

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

FORAS TECHNOLOGIES LTD.,

Plaintiff,

v.

DENSO CORPORATION,

Defendant.

Case No. 2:23-cv-00150-JRG
(Lead Case)

JURY TRIAL DEMANDED

FORAS TECHNOLOGIES LTD.,

Plaintiff,

v.

KIA CORPORATION and KIA AMERICA,
INC.,

Defendants.

Case No. 2:23-cv-00219-JRG
(Member Case)

JURY TRIAL DEMANDED

KIA'S OPPOSED MOTION TO STAY UNDER CUSTOMER-SUIT EXCEPTION

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	LEGAL STANDARD.....	4
III.	ARGUMENT	6
A.	Kia Is a Mere Reseller of Klemove Radar Products	6
B.	Kia Agrees to Be Bound by the Klemove Case	7
C.	Klemove Is the Sole Source of the Accused Radar Products	9
D.	Traditional Stay Factors Also Favor Staying this Case Against Kia	9
1.	A Stay Will Not Unduly Prejudice Foras	9
2.	A Stay Will Simplify the Issues and Any Trial in this Case.....	10
3.	This Case Is in Its Early Stages.....	10
E.	Joint Customer-Suit Exception Stay Motion Filed by Foras and Toyota in a Related Case Supports Kia’s Motion	11
IV.	CONCLUSION.....	12

Defendants Kia Corp. and Kia America Inc. (collectively, “Kia”) respectfully move to stay this case under the customer-suit exception. Foras Technologies Ltd. (“Foras”) alleges that Kia automobiles having Radar products with Infineon chipsets infringe seven claims of U.S. Patent No. 7,502,958. These infringement allegations are based solely on functionality in the Radar products (or Infineon chipsets therein) that HL Klemove Corp. (“Klemove”) supplies to Kia. As a result, Klemove has filed a complaint against Foras seeking a declaratory judgment that its Radar products (including all such products supplied to Kia) do not infringe at least the same seven claims of the ’958 patent. All factors considered in determining whether to apply the customer-suit exception to the first-to-file rule, as well as the traditional stay factors, favor a stay here. Although Foras opposes this motion, it previously joined a customer-suit exception stay motion in its related case against Toyota Motor North America, Inc. Foras’s participation in, and the reasons for, that motion support granting Kia’s motion here.

I. BACKGROUND

The ’958 patent is titled “System and Method for Providing Firmware Recoverable Lockstep Protection.” Dkt. No. 1-4. Both the Abstract and the Brief Summary of the Invention sections of the patent state the following, in their entirety:

According to at least one embodiment, a method comprises detecting loss of lockstep for a pair of processors. The method further comprises triggering, by firmware, an operating system to idle the processors, and recovering, by the firmware, lockstep between the pair of processors. After lockstep is recovered between the pair of processors, the method further comprises triggering, by the firmware, the operating system to recognize the processors as being available for receiving instructions.

Dkt. No. 1-4 at [57], 3:48-59.

On May 18, 2023, Foras filed this case against Kia based on the following allegation:

On information and belief, Defendants have and continue to make, use, offer for sale, sell, and/or import certain products and services,

including without limitation the Kia K5, Telluride, and Seltos which include a Mando MRR-20 Mid-Range Radar (containing an Infineon SAK-TC297TA chipset) and/or Hella RS4 Lange Change Assist Radar (containing an Infineon SAK-TC264DA chipset) (“Accused Products”), that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ’958 Patent. Identification of the Accused Products will be provided in Plaintiff’s infringement contentions disclosed pursuant to the Court’s scheduling order.

Dkt. No. 1 at ¶ 14. Other than identifying Kia automobiles that allegedly have these Radar products, the claim chart accompanying the complaint relies on no Kia-specific functionality, documentation, or other information—instead relying on purported functionality of the Infineon chipsets in the Radar products. *See* Dkt. No. 1-5.

Foras served P.R. 3-1 and 3-2 disclosures on July 21, 2023. *See* Decl. of Adam M. Greenfield in Support of Kia’s Motion to Stay Under Customer-Suit Exception (“Greenfield Decl.”) at Ex. 1. These disclosures allege only that Kia automobiles having ASIL-D (Automotive Safety Integrity Level D) compliant Radar products containing Infineon chipsets with at least one pair of lockstep processors infringe claims 1-3, 6, 8, and 19-20 of the ’958 patent. *Id.* at 2. The claim chart included with these disclosures again relies on purported functionality of the Infineon chipsets in the identified Radar products, rather than on any Kia-specific functionality, documentation, or other information. *See id.* at Ex. A.

