' exception does not apply." The rule as stated in *Privasys* no longer applies.[17] *Nintendo* "extended the customer-suit rule and its principles to cases where patent infringement is alleged against an infringer and its

---

[13] *Id.* at 12:9-13:13.

[14] Reply in Support of Motion to Stay (the "Reply") [ECF No. 37] 2:22-26, 4:1-6:12, & 9:21-10:15.

[15] *See* Part II, *supra*.

[16] The court also found that the customer-suit exception did not apply because this case involved a distributor and a customer, not a manufacturer and a customer. *Id.*

[17] Longitude also cites *Cambrian Sci. Corp. v. Cox Commc'ns, Inc.*, 2012 WL 12898803, at *2 (C.D. Cal. Mar. 6, 2012), for the proposition that the customer-suit exception does not apply where the same counsel represented all customer-defendants and where those defendants did not "identify any particular complex issues." Again, however, this opinion predates *Nintendo*, 756 F.3d 1363.

customers." *Tissue Anchor Innovations, LLC v. Fountain Valley Reg'l Hosp.*, 2019 WL 8219779, at *3 (C.D. Cal. Nov. 25, 2019) (citing *Nintendo*, 756 F.3d at 1365).

Longitude's assertion that Defendant's are not "mere resellers" is not persuasive. Longitude alleges that Defendants package the WD SSDs and memory chips into their own unique products and then sell those products to customers.[18] However these allegations do not affect the applicability of the customer-suit exception. *See Upaid Sys., Ltd. v. CleanDan*, 2018 WL 5279567, at *3 (C.D. Cal. July 25, 2018) ("Although a distinction may exist, the Court is not convinced that Defendant does not qualify as a 'downstream' purchaser or retailer as a result. The exception's underlying rationale applies in this case just as it does in a 'typical' manufacturer/reseller case.").

Additionally, Longitude notes that Defendants do not contend that a finding that WD's components infringe necessarily establishes that Defendants' products infringe.[19] However, Longitude diminishes the importance of the alternative. Defendants' products cannot infringe if the Court determines that WD's products do not infringe or that the Asserted Patents are invalid.[20] Additionally, regardless of the outcome of any infringement or validity finding, each of the six actions requires a determination of whether WD's products infringe and requires a determination of the validity of the Asserted Patents. Thus, they share common questions of fact and law.

Longitude also argues that it accused Defendants of both direct infringement and induced infringement and that these allegations require additional discovery into Defendants' sales, marketing, and customer

---

[18] Opposition 8:11-15.

[19] *Id.* at 8:15-17.

[20] Longitude characterizes Defendants' emphasis of this point as "limited" and "self-serving." *Id.* at 8 n.3. While this point certainly supports Defendants' position, it is also true.

communications.[21] The Court agrees that Longitude's claims against Defendants may involve that resolution of additional issues. Longitude expresses concern that Defendants do not even suggest resolving these issues in a second phase of litigation following the resolution of WD's alleged infringement.[22] The Court finds it both appropriate and efficient to resolve these additional issues, if necessary, during a second phase of litigation. As stated above, however, each of the six actions requires a determination regarding whether WD's SSDs and memory chips infringe the Asserted Patents and a determination regarding the validity of the Asserted Patents. The resolution of these issues will involve labor-intensive technical analysis, both in a factual sense as to the infringement issue, but also in a legal sense as to claim construction. Accordingly, it makes sense to resolve these important issues first, in one case, so long as all Defendants are bound by the Court's ruling on these issues.

In contrast, the additional issues regarding Defendants are factual ones related to Defendants' allegedly infringing activities, including sales, marketing efforts, and customer relationships. These issues are largely separate from the technical issues related to WD's infringement and validity. For these reasons, Longitude's arguments that a stay is inefficient are unpersuasive.

Finally, Longitude's argument that Defendants are not bound is moot. Defendants expressly indicate their agreement to be bound.[23] Courts find stays appropriate where customer Defendants agree to be bound. *See Nintendo*, 756 F.3d at 1365; *see also Upaid*, 2018 WL 5279567, at *3.

2. Discretionary Stay

The *Lockyer* factors also favor a stay here. First, delay alone does not constitute harm to the non-movant. *See Upaid*, 2018 WL 5279567, at *2.

---

[21] *Id.* at 8:21-9:4.

[22] *Id.* at 11:17-19.

[23] Reply at 10:2-4.

Speculation regarding the loss of evidence and fading witness memories does not establish harm. *See, e.g.*, *Evolutionary Intelligence LLC v. Yelp Inc.*, 2013 WL 6672451, at *8 (N.D. Cal. Dec. 18, 2013). Longitude argues that it will suffer harm as a result of the stay because its infringement claims against Defendants involve additional issues. However, as explained above, the infringement claims against Defendants necessarily depend on WD's infringement. The fact that if, and only if, WD is found to infringe there may be additional factual issues, does not constitute harm. To the extent that WD is found to infringe, Longitude will have a full and fair opportunity to conduct discovery and to pursue claims against Defendants.[24]

Next, Defendants would suffer absent a stay. The Court agrees that having to defend a lawsuit is not hardship. *See Lockyer*, 398 F.3d at 1112. However, that is far from the only relevant consideration here. Resolving litigation in six separate actions that involve shared factual and legal questions will result in a considerable waste of effort. Additionally, proceeding in six separate actions creates the potential for inconsistent jury findings.

Finally, the orderly course of justice is perhaps the most compelling reason to grant a stay in these actions. As discussed above, these six actions involve common factual questions pertaining to infringement and validity. Resolving these issues six separate times in six separate actions would waste the Court's and the parties' resources. Resolving infringement as to WD and the validity of the Asserted Patents must occur in each case. The parties agree to be bound by the Court's findings regarding WD in the Amazon Action. Therefore, it is most efficient to resolve these issues first and then, only to the extent necessary, to move on to the claims against the customer Defendants.

[24] The Court declines to resolve the parties' disputes regarding damages at this early stage of litigation.

Longitude also argues that a stay would force it to obtain third-party discovery from Defendants, which would be complicated and wasteful. However, Longitude fails to specify what kind of third-party discovery it would need to obtain from Defendants to resolve the technical infringement claim as between WD and Longitude. The Court presumes that WD is the best and possibly only source of technical information regarding WD's own products. Absent further explanation, this argument is not persuasive. Additionally, Longitude remains entitled to pursue regular discovery from Defendants if and when the Court resolves infringement as to WD in Longitude's favor.

V. DISPOSITION

For the foregoing reasons, the Court hereby **ORDERS** as follows:

1. Defendants' Motion to Stay in each action is **GRANTED**.

2. Each action (with the exception of the Amazon Action with respect to WD) is **STAYED** pending the resolution of the Amazon Action with respect to WD.

3. Any party may make a motion at any time to modify or vacate the stay, for good cause shown.

IT IS SO ORDERED.

Dated: May 16, 2023

John W. Holcomb
UNITED STATES DISTRICT JUDGE

Western Digital Exhibit 1011