

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.1
Eastern Division**

Ki Chul Seong, et al.

Plaintiff,

v.

Case No.: 1:18-cv-00396
Honorable Steven C. Seeger

BEDRA, Inc., et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, January 29, 2020:

MINUTE entry before the Honorable Steven C. Seeger: The Motion to Stay (Dckt. No. 49]) is hereby granted. This case is stayed until March 31, 2020. The parties shall file a status report on March 31, 2020. Status hearing on February 4, 2020 is stricken. Status hearing is reset for April 9, 2020 at 9:00 a.m. Mailed notice. (jjr,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MEDLINE INDUSTRIES, LP,	)	
	)	
Plaintiff,	)	
	)	No. 17 C 7216
v.	)	
	)	Judge Sara L. Ellis
C.R. BARD, INC.,	)	
	)	
Defendant.	)	

ORDER

The Court grants Defendant C.R. Bard, Inc.’s motion to stay this case [353]. The Court stays this case pending the issuance of the Patent Trial and Appeal Board’s revised decisions. In light of the stay, the Court denies the pending motions for summary judgment and to strike expert opinions [279], [280], [285], [292], [293], [305], [307], [325], [326] without prejudice to the parties refiling these motions once the Court lifts the stay. The Court sets a status hearing on April 6, 2022 at 9:30 a.m. for the parties to report on the status of the Patent Trial and Appeal Board’s decisions and directs the parties to file a joint status report by March 31, 2022. See Statement.

STATEMENT

Plaintiff Medline Industries, LP (“Medline”) has filed three suits in the Northern District of Illinois alleging patent infringement against Defendant C.R. Bard, Inc. (“Bard”). This suit concerns four medical tray and patient aid patents: U.S. Patent Nos. 9,808,596 (the “’596 Patent”), 9,745,088 (the “’088 Patent”), 9,795,761 (the “’761 Patent”), and 9,808,400 (the “’400 Patent”). In October and November of 2018, Bard filed petitions with the Patent Trial and Appeal Board (“PTAB”) seeking *inter partes* reviews (“IPR”) on all of Medline’s claims. At the same time, Bard filed a motion to stay this case pending the PTAB’s decision whether to institute review, which the Court denied without prejudice as premature and invited Bard to renew its motion if the PTAB decided to institute IPRs on Bard’s petitions. Doc. 126; Doc.146. In June 2019, the PTAB granted Bard’s petitions for IPRs and subsequently, Bard filed a new motion to stay this case pending the result of the IPRs. Doc. 176. In September 2019, the Court granted that motion and stayed the case until June 2020, when the PTAB had issued final decisions in all of the IPRs. Doc. 190. The PTAB invalidated the ’400 Patent for obviousness but upheld the patentability of the remaining asserted patents and claims. In response, Bard appealed the IPR decisions regarding the ’596 Patent, the ’088 Patent, and the ’761 Patent to the United States Court of Appeals for the Federal Circuit. By August 2, 2021, the parties had completed discovery, *Daubert* briefing, and summary judgment briefing in this case. On August 13, 2021, the Federal Circuit vacated in part the PTAB’s decisions and remanded nine of the claims asserted in this case to the PTAB for further proceedings. Bard now moves to stay this case

pending the PTAB's revised decisions, which the parties expect the PTAB to issue by March 2022.

District courts have inherent power to control their own dockets, including the power to stay proceedings before them. *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (“The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.”). How best to manage the court’s docket “calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936). Specifically, the decision “to stay proceedings pending inter partes review of a patent is a matter committed to the district court’s discretion.” *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13–CV–1058, 2015 WL 1069111, at *1 (E.D. Tex. Mar. 11, 2015) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426–27 (Fed. Cir. 1988)); *Black & Decker, Inc. v. Positec USA, Inc.*, No. 13 C 3075, 2013 WL 5718460, at *3 (N.D. Ill. Oct. 1, 2013). District courts consider three factors in determining whether to grant a stay pending IPR review: (1) whether the stay will unduly prejudice or tactically disadvantage the nonmoving party; (2) whether the stay will simplify the issues in question and streamline the trial; and (3) whether the stay will reduce the burden of litigation on the parties and on the court. *Ignite USA, LLC v. Pac. Mkt. Int’l, LLC*, No. 14 C 856, 2014 WL 2505166, at *2 (N.D. Ill. May 29, 2014) (citation omitted).