Setting aside that these Radar products actually are not ASIL-D compliant, Klemove is the sole supplier to Kia. Decl. of Cho Ae Kim in Support of Kia’s Motion to Stay Under Customer-Suit Exception (“Kim Decl.”) at ¶¶ 3-4. Kia does not design, make, modify, adapt, program, or otherwise install firmware in these Radar products. *Id.* at ¶ 5. Kia is not presently aware of any basis it would have to testify regarding the design or operation of these Radar products, except knowing that they are not ASIL-D compliant and otherwise relying on documents and information provided by Klemove. *Id.* at ¶ 6. To the best of Kia’s knowledge, technical information regarding

the design and operation of these Radar products would be in the possession of, and confidential to, Klemove (and/or its supplier Infineon). *Id.* at ¶ 7.

On November 2, 2023, Foras attempted to subpoena Klemove for the production of documents in this case. Greenfield Decl. Ex. 2. The subpoena sought source code, technical documents, and schematics and bill of materials for products “related to lockstep processing supplied to Kia.” *Id.* at 7. Klemove objected to the subpoena on the basis that, among other things, Foras improperly delivered the subpoena HL Klemove America Corporation, a subsidiary of HL Klemove Corporation. *See* Greenfield Decl. Ex. 3 at 1.

Klemove then filed a declaratory judgment complaint against Foras on December 11, 2023, expressly “seek[ing] to enable the customer-suit-exception to pause all active litigation by Foras against Plaintiff’s customer, Kia, for alleged infringement of the ’958 Patent.” Dkt. No. 1 at ¶ 12, No. 2:23-cv-00647-EWH-RJK (E.D. Va.) (“Klemove Case”). Klemove’s complaint—including without exhibits as Greenfield Decl. Ex. 4—seeks a declaratory judgment that its Radar products do not infringe at least claims 1-3, 6, 8, and 19-20 the ’958 patent. *Id.* at ¶ 35. Klemove’s complaint admits that it “is the supplier of the MRR-20 Mid-Range Radar and the Hella RS4 Lane Change Assist Radar, also known as the Blind Spot Detection Radar Generation 4.0 (BSD GEN4.0),” identified in Foras’s infringement contentions against Kia. *Id.* at ¶ 8. The complaint acknowledges that Kia has requested indemnification from Klemove in connection with this dispute. *Id.* at ¶¶ 9, 32. And the complaint recognizes that “Foras’s infringement allegations against [Kia] are predicated on [Kia’s] incorporation of and/or use of [Klemove’s] products in automobiles,” alleging further that the accused functionality implicates “only a small part of the [Klemove] product, which is only a small part of [Kia’s] products.” *Id.* at ¶¶ 10, 16; *see also id.* at ¶¶ 26-29. Klemove filed this complaint in the Eastern District of Virginia because Foras resides

outside the United States and so that court has personal jurisdiction under 35 U.S.C. § 293. *Id.* at ¶ 22.

Separately, two Patent Office challenges have been filed against the '958 patent. On September 1, 2023, Unified Patents filed a request for *ex parte* reexamination of claims 1-25 of the '958 patent. See Reexamination Control. No. 90/019,245. The Patent Office granted this request on November 29, 2023, but has not issued a first office action yet. See Greenfield Decl. Ex. 5. On September 8, 2023, BMW of North America, LLC and Robert Bosch LLC petitioned for *inter partes* review of claims 1-8 and 13-22 of the '958 patent. See IPR2023-01373. The Patent Trial and Appeal Board issued a Notice of Filing date Accorded to Petition on September 22, 2023, and so should issue a decision whether to institute by March 22, 2024.

To date, Kia and Klemove have exchanged only a handful of documents and first sets of interrogatories. The P.R. 4-1 exchange of proposed claim terms for construction is not until March 14, 2024—followed by substantial completion of document production in June 2024, a claim construction hearing in July 2024, and trial in January 2025. Dkt. No. 46 at 1, 4-5.

II. LEGAL STANDARD

“The Supreme Court has repeatedly observed that under the doctrine of comity, when cases involving substantially overlapping issues are pending before two federal district courts, there is a strong preference to avoid duplicative litigation.” *In re Google Inc.*, 588 F. App'x 988, 990 (Fed. Cir. 2014) (“That rule reflects an elementary principle of ‘wise judicial administration.’”).

