

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

THE RIDGE WALLET LLC,	)	
	)	Civil Action No. 1:23-cv-00407-CNS-SBP
Plaintiff,	)	
	)	JURY TRIAL DEMANDED
v.	)	
	)	
2985, LLC	)	
D/B/A MOUNTAIN VOYAGE CO	)	
	)	
Defendant.	)	

**DEFENDANT 2985 LLC'S MOTION FOR STAY IN VIEW OF *INTER PARTES*
REVIEW PETITIONS**

CONTENTS

I.	INTRODUCTION	1
II.	CERTIFICATE PURSUANT TO D.C.COLO.L CivR 7.1	2
III.	PROCEDURAL HISTORY	2
IV.	ARGUMENT	3
A.	Public Policy Favors Staying this Case Pending Resolution of the IPR Petitions.....	4
B.	A Stay Would Simplify Issues in Question, Streamline the Trial, and Reduce the Burden of Litigation on the Parties and on the Court.....	6
C.	Expert Discovery is Not Complete, Nor has Trial Been Set.....	9
D.	Ridge will Not be Unduly Prejudiced if the Stay is Granted.....	9
V.	CONCLUSION.....	10

Table of Authorities

Cases

<i>2985 LLC d/b/a Mountain Voyage Co., LLC v. The Ridge Wallet LLC</i> , IPR2024-00692, Paper 1 (PTAB Mar. 15, 2024)	1
<i>2985 LLC d/b/a Mountain Voyage Co., LLC v. The Ridge Wallet LLC</i> , IPR2024-01264, Paper 2 (PTAB Aug. 6, 2024)	1
<i>Andersons, Inc. v. Enviro Granulation, LLC</i> , No. 8:13-cv-3004-T-33MAP, 2014 U.S. Dist. LEXIS 112814, at *4 (M.D. Fla. Aug. 14, 2014)	9
<i>Broadcast Innovation, LLC v. Charter Commc’n, Inc.</i> , Case No. 03-cv-2223, 2006 WL 1897165, at *4 (D.C. Colo July 11, 2006)	4
<i>Clinton v. Jones</i> , 520 U.S. 681, 706, (1997)	3
<i>Corel Software, LLC v. Microsoft Corp.</i> , No. 2:15-CV-528-JNP-PMW, 2016 WL 4444747, at *2–3 (D. Utah Aug. 23, 2016)	4
<i>Downing Wellhead Equipment, LLC v. Intelligent Wellhead Systems, Inc.</i> , Case No. 1:23-cv-01180-RMR-SBP, ECF No. 65 at 12 (D.C. Colo. February 14, 2024)	5, 6
<i>eSoft, Inc. v. Blue Coat Systems, Inc.</i> , 505 F. Supp. 2d 784 (D.C. Colo. 2007)	4, 8
<i>Let’s Go Aero, Inc. v. U-Haul Int’l, Inc.</i> , No. 16-cv-00410-REB-NYW, 2016 WL 11694752, at *2 (D. Colo. Dec. 7, 2016)	4
<i>Norred v. Medtronic, Inc.</i> , 2014 WL 554685, at *4 (D. Kan. Feb. 12, 2014)	4
<i>SAS Inst., Inc. v. ComplementSoft, LLC</i> , 825 F.3d 1341, 1354 (Fed. Cir. 2016)	5, 6
<i>Shenzhen Pincan Technology Co. Ltd., v. Ridge Wallet LLC</i> , IPR2024-00340, Paper 18 (PTAB Jul. 12, 2024)	1

<i>The Ridge Wallet, Inc. v. Shenzhen X-World Technology Co., Ltd.</i> ND. Ill. Case No. 1:24-cv-03569.....	9
<i>Universal Elecs., Inc. v. Universal Remote Control, Inc.</i> , 943 F. Supp. 2d 1028, 1029 (C.D. Cal. 2013)	6

Statutes

35 U.S.C. § 100 et seq.....	5
35 U.S.C. § 311(a)–(b).....	5
35 U.S.C. § 315(e)(2).....	6
35 U.S.C. § 316(a)(11).....	6
35 U.S.C. § 6.....	5

Other Authorities

157 Cong. Rec. S1352 (daily ed. Mar. 8, 2011)	5
Rick Bisenius, <i>What is the PTAB and Who are the Judges?</i> , Fish IP Law Essentials July 13, 2020, https://www.fr.com/insights/ip-law-essentials/what-is-the-ptab-and-who-are-the-judges/	2

Rules

37 C.F.R § 42.121	6
37 C.F.R. § 42.108(c).....	6

EXHIBITS

Exhibit	Description
Dec. of Jacob Busch	Declaration of Jacob Busch.
Exhibit A	Petition of IPR2024-00340. <i>Shenzhen Pincan Technology Co. Ltd., v. Ridge Wallet LLC</i> , IPR2024-00340, Paper 1 (PTAB Jul. 12, 2024).
Exhibit B	Decision to Institute IPR2024-00340. <i>Shenzhen Pincan Technology Co. Ltd., v. Ridge Wallet LLC</i> , IPR2024-00340, Paper 18 (PTAB Jul. 12, 2024).
Exhibit C	Petition of IPR2024-01264. <i>2985 LLC d/b/a Mountain Voyage Co., LLC v. The Ridge Wallet LLC</i> , IPR2024-01264, Paper 1 (PTAB Aug. 6, 2024).
Exhibit D	Motion for Joinder. <i>2985 LLC d/b/a Mountain Voyage Co., LLC v. The Ridge Wallet LLC</i> , IPR2024-01264, Paper 2 (PTAB Aug. 6, 2024).
Exhibit E	Petition of IPR2024-00692. <i>2985 LLC d/b/a Mountain Voyage Co., LLC v. The Ridge Wallet LLC</i> , IPR2024-00692, Paper 1 (PTAB Mar. 15, 2024).
Exhibit F	USPTO'S PTAB Trial Statistics FY23 End of Year Outcome Roundup IPR, PGR. https://www.uspto.gov/patents/ptab/statistics
Exhibit G	Excerpts from transcript of status hearing in the case <i>The Ridge Wallet LLC v. Shenzhen X-World Technology Co. Ltd.</i> , Case No. 1:24-cv-03569, ECF No. 31 (N.D. Ill. July 16, 2024).

I. INTRODUCTION

On July 12, 2024, the United States Patent Trials and Appeals Board (“PTAB”) instituted an *inter partes* review (“IPR”), IPR2024-00340 (the “’340 IPR”, attached hereto as Exhibit A), of all claims from U.S. Patent No. 10,791,808 (the “patent-in-suit”, or the “’808 Patent”), including all of the claims asserted against Defendant 2985 LLC d/b/a Mountain Voyage Co. (“Mountain Voyage”). *See Shenzhen Pincan Technology Co. Ltd., v. Ridge Wallet LLC*, IPR2024-00340, Paper 18 (PTAB Jul. 12, 2024), attached hereto as Exhibit B. The ’340 IPR was filed by Shenzhen Pincan Technology Co., Ltd d/b/a ARW. Mountain Voyage has submitted a pending “me too” petition (*i.e.*, a near duplicate of the ’340 IPR petition) and motion for joinder to the PTAB to join the ’340 IPR proceedings. *See 2985 LLC d/b/a Mountain Voyage Co., LLC v. The Ridge Wallet LLC*, IPR2024-01264, Paper 2 (PTAB Aug. 6, 2024) (the “’01264 IPR/Motion for Joinder”), attached hereto as Exhibits C and D.

Additionally, Mountain Voyage has filed a separate IPR petition challenging the validity of the claims of the ’808 patent that Ridge asserts in this action, IPR2024-00692 (the “’692 IPR”), which is pending review by the PTAB. *2985 LLC d/b/a Mountain Voyage Co., LLC v. The Ridge Wallet LLC*, IPR2024-00692, Paper 1 (PTAB Mar. 15, 2024), attached hereto as Exhibit E. Mountain Voyage anticipates a determination of institution of the ’692 IPR by no later than October 10, 2024.

The PTAB is an administrative body of the United States Patent and Trademark Office that has jurisdiction to review and determine the validity of issued patents. PTAB administrative law judges (“ALJs”) are typically former patent litigators, practitioners, or examiners who conduct a mini-trial solely on the issue of patent validity. PTAB ALJ’s have deep knowledge of patent law, and often have relevant technical knowledge in the field at issue. *See e.g.*, 35 U.S.C. § 6.

Accordingly, IPRs have become a very valuable resource in reviewing the validity of patents that perhaps never should have been issued due to invalidity over the prior art. *See* Rick Bisenius, *What is the PTAB and Who are the Judges?*, Fish IP Law Essentials July 13, 2020, <https://www.fr.com/insights/ip-law-essentials/what-is-the-ptab-and-who-are-the-judges/>.

The PTAB could invalidate each of the asserted claims, thus resolving this litigation in its entirety. Given the preclusive effect of a PTAB ruling on patent validity, courts often stay parallel district court litigation pending the outcome of the PTAB proceedings. The Court has broad discretion to stay these proceedings because a stay will simplify the issues in the litigation and reduce the burden of litigation on the Parties and the Court. Further, a stay would not prejudice Plaintiff The Ridge Wallet LLC (“Ridge”) at least because this Action is a case for past damages: Mountain Voyage no longer sells the Accused Products, and its current product offerings are not subject to this Action.

II. CERTIFICATE PURSUANT TO D.C.COLO.L CivR 7.1

Pursuant to D.C.COLO.L CivR 7.1, Mountain Voyage conferred with Ridge regarding this and other motions via a telephone call conducted on July 16, 2024. Ridge opposed this Motion for Stay, stating that there is always a chance that Ridge may settle the ’340 IPR. As described further herein, Mountain Voyage believes that this possibility is mitigated by the pending ’692 IPR and the ’1264 IPR/Motion for Joinder. Thus, the parties did not reach a resolution on this matter.

III. PROCEDURAL HISTORY

Ridge served its original complaint against Mountain Voyage on March 15, 2023. *See* Dkt. No. 15. On April 6, 2023, Ridge filed its first amended complaint alleging that certain Mountain Voyage wallets no longer offered for sale infringe claims 1, 14, and 19 of the ’808 Patent. *See* Dkt. No. 34, and 34-16. Also on April 6, 2023, the Court entered a Scheduling Order. *See* Dkt. No.

32. On May 5, 2023, Ridge served its initial infringement contentions, alleging that certain Mountain Voyage wallets infringe claims 1, 6-7, 12-14, and 18-21 of the '808 Patent (the "Asserted Claims"). At Mountain Voyage's request, Ridge served supplemental initial infringement contentions on May 22, 2023 to clarify ambiguities in the contentions. Mountain Voyage served its initial invalidity contentions on June 15, 2023.

This Court held a Markman hearing on April 2, 2024, and issued a claim construction order on April 16, 2024. *See* Dkt. No. 52 and 54. On May 20, 2024, Ridge notified Mountain Voyage that its previously served Second Supplement Preliminary Infringement Contentions (which identified additional accused products) were to serve as the final infringement contentions. On June 11, 2024, Mountain Voyage served its final invalidity contentions. Fact discovery concluded on July 23, 2024, expert discovery is on-going, dispositive motions have not been submitted, a trial date has not been set.

Each of the instituted '340 IPR, the pending '692 IPR, and the pending '01264 IPR/Motion for Joinder challenge the validity of all the Asserted Claims of the '808 Patent. Should any of the IPR proceedings succeed, the issues of the case will be greatly simplified or moot. Further, Mountain Voyage filed the '692 IPR with a stipulation that should the PTAB institute the petition, Mountain Voyage would be estopped from asserting invalidity grounds in this Action that reasonably could have been raised via the IPR. As such, even the mere institution of the '692 IPR for trial would greatly simplify the invalidity issues in this Action and thereby the pending motion to exclude portions of the invalidity contentions.

IV. ARGUMENT

"The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706, (1997). This includes stays pending

the outcome of patent office proceedings reexamining the validity of a patent. *See eSoft, Inc. v. Blue Coat Systems, Inc.*, 505 F. Supp. 2d 784 (D.C. Colo. 2007) (granting motion to stay pending USPTO inter partes reexamination). Given the preclusive effect of a PTAB ruling on patent validity, courts often stay parallel district court litigation pending the outcome of the PTAB proceedings. *See Corel Software, LLC v. Microsoft Corp.*, No. 2:15-CV-528-JNP-PMW, 2016 WL 4444747, at *2–3 (D. Utah Aug. 23, 2016); *Norred v. Medtronic, Inc.*, 2014 WL 554685, at *4 (D. Kan. Feb. 12, 2014).

Courts generally apply a four-factor test when determining whether a stay should be granted: (1) whether a stay will simplify the issues in question and streamline the trial; (2) whether discovery is complete and whether a trial date has been set; (3) whether the stay will unduly prejudice the non-moving party or present a clear tactical advantage for the moving party, and (4) whether a stay will reduce the burden of litigation on the parties and on the court. *See eSoft, Inc. v. Blue Coat Systems, Inc.*, 505 F. Supp. 2d 784, 787 (D.C. Colo. 2007). “Courts frequently collapse the first and fourth factors. None of these factors is controlling; rather, courts determine whether a stay is appropriate based on the totality of the circumstances.” *Let’s Go Aero, Inc. v. U-Haul Int’l, Inc.*, No. 16-cv-00410-REB-NYW, 2016 WL 11694752, at *2 (D. Colo. Dec. 7, 2016) (internal citations and quotation marks omitted, denying renewed motion to stay pending *ex parte* reexamination and arbitration). The *eSoft* factors weigh strongly in favor of granting a stay of this Action.

A. Public Policy Favors Staying this Case Pending Resolution of the IPR Petitions

Generally, “there exists a liberal policy in favor of granting motions to stay proceedings pending the outcome of reexamination proceedings.” *Broadcast Innovation, LLC v. Charter Commc’n, Inc.*, Case No. 03-cv-2223, 2006 WL 1897165, at *4 (D.C. Colo July 11, 2006). As this

Court has noted, “the same set of principles generally apply to motions to stay pending any of the several forms of post-grant proceedings – whether the former inter partes reexamination, ex parte reexamination, IPR, post-grant-review, or covered business methods review....” *Downing Wellhead Equipment, LLC, v. Intelligent Wellhead Systems, Inc.*, Case No. 1:23-cv-01180-RMR-SBP, ECF No. 65 at 12 (D.C. Colo. February 14, 2024) (“*Downing*”). IPR is an adversarial process created by the Leahy-Smith America Invents Act (“AIA”). 35 U.S.C. § 100 et seq. One of Congress’s goals in enacting the AIA was to reduce the burden of litigation on courts. An IPR proceeding is considered to be at least a partial and, in some situations, a complete alternative to litigation of patent validity issues. *See SAS Inst., Inc. v. ComplementSoft, LLC.*, 825 F.3d 1341, 1354 (Fed. Cir. 2016) (Newman, J., dissenting) (“The AIA proceeding is structured as a complete alternative to litigation of these issues.”)

The process allows any party, other than the patent owner, to challenge patentability by filing a petition with the PTAB within one year of being served with a complaint alleging patent infringement. *See* 35 U.S.C. § 311(a)–(b). The party challenging a patent’s patentability may do so by challenging the validity of the claims under 35 U.S.C. § 102 or § 103.

The petition is reviewed by the PTAB ALJs who are “of competent legal knowledge and scientific ability.” 35 U.S.C. § 6. As such, these experts within the PTO are more likely to come to correct decisions regarding the validity of patent claims faster than would be achieved via litigation in district court. *See SAS Inst.*, 825 F.3d at 1354 (Newman, J., dissenting) (“Congress designed the AIA to achieve expeditious and economical final resolution.”); *see also* 157 Cong. Rec. S1352 (daily ed. Mar. 8, 2011) (Sen. Udall commenting that “a panel of experts is more likely to reach the correct decision on a technical question compared to a jury composed of laypeople.”)

The PTAB institutes an IPR petition if “there is a reasonable likelihood that at least one of the claims challenged in the petition is unpatentable.” 37 C.F.R. § 42.108(c). Upon institution, the PTAB must issue a final written decision within one year of instituting the IPR, which must address every ground raised in the instituted IPR petition. *See* 35 U.S.C. § 316(a)(11); *SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018). During the proceeding, the patent owner may make a motion to amend the patent. *See* 37 C.F.R. § 42.121. Following the final written determination, the petitioner is estopped from raising invalidity arguments “on any ground that the petitioner raised or reasonably could have raised during that *inter partes* review.” 35 U.S.C. § 315(e)(2). The process streamlines patent litigation and limits “unnecessary and counterproductive litigation costs.” *Universal Elecs., Inc. v. Universal Remote Control, Inc.*, 943 F. Supp. 2d 1028, 1029 (C.D. Cal. 2013) (citation omitted).

B. A Stay Would Simplify Issues in Question, Streamline the Trial, and Reduce the Burden of Litigation on the Parties and on the Court

The IPR proceeding is an efficient and streamlined process for resolving patent validity and claim scope. Where an IPR challenging a litigation’s asserted patent claims is pending, a stay in the litigation reduces the burden of litigation on the Parties and on the Court by allowing the PTAB to simplify invalidity issues and thereby streamline the trial. This is especially true where an IPR challenging all the asserted patent claims has been instituted for trial, as is the case here.

As such, this Court has recently held that the presence of a pending IPR proceeding strongly favors *eSoft* factors 1 and 4. *See Downing*, ECF No. 65 at 16 (“However, even if only one of the IPR Petitions is instituted, it would mean that the PTAB believes IWS is more likely than not to prevail on at least one of the patent claims that it challenges therein. And even if an instituted IPR does not cancel any of the claims, the PTAB may provide reasoning that would assist the court in resolving this case: *i.e.*, the potential simplification and reduction of burden in this case is not

limited to the scope of estoppel under § 315(e). The court concludes that institution of even one of the IPR Petitions is likely to simplify the issues and reduce the burden of this case.”)

Here, the PTAB has recently instituted the ’340 IPR, indicating one or more of the Asserted Claims are more likely than not to be cancelled. Indeed, based on USPTO statistics of IPR petitions for fiscal year 2023 (*i.e.*, petition filed between October 1, 2022 to September 30, 2023); once instituted, a non-settled IPR petition resulted in at least one of the challenged claims being found unpatentable about 76% of the time, and all the challenged claims of the given patent were found unpatentable about 62% of the time. *See* Ex. F at 10. Thus, the ’340 IPR is likely to result in the cancellation of one or more of the Asserted Claims, and thereby simplify issues of invalidity in this Action.

Additionally, the ’692 IPR petition filed by Mountain Voyage has a high likelihood of institution. The breadth, scope, and substance of the prior art cited to the ’692 IPR is substantial and renders all the Asserted Claims invalid by obviousness. Like the instituted ’340 IPR, the ’692 IPR articulates how the Assert Claims are rendered obvious by Ridge’s own Kickstarter campaign in view of multiple secondary patent references. Further, Mountain Voyage has standing to raise the ’692 IPR, and there are no procedural issues that would bar institution. Accordingly, the ’692 IPR is likely to be successful. Further, the USPTO’s statistics of IPR petitions for fiscal year 2023 indicate that the PTAB institutes about 67% of pending petitions. *See* Ex. F at 9.

Also, mere institution of the ’692 IPR would simplify invalidity issues pertaining to the Asserted Claims. Mountain Voyage filed the ’692 IPR with a stipulation that should the petition institute, Mountain Voyage would be estopped from raising invalidity grounds in this Action that were raised or could have been reasonably raised in the IPR. This estoppel stipulation would be applicable to Grounds 3-6 in the final invalidity contentions. Thus, the ’692 IPR is likely to be

instituted, and the institution decision would render moot the majority of Ridge's pending motion to exclude certain invalidity contentions.

Moreover, Mountain Voyage has filed the '01264 IPR/Motion for Joinder with the PTAB to join the '340 IPR proceeding. Should the motion be approved, Mountain Voyage would adopt an "understudy role" in the '340 IPR and would transition to lead counsel should the petitioners of the '340 IPR chose not to pursue a final written decision in the proceeding. Also, notably with respect to Ridge's statement that it "might" settle the ARW IPR, the PTAB has discretionary power to deny motions to terminate the proceeding, even when the parties submit notice of settlement. The PTAB may choose to do so to advance public interest in reviewing the quality of granted patents. While a potential settlement might be a reason to reactivate this Action, it is not a reason to deny a stay in the first place.

