IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CHIEN-MIN SUNG,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO. LTD., SAMSUNG ELECTRONICS AMERICA, INC., SAMSUNG SEMICONDUCTOR, INC., and SAMSUNG AUSTIN SEMICONDUCTOR LLC,

Defendants.

Civil Action No. 4:23-cv-752-SDJ

JURY TRIAL DEMANDED

PLAINTIFF'S SUR-REPLY IN SUPPORT OF HIS OPPOSITION TO DEFENDANTS' MOTION TO STAY PENDING RESOLUTION OF TI'S MOTION FOR SUMMARY JUDGMENT

Alex Chan (Texas State Bar No. 24108051)
achan@devlinlawfirm.com
DEVLIN LAW FIRM LLC
1526 Gilpin Avenue
Wilmington, Delaware 19806
Telephone: (302) 449-9010
Facsimile: (302) 353-4251

DATED: June 24, 2024

TABLE OF CONTENTS

I. SAMSUNG'S REPLY STILL DOES NOT ESTABLISH GOOD CAUSE FOR STAYING THIS CASE IN THE MIDST OF *MARKMAN* BRIEFING 2

II. SAMSUNG HAS FAILED TO SHOW THAT THE *ERICSSON* FACTORS SUPPORT STAYING THIS CASE IN THE MIDST OF *MARKMAN* BRIEFING..... 3

III. CONCLUSION..... 5

TABLE OF AUTHORITIES

CASES

Danco, Inc. v. Fluidmaster, Inc.,
No. 5:16-cv-73-JRG-CMC (E.D. Tex. June 6, 2017) 3

Promethean Insulation Tech. LLC v. Sealed Air Corp.,
No. 2:13-cv-1113-JRG-RSP (E.D. Tex. July 22, 2015) 5

Samsung continues to base its request for an immediate stay ***in the midst of*** **Markman** ***briefing*** largely, if not entirely, on rationales that apply to a stay ***prior to the*** **Markman** ***hearing***. But Dr. Sung has already agreed to that latter stay. (Opp. Br. at 12.) So the question for the Court is simply whether Samsung has shown good cause for, or that the *Ericsson* factors support, staying this case immediately rather than three weeks from now. Samsung has failed to establish the requisite support for entering the immediate stay it has requested.

While Samsung touts as justification the potential savings of "additional expenses," Dr. Sung (an individual inventor) is not troubled by the cost of completing the ongoing *Markman* briefing process (particularly where, as here, savings, not expenses, could be realized by completing, rather than, halting the ongoing *Markman* briefing should Samsung's Motion be denied) or by the marginal expense of a few more weeks of discovery—which Samsung had not previously raised with Plaintiff during their prior meet and confer.

Rather, any savings to Samsung, a multinational conglomerate, from having to complete its responsive *Markman* brief over the nine days following filing of this sur-reply are likely to be marginal.[1] Moreover, any complaints about the costs of discovery are a red herring, when Samsung still has not even met and conferred with Dr. Sung about a stay of discovery or any extensions of deadlines, and for good reasons—Samsung is still steadfastly pursuing new third-party discovery, including discovery from Texas Instruments Inc. in the ***midst*** of the parties' briefing on Samsung's Motion to Stay, which seriously undermines Samsung's argument regarding the purported costs of discovery that would be borne by Samsung if a stay is not granted. (*See* Opp. at 1–2, n.1.) Samsung's own choices to engage in offensive discovery during

[1] To be sure, it is possible that Samsung may not yet have incurred any such expenses because it has decided to play Russian roulette by gambling on winning its Motion to Stay. But if Samsung were prudent and hedged its bets, and work on its brief is indeed well underway to meet the filing deadline nine days hence, such savings will be minimal.

this period, coupled with Samsung's routine discovery obligations, do not justify a stay in this judicial district during the midst of *Markman* briefing.

I. SAMSUNG'S REPLY STILL DOES NOT ESTABLISH GOOD CAUSE FOR STAYING THIS CASE IN THE MIDST OF *MARKMAN* BRIEFING

Samsung appears to mischaracterize Dr. Sung's explanations of why TI's motion for summary judgment ("MSJ") does not justify an immediate stay ***here.*** The efficiency rationale ***in this case*** is illusory without an estoppel against Samsung. While it is true that "TI can still raise the same invalidity arguments at trial and present those factual disputes to the jury" (Reply Br. at 2), that misses the point. Should its motion be denied, ***TI*** would be barred from filing another MSJ in that case on the exact same grounds due to the law of the case. But that is no obstacle to Samsung, which is free to simply recycle those exact same arguments should Samsung decide to follow suit and file the same MSJ in this case.[2] So any claims about efficiency are illusory, as they not only depend on TI's motion being granted, but also fail to apply to Samsung's request to stay this case immediately rather than 22 days from now.

Samsung's misunderstanding of the interplay between the TI case and this one continues to warp its view of this case. Samsung is incorrect that Dr. Sung "ignores the Court's ruling in the TI case." (Reply Br. at 3.) Dr. Sung has not "ignored" that ruling because that ruling—from a separate case where Samsung is neither a party nor bound by any adverse consequence—does not apply here. Nor did this Court state that ***this case*** could also be resolved without the need for further discovery or claim construction.[3] While an ultimate invalidity ruling on Dr. Sung's patents will apply beyond any one case, that substantive principle of patent law does not extend

[2] Tellingly, at no point has Samsung even suggested that it would not file a MSJ of invalidity in this case on the same grounds asserted by TI should TI's MSJ be denied.

[3] Dr. Sung is not requesting claim construction at the present time, but merely that the parties complete the briefing process that had already begun.

to discretionary procedural rulings. Samsung's "heads I win; tails I don't lose" usage of the TI case is legally unsupported and fails to provide good cause for a stay in the midst of *Markman* briefing.

