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

SK NEXILIS CO., LTD.,

Plaintiff,

v.

SOLUS ADVANCED MATERIALS CO., LTD., VOLTA ENERGY SOLUTIONS S.A.R.L., VOLTA ENERGY SOLUTIONS EUROPE KFT., VOLTA ENERGY SOLUTIONS HUNGARY KFT., AND VOLTA ENERGY SOLUTIONS CANADA INC.,

Defendants.

Civil Action No. 2:23-cv-00539-JRG-RSP

JURY TRIAL DEMANDED

PLAINTIFF SK NEXILIS CO., LTD.'S SUR-REPLY IN OPPOSITION TO DEFENDANTS' MOTION TO STAY PENDING *INTER PARTES* REVIEW

TABLE OF CONTENTS

Page

I. INTRODUCTION 1
II. ARGUMENT 1
A. A Stay Will Not Simplify The Issues 1
B. A Stay Will Unduly Prejudice SKn 2
C. The Stage Of The Case Does Not Favor A Stay 3
III. CONCLUSION 3

TABLE OF AUTHORITIES

Page

Cases

3rd Eye Surveillance, LLC v. City of Frisco,
No. 6:14-CV-533-JDL, 2015 WL 179101 (E.D. Tex. Jan. 14, 2015) 2

Arbor Global Strategies LLC v. Samsung Elecs. Co.,
2:19-CV-0333-JRG-RSP, Dkt. 46 (E.D. Tex. June 29, 2020) 2

Arbor Global Strategies LLC v. Samsung Elecs. Co.,
2:19-CV-0333-JRG-RSP, Dkt. 52 (E.D. Tex. Aug. 10, 2020) 2

Chart Trading Dev., LLC v. Tradestation Grp., Inc.,
No. 6:15-CV-1136-JDL, 2016 WL 1246579, at *4 (E.D. Tex. Mar. 29, 2016) 1

Clear Imaging Rsch., LLC v. Samsung Elecs. Co.,
No. 2:19-CV-00326-JRG, 2020 WL 13886381 (E.D. Tex. Dec. 21, 2020) 2

Force Mos Tech., Co. v. ASUSTek Computer, Inc.,
No. 2:22-CV-00460-JRG, 2024 WL 1586266 (E.D. Tex. Apr. 11, 2024) 1, 2

I. INTRODUCTION

Defendants' Reply (Dkt. 65) makes clear there is no legitimate reason to stay this case pending IPR. Defendants cannot outrun this Court's "consistent practice [to] deny[] motions to stay when the PTAB has yet to institute post-grant proceedings." *Force Mos. Tech., Co. v. ASUSTek Computer, Inc.*, No. 2:22-CV-00460-JRG, 2024 WL 1586266, at *1 (E.D. Tex. Apr. 11, 2024) (quoting *Nanoco Techs. Ltd. v. Samsung Elecs. Co.*, No. 2:20-CV-00038-JRG, 2021 WL 3027335, at *1 (E.D. Tex. Jan. 8, 2021)). Confronted with this inconvenient reality, Defendants rely on inapposite case law and arguments that this Court has rejected previously. Unsurprisingly, Defendants have not shown any of the three factors favors a stay. Nor have they met SKn's challenge to identify a single case within this district granting a pre-institution motion to stay pending IPR. Dkt. 64 at 1, 3. The Court should deny their Motion to Stay.

II. ARGUMENT

A. A Stay Will Not Simplify The Issues

As an initial matter, Defendants' belated citation to a CBM case is irrelevant. *See* Dkt. 65 at 1. That legal test is not the test the Court must conduct here. *See Chart Trading Dev., LLC v. Tradestation Grp., Inc.*, No. 6:15-CV-1136-JDL, 2016 WL 1246579, at *4 (E.D. Tex. Mar. 29, 2016) (explaining that motions to stay pending CBM review are evaluated using a four-factor test that district courts have interpreted as "eas[ing]" the movant's burden compared to the "traditional [three-factor IPR] test"). Defendants' next argument, that this Court "has credited defendants for having promptly moved to stay when ruling on a post-institution motion," is a point in *SKn's* favor. *See* Dkt. 65 at 1 (citing *Arbor Global Strategies LLC v. Samsung Elecs. Co.*, No. 2:19-CV-0333-JRG-RSP, Dkt. 175 (E.D. Tex. Jan. 7, 2021)). After all, there would be no need to credit such promptness in the post-institution context if the pre-institution motion to stay was granted in the

first instance. *See Arbor Global Strategies LLC*, 2:19-CV-0333-JRG-RSP, Dkt. 46 (E.D. Tex. June 29, 2020) (pre-institution motion to stay pending IPR) & Dkt. 56 (E.D. Tex. Aug. 10, 2020) (denying the motion because the Eastern District of Texas's "universal practice" is to deny pre-institution motions to stay pending IPR (citation omitted)).

Defendants' remaining arguments boil down to the proposition that resolution of the IPR petitions, regardless of outcome, could simplify the issues or eliminate this case. Dkt. 65 at 1–2. But Defendants ignore the ample case law in SKn's opposition explaining that courts in this district have considered and rejected these arguments repeatedly. *See* Dkt. 64 at 2–5. Indeed, as SKn highlighted, this Court recently observed that a motion to stay's pre-institution posture is "reason alone" to deny it. *Id.* at 4 (quoting *Force Mos Tech.*, 2024 WL 1586266, at *4). As Defendants offer no reason for the Court to deviate from this considered stance, the Court should find that the simplification factor strongly disfavors a stay.

B. A Stay Will Unduly Prejudice SKn

Defendants' two responsive arguments are unavailing. First, Defendants are incorrect that SKn has identified no specific prejudice beyond "generic concerns." Dkt. 65 at 2. As SKn argued in its opposition, SKn and Defendants compete to supply battery copper foils for use in electric vehicle batteries. Dkt. 64 at 6. That the parties are competitors is a case-specific fact that amplifies the prejudice of delay and therefore weighs against a stay more strongly. *See, e.g., 3rd Eye Surveillance, LLC v. Stealth Monitoring, Inc.*, No. 6:14-CV-162-JDL, 2015 WL 179000, at *2 (E.D. Tex. Jan. 14, 2015) ("The delay caused by a stay is especially burdensome where, like here, the parties are competitors in the marketplace."). Second, Defendants' concluding argument—that the public has a strong interest in conserving judicial resources, Dkt. 65 at 3—is both newly introduced and irrelevant to the prejudice inquiry. *See Clear Imaging Rsch., LLC v. Samsung*

Elecs. Co., No. 2:19-CV-00326-JRG, 2020 WL 13886381, at *1 (E.D. Tex. Dec. 21, 2020) ("[T]he present factor in the stay analysis looks to 'whether a stay will unduly prejudice or present a clear tactical disadvantage *to the nonmoving party*.'" (quoting *Tessera Adv. Techs., Inc. v. Samsung Elecs. Co.*, No. 2:17-CV-671, 2018 WL 3472700, at *1 (E.D. Tex. July 19, 2018)). The Court should find the prejudice factor strongly disfavors a stay.

C. The Stage Of The Case Does Not Favor A Stay

Defendants' characterize SKn's chronology of the case as "inflat[ion] [of] the parties' progress." Dkt. 65 at 3. SKn's transparency is not inflation. SKn has identified the progress the parties have made accurately. Dkt. 64 at 7. Defendants do not dispute SKn's account. Instead, they respond with a list of future case milestones. Dkt. 65 at 3; *see also* Dkt. 63 at 5–6. But in their attempts to characterize SKn as unreasonable, Defendants miss the crux of SKn's argument. Even if considerable work on this case is yet to come, considerable work already has occurred, which distinguishes this case from Defendants' cited authority, in which the court had not even set a schedule and the parties had not exchanged any discovery. *See* Dkt. 64 at 8 (citing Dkt. 63 at 5–6). Here, the stage of the case factor favors SKn or is neutral—and in either case, does not support a stay.

III. CONCLUSION

For the reasons above and in SKn's opposition briefing, Defendants' Motion to Stay should be denied.

Dated: November 21, 2024

/s/ Brianne M. Straka (with permission)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via e-mail on November 21, 2024.

Dated: November 21, 2024

/s/ Harrison B. Rose
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