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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

WITHROW NETWORKS, INC.,

Plaintiff,

v.

GOOGLE LLC and YOUTUBE, LLC,

Defendants.

Case No. 5:24-CV-03203-PCP

**DEFENDANTS GOOGLE LLC AND
YOUTUBE LLC'S REPLY IN SUPPORT
OF MOTION TO STAY CASE PENDING
THE RESOLUTION OF PETITION FOR
INTER PARTES REVIEW**

Date: May 1, 2025
Time: 10:00 a.m.
Dept.: 8, 4th Floor
Judge: Hon. P. Casey Pitts

Date Filed: May 28, 2024

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28

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. ARGUMENT	1
A. Defendants acted promptly in seeking a stay of this case, which remains in the early stages of litigation.	1
1. Withrow cannot meaningfully dispute that discovery is in its early stages.	1
2. Courts routinely grant stays in cases at far later stages of litigation than present here.	4
B. A stay is likely to simplify the issues in this case.	5
C. The petition’s timing and the lack of cognizable prejudice to Withrow favor a stay.	8
1. The timing of the petition and motion favors a stay.	8
2. Withrow has not shown any cognizable prejudice from a stay.	9
III. CONCLUSION	11

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>Aavid Thermalloy LLC v. Cooler Master, Ltd.</i> , No. C 17-05363 JSW, 2019 WL 4009166 (N.D. Cal. Aug. 26, 2019).....	8
<i>AbCellera Biologics Inc. v. Berkeley Lights, Inc.</i> , No. 20-CV-08624-LHK, 2021 WL 4499231 (N.D. Cal. Aug. 26, 2021).....	9
<i>Apple Inc. v. AliveCor, Inc.</i> , No. 22-cv-07608-HSG, 2023 WL 9187388 (N.D. Cal. Dec. 29, 2023)	6
<i>Apple Inc. v. Fintiv, Inc.</i> , No. IPR2020-00019, 2020 WL 2126495 (P.T.A.B. Mar. 20, 2020)	6
<i>Asetek Holdings, Inc v. Cooler Master Co.</i> , No. 13-cv-00457-JST, 2014 WL 1350813 (N.D. Cal. Apr. 3, 2014)	8
<i>Audio MPEG, Inc. v. Hewlett-Packard Comp.</i> , No. 2:15cv73, 2015 WL 5567085 (E.D. Va. Sept. 21, 2015).....	8
<i>Barbaro Techs., LLC v. Niantic, Inc.</i> , No. 18-cv-02955-RS, 2019 WL 13232979 (N.D. Cal. Apr. 24, 2019).....	6
<i>Bender v. Maxim Integrated Prods., Inc.</i> , No. C 09-01152 SI, 2010 WL 1135762 (N.D. Cal. Mar. 22, 2010)	10
<i>Columbia Ins. Co. v. Simpson Strong-Tie Co.</i> , 703 F. Supp. 3d 1007 (N.D. Cal. 2023)	5
<i>Columbia Ins. Co. v. Simpson Strong-Tie Co.</i> , No. 5:24-cv-01652-PCP, 2024 WL 4752133 (N.D. Cal. Nov. 12, 2024).....	5
<i>Digital Reg of Tex., LLC v. Adobe Sys. Inc.</i> , No. CV 12-01971-CW (KAW), 2013 WL 633406 (N.D. Cal. Feb. 20, 2013).....	10
<i>Entangled Media, LLC v. Dropbox Inc.</i> , 732 F. Supp. 3d 1120 (N.D. Cal. 2024)	4, 9
<i>Evolutionary Intel. LLC v. Yelp Inc.</i> , No. C-13-03587 DMR, 2013 WL 6672451 (N.D. Cal. Dec. 18, 2013).....	2
<i>Evolutionary Intel., LLC v. Millennial Media, Inc.</i> , No. 5:13-CV-04206-EJD, 2014 WL 2738501 (N.D. Cal. June 11, 2014).....	11
<i>IXI Mobile (R & D) Ltd. v. Samsung Elecs. Co.</i> , No. 15-cv-03752-HSG, 2015 WL 7015415 (N.D. Cal. Nov. 12, 2015).....	6
<i>Karl Storz Endoscopy-Am., Inc. v. Stryker Corp.</i> , No. 14-cv-00876-RS, 2015 WL 13727876 (N.D. Cal. Mar. 30, 2015)	2, 9

