

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Withrow Networks, Inc.,	)	
	)	No. 5:24-cv-03203-PCP
Plaintiff,	)	
	)	
vs.	)	
	)	San Jose, California
Google, LLC, et al,	)	May 1, 2025
	)	10:00 a.m.
Defendants.	)	
	)	

BEFORE: THE HONORABLE P.CASEY PITTS, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VIA HYBRID ZOOM VIDEOCONFERENCE

MOTION TO STAY

Official Court Reporter:

Andrea K. Bluedorn, RMR, CRR (By Zoom Videoconference)

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P R O C E E D I N G S

COURTROOM DEPUTY: Case number 24-CV-3203, Withrow Networks versus Google. On today for the motion to stay.

Will the parties please approach the podium and state your appearance for the record beginning with the plaintiff.

MR. ROSENBAUM: Good morning, Your Honor. Evan Rosenbaum and John Picone for plaintiff, Withrow Networks Inc.

THE COURT: Okay. Good morning.

MR. ROSENBAUM: Good morning.

MS. LAZARUS: Good morning. Kate Lazarus and Asim Bhansali, Kwun Bhansali Lazarus, for defendants.

THE COURT: Okay. Good morning.

So we are here on the defendant's motion to stay pending a decision on Inter Partes Review so I will hear from defendants first.

MS. LAZARUS: Thank you, Your Honor. Unless the Court would like to start anywhere in particular, I'll run through the three factors of the analysis.

THE COURT: Let me just -- my concern -- you know, to me, the most important factor and -- that is concerning me here is the likely -- is, at this state, the likelihood of this to simplify these proceedings. And, you know, we're in a circumstance where we don't know if review is going to be initiated. And, you know, that -- as the parties are well

1 aware from the briefing, you know, there are instances where I
2 have granted stays pending a decision and cases where I
3 haven't.

4 You know, the Simpson Strong-Tie cases were a little
5 bit unique in the sense that that family of patents, the PTAB
6 had already instituted review of -- on a number of other
7 related patents -- so the likelihood of an institution of
8 review wasn't just relying on the general statistics about the
9 likelihood of review being instituted but the particular facts
10 of that case.

11 So, you know, under that -- here, we don't know what
12 they're going to do. Right. And there's going -- you know,
13 there's a lot that's been raised about trying to predict what
14 they're going to do and not going to do. But, you know, why is
15 the time to stay these proceedings, if any, why isn't it after,
16 you know, if review is, in fact, granted as opposed, and why
17 should we, you know, get a further six month delay now in these
18 proceedings if that it turns out that, in fact, they deny
19 review and -- or they decline institute review so that we're in
20 exactly the same place that we are today six months from now.

21 MS. LAZARUS: Thank you, Your Honor. Couple points.

22 I begin with, as you know from our briefing and from
23 your other motions, courts in this district regularly stay
24 cases pre-institution. And in all of those cases, there's no
25 way to know for sure what the PTAB is going to do. And I think

1 in a majority of these cases, the circumstances don't
2 necessarily involve a patent family that's already been
3 reviewed by the PTAB. It's a new petition on a new set of
4 patents, and all we really have is the historical data from the
5 PTAB.

6 And we can get into how there are changes in those
7 processes as addressed in the supplemental briefs, but I think
8 the bottom line is we agree with Your Honor. We don't know
9 what the PTAB is going to do, and it's probably not a
10 worthwhile use of anyone's time to engage in too much
11 speculation about that. We do know that, historically, it's
12 more likely than not that institution would be granted here.

13 So I think the question becomes what are the
14 efficiencies to be gained in this matter. We would note that
15 the stay will be relatively brief. We're expecting an
16 institution decision by the middle of October, so less than
17 five months I believe at this point.

18 Also, perhaps petitioner will address this further,
19 but they have filed a brief on -- requesting discretionary
20 denial. That should be resolved perhaps slightly earlier than
21 the institution decision. So if petitioners are successful in
22 requesting denial from the PTAB, then we will know by this
23 summer whether the petition is moving forward with the PTAB.
24 So I think the bottom line there is it's a relatively brief
25 stay that we're requesting.

1 At the same time, there's significant work that's
2 coming up in this case. Discovery has just gotten started.
3 But the claim construction process is coming up very soon
4 starting with an exchange of preliminary terms next week and
5 culminating with briefing over the summer. So I do think
6 there's significant party resources and then judicial resources
7 shortly thereafter that will be conserved by a brief stay at
8 this point given the likelihood of -- of things being greatly
9 simplified or mooted entirely with the potential institution
10 decision.

11 I would also add as one other factor in terms of
12 judicial resources, the parties appear to be reaching an
13 impasse on the sufficiency of Withrow's infringement
14 contentions as to numerous accused instrumentalities and that
15 is likely to result in motion practice before this court. And
16 I think those motions will be fairly involved given that they
17 are involved in the infringement contentions. So, again,
18 that's something that could be entirely mooted by a brief stay.

19 THE COURT: Okay. I will say I think -- I've gone
20 back and forth. I think there are different practices. I
21 think, generally, the disputes about the infringement
22 contentions are treated as a discovery matter so it would not
23 necessarily be me in the first instance --

24 MS. LAZARUS: If the assumption that you also care to
25 concern your colleagues --

1 THE COURT: I do. I do. I think our magistrate
2 resources may be even more taxed than the District Judges
3 resources so I'm certainly concerned about that.

4 MS. LAZARUS: Yep. And we assumed it would be before
5 the magistrate so I appreciate that clarification as a side
6 point.

7 THE COURT: I've written at least one order before I
8 realized it -- when it was addressed to me in a different case.

9 I mean, the other thing, you know, I will be frank,
10 you know, that I sort of made the right prediction in the
11 Entangled Media case where -- that you've cited -- where I did
12 deny a stay and, ultimately, review was not instituted. So,
13 you know, the last time this issue was before me, I made the
14 right choice in terms of moving the case along.

15 I mean, the other -- I understand that there are party
16 resources and judicial resources that will be used, but, you
17 know, we're not -- obviously your client is able to defend this
18 case and has the resources to do so, presumably, and, you know,
19 I'm willing to do the work that's needed. So, you know, I
20 guess just why -- you know, is there a real harm in allowing
21 this case to move forward for a few more months until we know
22 -- we have some certainty about what PTAB is going to do?

23 MS. LAZARUS: I think the harm are the factors
24 addressed in our brief, I think, which are also laid out in the
25 three part analysis. I think, again, court resources, party

1 resources. I don't think that the decisions tend to turn on
2 the market capitalization of the defendants but I certainly
3 take the point.

4 I think, you know, the flip side of this of course is
5 what is -- what is the harm from the stay. And I -- as we
6 addressed in our brief, we really don't see any here. This is
7 a nonpracticing entity plaintiff that has not sought injunctive
8 relief. In the event they are ultimately successful in their
9 claims, monetary damages will make them whole and a several
10 month delay in those monetary damages doesn't seem to cause any
11 real prejudice.

12 The cases are pretty clear that the prejudice -- that
13 the delay inherent in a stay is not sufficient to establish
14 prejudice. There needs to be some kind of actual harm beyond
15 the delay itself. And as we addressed in the briefs, there's
16 sort of some speculation about some 2009 documents that Adobe
17 might have. We think that's quite far field and highly
18 speculative.

19 There's just -- you know, I would also note that
20 defendants -- the patent issued in 2020, and the plaintiff
21 waited until 2024 to file suit. So I think it's fairly clear
22 that there was no urgency there. And the idea that a few more
23 months is going to affect the scope of their relief seems
24 highly speculative.

25 THE COURT: Okay. And the other -- I mean, let me ask

1 you at the other point. I mean, obviously -- if you -- you
2 filed the petition within the one year that's provided for by
3 statute so it's timely in that sense. But, you know, you're
4 shortly before that one year period. And, you know, there is
5 some concern, you know, that if the petition had been filed
6 sooner, we may -- we may have the answer already, you know, if
7 the petition had been filed shortly after or reasonably soon
8 after the initiation of this litigation, we would now be in a
9 position to know exactly what the PTAB was going to do with the
10 petition.

