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

PORTSMOUTH NETWORK CORPORATION, *Plaintiff*, v. CISCO SYSTEMS, INC., *Defendant*.	§ § § § § § § § § §	CIVIL ACTION NO. 2:23-CV-00441-JRG

ORDER

Before the Court is Defendant's Motion for a Stay Pending *Inter Partes* Review Proceedings on All Four Asserted Patents (the "Motion") filed by Defendant Cisco Systems, Inc. ("Cisco" or "Defendant"). (Dkt. No. 76.) In the Motion, Defendant "moves to stay this litigation until the Patent Trial and Appeal Board ('PTAB') concludes its *inter partes* review ('IPR') of four petitions filed by Cisco on every asserted claim of the Patents-in-Suit asserted by Plaintiff Portsmouth Network Corp. ('Portsmouth' [or 'Plaintiff'])." (*Id*. at 1.)

Plaintiff has asserted four patents against Defendant: U.S. Patent Nos. 6,917,986; 7,035,279; 8,014,394; and 8,199,637 (collectively, the "Asserted Patents"). (Dkt. No. 57 ¶ 1.) Defendant has filed IPR petitions challenging the patentability of all asserted claims of all Asserted Patents. (Dkt. No. 76 at 1.) The PTAB has instituted IPR against three of the Asserted Patents, and Defendant expects the PTAB to issue an institution decision on the petition challenging the fourth Asserted Patent by December 16, 2024. (*Id*. at 1 n.1.)

District courts have the inherent power to control their own docket, including the power to stay proceedings. *Clinton v. Jones*, 520 U.S. 681, 706 (1997). How to best manage a 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).

"District courts typically consider three factors when determining whether to grant a stay pending *inter partes* review of a patent in suit: (1) whether the stay will unduly prejudice the nonmoving party, (2) whether the proceedings before the court have reached an advanced stage, including whether discovery is complete and a trial date has been set, and (3) whether the stay will likely result in simplifying the case before the court." *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-cv-1058-WCB, 2015 WL 1069111, at *2 (E.D. Tex. Mar. 11, 2015) (Bryson, J.). "Based on th[ese] factors, courts determine whether the benefits of a stay outweigh the inherent costs of postponing resolution of the litigation." *Id.*

Where a motion to stay is filed before the PTAB institutes a proceeding, courts often withhold a ruling pending action on the petition by the PTAB or deny the motion without prejudice to refiling in the event that the PTAB institutes a proceeding. *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1316 (Fed. Cir. 2014) (citing *Checkfree Corp. v. Metavante Corp.*, No. 12-cv-15, 2014 WL 466023, at *1 (M.D. Fla. Jan. 17, 2014)); *see also NFC Techs.*, 2015 WL 1069111, at *6. Indeed, this Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings. *Trover Group, Inc. v. Dedicated Micros USA*, No. 2:13-cv-1047-WCB, 2015 WL 1069179, at *6 (E.D. Tex. Mar. 11, 2015) (Bryson, J.) ("This Court's survey of cases from the Eastern District of Texas shows that when the PTAB has not yet acted on a petition for *inter partes* review, the courts have uniformly denied motions for a stay.").

Considering these circumstances, the Court concludes that the Motion is premature, and a stay of these proceedings in advance of the PTAB's last institution decision should be denied. Accordingly, the Motion is **DENIED WITHOUT PREJUDICE** to refiling of the same, which

shall be permitted within fourteen (14) days following the PTAB's institution decision regarding the last of the Asserted Patents.

So Ordered this

Oct 21, 2024

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE