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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

**SOUTHERN DIVISION**

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| POLARIS POWERLED TECHNOLOGIES, LLC,<br><br>Plaintiff,<br><br>v.<br><br>WESTERN DIGITAL CORPORATION, WESTERN DIGITAL TECHNOLOGIES, INC.,<br><br>Defendants. | CASE NO. 24-02864-ODW(MARx)<br><br>**WESTERN DIGITAL'S REPLY IN SUPPORT OF MOTION TO STAY ACTION PENDING *INTER PARTES* REVIEW**<br><br>Date: March 3, 2025<br>Time: 1:30 P.M.<br>Ctrm: 5D |



Polaris EX2011
Sandisk v. Polaris
IPR2025-00516

## I. INTRODUCTION

Nothing in Polaris's Opposition changes the fact that all three factors under *Universal Elecs., Inc. v. Universal Remote Control, Inc.* weigh heavily in favor of a stay pending the resolution of Western Digital's three IPRs. 943 F. Supp. 2d 1028 (C.D. Cal. 2013). First, regardless of their ultimate outcome, Western Digital's IPRs will greatly simplify the issues in this case. Western Digital challenges all Asserted Claims for all three patents-in-suit, and therefore whether successful or not, Western Digital's IPRs will at the very least significantly streamline any future litigation (and may end the underlying litigation altogether). Second, Polaris cannot credibly dispute that this case has barely progressed beyond the pleadings. Discovery has just begun, a claim construction hearing will not take place for six months, and a trial date will not occur for well over a year. Indeed, the scheduling order in this matter was entered only weeks ago. And third, Polaris, a non-practicing entity ("NPE"), fails to articulate any hardship that would be suffered beyond mere delay.

Unable to show that any factor weighs against a stay, Polaris's Opposition relies on several misguided tactics: (1) arguing that this Court, and courts in this District, have a practice of denying pre-institution stays; (2) mischaracterizing opinions from this Court; (3) arguing that co-defendant Western Digital Corporation is not bound by any estoppel resulting from the petitions; (4) moving the goalposts for the well-established three-factor test for stays; and (5) boilerplate accusations of gamesmanship.

As to the first tactic, Polaris is simply incorrect in its characterization that it is somehow the blanket practice of this Court to deny pre-institution stays. In fact, Western Digital confirmed the exact opposite by citing numerous cases from this District—***including from this Court***—staying cases prior to institution where, like here, the litigation is at its early stages. *See* Motion at 5, n.3 (collecting cases). This is particularly true where, like here, the plaintiff is an NPE that will not

possibly be prejudiced due to a stay. *Evolutionary Intelligence, LLC v. Millennial Media, Inc.*, No. 13-cv-04206-EJD, 2014 WL 2738501, at *6 (N.D. Cal. June 11, 2014). Polaris appears to hang its entire position on the fact that the IPRs here have not yet been instituted. However, Polaris notably fails to address the common theme in Western Digital's case law: courts in this District routinely grant pre-institution stays, and this Court has done the same.[1]

As to the second tactic, Polaris calls this case "similar" to cases such as *Farstone*, *Zipshade*, and *MyMedicalRecords*, when the stage of the case, likelihood of simplification, and prejudice here have virtually no similarities with the facts of those cases. Moreover, Polaris omits critical, ***outcome-determinative*** facts from these cases that are not present in this matter. It does all of this with the aim of mischaracterizing this Court's practice as routinely denying stays prior to institution, with Polaris doing so when ***this Court has previously granted stays under similar circumstances***. *See, e.g.*, *Tire Hanger Corp. v. My Car Guy Concierge Services Inc.*, No. 5:14-cv-00549-ODW(MANx), 2015 WL 857888, at *2 (C.D. Cal. Feb. 27, 2015).

