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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

INARI MEDICAL, INC., Plaintiff, v. IMPERATIVE CARE, INC., Defendant.	Civil Action No. 5:24-cv-03117-EKL-SVKx **IMPERATIVE CARE, INC.'S NOTICE OF MOTION AND MOTION TO STAY PENDING *INTER PARTES* REVIEW** Hearing Date: July 16, 2025 Time: 10:00 a.m. Courtroom: 7 Hon. Eumi K. Lee

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PLEASE TAKE NOTICE, on July 16, 2025 at 10:00 a.m., in the Courtroom of the Honorable Eumi K. Lee, Courtroom 7, 4th Floor, 280 South First Street, San Jose, CA 95113, Imperative Care, Inc. ("Imperative Care") will move to stay the above-captioned matter.

By this motion, Imperative Care moves to stay this case, except for the pending Motion for Preliminary Injunction ("PI Motion"), while the U.S. Patent & Trademark Office ("PTO") determines the validity of over 150 patent claims asserted by Inari Medical, Inc. ("Stryker/Inari"). A proposed order is also being lodged for the Court's consideration. The parties conducted a Local Rule 7-2 conference on April 1, 2025.

I. INTRODUCTION

Congress created IPRs to provide a cost-effective, streamlined process for the PTO to reconsider and cancel invalid patent claims, and as an alternative to resource-intensive district court litigation. Imperative Care has already filed five petitions for *inter partes* review ("IPR") at the PTO challenging Stryker/Inari's asserted patents, will file three more petitions before this Motion is heard, and expects to file an additional three petitions on patents recently added to this case shortly thereafter. The PTO has already instituted one of Imperative Care's petitions, which caused Stryker/Inari to withdraw the patent from this case.

Courts in this district consider three primary factors in deciding whether to stay a case pending IPR: (1) the stage of discovery and proximity of trial; (2) whether the stay would simplify the issues; and (3) whether the stay would unduly prejudice the nonmoving party. All three factors warrant a stay here. Stryker/Inari recently conceded that "discovery is at an early stage," the claim-construction hearing is several months away, and the Court has not yet set a trial date or deadlines for fact or expert discovery. Moreover, the future case schedule is particularly uncertain here because Stryker/Inari intends to add more patents to the case as they issue from the PTO, which will result in additional case delays.

The IPRs will indisputably simplify the issues. Imperative Care has filed or will file IPRs against all asserted claims. When the PTO institutes those IPRs, Stryker/Inari will likely withdraw the challenged patents from this case entirely—as it has already done with one asserted patent. When the PTO invalidates any of the remaining claims, the scope of the

case will be further narrowed. And, even if some claims survive IPR, this case would be simplified because (a) Imperative Care would be estopped from presenting certain invalidity arguments, and (b) Stryker/Inari's arguments in the IPR and any claim-construction issues addressed by the PTO would aid this Court in performing its own claim-construction analysis.

Finally, a stay would not cause undue prejudice to Stryker/Inari. Stryker/Inari cannot show it would be prejudiced by having to wait for legal or equitable relief. Regarding monetary relief, Stryker/Inari has unlimited resources following its acquisition by Stryker, one of the world's largest medical device companies, so it cannot claim any economic hardship. Plus, prejudgment interest can compensate Stryker/Inari for any delayed recovery. Regarding equitable relief, Imperative Care proposes the Court decide the pending PI Motion before issuing a stay so Stryker/Inari will have an opportunity for equitable relief. Imperative Care welcomes the upcoming hearing so it can clear the unfair cloud Stryker/Inari has cast over its business. Presumably, Stryker/Inari selected its three best patent claims to assert in that motion. Thus, a denial of the PI Motion would confirm that Stryker/Inari is unlikely to prevail on the merits and/or could not show irreparable harm or hardships for an injunction. Conversely, in the unlikely event the Court were to grant the PI, Stryker/Inari would probably welcome a stay because Symphony Thrombectomy System ("Symphony") would be off the market, satisfying its primary goal for filing suit.

Courts in this district routinely stay patent cases pending IPRs on the asserted patents. And they do so without waiting for the PTO's institution decision. Accordingly, the Court should stay this case during the pendency of the IPR proceedings concerning all the patents which Stryker/Inari may assert against the sale of Symphony.

II. FACTUAL BACKGROUND

A. Stryker/Inari Asserts a Growing Number of Patents Against Imperative Care

On May 22, 2024, Stryker/Inari filed its initial Complaint, which accused Imperative Care's manufacture and sale of Symphony of infringing eight patents, including U.S. Patent No. 11,697,011 ("the '011 Patent"). Dkt. 1. On July 9, 2024, Stryker/Inari filed a First Amended Complaint, which added a ninth patent to the lawsuit. Dkt. 20.