11 And rather than being, you know, as far along as we
12 are, and -- and, you know, I'm concerned about delay just
13 generally, a delay, you know, in resolving matters that are
14 pending before me. And, you know, some of that delay is on me
15 because there was a very complicated Alice Motion that was
16 filed, and it took me time to work through that and think
17 through all of those issues and get an order to you on that so
18 I own some of the delay that has happened in these proceedings
19 myself.

20 But, you know, I guess, to be frank, I'm concerned
21 that, you know, had we had this petition been filed sooner, I
22 understand you were waiting for infringement conditions and
23 it's timely, and in the context of the institute. But had it
24 been filed sooner, we would know at a much earlier point in the
25 proceedings whether there was actually going to be review.

1 MS. LAZARUS: Just briefly address that, Your Honor.
2 We were not waiting for the infringement contentions. That's
3 just the way that the timing worked out. We were on two
4 parallel tracks.

5 I remember being here for the case management
6 conference -- or perhaps being remotely here -- and notifying
7 the Court and the parties that we were working on this motion
8 to stay and this IPR petition. And, frankly, we were trying to
9 get that done as quickly as possible because we wanted to move
10 to stay as quickly as possible. There was no real incentive
11 for defendants to keep this going and to incur fees when we
12 knew an IPR petition was being prepared.

13 I think the odds that we would know at this point we
14 had an institution decision, that would have required
15 defendants to prepare the IPR petition within a couple months
16 of the complaint being filed. And, candidly, Your Honor, I
17 think that would be very unlikely and pretty rare with these
18 fairly complicated and involved filings before the PTAB.

19 Obviously defendants don't want to be wasting the
20 patent offices time with a half-baked petition for review. So
21 a lot of work went into that petition. There's experts
22 involved.

23 So I think the fact that it took ten months to prepare
24 that is pretty typical. And certainly I understand that it
25 would have been nice to have gotten started on this sooner and

1 had a longer lead time. But I think, as a practical matter,
2 this is pretty typical timing. And often these petitions are
3 filed closer to the 12 months so 10 months, you know, we felt
4 was fairly expeditious under the circumstances, and it's just
5 the nature of the work involved in preparing the petition.

6 THE COURT: Okay. Thank you. Let me hear from
7 plaintiffs on the motion.

8 MR. ROSENBAUM: Thank you, Your Honor.

9 I want to address the prejudice first because I think
10 there's something missing here in the argument and maybe in the
11 Court's understanding.

12 The -- I mean, I want to address several points but I
13 want to start with prejudice. The fact is there will be real
14 prejudice here. It's not the typical case where money damages
15 will be recoverable afterwards.

16 In our patent disclosures, we identified Google TV as
17 a product we have a high confidence infringes the '849 patent
18 because we know it uses HLS and MPEG-DASH which means it
19 satisfies many of the elements of the claims. But because it's
20 encrypted, we can't confirm that it satisfies all of the
21 elements without discovery.

22 Now, defendants have taken the position in their paper
23 that discovery into uncharted accused instrumentalities is
24 inappropriate, they need to be charted, but California case law
25 holds differently. The Monolithic Power Systems case -- which

1 I have with me if Your Honor would like it -- says that
2 discovery is permissible into unaccused products if the
3 plaintiff could not have discovered the product absent
4 discovery. And there's a line of cases along that line.

5 So given defendant's position to date, we expect a
6 motion to compel will be necessary. Once we receive those
7 Google TV documents, we'll move to amend to add Google TV, at
8 which point, Google TV will be part of the case.

9 What's the point? The point is the patent expired
10 last week on April 26th, 2025, on Saturday. So every day that
11 Google TV is not part of the case, Withrow loses unrecoverable
12 damages. Once we can confirm -- if we confirm -- that Google
13 TV infringes, we can add it, and then the damages will start to
14 accrue. So, you know, every day that defendants delay
15 discovery is a day that Withrow is harmed and an additional
16 five month stay adds five months to the unrecoverable damages.

17 Now, defendants are going to argue -- as they already
18 have -- that the -- the -- you know, the complaint was filed
19 late after the patent was finally issued. That's not the issue
20 on this motion. The issue on this motion is what prejudice the
21 stay will cause.

22 And I have a case, Kilopass, if the Court would like
23 that as well and I can just provide the pin cite if you'd
24 prefer. But -- so there is real prejudice in this case. And
25 as -- sticking on the prejudice issue and defendants argument

1 regarding the time of the filing of the petition. Where
2 defendant has been less than expedient but obviously within the
3 statutory time period, courts focus on whether there have been
4 dispositive motions. The International Test Solutions case
5 cited in our papers said that where there was 112
6 indefiniteness argument during claim construction, that issue
7 weighed against a stay.

8 And in the Entangled Media case, as you know, there
9 was a 101 motion to dismiss which was an issue. And -- but,
10 generally, even if that is true, courts generally find that
11 factor neutral where the defendants are within the statutory
12 time frame but obviously could have been earlier.

13 And the -- the Aylus case, the Uniloc case, the
14 Mindbase HQ case, the Asetek case all hold that those two
15 factors are neutral; the timing of the petition and the timing
16 of the motion to stay, the subfactors within factor three. And
17 obviously the third subfactor and the prejudice clearly weighs
18 against a stay.

19 That's the status of the IPR proceedings where, you
20 know -- actually, that's the next point I would like to get to
21 which is, you know, defendants want to focus on the statistics.
22 They don't want the Court to look at the merits of the motion.
23 But the only thing that relates to the facts of this case,
24 which the Court noted in Entangled Media was necessary,
25 otherwise, it's speculative.

1 If the -- if there's nothing tethering the facts of
2 the case to the statics, it's just speculative. Well, here,
3 the IPR petition is based on five arguments about obviousness,
4 not on anticipation, and they're all based on a reference --
5 that's the Carmel reference -- which is on the face of the '849
6 patent. Now that suggests that the petition is less likely to
7 be granted based on the facts of this case because they have to
8 establish that the patent examiner made a mistake when it
9 considered the Carmel reference on the first instance.

10 So then the -- you know, obviously the -- the issue of
11 the simplification of the issues weighs heavily against a stay,
12 as I think the Court notes in Entangled Media, and is
13 suggesting -- based on the first question -- to defendants.
14 The first factor, the stage of litigation, we think it's
15 clearly a tougher call.

16 We think this factor might be neutral. Clearly,
17 discovery has started relatively recently, claims
18 construction -- as defendants noted -- is going to begin next
19 week. But we have had dispositive motions. Defendants chose
20 to file a 101 motion to dismiss.

21 And I think it's important on the facts of this case
22 to note why we are where we are and that's because defendants
23 chose to file their motion to continue the CMC and refused to
24 hold the Rule 26(f) conference, which would have started
25 discovery several months ago until after the motion was decided

1 so they've already had a five month de facto stay of discovery
2 which prejudiced Withrow and provided no benefit. Another five
3 months seems inappropriate and unfair.

4 THE COURT: Okay. Okay. Anything else you would like
5 to offer on the motion?

6 MR. ROSENBAUM: No. Thank you.

7 THE COURT: Okay. Thank you.

8 MS. LAZARUS: Respond to a few of those points, Your
9 Honor?

10 THE COURT: Yes.

11 MS. LAZARUS: First of all, the CMC timing, we made
12 that motion consistent with guidance and the Court's order that
13 you were receptive to such requests, and we did think it was
14 efficient to stay discovery pending a dispositive motion -- or
15 not even stay, but not begin discovery pending a dispose
16 motion. We don't think that kind of case management is
17 A-typical.

18 And, respectfully, as Your Honor pointed out, we --
19 defendants did not have control over the timing of the
20 resolution of that motion. But as soon as the motion was
21 resolved, we moved promptly towards a CMC and plaintiff then
22 began issuing discovery. So I don't think that should be held
23 against defendants in this situation. And, again, I don't
24 think there's any actual prejudice to any of these reported
25 delays.

1 Going back to the Google TV point. The argument
2 really is totally spurious and just doesn't hold together. The
3 way patent cases work -- at least in this district -- is we get
4 our contentions and then we do discovery based on those
5 contentions. The infringement contentions come quite early in
6 the case, and the case law is clear that you get discovery on
7 accused instrumentalities, not on not accused
8 instrumentalities.

