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

AX WIRELESS LLC, Plaintiff, v. DELL INC., *et al.*, Defendants.	Civil Action No. 2:22-cv-00277-RWS-RSP **JURY TRIAL DEMANDED**

OPPOSED MOTION TO STAY PENDING RESOLUTION OF INSTITUTED *INTER PARTES* REVIEW OF DEFENDANTS DELL INC. AND DELL TECHNOLOGIES INC.

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Defendants Dell Inc. and Dell Technologies Inc. (collectively, "Dell") move to stay this patent case filed by AX Wireless LLC ("AX Wireless") because the Patent Trial & Appeals Board ("PTAB") has instituted *inter partes* review ("IPR") proceedings against all asserted patents and nearly all asserted claims. AX Wireless alleges that hundreds of Wi-Fi 6-certified consumer electronic products sold by Dell ("Dell products") infringe eight patents, each of which they also assert against Lenovo Group Limited ("LGL"), HP Inc. ("HPI"), and Acer in co-pending litigation.[1] Trials for LGL, Dell, and HPI are set for the same day, July 15, 2024, and expert discovery is about to begin. The Acer trial is more than ten months away, on January 6, 2025. A tremendous amount of party and judicial resources will be necessary to take any one of these cases to trial—let alone all four.

On balance, the stay factors strongly weigh in favor of a stay. ***First***, the IPRs instituted between February 14 and March 5, 2024, on all eight patents will greatly simplify the issues, not just in the Dell case, but in all four cases because AX Wireless asserts the same patents. For each asserted claim addressed on the merits, the PTAB found the claim reasonably likely to be found invalid in view of prior art. Though the PTAB discretionarily denied institution of a handful of claims in one patent, the PTAB nevertheless instituted IPR of other patents with nearly identical claim limitations. If the instituted IPRs succeed, the overlapping scope of the claims across several of the patents will subject the few non-instituted claims to collateral estoppel. Otherwise, litigation of any surviving claims can resume in early 2025, approximately seven months from the currently-scheduled trial date. ***Second***, this seven-month delay will cause no undue prejudice because plaintiff is a non-practicing entity whose claims, if successful, could be satisfied by monetary

[1] *See* Case Nos. 2:22-cv-00280 (E.D. Tex.), ECF No. 29 (Am. Compl. against LGL), ¶ 27; 2:22-cv-00279 (E.D. Tex.), ECF No. 16 (Am. Compl. against HPI), ¶ 28; 2:23-cv-00041 (E.D. Tex.), ECF No. 49 (Am. Compl. against Acer), ¶ 27.

damages. ***Finally***, this Court has found that IPRs can significantly simplify the issues, especially where the most burdensome parts of the case—expert discovery, dispositive motions, *Daubert* motions, pretrial exchanges, trial preparation, and trial—all lie in the future. Accordingly, Dell requests that the Court stay the entirety of the litigation through resolution of the instituted IPRs.

I. BACKGROUND

A. AX Wireless Sued Dell in July 2022 and Expanded Its Infringement Claims in October and November 2022

AX Wireless is a non-practicing entity formed in 2021 to monetize patents purportedly related to technology incorporated into a version of Wi-Fi called Wi-Fi 6. *See* ECF No. 1 (Compl.), ¶ 23. AX Wireless filed its original Complaint on July 22, 2022, asserting that Dell infringed one claim from each of four related patents. *See* ECF No. 1, ¶¶ 34–37 (10,917,272 ("the '272 patent"), 11,212,146 ("the '146 patent"), 9,973,361 ("the '361 patent") and 10,079,707 ("the '707 patent")).