Under Federal Rule of Civil Procedure 21, “courts have developed a practice of severing and staying claims against customers pending resolution of the suit against the manufacturer.” *St. Lawrence Commc'ns LLC v. Apple Inc.*, No. 2:16-cv-00082-JRG, 2017 WL 3712912, at *1 (E.D. Tex. July 12, 2017). This “‘customer-suit exception’ to the first-file rule provides that ‘litigation against or brought by the manufacturer of [allegedly] infringing goods takes precedence over a

suit by the patent owner against customers of the manufacturer.” *Network Sys. Techs., LLC v. Samsung Elecs. Co.*, No. 2:22-cv-00481-JRG, 2023 WL 7649372 at *2 (E.D. Tex. Nov. 14, 2023) (quoting *Katz v. Lear Siegler, Inc.*, 909 F.2d 1459, 1464 (Fed. Cir. 1990)). “Underlying the customer-suit doctrine is the preference that infringement determinations should be made in suits involving the true defendant in the plaintiff’s suit, i.e., the party that controls the product’s design, rather than in suits involving secondary parties, i.e. customers.” *Ciena Corp. v. Nortel Networks Inc.*, No. 2:05-cv-00014-LED, 2005 WL 1189881, at *9 (E.D. Tex. May 19, 2005) (citing *Codex Corp. v. Milgo Elec. Corp.*, 553 F.2d 735, 737-38 (1st Cir. 1977)). The Federal Circuit has recognized that the “rule exists to avoid, if possible, imposing the burdens of trial on the customer, for it is the manufacturer who is generally the ‘true defendant’ in the dispute.” *In re Nintendo of Am., Inc.*, 756 F.3d 1363, 1365 (Fed. Cir. 2014).

“[T]he manufacturer’s case need only have the potential to resolve the ‘major issues’ concerning the claims against the customer—not every issue—in order to justify a stay of the customer suits.” *Spread Spectrum Screening LLC v. Eastman Kodak Co.*, 657 F.3d 1349, 1358 (Fed. Cir. 2011) (citing *Katz*, 909 F.2d at 1464). “The way to avoid wasted resources is ... through a flexible approach, including staying proceedings if the other suit is so closely related that substantial savings of litigation resources can be expected.” *In re Google*, 588 F. App’x at 991.

“In determining whether the customer-suit exception applies, the [C]ourt analyzes three factors: ‘(1) whether the customer-defendant in the earlier-filed case is merely a reseller; (2) whether the customer-defendant agrees to be bound by any decision in the later-filed case that is in favor of the patent owner; and (3) whether the manufacturer is the only source of the infringing product.’” *CyWee Grp. Ltd. v. Huawei Device Co.*, No. 2:17-cv-00495-WCP-RSP, 2018 WL 4002776 at *5 (E.D. Tex. Aug. 22, 2018) (citations omitted). Courts have found that a customer

simply incorporating a manufacturer's product into its own is a "mere reseller." *See, e.g., Katz*, 909 F.2d at 1460-61, 1464.

III. ARGUMENT

All three factors favor a stay here. First, Kia is a mere reseller of Klemove Radar products; Foras's infringement allegations are based solely on functionality in such products (or Infineon chipsets therein), which Kia does not design, make, modify, or adapt. Second, Kia agrees to be bound by a final determination in the Klemove Case, and thus resolution of the Klemove Case will resolve the major issues in Foras's claims against Kia. Third, Klemove is the only source of Radar products in Kia automobiles that Foras has accused of infringement in this case.

A. Kia Is a Mere Reseller of Klemove Radar Products

Foras's infringement contentions confirm that Kia is equivalent to a "reseller" of Klemove Radar products and that Foras's claims against Kia are peripheral.

The asserted claims are directed to a system (claims 19-20) or method (claims 1-3, 6, 8) comprising a pair of lockstep processors and firmware code for detecting loss of lockstep and for determining if lockstep is recoverable. The patent specification explains that "a lockstep mismatch refers to the output of master processor 12A and slave processor 12B failing to match." '958 patent at 4:49-51. The asserted claims are *not* directed to automobiles or vehicles, terms which *never* even appear in the '958 patent.