9 And it's also fairly absurd that we can't have a four
10 month delay even after a four year delay in filing the case.
11 That was plaintiffs decision, for whatever reasons, and I don't
12 think defendants should be -- should be dinged for that in --
13 when they ask for a relatively brief stay.

14 I would also note that I don't believe there are any
15 pending requests to defendants for discovery related to Google
16 TV right now. We do have a dispute about some other accused
17 instrumentalities involving some media players called Shaka and
18 XO. They are not Google TV. Those are what we anticipate may
19 well come before the magistrate in this case, but there are no
20 pending requests for Google TV discovery. And so the idea that
21 we can't have a stay because there has to be discovery on
22 instrumentality that hasn't yet been put into this case in any
23 meaningful way I think is really attenuated and is just
24 evidence that there really is no actual prejudice in this case
25 other than the sort of general delay.

1 THE COURT: And I assume that the defendants would not
2 be willing to enter into any kind of stipulation to preserve,
3 you know, the -- to prevent, if it ends up being the case, that
4 they're allowed to pursue claims involving Google TV to prevent
5 any running of the statute of limitations on the back end as to
6 damages.

7 MS. LAZARUS: I guess we could think about it.
8 Certainly something I would have to talk on our clients about.
9 And I think -- I think this would only really come into play if
10 institution is granted because then we're talking about a
11 potential multiple year delay. I don't think the issue is --

12 THE COURT: Well I guess their argument is that the
13 tail end -- as I understand it -- is the tail end of their
14 damages already running. Right? So --

15 MS. LAZARUS: Right. So keep in mind the patent
16 issued in 2020 so there's no damages prior to 2020 as it is.
17 And so -- and I believe there's a six year tail on damages. So
18 as long as Google TV is in the case, I believe by sometime in
19 2026, there's no harm.

20 Plaintiffs counsel can correct me if I'm wrong here,
21 but I'm just trying to understand the argument that I feel is
22 fairly out there.

23 MR. ROSENBAUM: Because Google TV -- I want to address
24 that point, but I want to address other points as well.
25 Because Google is not yet in the case, the damages don't start.

1 But because the patent expired, the damages don't start
2 accruing until we add it to the case so.

3 MS. LAZARUS: Well, there won't be any damages after
4 expiration so.

5 THE COURT: Right. I guess the argument seems to be
6 if -- and you are the patent experts more than I am -- but if
7 there's a six year statute of limitations, if there was a six
8 year damages period, that starts on the date that the patent
9 issues and runs to the expiration of the patent, you know,
10 isn't it right that as long as, you know, that -- as long as
11 Google TV is in the case by six years of the issuance of the
12 patent that all of the available damages will be available?

13 MR. ROSENBAUM: I have to admit I don't know the
14 answer to that off the top of my head.

15 MS. LAZARUS: I believe the answer is yes, Your Honor.

16 THE COURT: Okay.

17 MR. ROSENBAUM: I do want to address the point about
18 discovery. We did issue discovery two days after discovery
19 opened. And our requests, based on the definition of accused
20 instrumentality, do include what we think would be Google TV.
21 So we have sought discovery related to Google TV.

22 And Google TV is identified in our patent disclosures
23 as something that practices HLS and MPEG-DASH, it's just not
24 charted because we don't have all of the information. We
25 couldn't chart every element because we need discovery into it.

1 MS. LAZARUS: If I could just add, Your Honor, we've
2 had half a dozen meet and confer calls on the discovery
3 requests and Google TV has not been mentioned in any of them.

4 THE COURT: Okay. Well, given the -- you know, the
5 likelihood that there's some period of time before -- at least
6 as it sounds before me -- that before there is going to be an
7 impact on the available damages as to Google TV, that seems to
8 be less significant in terms of my thinking about this.

9 But I remain, you know, just -- I remain concerned
10 that at this stage we really -- it's speculative that IPR
11 proceedings will simplify the matters before us. And so I am
12 going to deny without prejudice the motion for a stay at this
13 time. And, you know, certainly once there's a decision on IPR
14 review, and if IPR does in fact decide to institute review, you
15 know, this denial is without prejudice and you're welcome to
16 come back either to agree if you think -- if both parties think
17 that makes sense or to come back on a motion for a stay given
18 that the institution has in fact been granted.

19 So and I won't -- this will be my ruling. I'm ruling
20 orally so everyone knows where we stand and we can proceed
21 forward. And so I won't plan on issuing a further written
22 ruling on the issue.

23 MS. LAZARUS: Your Honor, could I -- I appreciate
24 that, and thank you. Could I trouble the Court with one
25 question that was raised by the supplemental filings over the

1 last couple days.

2 We understand from the Court's standing order that the
3 hope or expectation is that trial would occur within 24 months
4 of the initial CMC. We took that to mean the CMC that actually
5 happened in February that kicked off discovery that then, you
6 know, lead to a waterfall of deadlines.

7 Plaintiff took the position in front of the PTAB that
8 their expectation was that that clock started running with the
9 CMC that was set for last August but ultimately didn't happen
10 and was continued such that we they would expect trial by next
11 summer. So appreciate the Court's guidance on what we might
12 expect --

13 THE COURT: And I understand that that's confusing. I
14 mean, I would -- generally, I would say it would run from the
15 actual conduct of the actual case management conference because
16 that's really when we're moving forward with the case. And I
17 -- I think the points you made about the propriety of a stay
18 pending a dispositive motion, particularly one, you know, a
19 12(b)(6) motion that could dispose of the entire case that
20 there is a reason to do so.

21 So I would say the expectation will be 24 months. And
22 also that is a -- you know, that is a guidance for every case
23 that comes before me, some of which are far less complicated
24 than some of these patent cases that we handle. So, you know,
25 we can -- we'll make -- we'll figure out when the appropriate

1 time for trial is if and when we get to that point in the case.

2 MS. LAZARUS: Thank you, Your Honor.

3 MR. ROSENBAUM: If I might just respond briefly to
4 that. Our representation to the PTAB was there was no
5 misstatement. It was based on an aggressive time to trial
6 based on when the dispositive motions would be due. A couple
7 months after that would be August of the summer so it's
8 possible based on a fast schedule that the trial could be when
9 we said it would be.

10 THE COURT: To be frank, you know, I've had -- I may
11 have mentioned this last time -- I'm changing up a little bit
12 how I'm handling things and sort of setting -- doing a trial
13 setting conference a few months after the expected hearing on
14 dispositive motions. So and that's the point at which I'm now
15 going to be setting the actual trial dates.

16 And, in part, to give, especially, try -- and, you
17 know, in complicated cases, I need time to decide to issue a
18 ruling on the dispositive motions. The parties need time to
19 take account of that ruling and formulating their trial
20 strategies and all of their pretrial motions so I realize that
21 I do think trying to get to trial within a few months of --
22 even of the hearing on dispositive motions is challenging.

23 And then there are cases where it's absolutely
24 necessary and we'll get it done. But for the reasons I think
25 that have been talked about here, I'm not certain this is one

1 where we would -- there's a compelling need to try and, you
2 know, have me get an order out in two weeks and have the
3 parties back before me in, you know, two weeks after that ready
4 to do our pretrial conference.

5 MR. ROSENBAUM: Of course.

6 MS. LAZARUS: Understood. Thank you, Your Honor.

7 MR. ROSENBAUM: Okay. Thank you, Your Honor.

8 THE COURT: Thank you. Have a good morning.

9 MR. ROSENBAUM: You too.

10 MS. LAZARUS: You too.

11 COURTROOM DEPUTY: Thank you. Court is concluded.

12

13 (The record was concluded at this point at 10:29 a.m.)

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C E R T I F I C A T E

I, ANDREA K. BLUEDORN, do hereby certify that I am
duly appointed and qualified to act as Official Court Reporter.

I FURTHER CERTIFY that the foregoing pages constitute
a full, true, and accurate transcript of all of that portion of
the proceedings contained herein, had in the above-entitled
cause on the date specified therein, and that said transcript
was prepared under my direction and control.

DATED this 1st day of May, 2025

/s/ Andrea K. Bluedorn
Andrea K. Bluedorn, RMR, CRR