1	<i>Largan Precision Co. v. Motorola Mobility LLC.</i> ,	
2	No. 21-cv-09138-JSW, 2022 WL 2954935 (N.D. Cal. July 26, 2022)	4, 5
3	<i>NantWorks, LLC v. Niantic, Inc.</i> ,	
4	No. 20-cv-06262-LB, 2021 WL 3473934 (N.D. Cal. July 15, 2021).....	11
5	<i>Regents of Univ. of Mich. v. Novartis Pharms. Corp.</i> ,	
6	No. 22-cv-04913-AMO, 2023 WL 6795971 (N.D. Cal. Oct. 12, 2023).....	2
7	<i>Sec. First Innovations, LLC v. Google LLC</i> ,	
8	No. 2:23-cv-97, 2024 WL 234720 (E.D. Va. Jan. 22, 2024).....	7
9	<i>Sec. People, Inc. v. Ojmar US, LLC</i> ,	
10	No. 14-cv-04968-HSG, 2015 WL 3453780 (N.D. Cal. May 29, 2015)	3, 9
11	<i>Speir Techs. Ltd. v. Apple, Inc.</i> ,	
12	No. 5:23-cv-00095-EJD, 2023 WL 2714931 (N.D. Cal. Mar. 30, 2023).....	6, 9
13	<i>Symantec Corp. v. Zscaler, Inc.</i> ,	
14	No. 17-cv-04426-JST, 2018 WL 3539267 (N.D. Cal. July 23, 2018).....	5
15	<i>Synopsys, Inc. v. Siemens Indus. Software Inc.</i> ,	
16	No. 20-cvV-04151-WHO, 2022 WL 20508655 (N.D. Cal. June 7, 2022).....	4, 5
17	<i>Tech. Props. Ltd. LLC v. Samsung Elecs. Co.</i> ,	
18	114 F. Supp. 3d 842 (N.D. Cal. 2015)	10
19	<i>Topia Tech., Inc. v. Dropbox Inc.</i> ,	
20	No. 23-CV-00062-JSC, 2023 WL 3437823 (N.D. Cal. May 12, 2023)	9
21	<i>Trusted Knight Corp. v. Int’l Bus. Machines Corp.</i> ,	
22	No. 19-cv-01206-EMC, 2020 WL 5107611 (N.D. Cal. Aug. 31, 2020)	4, 5
23	<i>VirtualAgility Inc v. Salesforce.com, Inc.</i> ,	
24	759 F.3d 1307 (Fed. Cir. 2014).....	5
25	<i>Zomm, LLC v. Apple Inc.</i> ,	
26	391 F. Supp. 3d 946 (N.D. Cal. 2019)	6

Other Authorities

21	Kevin D. Rodkey, Victor M. Palace, Misook Kim, Annmarie O Dressler, Sara Salehi,	
22	Matthew Weirich, <i>Trending at the PTAB: 1 Year of Denials of Institution</i> , Finnegan	
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Rules

24	Patent L.R. 3-1(c).....	10
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I. INTRODUCTION

Throughout its Opposition to Defendants' Motion to Stay, Plaintiff attempts to recast the routine course of patent litigation into a nefarious ploy by Defendants to delay this case. But despite Withrow's inflammatory assertions, Defendants have acted promptly throughout the course of this litigation, which remains in its early stages. Indeed, Withrow cannot and does not dispute that courts within this District routinely grant stays in cases at far later stages of litigation than present here.

Nor does Withrow meaningfully dispute that a stay is likely to simplify the issues in this case; instead, it tries to divert the Court's attention to the merits of Defendants' IPR petition. But not only is the IPR petition not before this Court, but in the event the petition were not instituted, any stay pending the PTAB's decision would be brief and minimally disruptive.

Furthermore, Withrow fails to show that such a stay would be unduly prejudicial. Indeed, Withrow effectively admits that monetary damages would be sufficient compensation for infringement. In attempting to avoid this admission's effect, Withrow tries to manufacture prejudice by offering wholly speculative and highly tenuous arguments about the potential loss of evidence. But courts routinely reject such speculative arguments. Further, despite Withrow's claims that this evidence is "critical" to its case, it has made minimal efforts to date to request these specific materials either from Defendants or any third party. Withrow's claims of prejudice thus fall flat and should be rejected.