As to the third tactic, Polaris's purported concern about estoppel is without merit. Momentarily putting aside the dubious nature of Polaris's position on this issue generally, Western Digital Corporation agrees to be bound by the estoppel effect of the IPRs. This issue manufactured by Polaris is therefore mooted in its entirety from the start.

As to the fourth tactic, Polaris makes a clear attempt to twist and distort the

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[1] Moreover, for five cases cited by Polaris on this issue, Polaris's only basis for calling them "inapposite" is that the Defendants in those cases were bound by statutory estoppel. Since Western Digital Corporation agrees to be bound by statutory estoppel to the same extent as Western Digital Technologies, ***Polaris has no basis to distinguish these cases***. *See e.g.*, *Wonderland Nursery Goods Co. v. Baby Trend, Inc.*, No. EDCV 14-01153-VAP, 2015 WL 1809309 (C.D. Cal. Apr. 20, 2015)

three-factor test for stays into something that it is not. Most notably, Polaris for some reason calculates the probability of ***all three IPRs*** resulting in institution in an apparent attempt to set the invalidation of ***all claims*** as the required bar for a stay. This, quite simply, is not the law. Indeed, Polaris improperly conflates simplification of issues with the complete resolution of all issues, thereby attempting to implement some nonexistent requirement that all claims asserted in this action must be resolved to warrant any stay. Polaris also makes a confusing request for this Court to consider whether a stay will simplify the IPRs, rather than the stay simplifying this case—an approach that turns the applicable three-factor test on its head.

Finally, Polaris's accusation that Western Digital is engaging in gamesmanship is meritless. Western Digital filed its IPRs only a few months after receiving Polaris's infringement contentions—while the parties were engaged in ongoing discussions regarding the adequacy of those contentions. *Sleep No. Corp. v. Sizewise Rentals, LLC*, No. 5:18-cv-00356-AB-SPx, 2019 WL 1091335 (C.D. Cal. Feb. 12, 2019) ("The fact that the parties have had ongoing discussions regarding the adequacy of contentions is informative in this regard and also could alternatively suggest other reasons for the timing of Defendants' IPR petitions."). Western Digital timely filed its IPR petitions and timely moved to stay. Polaris's accusation of gamesmanship is smoke and mirrors and an attempt to distract from the actual legal issue at hand: the application of the three-factor test.

In short, a stay is warranted under the present circumstances, and Polaris's attempt to distort the applicable three-factor test for stays and distract from the issues at hand should be ignored. Western Digital requests that this Court stay this litigation pending resolution of its IPRs.

## II. <u>A STAY SHOULD BE ISSUED</u>

### A. A Stay Will Simplify the Issues Before This Court

The test concerning simplification of issues is straightforward: the question

is whether a stay will *simplify* the issues in question and trial of the case. *Caravan Canopy Int'l, Inc. v. Home Depot U.S.A., Inc.*, No. 19-CV-1072-PSG (ADSx), 2020 WL 5834297, at *1 (C.D. Cal. Aug. 19, 2020) (citations omitted). As detailed in Western Digital's Motion, it is indisputable that Western Digital's IPRs will do so.

With Polaris largely unable to dispute this point, Polaris instead turns to improperly conflating *simplification* of the issues with *resolution* of all issues. But this is not required, and Polaris's unsupported attempt to transform this factor into a heightened standard should be rejected. In particular, Polaris argues a stay should be denied because it is possible that at least some Asserted Claims will survive the PTAB to be litigated in this Court. But again, the question is not whether it is guaranteed that all outstanding issues will be resolved by Western Digital's IPRs. As Western Digital detailed in its Motion, the question is instead whether issues will be simplified. And here, particularly given that Western Digital has filed IPRs on all Asserted Claims of all three patents-in-suit, Western Digital's IPRs will undeniably simplify issues before the Court. Indeed, Polaris does not deny that at least some claims (if not all) may be resolved entirely thereby avoiding the unnecessary waste of judicial resources. *See Core Optical Techs., LLC v. Fujitsu Network Commc'ns, Inc.*, 2016 WL 7507760, at *2 (C.D. Cal. Sept. 12, 2016) ("If the PTAB cancels or narrows a portion of the asserted claims, the scope of this litigation may be significantly reduced.").