On July 24, 2024, Stryker/Inari filed its PI Motion to enjoin the sale of Symphony, asserting three claims from two of the eight patents. Dkt. 24.

On February 7, 2025—the deadline to amend the pleadings (Dkt. 54)—Stryker/Inari filed a Second Amended Complaint, withdrawing the '011 Patent (shortly after the PTO instituted an IPR on that patent) and adding two new patents. Dkt. 68. Stryker/Inari also served supplemental infringement contentions, which identified 181 asserted claims from the ten patents asserted in the Second Amended Complaint. Ex. 1.

On March 5, 2025, Stryker/Inari filed a Motion for Leave to File a Third Amended Complaint ("Motion to Amend"). Dkt. 88. That Motion, pending for hearing on May 28, seeks to add an eleventh patent to this case. *Id.* Imperative Care conditionally opposed that motion, requesting that the Court vacate the schedule to allow Stryker/Inari to obtain and assert all its patents against Symphony. Dkt. 98. Also on March 5, 2025, Stryker/Inari served more supplemental infringement contentions, which identified 21 asserted claims from this eleventh patent. Ex. 2. Stryker/Inari has presently identified 202 asserted claims from these eleven patents in an apparent attempt to overwhelm its early-stage competitor.

Stryker/Inari has threatened to add even more patents and claims to this litigation. On February 18, 2025, Stryker/Inari sent a letter to Imperative Care identifying an additional five patents and 82 patent claims to "consider … before attempting to commercialize any blood return system" for use with the Symphony system. Ex. 3. On March 14, 2025, Stryker/Inari moved to compel the production of information about an unaccused blood-return device developed by Imperative Care that has never been commercialized and has not yet received FDA approval. In its motion Inari even admitted that it was seeking the discovery to develop new infringement claims to assert in this case. Dkt. 94. Then, in correspondence concerning its Motion to Amend, Stryker/Inari again confirmed its intent to continue to expand this case by asserting new patents. Ex. 4.

B. <u>Imperative Care Continues to File IPR Petitions on the Asserted Patents</u>

An IPR is a proceeding for challenging the validity of an issued patent at the PTO. 35 U.S.C. §§ 311-319. To initiate an IPR, a party files a petition requesting that the PTO cancel

one or more claims of the patent under 35 U.S.C. § 102 (lack of novelty) or 35 U.S.C. § 103 (obviousness) based on prior-art patents and printed publications. 35 U.S.C. § 311(b). The filing fee for each IPR is $51,875. 37 C.F.R. § 42.15(a)(1)-(2).

On July 8, 2024, Imperative Care filed its first IPR petition against the '011 patent. Dkt. 24-35. Imperative Care argued that the claims of the '011 patent were invalid because they did not describe a new and nonobvious invention in view of prior art references that the PTO did not consider when it allowed that patent. *Id.* at 1-6. Imperative Care has since filed IPR petitions challenging four other Stryker/Inari patents asserted in this case. Stowell Decl., ¶ 2. Imperative Care is also preparing IPR petitions for the remaining asserted patents and expects to file several of those petitions before the hearing on this Motion. *Id.*, ¶ 3. For the remaining more recently issued patents, Imperative Care must wait to file its petitions until nine months after the patent issuance date. *See* 35 U.S.C. § 311(c)(1).

On January 23, 2025, the PTAB instituted the '011 Patent IPR, finding Imperative Care was likely to show invalidity. Ex. 5. On February 7, the PTAB declined to institute IPR of the '691 Patent for reasons unrelated to any of the other asserted patents. Ex. 6; Dkt. 89 at 8-9. That day, Stryker/Inari withdrew the '011 Patent from this litigation, showing how IPRs can simplify this case. Since then, the Court has allowed the parties to submit supplemental briefs over the relevance to the PI Motion of those two institution decisions and Stryker Corporation's ("Stryker") recent acquisition of Inari. Dkt. 89; Dkt. 97. This Court will hear argument on both the PI Motion and the Motion to Amend on May 28, 2025.

By statute, the PTAB must issue its final written decision on the '011 Patent IPR by January 2026. 35 U.S.C. § 316(a)(11). Because the PTAB must decide whether to institute an IPR within about six months of filing, its institution decisions on its pending IPR petitions will issue between May and September 2025.