On October 17, 2022, AX Wireless amended its Complaint to assert one claim from four additional patents. ECF No. 19, ¶¶ 35–42 (U.S. Patent Nos. 9,584,262 ("the '262 patent"), 9,614,566 ("the '566 patent"), 10,291,449 ("the '449 patent"), 10,554,459 ("the '459 patent")). In November 2022, AX Wireless served its Preliminary Infringement Contentions adding ***one-hundred*** additional claims. Ex. 1 (Cover Pleading). While AX Wireless identifies ***one-hundred and eleven*** exemplary Dell products, its infringement allegations implicate hundreds of Wi-Fi 6-enabled PC, tablet, and laptop products that incorporate third-party Wi-Fi 6 modules manufactured by Intel, MediaTek, and Qualcomm. Ex. 2 (Attachment A).

AX Wireless's original Complaint pled relief related to previous and future sales of Dell products that are Wi-Fi 6 certified. As to future sales, AX Wireless asked that the court "[o]rder each Defendant to pay ongoing royalties in an amount to be determined for any continued infringement after the date of judgment" and "[e]njoin each Defendant and its subsidiaries, and

their officers, agents, servants, employees, and all persons in active concert with any of the foregoing from further infringement." *See id.* at 9–10; *see also* ECF No. 19 at 11. AX Wireless has never moved for a preliminary injunction or abandoned its request for an ongoing royalty following any judgment of infringement against Dell.

B. Third-Party Intel Timely Filed IPRs Challenging All Asserted Patent Claims, and the PTAB Instituted IPRs on All but 5 Asserted Claims

Many of the accused Dell products incorporate Wi-Fi 6 modules manufactured by Intel. Following AX Wireless's expanded disclosure of asserted claims and accused products in November 2022, Intel filed IPR petitions against all 108 then-asserted claims across the eight asserted patents. AX Wireless later reduced the number of asserted claims to 32 in accordance with the claim-narrowing provisions of the Docket Control Order. *See* Ex. 12 (email identifying asserted claims). The PTAB recently instituted on at least one ground of invalidity for 27 of the 32 currently-asserted claims and on ***multiple*** grounds for 25 of the currently-asserted claims.[2] The table below summarizes the relevant history of each instituted IPR:

IPR Petition Number	Challenged Patent	Date Filed	Date Instituted	Asserted Claims Found Reasonably Likely to Be Invalid
IPR2023-01136	10,079,707	06/30/23	02/14/2024	All current (and previously) asserted claims
IPR2023-01137	10,291,449	06/30/23	02/14/2024	All current (and previously) asserted claims
IPR2023-01138	10,554,459	06/30/23	02/14/2024	All current (and previously) asserted claims
IPR2023-01139	10,917,272	06/30/23	02/14/2024	Previously-asserted claim nos. 1–3, 5, and 7–9
IPR2023-01135	9,973,361	07/01/23	02/14/2024	All current (and previously) asserted claims

[2] *See* Institution Decisions at Ex. 3 ('707 patent) at 43–44, 48; Ex. 4 ('449 patent) at 39–40, 42; Ex. 5 ('459 patent) at 46–47, 51; Ex. 6 ('272 patent) at 45, 48; Ex. 7 ('361 patent) at 38–39, 45; Ex. 8 ('262 patent) at 38–40; Ex. 9 ('566 patent) at 41–42; Ex. 10 ('146 patent) at 25–26, 37–38.

IPR Petition Number	Challenged Patent	Date Filed	Date Instituted	Asserted Claims Found Reasonably Likely to Be Invalid
IPR2023-01143	9,584,262	07/01/23	02/14/2024	All current (and previously) asserted claims
IPR2023-01144	9,614,566	07/03/23	02/21/2024	All current (and previously) asserted claims
IPR2023-01145	11,212,146	07/08/23	03/05/2024	All current (and previously) asserted claims

The PTAB discretionarily denied one IPR petition for the '272 patent on procedural grounds, without addressing the petition's merits. The PTAB's denial rested solely on its finding that the claims should have been combined with and challenged in petition IPR2023-01139, which challenged other claims from the '272 patent. Ex. 11 (IPR No. 2023-01140 decision denying institution). Thus, all but 5 asserted claims of one patent are subject to instituted IPRs (i.e., claims 11, 12, 13, 15, and 17 of the '272 patent). *Id.*