Polaris relies heavily on the argument that issues will not be simplified because Western Digital Corporation is not a named petitioner and therefore not subject to the estoppel provisions of 35 U.S.C. § 315(e)(2). Putting aside the dubious nature of Polaris's argument from the start, should a stay be granted, Western Digital Corporation agrees to be bound under 35 U.S.C. § 315(e)(2) to the same extent as Western Digital Technologies. Accordingly, to the extent that any

doubt previously existed, this agreement moots Polaris's argument in its entirety.[2] *See Vivint, Inc. v. SkyBell Techs., Inc.*, No. CV 21-9472-GW-GJSX, 2022 WL 18587113, *4 (C.D. Cal. Nov. 9, 2022) (estoppel concerns are alleviated where [defendant] agrees to be bound as if it had filed the IPR petition).[3]

Polaris also makes the boilerplate argument that a stay is not warranted where a simplification of the issues is merely "speculative." However, even in the event that institution is denied for any patent (let alone the unlikely event that it is denied for all three), "the intrinsic record developed by the PTO may inform and expedite claim construction determinations." *One-E-Way, Inc. v. Apple Inc.*, No. 2:20-CV-06339-JAK-GJS, 2021 WL 4932518, at *3 (C.D. Cal. Mar. 16, 2021) (granting a pre-institution stay) (citing *Core Optical*, 2016 WL 7507760, at *2 ("Even if no patent claim is eliminated, the intrinsic record developed during the IPR may inform on issues like claim construction.")). Polaris also raises the potential that Western Digital will raise indefiniteness arguments at claim construction that could not be raised at the PTAB. While the parties have made an initial exchange of terms for construction, there has been no exchange of proposed constructions and therefore it is Polaris's concerns that are speculative here. In any event, the fact that separate arguments might be made in underlying district court proceedings is irrelevant—the question remains solely whether IPR proceedings will simplify issues before the Court.

Polaris also makes the incorrect assertion that it is somehow this Court's blanket practice to deny a stay merely because the IPR petitions have not yet been

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[2] Counsel for Polaris did not raise this issue at all during the parties' required Local Rule 7-3 meet and confer. Had Polaris's counsel done so, this issue would have been addressed without the need for briefing.

[3] In its introduction, Polaris raises that Western Digital has been unwilling to agree to *Sotera* stipulation; although, Polaris fails to fully articulate this argument in the remainder of its brief. Due to the timing of the parallel proceedings, Western Digital was not required enter into a *Sotera* stipulation. Polaris cites to no case supporting that a *Sotera* stipulation would be required to grant a stay.

instituted. Specifically, Polaris compares this case to the *Farstone*, *ZipShade*, and *MyMedicalRecords* cases. But in both *Farstone* and *MyMedicalRecords*, the motions to stay were filed after the *Markman* hearing had already concluded and the claim construction order issued. *Farstone Tech., Inc. v. Apple Inc.*, No. 8:13-cv-157-ODW-JEMX at Dkts. 69, 189; *MyMedicalRecords, Inc. v. Jardogs, LLC*, No. 213CV03560ODWSHX, 2014 WL 12967515 (C.D. Cal. Dec. 16, 2014). Moreover, in *Farstone*, despite the case being relatively far along, this Court actually ***granted-in-part*** the motion and only denied-in-part the portion of the motion concerning a supplemental claim construction/indefiniteness issue still pending before the Court. Finally, in *Zipshade*, the Court denied a motion to stay because the case ***had already been stayed*** pending a first-filed IPR, which was ultimately not instituted, and the Court was reluctant to issue ***a second stay*** based on a second-filed IPR. *ZipShade Indus. (B.V.I.) Corp. v. Lowe's Home Centers, LLC,* No. 2:14-CV-05934-ODW(RZX), 2015 WL 14094882 (C.D. Cal. Sept. 18, 2015). Calling these cases "similar" to the present case is simply incorrect. Contrary to Polaris's argument, it is actually this Court's practice, as well as the practice of the courts in this District generally, to assess whether a stay is appropriate based on a totality of the circumstances. *See e.g.*, *Tire Hanger Corp.*, 2015 WL 857888, at *2.

