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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SANDPIPER CDN, LLC,

Plaintiff,

vs.

GOOGLE LLC,

Defendant.

Case No. 2:24-cv-03951-AB (RAO)

**GOOGLE'S NOTICE OF MOTION
AND MOTION TO STAY PENDING
IPR PROCEEDINGS**

Date: June 27, 2025, 10:00 AM

Courtroom: 7B

Judge: Hon. André Birotte Jr.

NO. 2:24-CV-03951-AB (RAO)

GOOGLE'S MOTION TO STAY PENDING IPR PROCEEDINGS

NOTICE OF MOTION AND MOTION TO STAY
PENDING IPR PROCEEDINGS

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 23, 2025 at 10:00 a.m., or as soon thereafter as the matter may be heard in the Courtroom of the Honorable André Birotte Jr., United States District Judge, at 350 W. 1st Street, Courtroom 7B, Los Angeles, California, Defendant Google LLC (“Google”) will and hereby does move to stay this case pending the resolution of its *inter partes* review (“IPR”) petitions, which collectively challenge the patentability of all patent claims asserted in this action by Plaintiff Sandpiper CDN, LLC (“Plaintiff”).

Google brings this Motion to Stay on the ground that all relevant factors that courts in this District consider weigh in favor of a stay—this case is at an early stage, the IPRs are likely to simplify the issues before this Court, and a stay will not unduly prejudice or present a clear tactical disadvantage to Plaintiff. These factors and the totality of circumstances, including the interest of judicial economy, favor a stay. Google’s Motion to Stay is based on this Notice of Motion and Motion to Stay, the accompanying Memorandum of Points and Authorities, the Declaration of Heather E. Takahashi (“Takahashi Decl.”), and all pleadings and other documents on file in this case and any other argument and evidence as may be received by the Court.

Pursuant to L.R. 7-3, the parties conferred regarding the substance of this Motion on May 20, 2025. Plaintiff indicated that it intends to oppose the motion. *See* Takahashi Decl. ¶ 2. Plaintiff has agreed to waive the remainder of the seven-day period under L.R. 7-3.

Google requests that this action be stayed pending resolution of all IPR petitions challenging the patentability of the Asserted Patents, including through appeal.

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Respectfully submitted,

DATED: May 23, 2025

MUNGER, TOLLES & OLSON LLP

By: /s/Zachary M. Briers
Zachary M. Briers
Counsel for Defendant Google LLC

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND.....	1
III.	ARGUMENT	2
A.	This Case Is in Its Early Stages and a Stay Would Conserve Resources.	3
B.	A Stay Is Likely to Significantly Simplify the Issues in the Case.....	4
C.	Plaintiff Will Not Suffer Undue Prejudice from a Stay.....	6
IV.	CONCLUSION	8

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

<i>Bell Semiconductor, LLC v. NXP USA, Inc.</i> , No. 8:22-cv-2133-HDV-ADS, 2024 WL 3914500 (C.D. Cal. Feb. 12, 2024).....	7
<i>Core Optical Techs., LLC v. Fujitsu Network Commc'ns, Inc.</i> , No. SACV 16-00437-AG-JPRx, 2016 WL 7507760 (C.D. Cal. Sept. 12, 2016).....	5, 6, 8
<i>Danco Inc. v. Fluidmaster Inc.</i> , No. SA CV 23-1156-AB, 2024 WL 3914664 (C.D. Cal. Apr. 3, 2024).....	7
<i>Entropic Commc'ns, LLC v. DirecTV, LLC</i> , No. 2:22-cv-07775-JWH-JEM, 2023 WL 3407132 (C.D. Cal. Apr. 17, 2023).....	3
<i>Landis v. N. Am. Co.</i> , 299 U.S. 248 (1936)	3
<i>Laser Spallation Techs., LLC v. Boeing Co.</i> , No. CV 23-2294-AB, 2024 WL 3915091 (C.D. Cal. May 22, 2024).....	4, 6
<i>Mediatek, Inc. v. NXP Semiconductors N.V.</i> , No. CV 21-4969-GW-AFMx, 2022 WL 17185976 (C.D. Cal. June 21, 2022).....	3
<i>NFC Tech. LLC v. HTC Am., Inc.</i> , No. 2:13-CV-1058-WCB, 2015 WL 1069111 (E.D. Tex. Mar. 11, 2015).....	5
<i>Nike, Inc. v. Skechers U.S.A., Inc.</i> , No. CV 23-09346-AB, 2025 WL 439935 (C.D. Cal. Feb. 4, 2025)	3, 4, 5, 6
<i>One-E-Way, Inc. v. Apple Inc.</i> , No. 2:20-cv-6339-JAK-GJS (C.D. Cal. Mar. 16, 2021)	5
<i>Prime Focus Creative Servs. Can. Inc. V. Legend3D, Inc.</i> , No. CV-15-2340-MWF (PLA), 2015 WL 12746207 (C.D. Cal. Sept. 23, 2015).....	6