First, Medline fails to adequately explain how a stay would cause undue prejudice or place it at a tactical disadvantage. Medline argues that the stay will cause undue prejudice because it would unnecessarily delay an already long-running case between direct competitors and Medline is entitled to an injunction to stop Bard’s ongoing infringement. However, “[t]he general prejudice of having to wait for resolution is not a persuasive reason to deny the motion for stay.” *Sorensen v. Black & Decker Corp.*, No. 06CV1572, 2007 WL 2696590, at *4 (S.D. Cal. Sept. 10, 2007); *see also Ignite USA*, 2014 WL 2505166, at *2 (“[T]he fact that the IPR will cause some degree of delay, in and of itself, is not dispositive of whether a party will suffer undue prejudice.”). Moreover, Medline has not moved for summary judgment on all of the asserted claims and acknowledges that a trial in this case would not take place before March 2022, when the parties expect the PTAB to issue revised decisions. Therefore, any delay caused by this short stay is immaterial to the expediency of the resolution of this case. Medline also asserts that the stay would provide little value to managing the case as a whole and therefore, it is tactically one-sided. However, as explained below, the Court finds that a stay will simplify the issues in the case, streamline the trial, and reduce the burden of litigation. Therefore, the Court finds that Medline would not suffer undue prejudice or a tactical disadvantage from a stay.

Second, the PTAB’s revised decisions will likely simplify and streamline the issues in this case. Medline argues that because the Federal Circuit upheld the patentability of seven of its claims, the remaining three asserted patents and all alleged infringing products will remain at issue in this case regardless of the outcome of the PTAB’s revised decisions and therefore, the decisions will not simplify or streamline the case. However, regardless of what issues remain in the case, if the PTAB invalidates one or more of Medline’s claims based on the Federal Circuit’s instructions on remand, it would undoubtedly simplify and streamline the case. *See Black & Decker*, 2013 WL 5718460, at *2 (“The court evaluates whether review would simplify the issues in question, not whether it could eliminate every issue in the case.”). Medline focuses its argument on issues in the case that the remand will not affect but fails to recognize that because

the remand will impact many other issues in the case, it will simplify and streamline the trial. The Federal Circuit vacated nine of the PTAB's patentability determinations. In light of the Federal Circuit's opinion, the PTAB may invalidate nine of the sixteen claims at issue in this case, which would undoubtedly simplify and streamline the trial. *See Ignite USA*, 2014 WL 2505166, at *4 ("If the [PTAB] cancels all or some of the asserted claims, then the issue of infringement for those claims would no longer exist."). "Moreover, even in the event that none of the claims are invalidated, the Court will still benefit from the [PTAB's] expertise in evaluating the scope and validity of [the remanded] claims." *Milwaukee Elec. Tool Corp. v. Hilti, Inc.*, 138 F. Supp. 3d 1032, 1039 (E.D. Wis. 2015). Thus, the Court finds that a stay would simplify and streamline this case.

Finally, the PTAB's revised decisions will likely reduce the burden of litigation on both the parties and the Court. If the PTAB's revised decisions result in invalidation of all or some of the remanded claims, those claims would no longer be at issue in this case. *Ignite USA*, 2014 WL 2505166, at *4; *see also Oil-Dri Corp. of Am. v. Nestle Purina Petcare Co.*, No. 15-cv-1067, 2015 WL 13650951, at *2 (N.D. Ill. May 5, 2015) (noting that because IPR review "may narrow or dispose of claims, arguments, and defenses, this factor weighs in favor of the Court staying the proceedings" (citation omitted)). Medline argues that the Court will still need to resolve the five pending and fully briefed motions—Medline's two motions for summary judgment and Bard's three *Daubert* motions—regardless of the PTAB's revised decisions. However, as Medline acknowledges, each motion relates, at least in part, to claims and issues the Federal Circuit remanded to the PTAB. Indeed, Medline moved for summary judgment on Bard's infringement of three claims, all of which the Federal Circuit vacated and remanded to the PTAB. Therefore, if the PTAB invalidates any of the remanded claims, it will undoubtedly impact the Court's analysis of the summary judgment and *Daubert* motions and the parties' trial preparation thereafter. *See Milwaukee Elec. Tool Corp.*, 138 F. Supp. 3d at 1038 (granting stay pending IPR review despite completed summary judgment briefing because "the Court ha[d] yet to resolve any of the issues" and the related cases would require multiple trials, and thus, "there remain[ed] considerable work to be done"). While the Court acknowledges Medline's concerns, "[w]ithout a stay, simultaneous proceedings present substantial risks that the parties and court will expend resources unnecessarily," *Ignite USA*, 2014 WL 2505166, at *4, and that inconsistent rulings will result, *see Bos. Sci. Corp. v. Cook Grp. Inc.*, No. 17-cv-03448, 2019 WL 2511162, at *3 (S.D. Ind. June 17, 2019) (despite late stage of litigation, the "Court's time, resources, and desire to avoid inconsistent rulings would be better served by continuing the stay"). For the foregoing reasons, the Court grants Bard's motion to stay this case until the PTAB issues revised decisions. In light of the stay and the potential that the PTAB's revised decisions will affect the issues raised by the parties in the summary judgment and *Daubert* motions, the Court also denies those motions without prejudice to refiling after the Court lifts the stay.

