

The Honorable Tana Lin

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
SEATTLE

IMMERSION CORPORATION,

Plaintiff,

v.

VALVE CORPORATION,

Defendant.

No. 2:23-cv-00712-TL

**DEFENDANT VALVE  
CORPORATION'S MOTION TO  
STAY CASE PENDING  
RESOLUTION OF PETITIONS FOR  
*INTER PARTES* REVIEW**

**NOTE ON MOTION CALENDAR:  
MARCH 29, 2024**

VALVE CORPORATION'S MOTION TO STAY  
Case No. 2:23-CV-00712-TL

**KWUN BHANSALI LAZARUS LLP**  
555 MONTGOMERY STREET, SUITE 750  
SAN FRANCISCO, CA 94111  
415.630.2350

Valve Exhibit 1010  
Valve v. Immersion

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## I. Introduction

Defendant Valve Corporation moves this Court to stay this case pending *inter partes* review (“IPR”) of the patents-in-suit. Courts in the Ninth Circuit, including in this district, routinely grant stays pending IPR where, like here, the petitions challenge all asserted claims of the patents-in-suit. Plaintiff Immersion Corporation asserts Valve infringes 75 claims across seven patents. Valve has filed IPR petitions requesting that the Patent Trial and Appeal Board (“PTAB”) review all asserted claims of six of the seven patents-in-suit and anticipates that by the time this motion is fully briefed it will have filed a petition challenging all asserted claims of the seventh patent-in-suit.

If instituted, the IPRs will simplify this case. First, if the PTAB cancels all the asserted claims, that would end this case entirely. Second, even if the PTAB finds some or none of the claims unpatentable in final written decisions, the case would nevertheless be simplified because the Court would benefit from the PTAB’s analysis of claim terms, Immersion would be bound by statements made during the IPRs, and Valve would be estopped from raising in this Court invalidity defenses raised in the IPRs.

Here, this case is still in its early stages, with little written discovery and no depositions, and trial more than one year away. Moreover, the Court has not yet ruled on Valve’s motion to dismiss, which likewise could potentially eliminate some or all issues in the case. Allowing the case to proceed also presents the risk that the Court and the PTAB will issue inconsistent rulings that may require later reconsideration.

Finally, Immersion will not face any undue prejudice or tactical disadvantage from a stay. Immersion is a patent licensor that does not compete with Valve. A mere delay in potential recovery is not enough to overcome the substantial benefits of waiting until the conclusion of the IPR process to resume this litigation—if there is anything left to resume at that point. Further, the parties are free to move the Court to lift the stay should the PTAB deny institution of the IPRs.

## II. Background

### A. The litigation is in its early stages.

Immersion filed its complaint on May 15, 2023, and now asserts infringement of 75 claims across seven patents:

| Patent | Asserted Claims                    |
|--------|------------------------------------|
| '260   | Claims 1, 2, 5-7                   |
| '507   | Claims 1-8                         |
| '042   | Claims 1-3, 7-11, 13-16, 18, 19    |
| '546   | Claims 1, 2, 3, 5, 6, 7            |
| '907   | Claims 1-20                        |
| '067   | Claims 1-3, 5-8, 11, 12, 15, 17-21 |
| '738   | Claims 1, 2, 3, 6, 14, 15, 19      |

Declaration of Michael Kwun (“Kwun Decl.”), ¶ 3.

Immersion is in the business of licensing its portfolio of patents related to the use of haptics technology. Compl. ¶ 4 (ECF No. 1). It does not claim to make or sell any products that compete with Valve’s. *See id.* ¶ 4. Indeed, according to Immersion, it is a “*premier licensing company* focused on the invention, acceleration, and scaling, *through licensing*, of innovative haptic technologies that allow people to use their sense of touch to engage with products and experience the digital world around them.” Kwun Decl., Ex. B (Immersion’s 2022 10-K) at 5 (emphases added).