Not surprisingly then, the accused functionality identified by Foras corresponds to Infineon chipsets in Klemove Radar products, rather than in anything that Kia designs, makes, modifies, or adapts. Kim Decl. ¶ 5. Foras's claim charts do not allege that any claim element is practiced or embodied in any component outside the Klemove Radar product. *See* Dkt. No. 1-5; Greenfield Decl. Ex. 1. Rather, Foras alleges only that certain Kia automobiles infringe the '958 patent because they have Radar products that themselves have "Infineon AURIX TC2XX / TC3XX

chipsets that contain at least one lockstep pair of processors,” including for example the Infineon SAK-TC297TA and SAK-TC264DA chipsets. Greenfield Decl. Ex. 1 at 2, Ex. A at 1. Foras does not allege (because it cannot) that Kia designs, makes, modifies, adapts, programs, or otherwise installs firmware in the Infineon chipsets in the Klemove Radar products. Kim Decl. ¶ 5.

Klemove’s declaratory judgment complaint agrees. *See* Greenfield Decl. Ex. 4 at ¶ 26 (“Other than alleging that certain Kia automobiles include the HLK radar products, neither the complaint nor attached claim chart assert that the Kia automobiles play any role in the alleged infringement.” (internal citation omitted)). And Klemove has acknowledged that it is “the original equipment manufacturer and supplier of the radar products identified as the accused instrumentalities in the *Kia* case.” Greenfield Decl. Ex. 4 at ¶ 12.

Foras’s claims thus rely “exclusively on the underlying functionalities provided in” the Klemove Radar products (or Infineon chipsets therein), *In re Google*, 588 F. App’x at 990, “without which the alleged infringement by [Kia] would not be possible,” *CyWee*, 2018 WL 4002776, at *6. Kia has “no essential knowledge about the alleged infringement.” *Richmond v. Forever Gifts, Inc.*, Case No. 3:15-cv-0583, 2015 WL 11120883, at *1 (N.D. Tex. Mar. 18, 2015). And Kia “will have very little to offer in the way of evidence regarding the substantive aspects of the infringement case.” *Nintendo*, 544 F. App’x at 941. At trial, Kia would need to rely on testimony from non-party technical fact witnesses. Accordingly, this factor supports a stay because Kia is merely a reseller.

B. Kia Agrees to Be Bound by the Klemove Case

Should the Court stay this case under the customer-suit exception, Kia agrees to be bound by the Klemove Case outcome on issues of alleged infringement and invalidity, as well as any claim construction decision. Thus, this factor favors staying the claims against Kia. *See Wapp Tech Ltd. P’ship v. Hewlett-Packard Enters.*, No. 4:18-CV-468-ALM, 2019 WL 3818761, at *4

(E.D. Tex. Aug. 14, 2019) (“[A]greement to be bound by an infringement determination in a separate suit, that will leave little left for the court to adjudicate in the current suit, weighs heavily in favor of” a stay). Kia’s agreement “reinforce[s] that the [] claims against the Customer Defendants are peripheral to the central infringement dispute in this lawsuit.” *Network Sys.*, 2023 WL 7649372, at *8 (E.D. Tex. Nov. 14, 2023) (alterations original, citations omitted).

Resolution of Klemove’s claims against Foras would resolve the major issues, and perhaps all issues, in Foras’s claims against Kia. Foras alleges that Kia automobiles containing Infineon chipsets with at least one pair of lockstep processors infringe claims 1-3, 6, 8, and 19-20 of the ’958 patent. Klemove supplies all such Radar products to Kia, Kim Decl. ¶¶ 2-3, and seeks a declaratory judgment that these Radar products do not infringe at least the same claims of the ’958 patent. Greenfield Decl. Ex. 4 at ¶¶ 8, 10-12, 21, 34-37. A noninfringement or invalidity determination in the Klemove Case would moot each of Foras’s claims against Kia here, whereas a judgment in Foras’s favor in the Klemove Case would exhaust its rights and preclude the collection of duplicative damages from Kia. *See, e.g., Glenayre Elecs., Inc. v. Jackson*, 443 F.3d 851, 864 (Fed. Cir. 2006) (“[A] party is precluded from suing to collect damages for direct infringement by a buyer and user of a product when actual damages covering that very use have already been collected from the maker and seller of that product.”); *Quanta Comput., Inc. v. LG Elecs., Inc.*, 553 U. S. 617, 629-31 (2008) (“[T]his Court has repeatedly held that method patents were exhausted by the sale of an item that embodied the method.”). Even if ancillary issues were to remain after resolution of Klemove’s claims against Foras, it would significantly simplify the issues involving Kia. *See Katz*, 909 F.2d at 1464; *Westport Fuel Sys. Can., Inc. v. Nissan N. Am., Inc.*, No. 2:21-CV-0455-JRGRSP, 2023 WL 346807 at *3 (E.D. Tex. Jan. 20, 2023); *Network Sys.*, 2023 WL 7649372, at *7. This factor, therefore, supports a stay because Kia agrees to be bound.