Because a stay pending resolution of Defendants' IPR petition would conserve valuable judicial and party resources and because Plaintiff offers no persuasive arguments to the contrary, Defendants respectfully request that the Court stay the case.

II. ARGUMENT

A. Defendants acted promptly in seeking a stay of this case, which remains in the early stages of litigation.

1. Withrow cannot meaningfully dispute that discovery is in its early stages.

Contrary to Withrow's misleading assertions, there has been no undue delay in the present litigation. The case is proceeding in accordance with standard practice, and the parties are still

1 early in the discovery process. A stay could lead to significant preservation of the Court's and
2 parties' resources.

3 First, Withrow's rhetoric regarding Defendants' purported efforts to "stall" this case is
4 unfounded. Withrow complains that (1) the deadline for Defendants to answer the Complaint was
5 moved; (2) the date for a Rule 26(f) conference was moved; and (3) Defendants are purportedly
6 engaging in "gamesmanship" regarding the timing of their IPR. ECF No. 63 ("Opp.") at 2-5. All
7 these contentions fall flat.

8 First, the 45-day extension for Defendants to answer the Complaint was both stipulated to
9 by all Parties and standard in litigation. Indeed, Local Rule 6-1(a) explicitly permits parties to
10 stipulate to extend the "time within which to answer or otherwise respond to the complaint"
11 without leave of court.

12 Second, the so-called "de facto" stay of discovery and rescheduling of the Rule 26(f)
13 conference until after the pleadings were resolved was based on the Court's decision to grant
14 Defendants' request to continue the Case Management Conference, ECF No. 33, and the Parties'
15 subsequent *stipulated* agreement regarding the same. ECF No. 41.

16 Finally, as detailed in the Motion to Stay, ECF No. 60, Google filed its IPR months before
17 its one-year deadline to do so. Courts have regularly held that the filing of petitions even closer to
18 the deadline does not show improper delay. *See, e.g., Evolutionary Intel. LLC v. Yelp Inc.*, No. C-
19 13-03587 DMR, 2013 WL 6672451, at *9 (N.D. Cal. Dec. 18, 2013) (finding no undue delay
20 even when the defendant filed its IPR petition exactly one year after the complaint was served);
21 *Regents of Univ. of Mich. v. Novartis Pharms. Corp.*, No. 22-cv-04913-AMO, 2023 WL
22 6795971, at *2 (N.D. Cal. Oct. 12, 2023) ("[W]hile the Universities make much ado about
23 Novartis's IPR petitions filed at the filing deadline, close filings were timely."). Further, the
24 petition was filed only seventeen days after Withrow served its infringement contentions. The
25 case law is clear that where a defendant waits until "after receiving infringement contentions to
26 analyze the claims alleged" and file its IPR, there is no improper delay. *Karl Storz Endoscopy-*
27 *Am., Inc. v. Stryker Corp.*, No. 14-cv-00876-RS, 2015 WL 13727876, at *3 (N.D. Cal. Mar. 30,
28 2015) (finding that the defendant had not engaged in "dilatory tactics" where it filed its IPR

petition three-and-a-half months after receiving the plaintiff's supplemental infringement contentions); *Sec. People, Inc. v. Ojmar US, LLC*, No. 14-cv-04968-HSG, 2015 WL 3453780, at *4 (N.D. Cal. May 29, 2015) (finding that the defendant had not engaged in "delay tactics" where it filed its IPR petition fourteen days after receiving infringement contentions). Withrow's litany of complaints thus does not reveal some nefarious scheme on Defendants' part; instead, the schedule here tracks the ordinary course of patent litigation in this District.

Nor does Defendants' motion violate some purported agreement regarding a "speedy time to trial." Opp. at 3, 4. While the parties jointly proposed a schedule that follows the Court's Standing Order regarding the timing of trial and other deadlines (ECF No. 48), such proposal in no way undercuts the potential conservation of valuable judicial and party resources that a stay could provide. Moreover, the parties' joint proposal does not propose a set trial date, and much of the case schedule is dependent on the timing of a claim construction ruling. Indeed, Withrow's attempt to weaponize Defendants' adherence to the Court's rules is confounding at best.

Additionally, Withrow mischaracterizes Defendants' positions on Withrow's discovery requests. In its email correspondence, Plaintiff itself stated that "[i]n Defendants' responses to this set of discovery, **Defendants stated that they would provide interrogatory responses and documents in response to most RFPs.**" ECF No. 63-2 at 10. Furthermore, Withrow's own correspondence demonstrates that it is considering Defendants' objections regarding certain requests and may provide new proposals. *Id.* at 8-9. As of the date of this filing, Withrow has not yet provided its positions on numerous outstanding issues.

Withrow also wrongly asserts that Defendants have claimed "they are not required to produce *any* materials" due to deficiencies in Withrow's preliminary infringement contentions. Opp. at 5. In fact, Defendants have stated that they will not produce documents in connection with certain inadequately identified accused instrumentalities. *See* ECF No. 63-2 at 4-5. Indeed, Defendants anticipate a significant production on or about April 21, 2025 in accordance with the Patent Local Rules and the Parties' stipulated schedule. Declaration of Amy Le ("Le Decl.") at ¶ 3; ECF No. 48, Ex. 1. Withrow's charge that Defendants have "refused to participate in discovery," Opp. at 6, thus lacks merit.

1 Finally, while Withrow touts its own document production to show that it has made
 2 “efforts to move this case along,” Opp. at 5, the vast majority of that document production
 3 consists of publicly available material. Le Decl. at ¶ 4. Further, while Withrow issued three third-
 4 party subpoenas in late March and one last Friday, no documents have yet been produced in
 5 response. *Id.* at ¶ 5.

6 All in all, discovery remains in its early stages, not as result of any improper tactics by
 7 Defendants, but rather as a result of the orders of the Court and the stipulated schedule in this
 8 case.

9 **2. Courts routinely grant stays in cases at far later stages of litigation**
 10 **than present here.**

11 Recognizing a “liberal policy in favor of granting motions to stay proceedings pending the
 12 outcome of USPTO reexamination or reissuance proceedings,” *Largan Precision Co. v. Motorola*
 13 *Mobility LLC.*, No. 21-cv-09138-JSW, 2022 WL 2954935, at *1 (N.D. Cal. July 26, 2022), courts
 14 in this District have granted stays in cases at far later stages of litigation than present here. *See,*
 15 *e.g., Synopsys, Inc. v. Siemens Indus. Software Inc.*, No. 20-cvV-04151-WHO, 2022 WL
 16 20508655, at *2 (N.D. Cal. June 7, 2022) (granting stay “even though claim construction is
 17 complete and the parties have already engaged in fact discovery”); *Trusted Knight Corp. v. Int’l*
 18 *Bus. Machines Corp.*, No. 19-cv-01206-EMC, 2020 WL 5107611, at *2 (N.D. Cal. Aug. 31,
 19 2020) (granting stay where discovery was ongoing and “claim construction has already
 20 occurred”).

21 Nor is the resolution of a motion to dismiss a determinative factor. *See* Opp. at 6. Indeed,
 22 given the work required to prepare an IPR petition, it is to be expected that the petition may be
 23 filed after the court pleadings are resolved. Withrow relies heavily on *Entangled Media*, but there
 24 the determinative factor was not the resolution of a motion to dismiss, but rather the fourteen
 25 months spent in discovery and the setting of a trial date. *Entangled Media, LLC v. Dropbox Inc.*,
 26 732 F. Supp. 3d 1120, 1123 (N.D. Cal. 2024) (while “[c]ourts have [] stayed proceedings where
 27 parties have engaged in substantial discovery and even undertaken claim construction,” these
 28 cases “can be distinguished because neither court had set a trial date”). Here, Withrow’s first set

1 of requests were served less than three months ago, no trial date has been set, and the parties have
 2 not even exchanged potential terms for construction, much less engaged in the full claim
 3 construction process.

4 Withrow’s attempt to distinguish Defendants’ cases conflates the factors for determining
 5 whether to issue a stay, *i.e.*, the stage of the case, prejudice, and simplification of issues. *See Opp.*
 6 at 6-7. Indeed, Withrow does not—and cannot—dispute that in each of Defendants’ cited cases,
 7 the litigation was either in a similar stage as the present litigation or in later stages. *See Synopsys*,
 8 2022 WL 20508655 at *2 (claim construction complete); *Columbia Ins. Co. v. Simpson Strong-*
 9 *Tie Co.*, 703 F. Supp. 3d 1007, 1012 (N.D. Cal. 2023) (“*Columbia I*”) (first set of discovery
 10 requests served only three months prior and no trial date set); *Columbia Ins. Co. v. Simpson*
 11 *Strong-Tie Co.* (“*Columbia II*”), No. 5:24-cv-01652-PCP, 2024 WL 4752133, at *3 (N.D. Cal.
 12 Nov. 12, 2024) (discovery in early stages and trial date set); *Largan*, 2022 WL 2954935 at *4
 13 (initial discovery requests answered and some documents produced); *see also Symantec Corp. v.*
 14 *Zscaler, Inc.*, No. 17-cv-04426-JST, 2018 WL 3539267, at *2 (N.D. Cal. July 23, 2018) (claim
 15 construction discovery closed and claim construction fully briefed); *Trusted Knight*, 2020 WL
 16 5107611 at *2 (discovery ongoing and “claim construction has already occurred”). Instead,
 17 Withrow attempts to muddy the waters by arguing about the likelihood that the PTAB will
 18 institute the IPR. *Opp.* at 6. But this is irrelevant to the analysis of the “progress already made in
 19 the case.” Likewise, Withrow’s assertion that claim construction may be complete by the time the
 20 PTAB issues its decision is inapposite. *Opp.* at 6. “Generally, the time of the motion is the
 21 relevant time to measure the stage of litigation.” *VirtualAgility Inc v. Salesforce.com, Inc.*, 759
 22 F.3d 1307, 1317 (Fed. Cir. 2014).

23 In sum, the stage of the litigation strongly favors a stay, as Withrow cannot dispute that
 24 significant work remains to be done.

25 **B. A stay is likely to simplify the issues in this case.**

26 The inquiry into whether a stay might simplify the case is straightforward. *See Mot.* at 6-
 27 9. In a tacit admission that the proper analysis of this factor favors a stay in this case, Withrow
 28 again attempts to divert attention elsewhere, namely by inviting the Court to weigh the merits of

1 Google’s IPR petition and to prognosticate about Withrow’s hypothetical request that the PTAB
 2 issue a discretionary denial of the petition under *Fintiv*. These arguments are misplaced and
 3 unavailing. The reality is that it is statistically more likely than not that the PTAB will grant the
 4 petition. Mot. at 7. And if any claim, or even no claim, is invalidated, the case before this Court
 5 will be simplified.

6 As an initial matter, Withrow’s citation to a 2014 case from the Eastern District of Texas
 7 regarding what the “majority of courts” do on pre-institution stays is unpersuasive. *See* Opp. at 7-
 8 8. Defendants cited numerous decisions granting stays pending institution, and of course there are
 9 many more such decisions in this District. *See* Mot. at 10; *see also, e.g., Barbaro Techs., LLC v.*
 10 *Niantic, Inc.*, No. 18-cv-02955-RS, 2019 WL 13232979, at *3 (N.D. Cal. Apr. 24, 2019)
 11 (granting motion even though “the PTAB has not yet decided whether to institute Niantic’s
 12 IPRs,” since the PTAB would issue the decision within four months and any denial would only
 13 “slightly delay[]” the case); *Apple Inc. v. AliveCor, Inc.*, No. 22-cv-07608-HSG, 2023 WL
 14 9187388, at *4 (N.D. Cal. Dec. 29, 2023) (granting pre-institution stay); *IXI Mobile (R & D) Ltd.*
 15 *v. Samsung Elecs. Co*, No. 15-cv-03752-HSG, 2015 WL 7015415, at *5 (N.D. Cal. Nov. 12,
 16 2015) (same). Indeed, in a 2023 decision granting a pre-institution stay, Judge Davila observed
 17 that “[c]ourts in this district have often recognized a ‘liberal policy in favor of granting motions to
 18 stay’ pending IPR.” *Speir Techs. Ltd. v. Apple, Inc.*, No. 5:23-cv-00095-EJD, 2023 WL 2714931,
 19 at *1 (N.D. Cal. Mar. 30, 2023) (quoting *e.g., Zomm, LLC v. Apple Inc.*, 391 F. Supp. 3d 946, 956
 20 (N.D. Cal. 2019)).