1	<i>Realtime Data LLC v. Teradata Operations, Inc.</i> ,	
2	No. SACV 16-02743 AG (FFMx), 2017 WL 3453295 (C.D. Cal.	
3	Feb. 27, 2017).....	3
4	<i>Rivers v. Walt Disney Co.</i> ,	
5	980 F. Supp. 1358 (C.D. Cal. 1997).....	3
6	<i>RJ Tech. LLC v. Apple Inc.</i> ,	
7	No. 8:22-cv-1874-JVS, 2023 WL 8188475 (C.D. Cal. Oct. 4, 2023).....	1, 4
8	<i>SAS Inst., Inc. v. Iancu</i> ,	
9	584 U.S. 357 (2018)	5
10	<i>SCA Hygiene Prods. Aktiebolag v. Tarzana Enters., LLC</i> ,	
11	No. CV 17-04395-AB, 2017 WL 5952166 (C.D. Cal. Sept. 27,	
12	2017).....	6
13	<i>Universal Elecs., Inc. v. Universal Remote Control, Inc.</i> ,	
14	943 F. Supp. 2d 1028 (C.D. Cal. 2013).....	3
15	<i>UPL NA, Inc. v. Tide Int’l (USA), Inc.</i> ,	
16	No. CV 19-1201-RSWL-KSx, 2021 WL 663128 (C.D. Cal. Feb. 19,	
17	2021).....	8
18	<i>VirtualAgility Inc. v. Salesforce.com</i> ,	
19	759 F.3d 1307 (Fed. Cir. 2014).....	1
20	<i>Wonderland Nursery Goods Co. v. Baby Trend, Inc.</i> ,	
21	No. EDCV 14-1153-VAP, 2015 WL 1809309 (C.D. Cal. Apr. 20,	
22	2015).....	4, 8
23	FEDERAL STATUTES	
24	35 U.S.C. § 101.....	1
25	35 U.S.C. § 313.....	2
26	35 U.S.C. § 314(b).....	2
27	35 U.S.C. § 315(e)(2)	4
28	35 U.S.C. § 316(a)(11)	2

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Google respectfully requests that this case be stayed pending resolution of *inter*
4 *partes* review (“IPR”) proceedings against all asserted claims in the five Asserted
5 Patents. Over the past six weeks, Google has filed IPR petitions challenging every
6 Asserted Patent and claim, with institution decisions expected by the end of this year.

7 All three factors strongly favor a stay.

8 *First*, the case is in its early stages. Fact discovery just opened and is scheduled
9 to close next year; claim construction briefing has not begun. Courts in this District
10 routinely issue pre-institution stays where, as here, a case is still at an early phase. *See*
11 *RJ Tech. LLC v. Apple Inc.*, No. 8:22-cv-1874-JVS, 2023 WL 8188475, at *3 (C.D.
12 Cal. Oct. 4, 2023) (collecting cases).

13 *Second*, a stay will simplify the issues before the Court. Google’s IPR petitions
14 challenge every asserted claim and could “dispose of the entire litigation: the ultimate
15 simplification of issues.” *VirtualAgility Inc. v. Salesforce.com*, 759 F.3d 1307, 1314
16 (Fed. Cir. 2014).