Dated: January 31, 2022

/s/ Sara L. Ellis

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.4
Eastern Division**

OsteoMed LLC

Plaintiff,

v.

Case No.: 1:20-cv-06821

Honorable Steven C. Seeger

Stryker Corporation, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, April 6, 2022:

MINUTE entry before the Honorable Steven C. Seeger: The joint motion to stay pending disposition of the inter partes reviews of the patents-in-suit (Dckt. No. [79]) is hereby granted. The case is stayed pending a decision by the Patent Trial and Appeal Board. The PTAB has instituted review of the some of the challenged claims, and should make an institution decision on the remaining IPRs by August 2022. The joint motion for an extension of time to serve final non-infringement, enforceability, and validity contentions (Dckt. No. [80]) is hereby denied as moot in light of the stay. The case is stayed, and all currently deadlines are hereby vacated. The Court will reset the deadlines, if necessary, down the road. In light of the stay, and the pending review by the PTAB, Plaintiff OsteoMed's motion to strike (Dckt. No. [71]) is hereby denied. The motion is for administrative purposes only, and is not a ruling on the merits. OsteoMed can refile the motion down the road if necessary. The parties must file a status report by June 30, 2022. Mailed notice(jjr,)

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PIPP MOBILE STORAGE SYSTEMS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 21 C 2104
	)	
INNOVATIVE GROWERS EQUIPMENT,	)	Judge Sara L. Ellis
INC.	)	
	)	
Defendant.	)	

ORDER

The Court grants Defendant Innovative Growers Equipment, Inc.’s motion to stay pending *inter partes* review [101]. The Court stays this case pending the issuance of the Patent Trial and Appeal Board’s decision. In light of the stay, the Court denies Defendant’s motion to amend final invalidity contentions [95, 96] without prejudice to refiling after the Court lifts the stay. The Court grants in part Defendant’s motion to seal [99]. The Court orders the Clerk of Court to unseal the following documents: Docs. 102-1, 102-2, 102-3, 102-4, 102-5, 102-6, 102-7, 102-8, 102-10, 102-13, 102-14, 102-15. The Court sets a status hearing on 3/22/2023 at 9:30 a.m. for the parties to report on the status of the Patent Trial and Appeal Board’s decisions and directs the parties to file a joint status report by 3/15/2023. See Statement.

STATEMENT

Plaintiff Pipp Mobile Storage Systems, Inc. (“Pipp”) brought this action against Defendant Innovative Growers Equipment, Inc. (“Innovative”) asserting that Innovative infringes U.S. Patent No. 10,806,099 (the “’099 Patent”) through the sale of certain air flow systems. On April 19, 2022, Innovative filed a petition with the Patent Trial and Appeal Board (“PTAB”) seeking *inter partes* review (“IPR”) of claims 25, 26, 27, 45, 50, 58, and 59 of the ’099 Patent. On October 27, 2022, the PTAB granted Innovative’s petition and instituted an IPR of the challenged claims. As a result, Innovative brings the present motion to stay the proceedings in this trial until the PTAB issues its decision.¹ Innovative has also filed a motion to

¹ In connection with its motion to stay, Innovative filed a motion to seal exhibits accompanying its motion to stay, Doc. 99, and provisionally filed its memorandum, along with all exhibits, under seal. Innovative also filed a redacted version of its memorandum on the docket. Only three of the exhibits attached to Innovative’s motion, Docs. 102-9, 102-11, and 102-12, are identified as confidential under the protective order. “Documents that affect the disposition of federal litigation are presumptively open to public view, even if the litigants strongly prefer secrecy, unless a statute, rule, or privilege justifies confidentiality.” *In re Specht*, 622 F.3d 697, 701 (7th Cir. 2010). Because Innovative has not identified a basis for maintaining the other exhibits under seal, the Court orders the Clerk to unseal the following exhibits

amend its final invalidity contentions in response to the Court's claim construction ruling. Pipp opposes both motions.