C. Dell Agreed Not to Pursue in This Court the Same Grounds That Were Raised or Reasonably Could Have Been Raised in the Instituted IPRs

In each of the instituted IPRs, Dell provided a "*Sotera* stipulation," wherein Dell "stipulate[d] not to pursue in a parallel district court proceeding the same grounds as in [each IPR] petition or any grounds that could have reasonably raised in [each] petition." *See, e.g.*, Ex. 9 ('566 patent institution decision) at 52 (*quoting* USPTO's "Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation" (June 21, 2022)); *see also* Exs. 13–20 (*Sotera* stipulations for each instituted IPR).

II. LEGAL STANDARD

A stay is justified when "the outcome of [] PTO proceeding[s]" regarding the validity of patents at issue in a case are "likely to assist the court in determining patent validity or eliminate the need to try infringement issues." *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-cv-1058, 2015 WL 1069111, at *1 (E.D. Tex. Mar. 11, 2015) (citing cases). District courts typically consider

three factors when determining whether to grant a stay pending *inter partes* review of a patent in suit: (1) "whether the stay will likely result in simplifying the case before the court;" (2) "whether the stay will unduly prejudice the nonmoving party;" and (3) "whether the proceedings before the court have reached an advanced stage." *See id.* at *2. The "prospect that [an] *inter partes* review proceeding will result in simplification of [] issues before the Court" is the "most important factor bearing on whether to grant a stay." *See id.* at *4.

III. THE COURT SHOULD STAY THE CASE IN ITS ENTIRETY PENDING RESOLUTION OF THE INSTITUTED IPRS

The most important of the stay factors weighs strongly in favor of a stay: the PTAB's final decisions on the instituted IPRs could invalidate 27 of the 32 asserted claims and collaterally estop AX Wireless from pursuing the 5 non-instituted claims. Even if the IPRs do not eliminate all eight patents entirely, they will undoubtedly simplify the issues for expert discovery, dispositive motions, and trial. These benefits inure to the LGL, HP, and Acer cases, as well. A modest stay will not unduly prejudice AX Wireless's pursuit of money damages, and that minimal delay would be greatly outweighed by the efficiencies of a stay. Expert discovery is only about to begin, so the benefits of simplification will economize the most intensive phases of the case, from expert discovery through trial. Under similar circumstances, courts in this District have granted stays. *See, e.g.*, *Cywee Grp. Ltd. v. Samsung Elecs. Co.*, No. 2:17-CV-00140-WCB-RSP, 2019 WL 11023976 (E.D. Tex. Feb. 14, 2019) (staying two-year old case at close of discovery stage—three months before trial—where PTAB instituted review of the majority (but not all) of the asserted claims); *Stingray Music USA, Inc. v. Music Choice*, No. 2:16-cv-00586-JRG-RSP, 2017 WL 9885167 (E.D. Tex. Dec. 12, 2017) (staying case following submission of expert reports pending resolution of IPRs that were instituted on all but a few asserted claims). Accordingly, a stay pending resolution of the instituted IPRs is warranted.

A. With IPRs Instituted on All Eight Asserted Patents, Staying This Case in Its Entirety Will Greatly Simplify the Issues to Be Decided

The simplification factor strongly favors a stay. Every IPR-instituted claim will either be found invalid by the PTAB or subject to IPR estoppel upon the PTAB's final written decision. If the five non-instituted claims of the '272 patent are not collaterally estopped through invalidation of analogous claims in other IPRs, the '272 patent can be litigated in a streamlined manner following the PTAB's resolution of those analogous claims. *See Cywee*, 2019 WL 11023976, at *7–10. And since the same patents are asserted in other pending litigations against LGL, HPI, and Acer, the IPR proceedings will have an even greater simplification effect.