C. Klemove Is the Sole Source of the Accused Radar Products

In this case, Foras alleges that Kia automobiles having ASIL-D compliant Radar products containing Infineon chipsets with at least one pair of lockstep processors infringe claims 1-3, 6, 8, and 19-20 of the '958 patent. Greenfield Decl. Ex. 1 at 2; *see also* Dkt. No. 1 at ¶ 14. Setting aside that none of these Radar products in Kia automobiles are ASIL-D complaint, Klemove is the sole source of such Radar products. Kim Decl. ¶¶ 3-4. Klemove's declaratory judgment complaint agrees, acknowledging that it is "the original equipment manufacturer and supplier of the radar products identified as the accused instrumentalities in the *Kia* case"—including "the MRR-20 Mid-Range Radar and the Hella RS4 Lane Change Assist Radar, also known as the Blind Spot Detection Radar Generation 4.0 (BSD GEN4.0)." Greenfield Decl. Ex. 4 at ¶¶ 8, 12. Accordingly, this factor supports a stay. *See Network Sys.*, 2023 WL 7649372, at *8.

D. Traditional Stay Factors Also Favor Staying this Case Against Kia

"Courts may evaluate three traditional stay factors in considering customer suits: '(1) whether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party; (2) whether a stay will simplify the issues in question and the trial of the case; and (3) whether discovery is complete and whether a trial date has been set.'" *Network Sys.*, 2023 WL 7649372, at *8 (quoting *Lighthouse Consulting Grp., LLC v. Truist Bank*, No. 2:19-cv-00340-JRG, 2020 WL 6781977, at *2 (citations omitted)). All of these factors also favor a stay here.

1. A Stay Will Not Unduly Prejudice Foras

Staying Foras's claims against Kia will not unduly prejudice Foras because Foras's claims against Kia are peripheral to those against Klemove and will be resolved (entirely or largely) by resolution of the Klemove Case. *See supra* Sections III.A-B; *see also GreatGigz Sols., LLC v. Costco Wholesale Corp.*, No. 6-21-CV-00807, 2022 WL 1037114 (W.D. Tex. Apr. 6, 2022) at *4 (finding a stay was not unduly prejudicial because the suits focused largely on "the entity engaged

in design, development, and sale of the accused products”). That this factor supports a stay is strengthened by Foras seeking early discovery in this case from *true defendant* (albeit non-party) Klemove, facing objections for improper service, and being better positioned to obtain such discovery in the Klemove Case rather under The Hague Convention in this case. *See, e.g., Westport*, 2023 WL 318466, at *3 (“Additionally, discovery directly from [the supplier] will likely yield better evidence because [the supplier] likely has greater access to evidence regarding the functionality of the accused device than would any of its customers.”). “Lastly, as to prejudice or tactical disadvantages, the median time to trial or dispositive outcome in the Eastern District of Virginia is comparable to that in the Eastern District of Texas. ... Thus, a timely resolution of the major issues is not prevented by a stay of this suit.” *Id.*; *see also* Greenfield Decl. Ex. 6. This factor weighs in favor of a stay.

2. A Stay Will Simplify the Issues and Any Trial in this Case

Resolution of the Klemove case will greatly simplify this case against Kia by resolving whether the implicated Radar products infringe, invalidity of the same asserted claims, and claim construction, as well as streamlining discovery. *See supra* Section III.A-C and D.1. The reverse is not true because Kia is only one of Klemove’s customers. Greenfield Decl. Ex. 4 at ¶ 4. Thus, this factor also weighs in favor of a stay. *See, e.g., Spread Spectrum*, 657 F.3d at 1357; *CyWee*, 2018 WL 4002776, at *3-4; *Westport*, 2023 WL 318466, at *4; *Topia Tech., Inc. v. Dropbox, Inc.*, No. 6:21-cv-01373-ADA, 2022 WL 18109619, at *5 (W.D. Tex. Dec. 29, 2022).

3. This Case Is in Its Early Stages

This case is at a very early stage, with no major deadline having passed since the disclosure of preliminary infringement and invalidity contentions. Dkt. No. 46 at 5. The first claim construction deadline (P.R. 4-1 exchange of terms) is months away on March 14, 2024. *Id.* Kia and Klemove have exchanged only a handful of documents and first sets of interrogatories.