III. LEGAL STANDARD

Congress established IPRs to provide "a more efficient system for challenging patents that should not have issued" and to reduce "unwarranted litigation costs." H.R. Rep. No. 112-98, at 39-40 (2011). The Federal Circuit's affirmance of a PTAB decision canceling a

patent "has an immediate issue-preclusive effect on any pending or co-pending actions involving the patent," *XY, LLC v. Trans Ova Genetics, L.C.*, 890 F.3d 1282, 1294 (Fed. Cir. 2018), and the Federal Circuit will vacate a district court's judgment in the patentee's favor once it affirms an IPR decision invalidating a patent, *Soverain Software LLC v. Victoria's Secret Direct Brand Mgmt., LLC*, 778 F.3d 1311, 1313, 1320 (Fed. Cir. 2015).

District courts have inherent power to stay a patent case in view of a co-pending IPR. *Murata Mach. USA v. Daifuku Co.*, 830 F.3d 1357, 1361 (Fed. Cir. 2016). There is "a liberal policy in favor of granting motions to stay" in view of pending PTO proceedings. *Finjan, Inc. v. Symantec Corp.*, 139 F. Supp. 3d 1032, 1035 (N.D. Cal 2015) (internal quotes and citation omitted). Courts in this district routinely stay patent cases where the PTAB has instituted IPR on one or more asserted patents, or even where institution of the IPRs is still pending. *See, e.g., Google LLC v. EcoFactor, Inc.*, No. 21-cv-03220-HSG, 2022 WL 6837715 (N.D. Cal. Oct. 11, 2022) (IPRs instituted for three of four asserted patents); *IXI Mobile (R & D) Ltd. v. Samsung Elecs. Co Ltd*, No. 15-CV-03752-HSG, 2015 WL 7015415 (N.D. Cal. Nov. 12, 2015) (three pending IPRs petitions); *Speir Techs. Ltd. v. Apple, Inc.*, No. 5:23-CV-00095-EJD, 2023 WL 2714931 (N.D. Cal. Mar. 30, 2023) (similar).

Three factors guide the stay inquiry: "(1) whether discovery is complete and a trial date has been set; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether a stay would unduly prejudice or present a clear tactical disadvantage to the nonmoving party." *PersonalWeb Techs., LLC v. Apple Inc.*, 69 F. Supp. 3d 1022, 1025 (N.D. Cal. 2014). Courts can also consider other factors in assessing a stay. *See Murata*, 830 F.3d at 1362 ("Attendant to the district court's inherent power to stay proceedings is the court's discretionary prerogative to balance considerations beyond those captured by the three-factor stay test."). All factors favor granting a stay in this case.

IV. ARGUMENT

A. This Case Is In Its Early Stages

In analyzing the first stay factor, "the proper time to measure the stage of litigation" is "the date of the filing of the motion to stay." *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759

F.3d 1307, 1316 (2014). "Issues for consideration include whether the parties have engaged in costly expert discovery and dispositive motion practice, whether the parties have fully briefed the issue of claim construction, attended a *Markman* hearing and received a claim construction order, and whether a court has set a trial date." *HD Silicon Solutions LLC v. Microchip Tech. Inc.*, No. 21-cv-08295-SK, 2022 WL 3084315 *2 (N.D. Cal. Aug. 3, 2022). Grant of a "stay is particularly appropriate for cases in the initial stages of litigation or in which there has been little discovery." *Finjan, Inc. v. Symantec Corp.*, 139 F. Supp. 3d 1032, 1035 (N.D. Cal. 2015).

Here, the parties agree that "discovery is at an early stage …." Dkt. 88 at 2. Outside of limited discovery as part of the PI Motion, the parties have not engaged in any costly expert discovery or filed dispositive motions. The parties have also not briefed the issue of claim construction and are not due to file their Joint Claim Construction & Prehearing Statement until April 28, 2025. Nor are they scheduled to participate in the claim-construction hearing until July 24, 2024. Dkt. 54. Finally, the Court has not set a trial date or dates for the close of fact or expert discovery. *Id.*

Moreover, Stryker/Inari is still amending the pleadings to assert additional patents. For example, on February 7, 2025, Stryker/Inari filed a Second Amended Complaint, which asserted two additional patents in the case. Dkt. 68. On March 5, 2025, Stryker/Inari sought leave to file a Third Amended Complaint, which would add yet another patent to the case. Dkt. 88. Stryker/Inari has also threatened to continue to add even more patents to this case against a pre-commercial, developmental-stage blood-return device it believes could be used with Symphony. Ex. 3; Dkt. 94 at 6. If the Court allows Stryker/Inari to add patents, the parties will be forced to engage in a seemingly never-ending cycle of contentions, claim-construction proceedings, and discovery, which will extend the case schedule significantly. Accordingly, the first factor weighs heavily in favor of a stay because the parties agree the case is in its early stages.