First, the most likely simplification from the instituted IPRs is that all asserted claims from seven of the patents will be found invalid, which will "unquestionably" simplify the case. *See id.* at *9. The Board has already found a reasonable likelihood that 27 asserted claims across seven patents would be invalid over at least one prior art reference or combination, and for 25 of those claims, likely invalid over two distinct sets of prior art. *See above,* Section II.B. In view of the Supreme Court's decision in *SAS Institute, Inc. v. Iancu*, 138 S. Ct. 1348 (2018), some courts have found a "weaker inference that the PTAB will determine that all challenged claims are unpatentable" after institution, because the PTAB is required to institute all claims challenged in a petition even though only one may be reasonably likely to be invalid over the presented prior art. *See Peloton Interactive, Inc. v. Flywheel Sports, Inc.*, No. 2:18-cv-00390-RWS-RSP, 2019 WL 3826051, at *2 (E.D. Tex. Aug. 14, 2019). But *SAS* has no bearing on this factor here, because the PTAB expressly found that all 27 instituted, asserted claims are reasonably likely to be invalid on one or more prior art grounds. *See above,* Section II.B.

In addition, although five asserted claims from the '272 patent are not part of any instituted IPR (review was denied on procedural grounds, *see above*, Section II.B), these claims are merely

Beauregard versions of method claims that are nearly identical to ***another*** patent subject to the instituted IPRs. Thus, resolution of the instituted IPRs is highly likely to simplify issues related to these claims. A *Beauregard* claim is a "claim to a computer readable medium (e.g., a disk, hard drive, or other data storage device) containing program instructions for a computer to perform a particular process." *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011). Non-instituted claims 11, 12, 13, 15, 17 of the '272 patent merely claim a "[a] non-transitory computer-readable information storage media" storing instructions for performing the same methods recited in claims 9, 10, 11, and 13 of the '707 patent, which is facing review in instituted IPR No. IPR2023-01136. *See* Ex. 3 at 7–8. As the below redline comparison of these claims makes clear, the only difference between claims 11, 12, 13, and 15 of the '272 patent and claims 9, 10, 11, and 13 of the '707 patent is the preamble's recitation of computer-readable media:

~~9. A method of operating~~
11. A non-transitory computer-readable information storage media, having stored thereon instructions, that when executed by one or more processors in a transceiver, cause to be performed a method comprising:
receiving, by a wireless ~~OFDM (~~Orthogonal Frequency Division Multiplexing~~) transceiver comprising:~~
~~receiving, by a wireless~~ (OFDM) communications receiver over a wireless communication channel, a first packet type comprising a first header field, wherein the first header field comprises two parts, a first part comprising a first set of header bits of the first header field and a second part comprising a second set of header bits of the first header field, wherein the first set of header bits of the first header field is different than the second set of header bits of the first header field;
demodulating, by a demodulator, a first OFDM symbol followed by a second OFDM symbol, wherein the first OFDM symbol is used to receive the first part of the first header field and the second OFDM symbol is used to receive the second part of the first header field;
receiving, by the wireless OFDM communications receiver over the wireless communication channel, a second packet type comprising a second header field, wherein the second header field comprises four parts, a first part comprising a first set of header bits of the second header field, a second part comprising a second set of header bits of the second header field, a third part comprising a third set of header bits of the second header field and a fourth part comprising a fourth set of header bits of the second header field,
wherein the first set of header bits of the second header field is the same as the second set of header bits of the second header field, wherein the third set of header bits of the second header field is the same as the fourth set of header bits of the second header field; and
demodulating, by the demodulator, a first OFDM symbol followed by a second OFDM symbol followed by a third OFDM symbol followed by a fourth OFDM symbol, wherein the first OFDM symbol is used to receive the first part of the second header field, the second OFDM symbol is used to receive the second part of the second header field, the third OFDM symbol is used to receive the third part of the second header field, the fourth OFDM symbol is used to receive the fourth part of the second header field,
wherein the second set of header bits of the second header field received using the second OFDM symbol are received in a different order than the first set of header bits of the second header field received using the first OFDM symbol, and
wherein the fourth set of header bits of the second header field received using the fourth OFDM symbol are received in a different order than the third set of header bits of the second header field received using the third OFDM symbol.
~~10~~12. The ~~me~~~~tho~~dia of claim ~~9~~11, wherein the reception of the same header bits in the second OFDM symbol provides diversity to increase a likelihood of correctly receiving header information of the second packet type.
~~11~~13. The ~~me~~~~tho~~dia of claim ~~9~~11, wherein the reception of the same header bits in the fourth OFDM symbol provides diversity to increase a likelihood of correctly receiving header information of the second packet type.
~~13~~15. The ~~me~~~~tho~~dia of claim ~~9~~11, wherein the wireless transceiver supports one or more wireless standards.