On July 24, 2023, Valve moved to dismiss the Complaint, on the basis that five of the seven patents-in-suit are patent ineligible, that the entire Complaint should be dismissed because Immersion failed to plead induced or direct infringement adequately, and that any remaining claims should be narrowed. ECF No. 37. The Court heard arguments on the motion on February 8, 2024, and took the motion under advisement. ECF No. 56. At argument, the Court indicated that it was inclined to dismiss four of the seven patents-in-suit under Section 101. Tr. At 3:7-14

1 (ECF No. 59). In the event that the Court grants the motion in whole or part, Immersion has  
2 requested leave to amend, which could necessitate another Rule 12 motion. ECF No. 39 at 25.

3 If Immersion amends the Complaint, it seems likely that the case schedule will need to  
4 be amended. And the parties only recently exchanged preliminary infringement and invalidity  
5 contentions. *See* ECF No. 46 at 1-2. Discovery is in its infancy. The parties have each only  
6 propounded their first sets of written discovery. Kwun Decl. ¶¶ 4-5. Only minimal documents  
7 have been exchanged to date, largely consisting of the document productions accompanying the  
8 parties' infringement and invalidity contentions. *Id.* ¶ 7. No depositions have been scheduled, let  
9 alone taken. *Id.* ¶ 6. The close of fact discovery is months away, and the close of expert discovery  
10 is nearly one year away. ECF No. 46 at 2. Claim construction briefing is not scheduled to be  
11 complete until mid-June, with the claim construction hearing scheduled for July. *Id.* Trial is  
12 currently scheduled for July 2025. *Id.* at 1.

13 **B. Valve's IPRs challenge all asserted claims.**

14 The IPR process permits any "person who is not the owner of a patent" to file a petition  
15 requesting that the PTAB cancel one or more claims as unpatentable based on grounds that prior  
16 art anticipates or renders obvious the claimed invention. 35 U.S.C. § 311 (a)-(b). The PTAB must  
17 determine whether to institute review of the patents within three months of the filing of the patent  
18 owner's preliminary response, which is due three months from the filing of the petition. 35 U.S.C.  
19 §§ 313-14. Thus, within six months from the petition filings the PTAB will decide whether to  
20 institute review of the patents. If review is instituted, the PTAB must complete its review within  
21 one year, absent an extension for good cause of at most six months. 35 U.S.C. § 316 (a)(11); 37  
22 C.F.R. § 42.100 (c).

23 Valve has filed six IPR petitions with the PTAB. Kwun Decl. ¶ 8. The below chart  
24 identifies the IPR filing number, the related patent, the date the IPR petition was filed,  
25  
26

Immersion's deadline to file an optional preliminary response, and the claims challenged in each petition:

| IPR Filing No. | Patent | Date Filed | Immersion's Preliminary Response Due | Challenged Claims         |
|----------------|--------|------------|--------------------------------------|---------------------------|
| IPR2024-00477  | '260   | 1/19/2024  | 4/19/2024                            | Claims 1-7                |
| IPR2024-00478  | '042   | 1/19/2024  | 4/19/2024                            | Claims 1-19               |
| IPR2024-00508  | '546   | 1/30/2024  | 4/30/2024                            | Claims 1-18, 21-24, 26-29 |
| IPR2024-00556  | '507   | 2/7/2024   | 5/7/2024                             | Claims 1-18               |
| IPR2024-00557  | '067   | 2/7/2024   | 5/7/2024                             | Claims 1-8, 11-12, 15-21  |
| IPR2024-00582  | '738   | 2/16/2024  | 5/16/2024                            | Claims 1-6, 14-16, and 19 |

*Id.* Valve anticipates filing a seventh IPR petition, challenging at least all the asserted claims of the '907 patent, shortly. *Id.* ¶ 9.

The challenged claims will include all claims that Immersion has asserted in its infringement contentions, as well as several additional claims. *Id.* ¶ 10.