Although Polaris attempts to argue differently, "courts in this District have adopted the majority position that even if IPR has not yet been instituted, the simplification factor may still weigh in favor of a stay." *See Purecircle USA Inc. v. SweeGen, Inc.*, No. SACV 18-1679 JVS(JDEX), 2019 WL 3220021, *3 (C.D. Cal. June 3, 2019) (Selna, J., presiding) (collecting cases).

Polaris also shifts the goal posts by arguing that the likelihood of all three petitions being instituted is 27.5%. But by its own math, the likelihood that none gets instituted is less than 5% (0.35*0.35*0.35), and again—the relevant inquiry is whether there will be any simplification of issues (not resolution of all). Moreover,

Polaris directly contradicts this argument later in its opposition. Specifically, while now, Polaris appears to demand a requirement for complete resolution of issues, Polaris attempts to distinguish *Mediatek* and *Sleep No. Corp.*, by arguing that the high number of patents in that case meant that there was a greater need for (and, in turn, likelihood of) simplification of issues. But by Polaris's logic, more patents and petitions would make it much less likely that ***all*** IPRs would be instituted (and all issues resolved). Polaris wants to have its cake and eat it too—apparently arguing that Western Digital has too many IPRs for all issues to be resolved, but not enough IPRs for simplification to be needed. Polaris's argument cannot even stand the scrutiny of its own positions.[4]

**B. The Present Stage of this Case Favors a Stay**

Polaris itself admits that the stage of the case is at least a neutral factor, but the reality is that it favors a stay. Polaris attempts to downplay the early stage of this case by noting that some of Western Digital's cited cases were stayed at earlier stages. But Polaris ignores that even more of these cases were stayed at ***later*** stages. *Wonderland Nursery Goods*, 2015 WL 1809309, at *3 (staying after parties submitted their claim construction briefs); *SCA Hygiene Prods. Aktiebolag ("AB") v. Tarzana Enterprises, LLC*, No. 2:17-cv-04395-AB-JPRx, 2017 WL 5952166 (C.D. Cal. Sept. 27, 2017) (staying after the parties had "likely already spent significant time on their claim construction briefs"); *Sleep No. Corp.*, 2019 WL 1091335 (staying after the parties had "already exchanged tens of thousands of documents and many written discovery requests"); *see also In Lund Motion Products, Inc. v. T-Max Hangzhou Tech. Co.*, No. 17-cv-01914-CJC-JPR, 2019 WL 116784, at *2 (C.D. Cal. Jan. 2, 2019) (staying after the parties had already engaged in one round of written discovery); *One-E-Way, Inc. v. Apple Inc.*, No.

[4] In any event, and as explained in Western Digital's Motion, there is a greater than 97% chance that at least one IPR will be instituted, and simplification will result regardless.

2:20-cv-06339-JAK-GJS, 2021 WL 4932518, at *4 (C.D. Cal. Mar. 16, 2021) (noting "even if Defendant had served its invalidity contentions, this factor would still weigh in favor of a stay"); *Weserve Drone, LLC v. SZ DJI Tech. Co.*, No. 2:19-cv-04382-AB-AFMx, 2020 WL 4373365 (C.D. Cal. Mar. 17, 2020) (staying despite the fact that a trial date had been set). If the stage of these cases weighed in favor of a stay, then it certainly does here as well.