Compare Ex. 21 ('272 patent) and Ex. 22 ('707 patent). Dependent claim 17 of the '272 patent adds only a single limitation not found in the claims of the '707 patent, but that limitation is present in other instituted claims. *Compare* Ex. 21 ('272 patent) at claim 17 ("wherein the first packet type is received in a first channel bandwidth and the second packet type is received in a second channel bandwidth, wherein the first channel bandwidth is at least two times wider than the second channel bandwidth.") *with* Ex. 23 ('459 patent) at claim 1 ("a wireless OFDM communications receiver operable to receive … a first packet type in a first channel bandwidth … a second packet type in a second channel bandwidth … wherein the first channel bandwidth is at least two times wider than the second channel bandwidth."). Because the PTAB determined that there is a

reasonable likelihood that claims 9, 10, 11, and 13 of the '707 patent, and claim 1 of the '459 patent, are all invalid (each on two grounds of invalidity), and these claims are materially identical to the not-instituted, asserted claims from the '272 patent, resolution of the instituted IPR of the '707 and '459 patents will very likely simplify, if not eliminate, litigation of the '272 patent claims here. *See Ohio Willow Wood Co. v. Alps S., LLC*, 735 F.3d 1333, 1342-43 (Fed. Cir. 2013) (affirming summary judgment of invalidity on the basis of collateral estoppel because "the differences between the unadjudicated patent claims and [previously] adjudicated patent claims" found invalid did not "materially alter the question of invalidity."). In *Cywee*, 2019 WL 11023976, at *10, the Court granted a stay of an eleven-claim case because, "even though claims 14–17 and 19 are not directly at issue in the IPR proceeding, the validity of those claims could be affected by the PTAB's analysis of the claims before it, which involve related technology" and were from the same patent as other instituted claims. The facts here are even stronger because the non-instituted claims from the '272 patent are identical to the instituted claims of the '707 patent, except for the *Beauregard* preambles and one limitation found in instituted claims of the '459 patent.

Even if the '272 patent claims were not effectively doppelgangers of claims in the instituted IPRs, this factor would still weigh heavily in favor of stay given the potential for simplifying the vast majority of the rest of the case (i.e., as to the other seven patents). "[C]ourts in this district have regularly issued stays in cases [where] IPR proceedings have been instituted on fewer than all claims asserted in the related litigation." *Cywee*, 2019 WL 11023976, at *8 ("the policies favoring simplification and the reduction of litigation burdens on the parties and the court are often [still] applicable" even where not all asserted claims are instituted) (collecting cases). In *Cywee*, the Court granted a stay even though five of the asserted claims were not subject to an instituted IPR. *See id.* *7–10. In finding that the simplification factor still "strongly" favored the defendant,

the Court recognized the case would "unquestionably" become simpler by virtue of the removal from (or estoppel as to) the asserted claims, while reducing the potential of inconsistent determinations as to the validity of the asserted claims between the PTAB and the Court. *See id.* The same considerations apply with even greater force here. The *Cywee* Court granted its stay where the PTAB had instituted six of the eleven asserted claims from two patents; here, the PTAB will instead address the validity of twenty-seven of thirty-two asserted claims across seven patents. Given the particularly "complex" technology at issue in this case, simplification across the seven patents with all asserted claims instituted will make any post-stay litigation "much easier" for the Court and jury. *See id.* at *9; *see also Stingray Music*, 2017 WL 9885167, at *2 (granting stay notwithstanding two asserted claims not subject to institution given the potential to greatly simplify litigation regarding the remaining ~60 claims).