21 Withrow next contends that a stay will not simplify the case because Google’s IPR is
 22 unlikely to be instituted, either because the PTAB will issue a discretionary denial under *Apple*
 23 *Inc. v. Fintiv, Inc.*, No. IPR2020-00019, 2020 WL 2126495 (P.T.A.B. Mar. 20, 2020), or because
 24 the petition will be rejected on the merits. *See* Opp. at 8-12. These arguments are well outside the
 25 scope of the analysis before this Court and should be completely disregarded, for several reasons.

26 First, as to a discretionary denial, notably Withrow does not cite a single case where a
 27 Court considered a patent owner’s likelihood of success on a *Fintiv* request in ruling on a motion
 28 to stay. Defendants are aware of no such decision. To the contrary, as an opinion last year from

the District Court for the Eastern District of Virginia put it:

SFI spends a considerable amount of time discussing the PTAB's six-factor *Fintiv* test. If the question before the Court was whether the PTAB was likely to institute review of Google's IPR petitions, then the *Fintiv* factors would be relevant. But that is not the question the Court must answer. The task here is to determine whether this Court should grant a stay.

Sec. First Innovations, LLC v. Google LLC, No. 2:23-cv-97, 2024 WL 234720, at *3 n.2 (E.D. Va. Jan. 22, 2024). The same is true here; Withrow spends a considerable amount of time on the PTAB's six-factor *Fintiv* test, but that question is not before the Court. Nor should the Court be asked to prognosticate about the likelihood that the PTAB will issue a discretionary denial of Google's IPR petition.¹

While Defendants will not litigate a hypothetical *Fintiv* request that will never be before this Court, it is worth noting that such denials have been rare. An analysis from last summer showed that 65% of IPR petitions were instituted, and 35% were denied; of those denials, only 5% were based on *Fintiv*.² In other words, *fewer than 2% of IPR petitions* resulted in a *Fintiv* denial. Accordingly, this Court should reject Withrow's request to deny the stay based on the highly speculative and statistically unlikely event that the PTAB issues a discretionary denial of Google's IPR petition under *Fintiv*.

Second, as to a potential non-institution on the merits, the Court should disregard Withrow's invitation to assess the petition. See Opp. at 10-11. Withrow goes on at length about the art cited in Google's petition, but as with the *Fintiv* argument, Withrow is barking up the wrong tree; the petition is not before this Court, and there is no reason for the Court to expend resources trying to guess how the PTAB will act. And again, Withrow cites no cases in which a court attempted to evaluate the merits of an IPR petition in deciding a motion to stay, and Defendants are aware of none. *Cf. Audio MPEG, Inc. v. Hewlett-Packard Comp.*, No. 2:15cv73,

¹ And certainly there is no reason for the Court to engage in conjecture regarding the possible impact of any reductions in administrative judges at the PTO. See Opp. at 12. Such speculation is far afield from the well-established framework for motions to stay pending IPR.

² See Kevin D. Rodkey, Victor M. Palace, Misook Kim, Annmarie O Dressler, Sara Salehi, Matthew Weirich, *Trending at the PTAB: 1 Year of Denials of Institution*, Finnegan (July 26, 2024), <https://www.finnegan.com/en/insights/articles/trending-at-the-ptab-1-year-of-denials-of-institution.html>.

2015 WL 5567085, at *3 (E.D. Va. Sept. 21, 2015) (citation omitted) (“[W]hile a district court may examine the IPR petition to determine whether IPR review will address claims and issues involved in the litigation, a court cannot attempt to predict how the PTAB will ultimately rule on the issues.”). Moreover, the odds of institution are actually in Defendants’ favor. *See* Mot. at 7, n.1.