17 *Third*, a stay will not unduly prejudice Plaintiff. Plaintiff does not compete with
18 Google and seeks only a reasonable royalty. In such cases, “[a] stay will not diminish
19 monetary damages” if infringement is ultimately proven—“it only delays realization
20 of those damages.” *Id.* at 1318–19.

21 Accordingly, the three factors and the totality of the circumstances favor a stay.

22 **II. BACKGROUND**

23 Plaintiff filed this action against Google in May 2024, alleging infringement of
24 six patents related to content delivery networks. (Dkt. 1.) Following the dismissal of
25 two patents for failure to claim patent-eligible subject matter under 35 U.S.C. § 101
26 (Dkt. 28), Plaintiff amended the Complaint to add one more patent. (Dkt. 57.) The
27 remaining five patents are U.S. Patent Nos. 8,478,903 (the “’903 patent”), 10,924,573
28

(the “’573 patent”), 8,645,517 (the “’517 patent”), 9,021,112 (the “’112 patent”), and 10,057,322 (the “’322 patent”) (collectively, the “Asserted Patents”).

Plaintiff served its infringement contentions in January 2025, and Google served its invalidity contentions in April 2025. Fact discovery opened in March 2025 with the exchange of initial disclosures, and the parties have since served their first sets of written discovery. Neither party has taken any depositions. Claim construction briefing is scheduled to begin in August 2025, with the *Markman* hearing set for September 12, 2025. (Dkt. 54.) Fact discovery is scheduled to close in early 2026. (*Id.*)

Meanwhile, Google filed IPR petitions with the Patent Trial and Appeal Board (“PTAB”) challenging all asserted claims of the ’903, ’573, ’517, ’112, and ’322 patents. *See* Exs. 1–5 (IPR petitions). As shown in the table below, the PTAB is expected to issue institution decisions by the end of 2025. If instituted, final written decisions will be due by the end of 2026.

Asserted Patent	IPR No.	Filing Date	Expected Institution ¹	Expected Final Decision ²
8,478,903	IPR2025-00969	5/9/2025	11/2025	11/2026
10,924,573	IPR2025-00860	5/1/2025	11/2025	11/2026
8,645,517	IPR2025-00806	4/14/2025	11/2025	11/2026
9,021,112	IPR2025-00826	4/15/2025	11/2025	11/2026
10,057,322	IPR2025-01010	5/23/2025	12/2025	12/2026

III. ARGUMENT

A district court has the inherent power to stay proceedings. Indeed, “[t]his power to stay is ‘incidental to the power inherent in every court to control the

¹ 35 U.S.C. §§ 313; 314(b).

² 35 U.S.C. § 316(a)(11).

1 disposition of the causes on its docket with economy of time and effort for itself, for
2 counsel, and for litigants.” *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D.
3 Cal. 1997) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)).

4 Courts in this District generally consider three factors in determining whether
5 to stay patent litigation pending IPR proceedings: “(1) whether discovery is complete
6 and whether a trial date has been set; (2) whether a stay will simplify the issues in
7 question and trial of the case; and (3) whether a stay would unduly prejudice or present
8 a clear tactical disadvantage to the nonmoving party.” *Universal Elecs., Inc. v.*
9 *Universal Remote Control, Inc.*, 943 F. Supp. 2d 1028, 1030–31 (C.D. Cal. 2013)³;
10 *Nike, Inc. v. Skechers U.S.A., Inc.*, No. CV 23-09346-AB (PVCx), 2025 WL 439935,
11 at *2 (C.D. Cal. Feb. 4, 2025). Ultimately, although these factors guide the analysis,
12 “the totality of the circumstances governs.” *Mediatek, Inc. v. NXP Semiconductors*
13 *N.V.*, No. CV 21-4969-GW-AFMx, 2022 WL 17185976, at *2 (C.D. Cal. June 21,
14 2022).

15 Here, the balance of these factors—and the totality of the circumstances—
16 favors a stay pending resolution of Google’s IPRs.