Accordingly, the most important factor—simplification of the issues for trial—strongly favors a stay of the entirety of the proceedings to reduce the need for duplication in discovery and inconsistent findings at trial.

B. The Prejudice Factor Weighs in Favor of a Stay Because AX Wireless Is a Non-Practicing Entity That Can Be Fully Compensated Through Monetary Damages

This factor weighs in favor of a stay because none of the recognized types of "undue prejudice" are present. That AX Wireless may face "mere delay in collecting" money "damages does not constitute undue prejudice." *See Stragent LLC v. BMW of N. Am, LLC*, No. 6:16-cv-446, 2017 WL 3709083, at *2 (E.D. Tex. Jul. 11, 2017); *Perdiemco LLC v. Telular Corp.*, No. 2:16-CV-01408-JRG-RSP, 2017 WL 2444736, at *2 (E.D. Tex. June 6, 2017) (prejudice factor "weighs in ***favor*** of a stay" where only alleged concerns are a delay in receiving damages and the advanced age of a non-party witness) (emphasis added); *Cywee*, 2019 WL 11023976, at *3 (dismissing "contention that any delay in the vindication of patent rights is prejudicial to a patent owner"

because "that factor is present in every case in which a patentee resists a stay, and it is therefore not sufficient, standing alone, to defeat a stay motion.") (collecting cases).

While AX Wireless also nominally requests injunctive relief, there is no evidence that money damages are inadequate to address AX Wireless's alleged injuries and thus, no undue prejudice from delay. First, because AX Wireless is a non-practicing entity and not a competitor to Dell in the market for products to the technology at issue, its "prospect of an injunction is low" even if it purports to seek one. *See Cywee*, 2019 WL 11023976, at *4. Most notably, AX Wireless requests both monetary and injunctive relief for the same acts of alleged future infringement. *See* ECF No. 19 at 11. This is direct evidence that AX Wireless's claims could be resolved by an award of money damages after a short stay. *See Village Green Techs., LLC v. Samsung Elecs. Co.*, No. 2:22-cv-00099-JRG, 2023 WL 416419, at *2 (E.D. Tex. Jan. 25, 2023). Further, AX Wireless has not sought the preliminary injunction it pleads, which further undermines any claim that it "cannot wait for a decision on infringement." *See Stingray Music*, 2017 WL 9885167, at *2; *Village Green*, 2023 WL 416419, at *2 n.2 (in dismissing patent owner opposition to a stay based on request for injunctive relief, noting that patent owner never sought the preliminary injunction it pled at the outset of the case).

Any delay resulting from a stay in this case is likewise not unduly prejudicial to AX Wireless. Trial is currently scheduled for July 2024, with final written decisions on the IPRs due about seven months later, from mid-February to early March 2025. Moreover, HPI, Dell, and LGL are scheduled for trial on the same day, July 15, 2024. It is unlikely that all three cases in these consolidated actions will go to trial on the same day, and much more likely that trial in the Dell matter will be continued. Were trial in the Dell matter rescheduled, the time between the final written decisions and trial would be even shorter. A delay of approximately six months has been

found to not constitute undue prejudice. *Stingray Music*, 2017 WL 9885167, at *2. The delay here is not materially longer, and any prejudice could be remedied by the application of prejudgment interest to any damages award. Finally, AX Wireless cannot claim undue prejudice from the fact that a non-party filed the IPRs, because Dell has stipulated that it "will not pursue in this litigation grounds raised or any other grounds that could have reasonably been raised before the PTAB" in the instituted IPRs. *See* Exs. 13–20; *see also Papst Licensing GmbH & Co., KG v. Apple, Inc.*, No. 6:15-cv-01095-RWS, 2017 WL 11638426, at *3 (E.D. Tex. June 16, 2017).

C. The Stage-of-Proceedings Factor Is Neutral to a Stay Because the Most Burdensome Parts of the Case Lie Ahead, and Dell Timely Filed This Motion

This factor is neutral because the parties are only about to begin expert discovery and are several months away from trial, so "the most burdensome parts of the case … all lie in the future." *See Cywee*, 2019 WL 11023976, at *6–7 (collecting cases). Further, neither the filing of the IPRs or the timing of this motion were dilatory in a manner that would weigh against a stay. *See NFC Tech.*, 2015 WL 1069111, at *3–4.

1. The most burdensome parts of the case still lie ahead

Courts assess the state of the proceedings as of the date a motion to stay is filed—here, March 13, 2024. *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1317 (Fed. Cir. 2014). Trial is four months away (July 15, 2024) and may be further delayed, the scheduled pretrial conference is three months away (June 14, 2024), dispositive motions are not due for two months (May 15, 2024), expert discovery will continue for just under two months (i.e., until May 8, 2024), and fact discovery is still underway (closing on March 20, 2024). *See* ECF Nos. 171 and 169 (Sixth Am. Docket Control Order and related joint motion).

Courts in this district have granted stays at similar junctures[3] and found this factor to be neutral, or in some cases only slightly against a stay.[4] As the Federal Circuit recognized in reversing a lower court denial of a request for a pretrial stay, the "most burdensome task is yet to come," even in preparing for a trial that is "mere months away." *See Smartflash, LLC v. Apple Inc.*, 621 F. App'x 995, 1005 (Fed. Cir. 2015) (where the trial was "mere months away," "[d]espite the substantial time and effort already spent in this case, the most burdensome task is yet to come"); *NFC Tech.*, 2015 WL 1069111, at *3 (with several months to trial, "it appears likely that the bulk of the expenses that the parties would incur in pretrial work and trial preparation are still in the future.") Given the number of claims that have been instituted here, the "most burdensome task" of trial preparation and trial would likely be significantly streamlined following resolution of the instituted IPRs.

2. The IPR petitions and the instant motion were timely

It is "reasonable" for a Defendant "to wait for the PTAB to institute IPR before filing its Motion to Stay," especially as it is unlikely the Court would have granted a motion to stay prior to

[3] *Motion Games, LLC v. Nintendo Co.*, No. 6:12-cv-878, 2015 WL 13404313 (E.D. Tex. June 8, 2015) (granting stay with trial only four months away because there was "little doubt that a substantial amount of pretrial, trial and post-trial resources have yet to be expended."); *Image Processing Techs., LLC v. Samsung Elecs. Co.*, No. 2:16-cv-505, 2017 WL 7051628, at *1 (E.D. Tex. Oct. 25, 2017) (stay granted three weeks before trial); *SSL Servs.*, 2016 WL 3523871, at *2 (stay granted 2½ months before trial); *Ericsson Inc. v. TCL Commc'n Tech. Holdings, Ltd.*, No. 2:15-cv-00011, 2016 WL 1162162, at *2 (E.D. Tex. Mar. 23, 2016) (stay granted two months before trial); *SynQor, Inc. v. Vicor Corp.*, No. 2:14-cv-287, 2015 WL 12916396, at *4 (E.D. Tex. Nov. 24, 2015) (stay granted seven weeks before pretrial conference).