Finally, Withrow argues that simplification is unlikely because further proceedings will be required if at least one of the nine challenged claims survives IPR. Opp. at 12. But this contention wholly ignores Defendants’ explanation that even if all claims somehow survive review, statements made in the IPR proceedings become part of the file history and Google will be estopped from raising certain defenses in this litigation. *See* Mot. at 6-7. “As has been repeatedly stated in this District, even if all the asserted claims survive IPR, the case could still be simplified because Defendant would be bound by the estoppel provisions for IPR and thus could not raise before this Court any arguments that it raised or reasonably could have raised at the PTO in its petition.” *Aavid Thermalloy LLC v. Cooler Master, Ltd.*, No. C 17-05363 JSW, 2019 WL 4009166, at *3 (N.D. Cal. Aug. 26, 2019) (internal quotations and alterations omitted).

In sum, and notwithstanding Withrow’s attempts at misdirection, a stay is likely to simplify the issues in this case. And if the PTAB does not grant review, then any stay will have been brief and minimally disruptive.

C. The petition’s timing and the lack of cognizable prejudice to Withrow favor a stay.

1. The timing of the petition and motion favors a stay.

Withrow once again contends—with no basis in fact or law—that Defendants have been “less than expedient” in filing their IPR petition and moving for a stay. Opp. at 13. Not so. As detailed above, Google timely filed the IPR petition months before the one-year deadline, and only seventeen days after Withrow served its infringement contentions. Courts routinely find that filing IPR petitions within the one-year time limit does not constitute undue delay. *See Asetek Holdings, Inc v. Cooler Master Co.*, No. 13-cv-00457-JST, 2014 WL 1350813, at *4 (N.D. Cal. Apr. 3, 2014) (internal quotation marks and citations omitted) (“Parties having protection under

the patent statutory framework may not complain of the rights afforded to others by that same statutory framework.”); *Evolutionary Intel. LLC v. Yelp Inc.*, No. C-13-03587 DMR, 2013 WL 6672451, at *9 (N.D. Cal. Dec. 18, 2013) (citation omitted) (finding no undue delay even when the defendant filed its IPR petition exactly one year after the complaint was served, because “just as Plaintiff was entitled to institute this litigation under federal patent law, Yelp was entitled to timely invoke the reexamination process”); *Topia Tech., Inc. v. Dropbox Inc.*, No. 23-CV-00062-JSC, 2023 WL 3437823, at *7 (N.D. Cal. May 12, 2023) (granting motion to stay where the plaintiff “provide[d] no specific reason why an IPR filing date within the statute of limitations represents an unreasonable delay”). Additionally, Defendants filed months earlier than the Defendant in *Entangled Media*, which filed its IPR petition “only a few days before the one-year statute of limitations ran.” 732 F. Supp. 3d at 1125.

Nor have Defendants ever asserted that Withrow’s infringement contentions were necessary for their IPR petition—only that courts have found IPR petitions timely when filed soon after plaintiff’s infringement contentions were served. *See Karl Storz*, 2015 WL 13727876 at *3; *Sec. People*, 2015 WL 3453780 at *5. After all, Defendants’ IPR petition was “lengthy and detailed,” “involv[ing] significant effort” on Defendants’ part. *Karl Storz*, 2015 WL 13727876 at *3.

Google not only timely filed the petition, but Defendants also promptly moved to stay just one day after filing the IPR petition. Courts within this District have found that where a defendant “filed its motion to stay just two weeks after filing its IPR petitions,” the defendant acted promptly, and this factor does not weigh against granting a stay. *AbCellera Biologics Inc. v. Berkeley Lights, Inc.*, No. 20-CV-08624-LHK, 2021 WL 4499231, at *2 (N.D. Cal. Aug. 26, 2021). Both the timing of the petition for review and the timing of the request for the stay thus weigh in Defendants’ favor.

2. Withrow has not shown any cognizable prejudice from a stay.

Finally, Withrow cannot demonstrate undue prejudice beyond any potential delay. Withrow admits that it seeks only monetary damages, *see* Opp. at 14-17, and thus any delay in recovery will not prejudice Withrow. *See, e.g., Speir Techs.*, 2023 WL 2714931, at *2 (where, as

here, the plaintiff was a non-practicing entity, it “cannot be prejudiced by a stay because monetary damages provide adequate redress for infringement”).

Unable to demonstrate any actual prejudice, Withrow throws up strawmen and rank speculation. First, Withrow argues that a stay “could also unduly prejudice Withrow by substantially limiting its potential damages with respect to” Google TV, a product that by Withrow’s own admission “*is not yet in the case.*” Opp. at 14 (emphasis added). Withrow seemingly contends that it has not yet charted Google TV against the asserted patent because Withrow needs third-party discovery and internal documents from Defendants to do so. *Id.* Yet Withrow has not served any subpoenas or any specific discovery requests related to Google TV. Le Decl. ¶ 6. Nor has it explained what would justify obtaining discovery on products not properly charted. *See Tech. Props. Ltd. LLC v. Samsung Elecs. Co.*, 114 F. Supp. 3d 842 (N.D. Cal. 2015) (citation omitted) (“Because ‘[c]ourts in this district generally do not order defendants to proceed with discovery in patent cases until the plaintiff provides infringement contentions that comply with Patent L.R. 3–1,’ Plaintiffs’ motion to compel is DENIED.”); *Digital Reg of Tex., LLC v. Adobe Sys. Inc.*, No. CV 12-01971-CW (KAW), 2013 WL 633406 (N.D. Cal. Feb. 20, 2013) (similar); *Bender v. Maxim Integrated Prods., Inc.*, No. C 09-01152 SI, 2010 WL 1135762, at *2 (N.D. Cal. Mar. 22, 2010) (“Until plaintiff meets the burden of providing infringement contentions compliant with Patent L.R. 3-1, the Court will not order defendant to proceed with discovery.”). Indeed, this District’s Patent Local Rules require that plaintiffs chart the accused products fourteen days after the Initial Case Management Conference, well before discovery is substantially underway. *See* Patent L.R. 3-1(c). Further, to the extent Withrow is concerned that damages may be “imperiled” by the impending expiration of its patent, Withrow might look to its own decision to wait *over four years* after the issuance of its patent to file this litigation. Withrow’s delay in bringing suit should not be credited in its favor here.

Withrow also feigns concern about the loss of third-party evidence that purportedly relates to a highly dubious damages theory. *See* Opp. at 15. Notably, Withrow waited until last Friday to issue a third-party subpoena to Adobe, despite having identified Adobe *in its complaint* and despite having earlier served several other third-party subpoenas. Le Decl. at ¶ 5. This timeline

1 strongly suggests that any such evidence is not relevant, let alone “critical.” *See* Opp. at 16; *see*
 2 *also, e.g.*, Compl., ECF No. 1 at ¶ 23. In addition, Withrow again takes the opportunity to
 3 wrongly accuse Defendants of discovery delays, Opp. at 16, but such false claims are irrelevant in
 4 any event because none of Withrow’s pending requests seek information about Defendants’
 5 “technology collaborators.” Le Decl. at ¶ 7. In short, Withrow’s claim that hypothetical evidence
 6 which it may or may not use in some damages model it has yet to present may somehow be
 7 destroyed is beyond credulity.³

8 Indeed, courts routinely reject such speculative arguments. *See, e.g., NantWorks, LLC v.*
 9 *Niantic, Inc.*, No. 20-cv-06262-LB, 2021 WL 3473934, at *2 (N.D. Cal. July 15, 2021)
 10 (“[S]peculation about the prejudice from disappearing evidence and deteriorating witness
 11 memories is insufficient to establish undue prejudice.”); *Evolutionary Intel., LLC v. Millennial*
 12 *Media, Inc.*, No. 5:13-CV-04206-EJD, 2014 WL 2738501, at *6 (N.D. Cal. June 11, 2014)
 13 (“Speculation that evidence will be lost, without more, is insufficient to demonstrate undue
 14 prejudice.”). Here, Withrow has not presented anything beyond a highly speculative possibility of
 15 loss.

16 **III. CONCLUSION**

17 As all factors weigh in favor a stay and Withrow has shown no compelling reason to
 18 continue this litigation while the PTAB considers Google’s petition, Defendants respectfully
 19 request that the Court enter an order staying this case pending resolution of the petition for *inter*
 20 *partes* review.

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28 ³ And again, even taken at face value, the claimed prejudice pales in comparison to the effect of
 Withrow’s decision to wait years after its patent issued to file suit.

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