

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

FALL LINE PATENTS, LLC,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. 6:18-CV-00407-RWS
v.	§	(LEAD CASE)
	§	
ZOE'S KITCHEN, INC., ZOE'S KITCHEN	§	
USA, LLC,	§	
	§	
Defendants.	§	

ORDER

Before the Court is Plaintiff's motion to lift stay. Docket No. 156; *see also* Docket No. 158. Defendants oppose the motion. Docket No. 157; *see also* Docket No. 159. Having considered the parties' briefing, the Court finds that the motion should be **GRANTED**.

Plaintiff filed its complaint on August 8, 2018. About a year later, this Court ordered a stay pending completion of *inter partes* review of U.S. Patent No. 9,454,748 (the '748 patent). Docket No. 110. In August of 2020, the Patent Trial and Appeal Board issued a final written decision, finding all but claim 7 of the challenged claims unpatentable. *Am. Multi-Cinema, Inc., et al v. Fall Line Patents, LLC*, IPR2019-00610, Paper 32 (PTAB, Aug. 5, 2020). And, on remand from the Federal Circuit, the Board once again found claim 7 not unpatentable in May of 2022. *Am. Multi-Cinema, Inc.*, No. IPR2019-00610, Paper 42 (P.T.A.B. May 17, 2022). Defendant-Petitioners have appealed the Board's final written decision to the Federal Circuit for a second time. *AMC Multi-Cinema, Inc. v. Fall Line Patents, LLC*, No. CAFC-22-2057 (Fed. Cir. filed July 22, 2022). During this appeal, Plaintiff requests that this Court lift its stay; Defendants, in response, argue that the case should remain stayed pending its second appeal to the Federal Circuit.

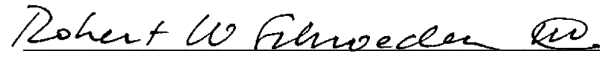
Courts have the inherent power to manage their dockets and stay proceedings. *E.g., Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988). Likewise, courts have the inherent power to lift a stay where the circumstances render the stay is no longer appropriate. *See Murata Mach. USA v. Daifuku Co.*, 830 F.3d 1357, 1361 (Fed. Cir. 2016). When determining whether to lift an already-imposed stay, a court should consider the same three factors that were considered at the time the stay was imposed: (1) whether a stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether discovery is complete and whether a trial date has been set. *See id.* (citations omitted).

Having considered the parties' arguments, the Court finds that the factors weigh in favor lifting the stay. First, James McGill, the Plaintiff's owner and primary trial witness, is 78 years old. Given his advanced age and the Plaintiff's interest in having him available at trial, further delay could create undue prejudice for the Plaintiff. Second, claim 7 is the only claim remaining in this litigation, and the Board has twice found that claim 7 is not unpatentable. Plaintiff and Defendants argue about the likelihood that the present appeal to the Federal Circuit will impact the patentability of claim 7; however, at the hearing on August 17, 2022, the parties stated that they did not anticipate a decision on the appeal for at least another year. The issues in this case have already been simplified through the *inter partes* review proceeding and maintaining a stay for another year on the premise that that the Defendants' second appeal to the Federal Circuit may further simplify the issues that remain in the case is too speculative. Finally, the parties have begun discovery, and the Court has held a *Markman* hearing. When stayed, this case was scheduled for trial.

Considering all of these factors together, the Court believes that they weigh in favor of the Plaintiff. Accordingly, Plaintiff's Motion to lift stay is **GRANTED**. It is therefore

ORDERED that the stay in this case is **LIFTED**.

SIGNED this 20th day of October, 2022.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE