

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

THE LITEBOOK COMPANY, LTD.,

Plaintiff,

v.

No. 4:22-cv-0615-P

**BOMBARDIER AEROSPACE CORPORATION
ET AL.,**

Defendants.

ORDER

Before the Court is Defendants' Motion to Stay Pending *Inter Partes* Review of the Asserted Patent ("Motion"). ECF No. 36.

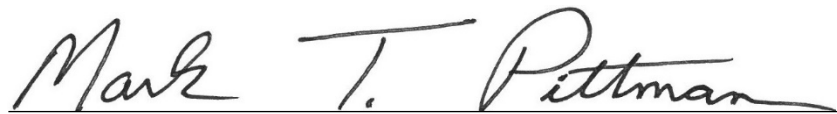
Courts have the inherent power to stay proceedings pending *inter partes* review. See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426–27 (Fed. Cir. 1988). "The moving party bears the burden of showing that a stay is appropriate and such showing must be based on more than the mere fact that a petition for *inter partes* review was filed." *CANVS Corp. v. United States*, 118 Fed. Cl. 587, 591–92 (2014) (cleaned up). To determine whether the moving party has met this burden, courts consider three factors: "1) whether a stay will unduly prejudice or present clear tactical disadvantage to the nonmoving party, 2) whether a stay will simplify the issues in question and the trial of the case, and 3) whether discovery is complete and whether a trial date has been set." *Blephex LLC v. Pain Point Med. Sys. Inc.*, No. 3:16-CV-0410-N, 2016 WL 7839343, at *1 (N.D. Tex. Nov. 3, 2016).

A court cannot, however, meaningfully address whether these factors warrant a stay pending *inter partes* review if the Patent Trial and Appeal Board ("PTAB") has yet to grant such review and is not guaranteed. See *Freeny v. Apple Inc.*, No. 2:13-CV-00361-WCB, 2014 WL 3611948, at *1–3 (E.D. Tex. July 22, 2014). To hold otherwise would require courts to speculate on whether the PTAB will accept review. *Id.* As a result, "the majority of courts that have addressed the issue have

postponed ruling on stay requests or have denied stay requests when the PTAB has not yet acted on the petition for review.” *Freeny*, 2014 WL 3611948, at *1.

Here, Defendants have filed a petition for *inter partes* review, but the PTAB has yet to initiate such review. The Court thus **DENIES** the Motion without prejudice with leave to refile the Motion if and when the PTAB grants the petition for *inter partes* review.

SO ORDERED on this **3rd day of January 2023**.

A handwritten signature in black ink that reads "Mark T. Pittman". The signature is fluid and cursive, with a horizontal line drawn underneath the name.

Mark T. Pittman

UNITED STATES DISTRICT JUDGE