In the likely event that at least one of the '340 IPR, the '692 IPR, and/or the '01264 IPR/Motion for Joinder is successful, Ridge's final infringement contentions would be moot as the Asserted Claims would be invalid. Additionally, since Ridge may be afforded the opportunity to amend the Asserted Claims during any of the IPR proceedings, a summary judgement ruling by this Court on the issue of infringement before the conclusion of any of the IPR proceedings may become moot in view of the amended claim language.

Ordering a stay until at least the '340 IPR, the '692 IPR, and the '01264 IPR/Motion for Joinder are decided will promote efficiencies for the parties as well as the Court. Thus, the first and fourth *eSoft* factors strongly favor a stay. *See eSoft*, 505 F.Supp.2d at 787-88.

C. Expert Discovery is Not Complete, Nor has Trial Been Set

Expert discovery has not been completed. Expert witnesses have not been deposed. Dispositive motions have not been submitted. No trial date has been set. As such, the second *eSoft* factor favors, or at least is neutral toward, a stay.

D. Ridge will Not be Unduly Prejudiced if the Stay is Granted

A stay of these proceedings will not unduly prejudice or tactically disadvantage Ridge. “[D]elay in litigation, without more, generally does not demonstrate undue prejudice.” *Andersons, Inc. v. Enviro Granulation, LLC*, No. 8:13-cv-3004-T-33MAP, 2014 U.S. Dist. LEXIS 112814, at *4 (M.D. Fla. Aug. 14, 2014) (quoting *Cascades Comput. Innovation, LLC v. SK Hynix, Inc.*, No. 11-4356, 2012 U.S. Dist. LEXIS 73487, at *4 (N.D. Ill. May 25, 2012)). Ridge’s asserted causes of action involve only the ’808 Patent, and each IPR proceeding challenges all the Asserted Claims. *See Id.* at *9–10 (noting that this fact weighs in favor of a stay).

The lack of prejudice to Ridge is amplified by the fact that Ridge is not seeking an injunction against current Mountain Voyage products, only damages against products that are no longer for sale. A fact Ridge has implicitly admitted in a proceeding before a sister court. *See* Transcript of Proceedings in *The Ridge Wallet, Inc. v. Shenzhen X-World Technology Co., Ltd.* ND. Ill. Case No. 1:24-cv-03569 – Telephonic Status Hearing Before the Honorable Andrea R. Wood at 10:20 – 11:11 (July 16, 2024) (attached hereto as Exhibit G).¹ All the Accused Products

¹ The cited portion of the Hearing Transcript reads as follows:

[COUNSEL FOR RIDGE]: No, we have not, and the reasons is that Mountain Voyage has designed around the ‘808 Patent in Colorado, or they believe they have.

THE COURT: But if the ‘808 Patent is at issue in the case in Colorado, why aren’t you making that argument to the court in Colorado?

[COUNSEL FOR RIDGE]: Because, at this point, that case is a past damages case. So I don’t think, unless Mountain Voyage changes what it’s doing, that there’s going to be a request for injunctive relief arising out of the ‘808 patent in Colorado.

in this Action are former wallet offerings that Mountain Voyage no longer offers for sale, nor does Mountain Voyage intend to offer the Accused Products for sale in the future. *See* Dec. of Jacob Busch, par. 5. Thus, a delay in the proceedings will not affect the relief sought by Ridge and the third *eSoft* factor weighs in favor of granting a stay in this Action.

V. CONCLUSION

For the foregoing reasons, this Court should stay these proceedings pending resolution by the PTAB of the '340 IPR, '692 IPR, and '01264 IPR/Motion for Joinder, each of which challenge all the Asserted Claims.

Respectfully submitted:

Dated: August 9, 2024

/s/ Jacob Busch/

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CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2024, I electronically filed the foregoing Motion for Stay in view *Inter Partes* Review Petitions with the Clerk of the Court using the CM/ECF system.

/s/ Jacob Busch/

Jacob M. Busch