### III. Argument

#### A. The Court should stay this case pending resolution of Valve's petitions for *inter partes* review.

"Courts have inherent power to manage their dockets and stay proceedings, including the authority to order a stay pending conclusion of a PTO reexamination." *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426-27 (Fed. Cir. 1988) (internal citation omitted). Courts in the Ninth Circuit "often grant stays pending [the] IPR process in light of the 'liberal policy in favor of granting motions to stay proceedings pending the outcome of [PTO] reexamination or reissuance proceedings.'" *Amazon.com, Inc. v. Uniloc USA, Inc.*, No. C17-1307JLR, 2018 WL 9633490, at \*1 (W.D. Wash. Feb. 15, 2018) (quoting *Roche Molecular Sys., Inc. v. Cepheid*, No. C-14-3228-EDL, 2015 WL 124523, at \*3 (N.D. Cal. Jan. 7, 2015)).

Courts weigh three factors when deciding whether to stay an action while the PTAB

considers a petition for *inter partes* review: “(1) whether a stay will simplify the issues in question and the trial of the case, (2) whether discovery is complete and whether a trial date has already been set, and (3) whether a stay will unduly prejudice or present a clear tactical disadvantage to the non-moving party.” *Pac. Bioscience Lab’ys, Inc. v. Pretika Corp.*, 760 F. Supp. 2d 1061, 1063 (W.D. Wash. 2011). Courts apply this “three-factor framework from *Pacific Biosciences* regardless of whether an IPR petition is pending or has been granted.” *SRC Labs, LLC v. Microsoft Corp.*, No. C18-0321JLR, 2018 WL 6065635, at \*2 (W.D. Wash. Nov. 20, 2018) (internal quotations and citation omitted). Here, all three factors favor a stay.

**1. A stay would simplify the issues and trial of the case.**

Valve’s IPR petitions will challenge every asserted claim of the seven patents-in-suit. “If the court were to allow the case to proceed, there is a substantial risk that both the court and the parties will needlessly expend valuable resources in determining the validity of patent claims that are ultimately cancelled or amended by the USPTO.” *WAG Acquisition, LLC v. Amazon.com, Inc.* (“*WAG Acquisition-Amazon*”), No. C22-1424JLR, 2023 WL 1991888, at \*2 (W.D. Wash. Feb. 14, 2023) (granting pre-institution stay pending IPR) (internal quotations and citation omitted).

The Court would benefit from a stay even if some of the asserted claims survive challenge, because the PTAB’s resolution of the IPRs will “facilitate trial by providing the court with expert opinion of the PTO and clarifying the scope of the claims.” *Id.*; *see also Pac. Bioscience*, 760 F. Supp. 2d at 1065 (highlighting the “benefit of the USPTO’s analysis of the disputed claim terms in ruling on claim construction”). If any of the IPRs are instituted, the IPR process will necessarily shape and limit the arguments the parties can make in this Court. Immersion’s statements regarding claim construction during the IPR proceedings will become part of the prosecution history for the patents-in-suit, which will then inform construction of the terms in the litigation. *See Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1361 (Fed. Cir. 2017) (“[S]tatements made by a patent owner during an IPR proceeding can be considered during

1 claim construction and relied upon to support a finding of prosecution disclaimer.”). Immersion’s  
2 optional preliminary responses to the first two petitions will be due on April 19, 2024, and its  
3 response to the latest-filed petition will be due three months after the filing of the anticipated  
4 ’907 petition. *See* 35 U.S.C. § 313; 37 C.F.R. § 42.107. Absent a stay, the Court may need to  
5 engage in supplemental claim construction proceedings in view of statements Immersion makes  
6 during the IPRs or otherwise risk ruling inconsistently with the PTAB. And, if the PTAB issues  
7 a final written decision finding some the asserted claims patentable, Valve will be estopped from  
8 asserting invalidity of those claims “on any ground that the petitioner raised or reasonably could  
9 have raised during that inter partes review.” 35 U.S.C. § 315(e).