Polaris does not dispute that (i) fact discovery has only just begun; (ii) expert discovery has not begun at all; (iii) the claim construction hearing will not take place for another six months; and (iv) a trial will not occur for another year-and-a-half. Indeed, a scheduling order was only issued weeks ago. Polaris's attempt to inflate the stage with the vague assertion that "substantial resources" and "substantial time" have been expended, without any further explanation, fails to rebut these facts. Polaris cites to this Court's decision denying a stay in *MyMedicalRecords*, 2014 WL 12967515, *1, but again , Polaris does not address the fact that *MyMedicalRecords* was significantly further along—the trial date there was only five months away and the discovery cutoff a mere two months. *Id.*

Notably, under comparable procedural postures actually similar to the one here (as well as in more advanced stages as detailed above) courts in this District—including this Court—regularly favored a stay. *See, e.g.*, *Tire Hanger Corp.*, 2015 WL 857888, at *2; *Vivint, Inc. v. Skybell Techs., Inc.*, 2022 WL 18587113, at *2 (C.D. Cal. Nov. 9, 2022) (finding that "more work ahead of the parties and the Court than behind them" even though the parties had already completed "exchanging initial disclosures, serving written discovery, noticing depositions, exchanging final infringement and invalidity contentions, and entering a claim construction order.").

### C. Any Hardship by Polaris is Merely Speculative

Polaris raises a hodgepodge of arguments about purported prejudice from a stay, each of which fail. First, Polaris argues that it would face significant

prejudice with Western Digital Corporation not being a party to the IPR petitions. But as explained, Western Digital Corporation's agreement to be bound to the same extent as Western Digital Technologies moots this argument in its entirety.

Second, relying on this Court's decision in *Farstone Tech., Inc. v. Apple Inc.*, Polaris argues that the Court should proceed with this case through claim construction in the event that it is necessary to determine indefiniteness issues. Case No. 8:13-CV-1537-ODW(JEMX), 2015 WL 14094881, at *1 (C.D. Cal. Sept. 25, 2015) (Wright, J., presiding). As an initial matter, this Court's decision in *Farstone* is distinguishable. There, the stay was granted on all issues except the Court's ruling on a supplemental claim construction issue on indefiniteness. Moreover, claim construction had occurred ***eight months prior*** and the indefiniteness issue was therefore ripe for decision. *Id.*

Third, Polaris's vague and boilerplate arguments about evidence potentially being lost and witnesses' memories fading are similarly meritless. "Speculation that evidence will be lost, without more, is insufficient to demonstrate undue prejudice." *Evolutionary Intelligence*, 2014 WL 2738501, at *6; *see also Limestone Memory Sys. LLC v. Micron Tech.*, Inc., No. 15-cv-0278-DOC, 2016 WL 3598109, at *5 (C.D. Cal. Jan. 12, 2016) ("Because Limestone 'merely points to generalized harm such as the potential loss of evidence and availability of witnesses,' the Court is unconvinced that Limestone will suffer undue prejudice.") (quoting *PersonalWeb Techs., LLC v. Apple, Inc.*, 69 F. Supp. 3d 1022, 1029 (N.D. Cal. 2014)).

Finally, Polaris asserts that the status of the proceedings causes prejudice to Polaris but fails to articulate any specific harm which would occur. Polaris further states that the posture of the parties is dispositive but again does not provide explanation for this statement. Polaris is an NPE that does not manufacture or sell products that embody any of the asserted claims of the Asserted Patents, does not compete in the market, and does not compete with Western Digital. Polaris does

not dispute these facts. In the event any claim survives the IPRs and infringement is demonstrated, a stay would not cause any hardship or prejudice that could not justly compensated through statutory damages. Polaris cannot articulate a specific hardship, and this factor favors a stay as well.

DATED: February 14, 2025

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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Western Digital certifies that this brief contains 3069 words, which complies with the word limit of Judge Wright's Procedure (A)(3).

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