Substantial completion of document production is not until June 6, 2024, followed by a claim construction hearing in July 2024 and trial in January 2025. Dkt. No. 46 at 4-5. Accordingly, this case is nowhere near as far along as cases like *CyWee Group Ltd. v. Samsung Electronics Co.* in which the customer-suit exception *still* warranted a stay. No. 2:17-cv-00140-WCB-RSP, 2019 WL 11023976, at *6-7, 10 (E.D. Tex. Feb. 14, 2019). In *CyWee*, the Court noted that “[t]he state of the proceedings is generally assessed as of the date the motion to stay is filed” and determined as follows: “By the time the motion to stay was filed, claim construction had been conducted and discovery was nearly complete. However, the most burdensome parts of the case—filing and responding to pretrial motions, preparing for trial, going through the trial process, and engaging in post-trial motions practice—all lie in the future.” *Id.* at *6.

Here, the large majority of fact discovery, claim construction, expert discovery, pretrial, and trial all lie much farther in the future than was true in *CyWee* and other cases where a stay was granted. *See id.*; *see also NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-CV-1058-WCB, 2015 WL 1069111, at *3 (E.D. Tex. Mar. 11, 2015) (“bulk of the expenses that the parties would incur in pretrial work and trial preparation are still in the future”). This factor weighs in favor of a stay.

E. Joint Customer-Suit Exception Stay Motion Filed by Foras and Toyota in a Related Case Supports Kia’s Motion

Foras’s participation in a joint motion to stay a related case under the customer-suit exception and the reasons for that motion support granting Kia’s motion here.

Foras previously sued Toyota Motor North America Inc. (“TMNA”) and its supplier DENSO Corporation (“DENSO”) on April 5, 2023 in related Case No. 2:23-cv-000150-JRG (E.D. Tex.) for alleged infringement of three patents, including the ’958 patent. On July 10, 2023, the parties in that case jointly moved to sever and stay claims against TMNA “on the grounds that DENSO manufactures the components accused of infringement in this action and supplies them to

TMNA and its parent company Toyota Motor Corporation.” D.I. 32 at 1. In doing so, “the parties ha[d] concluded that this action can most efficiently be litigated by severing the claims against TMNA and staying those claims pending resolution of claims against DENSO.” *Id.* at 2. The parties represented further that “application of the *Shifferaw* factors supports a severance and stay of claims against TMNA because those claims are peripheral to the claims against DENSO, and adjudication of the claims against DENSO will likely dispose of the stayed claims.” *Id.* (referring to *Shifferaw v. Emson USA*, No. 2:09-cv-0054, 2010 WL 1064380 (E.D. Tex. Mar. 18, 2010)). The joint motion explained that (1) “[i]nfringement turns on the common question of whether the accused DENSO components infringe the Asserted Patents”; (2) “DENSO is in the best position to address that question because it designs and manufactures the components and sources the accused chipsets”; (3) “adjudication of the claims against DENSO should dispose of all claims against TMNA”; and (4) “[g]iven DENSO’s position in the supply chain, this Court can ‘presume[]’ DENSO’s ‘greater interest in defending its actions against charges of patent infringement.’” *Id.* (last alteration original) (quoting *Spread Spectrum*, 657 F.3d at 1357). TMNA also agreed to be bound by certain decisions in the supplier case. *Id.* This Court granted the motion, severing the case and staying the proceeding against TMNA pending resolution of the proceeding against DENSO. D.I. 33 (July 12, 2023).

All of these reasons for which Foras, TMNA, and DENSO moved for a stay under the customer-suit exception apply to, and warrant granting, this stay motion by Kia.

IV. CONCLUSION

Accordingly, Kia respectfully requests that the Court stay this case under the customer-suit exception, until entry of final judgment and exhaustion of appeals in the Klemove Case. All customer-suit exception and traditional stay factors support this request.

Date: January 11, 2024

Respectfully submitted,

/s/ Melissa R. Smith

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record via the Court's CM/ECF system per Local Rule CV-5(a)(3) on January 11, 2024.

/s/ Melissa R. Smith

Melissa R. Smith

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for the Parties complied with the meet and confer requirement in Local Rule CV-7(h) and that this motion is opposed. Following an email exchange, a personal conference was conducted by telephone on January 10, 2024. Participants included Adam Greenfield on behalf of Defendants and Brett Cooper on behalf of Plaintiff. No agreement could be reached because Plaintiff opposes the relief requested. Discussions have conclusively ended in an impasse, leaving an open issue for the court to resolve.

/s/ Melissa R. Smith

Melissa R. Smith