District courts have inherent power to control their own dockets, including the power to stay proceedings before them. *Clinton v. Jones*, 520 U.S. 681, 706 (1997) ("The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket."). How best to manage the court's docket "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936). Specifically, the decision "to stay proceedings pending inter partes review of a patent is a matter committed to the district court's discretion." *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-CV-1058, 2015 WL 1069111, at *1 (E.D. Tex. Mar. 11, 2015) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426–27 (Fed. Cir. 1988)); *Black & Decker, Inc. v. Positec USA, Inc.*, No. 13 C 3075, 2013 WL 5718460, at *3 (N.D. Ill. Oct. 1, 2013). District courts consider three factors in determining whether to grant a stay pending IPR review: (1) whether the stay will unduly prejudice or tactically disadvantage the nonmoving party; (2) whether the stay will simplify the issues in question and streamline the trial; and (3) whether the stay will reduce the burden of litigation on the parties and on the court. *Ignite USA, LLC v. Pac. Mkt. Int'l, LLC*, No. 14 C 856, 2014 WL 2505166, at *2 (N.D. Ill. May 29, 2014) (citation omitted).

As for the first factor, the Court can discount "[t]he general prejudice of having to wait for resolution." *Sorensen v. Black & Decker Corp.*, No. 06CV1572 BTM (CAB), 2007 WL 2696590, at *5 (S.D. Cal. Sept. 10, 2007) ("The general prejudice of having to wait for resolution is not a persuasive reason to deny the motion for stay."); *see also Ignite USA*, 2014 WL 2505166, at *2 ("[T]he fact that the IPR will cause some degree of delay, in and of itself, is not dispositive of whether a party will suffer undue prejudice."). Pipp argues that Innovative made a tactical decision to delay its request for an IPR, which has allowed this case to proceed through fact discovery and claim construction before the institution of the IPR. The motion to stay came just a week before the original disclosure deadline for the parties' experts, with Pipp contending that this further contributes to the prejudice it would suffer because it has already engaged experts and those experts will have to refamiliarize themselves with the issues at a future date. But the Court does not find that a delay in this case will unduly prejudice Pipp, particularly considering that the case has proceeded relatively quickly up to this point. *See* Doc. 114-2 (listing the average time to resolution in patent infringement cases, noting the average time to claim construction from filing is 30.6 months and the average time to trial is 53.5 months). Even absent a stay, a trial in this case would not take place before October 2023, when the parties expect the PTAB will issue its decision. *See* 37 C.F.R. § 42.100(c) ("An inter partes review proceeding shall be administered such that pendency before the Board after institution is normally no more than one year."). And the Court does not find that Innovative sat on its request for a stay based on the institution of the IPR, as it filed its motion eleven days after the PTAB granted its petition.

Pipp also argues that it risks losing market share if the Court stays this case. Innovative responds that it no longer offers the accused product for sale and has modified the instructions for assembly of its air flow system in a non-infringing manner out of an abundance of caution.

attached to the motion to stay: Docs. 102-1, 102-2, 102-3, 102-4, 102-5, 102-6, 102-7, 102-8, 102-10, 102-13, 102-14, 102-15.

Pipp claims this representation is false, but the Court does not have sufficient information to make this determination. Even assuming that some of Innovative’s customers continue to use its system in an allegedly infringing manner, the fact that Pipp did not seek a preliminary injunction against Innovative undermines Pipp’s concerns about how a stay would cause it prejudice based on any continued infringement. *See Ignite USA*, 2014 WL 2505166, at *3 (“Ignite has not sought a preliminary injunction in this litigation, which further supports the absence of Ignite’s concern regarding a pressing threat to Ignite’s market share.”). Further, Pipp has identified at least three other competitors, which also undermines its market share argument. *See id.* (“[Other] competitors’ existence undermines Ignite’s argument that it will lose market share simply due to PMI’s alleged infringement.”). Pipp represents that it has held off on filing suit against these other competitors until resolution of this lawsuit, meaning that a stay in this case will also delay any movement against these other competitors. But Pipp’s litigation strategy with respect to these other competitors does not warrant denying the stay; Pipp may choose to pursue these other competitors in separate cases at any time. For these reasons, the Court finds that Pipp would not suffer undue prejudice or a tactical disadvantage from a stay.