II. SAMSUNG HAS FAILED TO SHOW THAT THE *ERICSSON* FACTORS SUPPORT STAYING THIS CASE IN THE MIDST OF *MARKMAN* BRIEFING

Samsung's self-serving mis-application of *Ericsson* similarly begs the question, assuming the propriety of Samsung's position and the outcome of TI's MSJ and working backwards from there. But even if these factors support a stay following the conclusion of *Markman* briefing, which Dr. Sung does not oppose, they do not justify the rush to an immediate stay that Samsung has requested.

Samsung's analysis of the first *Ericsson* factor is entirely backwards. As was explained in the Opposition brief, it is Samsung's burden to show that its requested stay is appropriate, and it is Samsung's burden to show that its stay request will not create a tactical disadvantage to Dr. Sung. (Opp. Br. at 3.) Samsung's demand for an immediate stay did not oblige Dr. Sung to accept at all (and certainly not immediately), and Samsung has identified no authority to the contrary. Rather, it is not the policy of this Court to stay actions pending decisions on potentially dispositive motions. (*Id.* (citing *Danco, Inc. v. Fluidmaster, Inc.*, No. 5:16-cv-73-JRG-CMC, Dkt. No. 69, slip op. at 1 (E.D. Tex. June 6, 2017)).)

Nevertheless, Samsung now claims that "the purported tactical disadvantage is of Plaintiff's own making" solely because Dr. Sung declined to ***instantaneously*** accept Samsung's May 14th demand to stay all proceedings in this case. (Reply Br. at 3.) But at that time—the afternoon of the day before the P.R. 4-3 joint statement was due—Samsung's counsel did not request an immediate response or flag the start of the *Markman* briefing process as any reason for urgency. Samsung's counsel indicated no concern for the P.R. 4-3 briefing schedule, merely

requesting "availability to meet and confer th[at] week" if Dr. Sung did not agree. (Dkt. 56-6.) Samsung's effort to blame Dr. Sung for the tactical disadvantage that he will suffer from an order staying this case in the midst of *Markman* briefing is based on Samsung's revisionist history.

In any event, Samsung fails to show that Dr. Sung will not suffer a tactical disadvantage from a stay entered in the midst of *Markman* briefing rather than after its conclusion. Samsung's discussion of *Uniloc 2017* (Reply at 4–5) again misses the point—that the *Uniloc 2017* court rejected Samsung's similar effort to leverage third-party proceedings to gain another bite at the apple of invalidity without having to deal with the core of estoppel. Regardless of the extent of overlap in claims between the proceedings, the *Uniloc 2017* court was justifiably concerned that there would be nothing preventing re-litigation of ***any*** claims and expressly denied Samsung's earlier effort to obtain a "no-lose stay"—the same situation now presented to this Court.

On the second *Ericsson* factor, it is Samsung that is "plainly incorrect," as Samsung misreads the applicable standards and conflates its prognostication with certainty. (Reply Br. at 5.) To be sure, any simplification that could result from a stay is highly contingent upon TI's MSJ being granted, which is hardly certain. With nothing preventing Samsung from relitigating the same invalidity argument in its own MSJ in this case, there is no scenario in which the issues "***will*** be simplified"—which is the actual standard. Any simplification that could potentially be realized by entering a stay in the midst of *Markman* briefing is just as achievable when a stay is entered upon completing the parties' claim construction briefing.

Finally, on the third *Ericsson* factor, Samsung fails to rebut that the courts in this judicial district are loath to enter a stay in the midst of *Markman* briefing (Opp. Br. at 11–12 (citing *Promethean Insulation Tech. LLC v. Sealed Air Corp.*, No. 2:13-cv-1113-JRG-RSP, Dkt. No.

222, slip op. at 5 (E.D. Tex. July 22, 2015))) and seeks to back away from its own concession that completing *Markman* briefing is "a convenient stopping point for the case" that "has certainly some merit." (Dkt. 56 at 11.) That the TI Court has found ***in a different case*** that it can resolve invalidity issues raised in the MSJ without the need ***for the Court to construe the claims*** does not support a sudden halt to an ongoing *Markman* briefing process already underway here—especially when that would create a tactical advantage for Samsung and a disproportional disadvantage for Dr. Sung. Even if claim construction were not necessary—as Dr. Sung has already conceded by agreeing to stay these proceedings at the end of *Markman* briefing—it does not follow that it is unnecessary to complete the briefing that would still be required in this case should Samsung's hopes about the TI MSJ fail to come to fruition.

III. CONCLUSION

For the reasons set forth above, Dr. Sung respectfully requests that this Court deny Samsung's Motion to Stay all proceedings in this case pending resolution of TI's MSJ. Samsung has failed to show good cause to enter a stay in the midst of *Markman* briefing, and *Ericsson* factors do not support entry of a stay in the midst of *Markman* briefing, especially when Dr. Sung has agreed to stay these proceedings once *Markman* briefing has concluded 22 days from now.

Dated: June 24, 2024

/s/ Alex Chan

Timothy Devlin (DE 4241)
tdevlin@devlinlawfirm.com
Alex Chan (Bar No. 24108051)
achan@devlinlawfirm.com
Neil A. Benchell (IL No. 6274550)
nbenchell@devlinlawfirm.com
Peter A. Mazur (DE No. 6732)
pmazur@devlinlawfirm.com
1526 Gilpin Avenue
Wilmington, DE 19806
Telephone: (302) 449-9010
Facsimile: (302) 353-4251

Counsel for Plaintiff Chien-Min Sung

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on June 24, 2024

/s/ Alex Chan
Alex Chan