10 The only fact weighing against a stay is that the PTAB has yet to institute review of the  
11 challenged patents; however, “a motion to stay pending an IPR is not ‘premature’ simply because  
12 the PTAB has not yet instituted the IPR.” *SRC Labs*, 2018 WL 6065635, at \*2. Indeed, “pre-  
13 institution stays are ‘not uncommon’” because either party can move to lift the stay if the IPR is  
14 denied. *New World Med. Inc. v. MicroSurgical Tech. Inc.*, No. 2:20-cv-01621-RAJ-BAT, 2021  
15 WL 952456, at \*3 (W.D. Wash. Feb. 18, 2021), *report and recommendation adopted*, No. 2:20-  
16 cv-01621-RAJ-BAT, 2021 WL 949382 (W.D. Wash. Mar. 12, 2021).

17 While courts are “under no obligation to stay proceedings pending parallel litigation in  
18 the PTAB, . . . judicial efficiency and the desire to avoid inconsistent results may, after a careful  
19 consideration of the relevant factors, counsel in favor of a limited stay, even before the PTAB  
20 has acted on a petition for IPR.” *Finjan, Inc. v. Symantec Corp.*, 139 F. Supp. 3d 1032, 1035  
21 (N.D. Cal. 2015) (quoting *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL  
22 6068407, at \*2 (N.D. Cal. Nov. 13, 2014)). Further, “any concern that the motion is premature  
23 is alleviated by the short time frame of the initial stay and the Court’s willingness to reevaluate  
24 the stay if inter partes review is not instituted for all of the asserted claims.” *New World Med.*,  
25 2021 WL 952456, at \*3 (quoting *DSS Tech. Mgmt., Inc. v. Apple, Inc.*, No. 14-cv-05330-HSG,  
26 2015 WL 1967878, at \*3 (N.D. Cal. May 1, 2015)); *see also Delphix*, 2014 WL 6068407, at \*2

1 (“At a minimum, instituting a brief, limited stay of approximately five months to see whether  
2 and how the PTAB will act on Defendant’s IPR petitions will conserve judicial resources and  
3 avoid inconsistent results.”).

4 Last year, the Court denied a pre-institution motion for a stay in *RealD Spark LLC v.*  
5 *Microsoft Corp.*, No. 2:22-cv-00942-TL, 2023 WL 5836459 (W.D. Wash. Aug. 25, 2023). But  
6 in that case RealD had also asserted causes of action for breach of contract and trade secret  
7 misappropriation—claims distinct from the patent claims that involved different evidence. *Id.* at  
8 \*1; *see also RealD’s Opp.*, No. 2:22-CV-00942-TL, ECF No. 65, at 1 (W.D. Wash. July 10,  
9 2023). Thus, unlike here, the IPRs did not have the potential to dispose of the case and the parties  
10 would have to proceed with discovery, summary judgment, and trial regardless of the outcome  
11 of the IPRs. Moreover, in the present case there are *seven* patents-in-suit, and a pending motion  
12 to dismiss. Absent a stay, the risk that the Court and the parties will “needlessly expend valuable  
13 resources,” *WAG Acquisition-Amazon*, 2023 WL 1991888 at \*2, is much higher here than in  
14 *RealD*, where only one patent was asserted and the defendant had already answered the  
15 complaint.

16 Courts in this district have relied on statistics regarding the rate at which the PTAB  
17 institutes review on IPR petitions to find that a stay is favored even prior to institution. *See, e.g.,*  
18 *New World Med.*, 2021 WL 952456 at \*3; *SRC Labs*, 2018 WL 6065635 at \*2; *Pac. Bioscience*,  
19 760 F. Supp. 2d at 1064; *WAG Acquisition-Amazon*, 2023 WL 1991888 at \*2. The PTAB’s 2023  
20 fiscal year-end statistics on IPRs indicate that the PTAB instituted review on 67 percent of the  
21 petitions filed. Kwun Decl. Ex. A at 6. For patents directed to “Electrical/Computer” technology,  
22 like the patents-in-suit, that rate is even higher, at 70 percent. *Id.* at 8. Indeed, the PTAB has  
23 previously, in IPR2016-01884, instituted review of claims 1 and 2 of the ’260 patent in view of  
24 two of the grounds raised in Valve’s IPR, terminating that review only because Apple and  
25 Immersion settled. Kwun Decl. ¶ 11. Thus, there is a high likelihood that the PTAB will institute  
26 review of at least some of the patents-in-suit.

