UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

10X GENOMICS, INC,
Petitioner,

v.

NANOSTRING TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2023-01300
U.S. Patent No. 11,473,142

PATENT OWNER'S BRIEF REGARDING AUTOMATIC STAY

Pursuant to the Board's February 20, 2024 email, Patent Owner hereby submits this brief regarding the applicability of the statutory stay under § 362 of the bankruptcy code to these proceedings.

The automatic stay provided for by § 362 is triggered immediately and automatically upon filing of a bankruptcy petition. 11 U.S.C. § 362(a). The purpose of the stay is to protect a debtor's estate and the interests of creditors. *See In re Rexene Prods., Co.*, 141 B.R. 574, 76 (Bankr. D. Del. 1992) (the automatic stay's "purpose is three-fold: to prevent certain creditors from gaining a preference for their claims against the debtor; to forestall the depletion of the debtor's assets due to legal costs in defending proceedings against it; and, in general, to avoid interference with the orderly liquidation or rehabilitation of the debtor."). Accordingly, the "sweep of the automatic stay is broad and 'serves as one of the most important protections of bankruptcy law.'" *Porter v. Nabors Drilling USA, L.P.*, 854 F.3d 1057, 1061 (9th Cir. 2017).

In practice, the filing of the bankruptcy petition "operates as a stay, applicable to all entities," of, among other things, "the commencement or continuation…of a judicial, ***administrative***, or other action or proceeding against the debtor[s] that was or could have been commenced before the commencement of the case under [the Bankruptcy Code], or to recover a claim against the debtor[s] that arose before the commencement of the [bankruptcy] case." 11 U.S.C. §§ 362(a)(1) (emphasis

added). These IPRs are administrative proceedings against the debtor commenced prior to Debtors' bankruptcy petition, and the automatic stay thus applies.

The exceptions to the stay are limited and specifically enumerated in the Bankruptcy Code. *See* 11 U.S.C. § 362(b). None of them apply here, and Patent Owner does not understand Petitioner to argue otherwise.

To the extent Petitioner believes that these IPRs should proceed, it has a clear avenue to advance that position – by filing a motion to lift the stay in the Bankruptcy Court. *See Association of St. Croix Condominium Owners v. St. Croix Hotel Corp.,* 682 F.2d 446, 449 (3d Cir. 1982). Indeed, this Panel has recognized that the Bankruptcy Court is the proper venue to decide such questions. *See Dr. Reddy's Laboraties Inc. v. Pozen Inc*., No. IPR2018-01341, 2018 WL 5099672, at *1 (P.T.A.B. Oct. 16, 2018) (deferring to bankruptcy court to determine whether the automatic stay under § 362 to IPRs); *see also Mylan Pharms. Inc. v. Pozen Inc.,* No. IPR2017-01995, 2018 WL 4191553, at *1 (P.T.A.B. Aug. 31, 2018) ("Given the parties' disagreement regarding whether the automatic stay applies to these proceedings—***a disagreement that, in our view, is best addressed in the bankruptcy court—we determined that the appropriate course of action was to suspend all deadlines in these proceedings until further notice***.") (emphasis added). The Bankruptcy Court will then consider whether to lift the stay to allow these IPRs to continue, based on the balancing test found in *Rexene Prods. Rexene*

Prods., 141 B.R. at 576. Absent the Bankruptcy Court granting relief from the automatic stay, the automatic stay applies.

In the February 8, 2024 email, the Panel asked "whether the Bankruptcy Court of Delaware has interpreted section 362 of the Bankruptcy Code to specifically apply to IPR2023-01298 and -1300." For the reasons set forth above, it has had no reason to do so: Patent Owner is a defendant in multiple pending legal actions, each of which are stayed by operation of law upon the filing of a bankruptcy petition. The Bankruptcy Court would only consider whether to allow any proceeding to continue upon the filing of a motion to lift the automatic stay, which no party has made.

It is also immaterial whether these IPR Proceedings involve a debt owed by the Debtors. As discussed above, the automatic stay applies to protect all assets of the estate and the Debtors' IP is an asset of the estate. *See* §§ 362(a)(1), (3); *Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991) (The "stay protects the bankrupt's estate from being eaten away by creditors' lawsuits and seizures of property before trustee has had chance to marshal estate's assets and distribute them equitably among creditors."). It does not matter whether Petitioner is seeking recovery of a debt – the automatic stay applies regardless.

Dated: February 20, 2024

RESPECTFULLY SUBMITTED,

/Derek C. Walter/

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **PATENT OWNER'S BRIEF REGARDING AUTOMATIC STAY** was served on February 20, 2024, via email pursuant to 37 C.F.R. and § 42.107 to the Petitioner at the addresses below:

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