Awaiting the PTAB’s decision also has the potential to simplify the issues and streamline the case. Based on past statistics, it is at least more likely than not that the PTAB will cancel one or more of Pipp’s claims. *See* USPTO, PTAB Trial Statistics, FY22 End of Year Outcome Roundup, https://www.uspto.gov/sites/default/files/documents/ptab__aia_fy2022_roundup.pdf. Even if the PTAB does not cancel any of the claims, the IPR will still simplify the issues in this case, and might encourage settlement, “because [Innovative] will be estopped from arguing that the claim[s] [are] invalid” based on the grounds available to it in the IPR.² *Ignite USA*, 2014 WL 2505166, at *4 (citing *Black & Decker*, 2013 WL 5718460, at *1); *see also Black & Decker*, 2013 WL 5718460, at *2 (“The court evaluates whether review would simplify the issues in question, not whether it could eliminate every issue in the case.”); *Milwaukee Elec. Tool Corp. v. Hilti, Inc.*, 138 F. Supp. 3d 1032, 1039 (E.D. Wis. 2015) (“Moreover, even in the event that none of the claims are invalidated, the Court will still benefit from the [PTAB’s] expertise in evaluating the scope and validity of [the remanded] claims.”). For these reasons, the Court finds that a stay would simplify and streamline this case.

The final factor—whether a stay will reduce the burden of litigation—also favors a stay. Pipp argues that this case is at an advanced stage, with little to gain from awaiting the PTAB’s final decision. But much work remains—including expert discovery, summary judgment briefing, and trial preparation—and a stay is likely to reduce the burden of getting this case to the finish line on both the parties and the Court. *See Milwaukee Elec. Tool Corp.*, 138 F. Supp. 3d at 1038 (granting stay pending IPR review despite completed summary judgment briefing because “the Court ha[d] yet to resolve any of the issues,” meaning “there remain[ed] considerable work to be done”). “Without a stay, simultaneous proceedings present substantial risks that the parties and court will expend resources unnecessarily,” *Ignite USA*, 2014 WL 2505166, at *4, with the added potential of inconsistent rulings, *see Bos. Sci. Corp. v. Cook Grp. Inc.*, No. 17-cv-03448, 2019 WL 2511162, at *3 (S.D. Ind. June 17, 2019) (despite late stage of litigation, the “Court’s

² Although Innovative will not be able to assert “that the claim is invalid on any ground that [Innovative] raised or reasonably could have raised during that inter partes review,” 35 U.S.C. § 315(e)(2), Innovative maintains that it can assert other invalidity challenges that it cannot raise in the IPR. The Court will address any potential remaining invalidity challenges after the PTAB issues its decision.

time, resources, and desire to avoid inconsistent rulings would be better served by continuing the stay”). If the IPR results in cancellation of all or some of Pipp’s claims, the parties will not need to engage in expert discovery on those claims. *Ignite USA*, 2014 WL 2505166, at *4 (“If the [PTAB] cancels, or simplifies the claims, the parties in all likelihood will have engaged in unnecessary discovery.”). And as discussed above, if the PTAB finds all of Pipp’s claims valid, the litigation will nonetheless be less burdensome because Innovative cannot assert invalidity defenses it could have raised in the IPR. *See* 35 U.S.C. § 315(e)(2) (“The petitioner in an inter partes review of a claim in a patent under this chapter that results in a final written decision under section 318(a) . . . may not assert . . . in a civil action . . . that the claim is invalid on any ground that the petitioner raised or reasonably could have raised during that inter partes review.”). For these reasons, the Court finds that a stay would likely reduce the burden of litigation on the parties and the Court.

Because all factors weigh in favor of a stay, the Court stays this case until the conclusion of the PTAB’s IPR. The Court denies Innovative’s motion to amend final invalidity contentions without prejudice to refiling after the Court lifts the stay.

Date: December 5, 2022

/s/ Sara L. Ellis

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF NextGen 1.7.1.1
Eastern Division**

With–U E–Commerce (Shanghai) Co., Ltd.

Plaintiff,

v.

Case No.: 1:22–cv–03815
Honorable Jeremy C. Daniel

COBIZI, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, October 12, 2023:

MINUTE entry before the Honorable Jeremy C. Daniel: Motion hearing set for October 18, 2023 is stricken. The parties' joint motion to stay [66] is granted. The case is stayed pending resolution of IPR2023–00580, including any appeals therefrom. The parties shall file a joint status report on or before January 10, 2024; the status report must address the status of the IPR and the effect, if any, 35 U.S.C. § 315(e) may have on the parties in this case should a final written decision issue in the IPR. Status hearing set for October 18, 2023 is reset to January 17, 2024, at 9:30 a.m. Mailed notice(vcf,)

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