1 And across all IPRs that resulted in a final written decision in 2023, the PTAB determined  
2 that all instituted claims were unpatentable in 67.52% of cases, that some claims were  
3 unpatentable in 15.35% of cases, and that no claims were unpatentable in only 17.12% of cases.  
4 Kwun Decl. Ex. A at 10. There thus is a high likelihood that the PTAB will find at least some  
5 and perhaps all the asserted claims unpatentable. As noted above, even if the PTAB finds only  
6 some of the asserted claims unpatentable, the Court will still benefit from the PTAB's analysis  
7 and the narrowing of the scope of the case.

8 **2. The early stage of the case favors a stay.**

9 A stay is particularly appropriate here because the case is in its early stages. The Court  
10 has not yet ruled on Valve's motion to dismiss. Discovery is in its infancy. The parties have  
11 conducted limited written discovery and document production. Trial is well over a year away.  
12 The fact discovery and expert discovery cutoffs are six months and one year away, respectively—  
13 and those deadlines will likely need to be extended if Immersion amends the Complaint. The  
14 claim construction hearing is not until July 12, 2024.

15 Thus, “[n]either the parties, nor the court, have invested the kind of resources that would  
16 render a stay pending [the resolution of the pending IPR petitions] untenable.” *Pac. Bioscience*,  
17 760 F. Supp. 2d at 1066. “The fact that substantial additional discovery, claim construction, and  
18 other issues lie ahead in this case weighs in favor of a stay.” *Id.*; see also *Zillow, Inc. v. Trulia,*  
19 *Inc.*, No. C12-1549JLR, 2013 WL 5530573, at \*5-6 (W.D. Wash. Oct. 7, 2013) (granting stay  
20 with trial “more than ten months away,” on the “eve of claim construction” and where “well over  
21 a hundred thousand pages of documents” had been produced and a Rule 30(b)(6) notice served).  
22 “Given the early stage of these proceedings and minimal resources expended in litigating this  
23 action to date, entering a stay will preserve the resources that would otherwise be required to  
24 litigate this case at a time when the merits of doing so are uncertain.” *New World Med.*, 2021  
25 WL 952456, at \*2 (granting stay pending pre-institution post-grant review of patent at issue).

26 Courts in this district have often stayed patent cases prior to IPR institution in similar or

even later stages. In *Pacific Bioscience*, the court granted a stay where, like here, trial was one year away, discovery was “far from complete,” the parties had conducted “limited written discovery and document production,” no depositions were scheduled, and the claim construction hearing had not yet taken place. 760 F. Supp. 2d at 1066. In *WAG Acquisition-Amazon*, the court granted a stay where the parties had already exchanged infringement and invalidity contentions and several discovery requests and submitted claim construction briefing. 2023 WL 1991888, at \*2. Similarly, in *SRC Labs*, the court granted stay where trial was over a year away, the discovery cutoff date was over seven months away, the claim construction hearing was over two months away, and only one fact witness deposition was scheduled. 2018 WL 6065635, at \*4.

Courts have likewise granted post-institution stays at similar stages. *See, e.g., WAG Acquisition, L.L.C. v. Flying Crocodile, Inc.*, No. 2:19-cv-01278-BJR, 2020 WL 8815491, at \*1 (W.D. Wash. Mar. 19, 2020) (granting stay where fact discovery was complete); *Cywee Grp. Ltd. v. HTC Corp.*, No. C17-0932JLR, 2019 WL 3860303, at \*6 (W.D. Wash. Aug. 16, 2019) (granting stay where discovery cut-off was near).

Here, given that the vast majority of the work in this case remains to be done, this factor strongly weighs in favor of a stay.

### **3. A stay would not unduly prejudice or tactically disadvantage Immersion.**

Here, Immersion would not be unduly prejudiced, nor would Valve gain any tactical advantage, if the Court were to issue a stay because Immersion is a patent licensor that does not compete with Valve. “[C]ourts have consistently found that a patent licensor cannot be prejudiced by a stay because monetary damages provide adequate redress for infringement.” *WAG Acquisition-Amazon*, 2023 WL 1991888 at \*3 (quoting *Implicit Networks, Inc. v. Advanced Micro Devices, Inc.*, No. C08-184JLR, 2009 WL 357902, at \*3 (W.D. Wash. Feb. 9, 2009)); *Flying Crocodile, Inc.*, 2021 WL 6693829, at \*3 (“the potential prejudice resulting from a stay is of less concern in cases where, as here, the parties are not competitors.”).

Notably, “mere delay does not demonstrate *undue* prejudice.” *SRC Labs*, 2018 WL 6065635, at \*4 (emphasis added) (citation omitted). Thus, this factor weighs in favor of a stay and Immersion cannot make “a specific showing of prejudice beyond the delay necessarily inherent in any stay.” *WAG Acquisition-Amazon*, 2023 WL 1991888, at \*3; *see SRC Labs*, 2018 WL 6065635, at \*4.

#### IV. Conclusion

All three factors weigh in favor of a stay. Valve will be challenging all the claims at issue in this case in its IPR petitions—which could moot the case entirely. This litigation is in its early stages, meaning that a delay may prevent substantial unnecessary work on the part of the Court and parties. And Immersion, which is primarily a patent licensor that does not compete with Valve, will not be unduly prejudiced by a stay.

Valve respectfully requests that the Court enter an order staying this case pending resolution of Valve’s IPR petitions.

*I certify that this memorandum contains  
3,264 words in compliance with the Local  
Civil Rules.*

DATED: March 14, 2024

**KWUN BHANSALI LAZARUS LLP**

By: /s/ Michael Kwun  
Michael Kwun (SBN 198945)  
(admitted pro hac vice)  
Asim Bhansali (SBN 194925)  
(pro hac vice pending)  
Kate Lazarus (SBN 268242)  
(admitted pro hac vice)  
Scott Taylor (SBN 318941)  
(admitted pro hac vice)  
Elizabeth Dinh (SBN 329295)  
(pro hac vice pending)  
555 Montgomery Street, Suite 750  
San Francisco, CA 94111  
Telephone: 415.630.2350  
mkwun@kblfirm.com  
abhansali@kblfirm.com  
klazarus@kblfirm.com  
staylor@kblfirm.com

1 edinh@kblfirm.com

2 And

3 **ARETE LAW GROUP PLLC**

4 By: /s/ Jonah O. Harrison

5 Jonah O. Harrison, WSBA No. 34576

6 Jeremy E. Roller, WSBA No. 32021

1218 Third Avenue, Suite 2100

Seattle, WA 98101

7 Phone: (206) 428-3250

8 Fax: (206) 428-3251

9 jharrison@aretelaw.com

jroller@aretelaw.com

10 *Attorneys for Defendant Valve Corporation*

**CERTIFICATE OF CONFERRAL**

Pursuant to the Court's Standing Order for Civil Cases § II.D, the undersigned counsel certifies that counsel for the parties met and conferred regarding the relief requested in this motion but were unable to reach agreement. Counsel conferred regarding the relief sought in this motion during a video conference on July 21, 2023.

/s/ Michael Kwun

Michael Kwun

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I caused true and correct copies of the foregoing document to be served on all attorneys of record using the automatic notification generated by the CM/ECF system.

Dated this 14<sup>th</sup> day of March, 2024 in Seattle, Washington.

/s/ Janet C. Fischer

Janet C. Fischer  
Paralegal