[4] *See Cywee*, 2019 WL 11023976, at *7 (collecting cases); *Papst*, 2017 WL 11638426, at *3–4 (with three weeks left in fact discovery, stage of case "weighs against granting a stay, but that weight is reduced" given "substantial time remained before trial and expert discovery."); *NFC Tech.*, 2015 WL 1069111, at *3-4 (stage of case was "neutral, or at most, cuts slightly against the issuance of a stay" where fact discovery closure one month away, and "significant pretrial discovery, filings, motions, and other events remain to be completed before the scheduled trial."); *Parthenon Unified Memory Artchitecture, LLC v. HTC Corp.*, No. 2:14-cv-00690-RSP, 2016 WL 3365855, at *4 (E.D. Tex. Jun. 17, 2016) (stage of case factor neutral where expert discovery and dispositive motions close in a month, and "neither side is likely to have begun preparing for a trial.")

the PTAB's institution decision. *See SSL Servs., LLC v. Cisco Sys., Inc.*, No. 2:15-cv-433-JRG-RSP, 2016 WL 3523871, at *3 (E.D. Tex. Jun. 28, 2018). While some Courts consider alleged 'gamesmanship' or 'dilatory behavior' by defendants regarding the timing of IPR petitions and motions to stay after institution, those concerns do not apply here. Dell expediently sought a stay following institution. The PTAB instituted the final IPR on March 5, 2024. On March 8, Dell notified AX Wireless of its intent to seek a stay by promptly filing the instant motion. Dell then filed the instant motion approximately one week after the institution of the final IPR petition relevant to this case (and Dell's request for a stay). This Court has found no "severe [or] unilateral prejudice … from [even a] five-week delay" in filing a motion to stay after institution, even though the Defendant purportedly "persisted in aggressively litigating [its] case" in the interim. *See Cywee*, 2019 WL 11023976, at *5. Thus, the approximately one week that elapsed between institution of the final IPR and filing this motion cannot cause severe or unilateral prejudice to AX Wireless. While the instant motion was filed approximately four weeks after the date of the first institution decision, this Court does not fault parties who, like Dell, wait until after the relevant institution decisions are issued to seek a stay. *See id.* In any event, this motion was still filed less than five weeks after the first relevant institution decision was issued, and only a week after the last institution decision issued. *See id.*

Furthermore, the instituted IPRs were timely filed by Intel, especially in view of AX Wireless's own conduct in repeatedly reshaping the scope of the case. In July 2022, when AX Wireless filed its original Complaint against Dell, it asserted only four patents and identified just one claim allegedly infringed for each. *See* ECF No. 1, ¶¶ 30–33. But in October 2023—approximately eight-and-a-half months before Intel filed the instituted IPRs—AX Wireless amended its Complaint to assert four additional patents. And then in November 2023—

approximately eight months before Intel filed the instituted IPRs—AX Wireless served infringement contentions asserting ***100*** additional claims across the eight patents. *See* Ex. 1. This Court has found in the context of a ***two-patent*** case, "a delay of seven and one-half months from the filing of the complaint is not unreasonable," particularly because the petitions were filed four months after receipt of infringement contentions. *See NFC Tech.*, 2015 WL 1069111, at *4. Here, in an ***eight-patent*** case covering complex technology, the instituted IPRs were filed approximately eight-and-a-half months after AX Wireless amended its Complaint to assert four new patents, and eight months after AX Wireless served infringement contentions identifying 100 additional claims. While the instituted IPRs were not filed for some patents as close in time to the filing of the Complaint (as in *NFC Tech.* and other cases discussed in this section), the timing reflects both the complexity of the case and the changing scope of the case resulting from AX Wireless's continued and ongoing expansion of its case after it filed its Complaint.

IV. CONCLUSION

For the foregoing reasons, Dell's request for a stay pending resolution of the instituted IPRs should be granted.

Dated: March 13, 2024

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I certify that counsel for Defendants Dell Inc. and Dell Technologies Inc. conferred with counsel for AX Wireless on March 8, 2024, concerning this motion, and AX Wireless opposes the motion and requested stay.

/s/ Janice L. Ta
Janice L. Ta

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served via electronic mail on March 13, 2024, to all opposing counsel of record via the Court's CM/ECF system.

/s/ Janice L. Ta
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