B. <u>A Stay Will Simplify This Case</u>

"Staying the case pending the outcome of IPR could simplify the case by rendering

some or all of [Stryker/Inari's] infringement claims moot, estopping [Imperative Care] from asserting any arguments they raised or reasonably could have raised in the IPR[s], and providing the Court with [the] PTAB's expert opinion on the claims at issue." *IXI Mobile*, 2015 WL 7015415 at *3. Thus, this factor also favors a stay.

Imperative Care has already sought IPR of all the asserted claims of five of Stryker/Inari's asserted patents. Although the PTAB declined to institute IPR of the '691 Patent (while instituting on the '011 Patent), it has not yet issued institution decisions for the other three pending IPR petitions. Stowell Decl., ¶ 2. Courts in this district grant stays under similar circumstances. *See, e.g.*, *EcoFactor*, 2022 WL 6837715 at *2 (granting stay despite PTAB declining to institute IPR on one of several asserted patents).

Moreover, because they appear to be invalid in view of the prior art, Imperative Care intends to file IPR petitions challenging all the asserted claims for each of the remaining asserted patents. Stowell Decl., ¶ 3. If the PTAB institutes any of those IPRs and invalidates the asserted claims, it would significantly simplify the issues. *See Speir Techs.*, 2023 WL 2714931 at *2 ("even a single PTAB decision has the potential to streamline the case significantly"); *see also EcoFactor*, 2022 WL 6837715 at *2) (granting stay where "53 of 70 claims" were "subject to potential invalidation" at PTAB). Under these circumstances, a stay "effectuates the intent of the AIA by allowing the agency with expertise to have the first crack at cancelling any claims that should not have issued in the patents-in-suit before costly litigation continues." *Software Rts. Archive, LLC v. Facebook, Inc.*, No. C-12-3970 RMW, 2013 WL 5225522, *6 (N.D. Cal. Sept. 17, 2013).

The PTAB has already instituted IPR of the '011 Patent, which Stryker/Inari admits caused it to withdraw the '011 Patent from this lawsuit. *See* Dkt. 97 at 2, n.1. Four asserted patents share a virtually identical specification with the '011 Patent, include many of the same claim limitations, and are invalid based on the same prior art. For example, nine of Stryker/Inari's asserted patents use the term "filament," which is currently in dispute in the '011 Patent IPR. Ex. 5. Thus, many of the issues the PTAB considered in its institution decision—and will resolve in a final written decision—are common among these patents.

Accordingly, Imperative Care expects the PTAB will institute IPRs against each of these related patents. If Stryker/Inari withdraws any of those patents after the PTAB issues its institution decision—as it did with the '011 Patent—no reason justifies wasting precious judicial resources and Imperative Care's limited resources litigating those patents now.

Alternatively, "[e]ven if all the asserted claims survive [IPR], the case could still be simplified because [Imperative Care] would be bound by the estoppel provisions … and thus could not raise before this Court any arguments it raised, or reasonably could have raised, at the PTO in its petitions." *Neodron, Ltd. v. Lenovo Group, Ltd.*, No. 19-cv-05644-SI, 2020 WL 5074308 *2 (N.D. Cal., Aug. 27, 2020). Such an outcome "would assist in streamlining the presentation of evidence and benefit the trier of fact by providing the expert opinion of the PTO." *PersonalWeb Techs.*, 2014 WL 116340 at *4. This "heavily tips the scale in favor of granting the stay." *Software Rts. Archive*, 2013 WL 5225522 at *4.

C. <u>A Stay Will Not Unduly Prejudice or Tactically Disadvantage Stryker/Inari</u>

Courts "address four considerations when evaluating undue prejudice: (1) the timing of the IPR petition; (2) the timing of the stay request; (3) the status of review; and (4) the relationship of the parties." *Apple Inc. v. AliveCor, Inc.*, No. 22-cv-07608-HSG, 2023 WL 9187388 *3 (N.D. Cal. Dec. 29, 2023). Courts in this district "have repeatedly found no undue prejudice unless the patentee makes a specific showing of prejudice beyond the delay necessarily inherent in any stay." *PersonalWeb Techs.*, 69 F. Supp. 3d at 1029 (collecting cases). Stryker/Inari cannot make such a showing.

First, Stryker/Inari cannot assert any undue prejudice based on the timing of Imperative Care's IPR petitions. Congress granted defendants the right to file an IPR petition within a year of being served with a patent infringement complaint. 35 U.S.C. § 315(b). Imperative Care has acted diligently to file IPR petitions against Stryker/Inari's asserted patents within the statutory window. Imperative Care's timely exercise of its statutory right does not suggest any dilatory motive. *See IXI Mobile*, 2015 WL 7015415 at *4. Further, Imperative Care is required by statute to wait until at least nine months after the issue date of an asserted patent to file an IPR. 35 U.S.C. § 311(c)(1). Stryker/Inari has repeatedly

amended its complaint to add newly issued patents, which has restricted when Imperative Care can file its IPR petitions. For example, Imperative Care cannot file an IPR on the recently added '669 Patent until September 2025.

Second, Stryker/Inari cannot assert any undue prejudice or surprise based on the timing of this motion. During the Court's initial case management conference, Imperative Care notified the Court that it would seek a stay once the PTAB started issuing institution decisions. Ex. 7 at 31:1-3. The Court responded that it was "very clear" to the Court already. *Id.* at 31:4. Under these circumstances, Stryker/Inari can claim no prejudice or surprise. *See Delphix Corp. v. Actifio, Inc.*, No. 13–cv–04613–BLF, 2014 WL 6068407 *3 (N.D. Cal. Nov. 13, 2014) (finding potential prejudice not significant where stay would allow more orderly claim construction if new patents were added to suit).

Third, the PTAB has already instituted one IPR, and did so on grounds that suggest other IPRs will also be instituted. The next institution decisions are due between May and September 2025.

Finally, the relationship between the parties is not a source of undue prejudice. Even where the parties are direct competitors, the question of "whether the patentee will be unduly prejudiced by a stay in the district court proceedings …, like the irreparable harm-type inquiry, focuses on the patentee's need for an expeditious resolution of its claim." *VirtualAgility*, 759 F.3d at 1318. Presumably, Stryker/Inari presented its best case for expeditious resolution of its claims in its PI Motion. Yet, Stryker/Inari's evidence is woefully deficient and cannot support a finding of undue prejudice that might weigh against a stay.

Stryker/Inari argued that Imperative Care's sale of the Symphony will irreparably harm Stryker/Inari's market position. Dkt. 24 at 30-33. Yet, Stryker/Inari has presented no evidence on the PI Motion that Imperative Care is causing it irreparable harm. The sales of the accused Symphony remain minimal, especially when compared to Stryker/Inari and other larger competitors, such as Penumbra. The overwhelming evidence indicates that Penumbra, and not Imperative Care, is taking sales from Stryker/Inari. Dkt. 34-5 at 30-31. Stryker/Inari's further speculation that Imperative Care's future sales of Symphony to treat

pulmonary embolisms ("PE") may cause irreparable harm is, at best, premature because the FDA has not even cleared Symphony for treating PE. *Id.* at 1. Thus, Stryker/Inari has not shown it is entitled to expedited equitable relief.

Similarly, Stryker/Inari has not shown a need for expedited monetary relief. Stryker/Inari has unlimited resources following its acquisition by Stryker, a company with annual sales exceeding $20 billion. *See* Dkt. 89 at 9. As part of this international conglomerate, Stryker/Inari can no longer claim the types of irreparable harm that might result from Imperative Care's relatively minor sales of Symphony. *Id.* at 9-10.

D. <u>Imperative Care Would Be Unfairly Prejudiced Without A Stay</u>

In addition to the three common factors, this Court should exercise its discretion to consider the harm to Imperative Care without a stay. *See Murata*, 830 F.3d at 1362. Stryker/Inari is determined to expand the scope of this case indefinitely, thereby forcing the parties to re-engage in discovery and re-litigate claim construction every time the PTO issues a new Stryker/Inari patent. Dkt. 98 at 1-2. Simultaneously, Stryker/Inari has shown a tendency to drop patents once the PTO institutes an IPR. Thus, the Imperative Care will be forced to repeat case activities as new patents are added and waste resources litigating patents that will never reach trial. In addition, the large number of patents has caused Imperative Care to incur significant attorney's fees and filing fees to prepare and file its IPR petitions. Further, as Imperative Care explained in its opposition to the Motion to Amend, Stryker/Inari's strategy of serially asserting patents as they issue from the PTO prejudices Imperative Care because it impairs this Court's ability to finally determine if Imperative Care can sell Symphony. *Id.* For that reason, Imperative Care urged the Court to vacate the case schedule to allow Stryker/Inari to assert all the patents it wants against Symphony. Granting this motion would also stay discovery and further conserve judicial and party resources.

V. <u>CONCLUSION</u>

For the foregoing reasons, this Court should stay this case until final written decisions issue in all of the IPRs concerning the asserted patents.

Respectfully Submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: April 2, 2025

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