17 **A. This Case Is in Its Early Stages and a Stay Would Conserve**
18 **Resources.**

19 The first factor favors a stay because this case is still in its early stages—most
20 of the work remains ahead. *See Realtime Data LLC v. Teradata Operations, Inc.*, No.
21 SACV 16-02743 AG (FFMx), 2017 WL 3453295, at *2 (C.D. Cal. Feb. 27, 2017)
22 (asking whether “there is more work ahead of the parties and the Court than behind”);
23 *Entropic Commc’ns, LLC v. DirecTV, LLC*, No. 2:22-cv-07775-JWH-JEM, 2023 WL
24 3407132, at *2 (C.D. Cal. Apr. 17, 2023) (granting pre-institution stay one month
25 before claim construction briefing would begin).

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27
28 ³ Citations omitted unless otherwise indicated.

1 Here, the parties only recently exchanged written discovery requests, they have
2 not taken any depositions, claim construction briefing is months away, and fact
3 discovery will not close for another eight months. “[T]he risk of delay attending an
4 unnecessary stay is minimal relative to the risk of unnecessary expenditure of
5 resources should the stay be denied and an IPR subsequently commence.” *Laser*
6 *Spallation Techs., LLC v. Boeing Co.*, No. CV 23-2294-AB (SKx), 2024 WL
7 3915091, at *3 (C.D. Cal. May 22, 2024); *see also Wonderland Nursery Goods Co.*
8 *v. Baby Trend, Inc.*, No. EDCV 14-1153-VAP (SPx), 2015 WL 1809309, at *3 (C.D.
9 Cal. Apr. 20, 2015) (finding a stay was favored when a Markman hearing had not yet
10 taken place).

11 A stay would conserve the Court’s and the parties’ resources and avoid
12 unnecessary litigation costs while the IPR proceedings progress. Accordingly, this
13 factor weighs strongly in favor of a stay.

14 **B. A Stay Will Simplify the Issues in the Case.**

15 The second factor also favors a stay because IPR proceedings are likely to
16 simplify this case. Indeed, “courts in this District have adopted the majority position
17 that even if IPR has not yet been instituted, the simplification factor may still weigh
18 in favor of a stay.” *RJ Tech*, 2023 WL 8188475, at *3 (collecting cases).

19 If an IPR is instituted and the PTAB issues a final written decision, Google will
20 be estopped from asserting invalidity based on any ground it “raised or reasonably
21 could have raised” during the IPR. 35 U.S.C. § 315(e)(2). This statutory estoppel
22 “streamlin[es] the invalidity portion of the case.” *Nike*, 2025 WL 439935, at *4.
23 Moreover, Google “stipulate[d] that, if the PTAB institutes an IPR proceeding on the
24 grounds presented in Google’s petition challenging the claims of [one of the Asserted
25 Patents], Google will not pursue in this district court litigation the same grounds in
26 the petition or any grounds that reasonably could have been raised during the IPR
27 with respect to the patent claims subjected to the instituted IPR.” Exs. 6–10 (Google
28

1 letters to Plaintiff with *Sotera* stipulations). This stipulation ensures that Plaintiff will
2 not face duplicative invalidity challenges across forums.

3 These estoppel protections carry particular weight here. Google’s IPR petitions
4 challenge every Asserted Patent claim, creating substantial overlap between the issues
5 before the PTAB and this Court. If IPRs are instituted, the PTAB is likely to narrow
6 or eliminate claims, streamlining the case for trial. *See One-E-Way, Inc. v. Apple Inc.*,
7 No. 2:20-cv-6339-JAK-GJS (C.D. Cal. Mar. 16, 2021), Dkt. 49, p. 4 (noting that
8 estoppel protections “present[] a potential to save time and resources in these
9 proceedings” and “could result in less discovery, fewer claim construction disputes,
10 more narrow motions for summary judgment, and a shorter trial”) (attached as Ex.
11 11). A favorable final written decision also would eliminate the need for this Court to
12 decide many issues of invalidity and non-infringement, reducing costs for both sides.
13 *See Core Optical Techs., LLC v. Fujitsu Network Commc’ns, Inc.*, No. SACV 16-
14 00437-AG-JPRx, 2016 WL 7507760, at *2 (C.D. Cal. Sept. 12, 2016) (“If the PTAB
15 cancels or narrows a portion of the asserted claims, the scope of this litigation may be
16 significantly reduced.”).

17 Staying this case also will permit this Court to benefit from the PTAB’s expert
18 analysis of the Asserted Patents and the prior art. Congress implemented the IPR
19 process “in large measure to simplify proceedings before the courts” and to provide
20 “the benefit of the expert agency’s full and focused consideration of the effect of prior
21 art on patents being asserted in litigation.” *NFC Tech. LLC v. HTC Am., Inc.*, No.
22 2:13-CV-1058-WCB, 2015 WL 1069111, at *4 (E.D. Tex. Mar. 11, 2015) (Bryson,
23 J.). If the PTAB institutes IPR proceedings on a patent, it must issue a final written
24 decision with respect to all the challenged claims in that patent, *see SAS Inst., Inc. v.*
25 *Iancu*, 584 U.S. 357, 363 (2018), finding the claims invalid or providing this Court
26 with its views regarding the surviving claims. Either way, “the decision would provide
27 simplification.” *Nike*, 2025 WL 439935, at *3. And the likelihood of simplification is
28 more than speculative: The PTAB’s 2024 institution rate—approximately 70%—

1 indicates that institution is likely. *See* Ex. 12 at 6, 7 (PTAB Trial Statistics). And even
2 if the PTAB denies institution, the delay will have been short, and outweighed by the
3 benefit of avoiding unnecessary expenditure if review is granted. *See Nike*, 2025 WL
4 439935, at *2–3 (granting a pre-institution stay after the claim construction hearing
5 but before the close of expert discovery, as there was “more work ahead of the parties
6 and the Court than behind”).

7 Here, Plaintiff asserts five patents from five different patent families, each with
8 a different specification and technical focus. (*See* Dkt. 54.) Given this breadth, there
9 is a “high upside” potential that IPR proceedings will significantly simplify this case.
10 *See Prime Focus Creative Servs. Can. Inc. V. Legend3D, Inc.*, No. CV-15-2340-
11 MWF (PLA), 2015 WL 12746207, at *3 (C.D. Cal. Sept. 23, 2015) (finding the
12 “PTAB’s review of the petition, if granted, could potentially streamline invalidity,
13 claim construction, and infringement issues in this action. Development of the IPR
14 record may also clarify claim construction positions for the parties, raise estoppel
15 issues, and encourage settlement.”). Moreover, Plaintiff’s submissions to the PTAB
16 in response to Google’s IPR petitions may inform claim construction. *See Core*
17 *Optical*, 2016 WL 7507760, at *2 (“Even if no patent claim is eliminated, the intrinsic
18 record developed during the IPR may inform on issues like claim construction.”).
19 Such significant upside mitigates any risk that the PTAB may deny review. *Id.*

20 Thus, the simplification-of-issues factor favors a stay.

21 **C. Plaintiff Will Not Suffer Undue Prejudice from a Stay.**

22 Plaintiff will suffer no discernible prejudice or tactical disadvantage if a stay is
23 implemented. *See Laser Spallation*, 2024 WL 3915091, at *4 (“Courts have
24 repeatedly found no undue prejudice unless the patentee makes a *specific* showing of
25 prejudice beyond the delay necessarily inherent in any stay.”). In weighing prejudice
26 to the non-moving party, courts look to considerations such as: “ the timing of the
27 requests for reexamination and a stay, the status of the reexamination proceedings,
28 and the relationship of the parties.” *SCA Hygiene Prods. Aktiebolag v. Tarzana*

1 *Enters., LLC*, No. CV 17-04395-AB (JPRx), 2017 WL 5952166, at *5 (C.D. Cal.
2 Sept. 27, 2017). Each of these considerations weighs in favor of a stay.

3 *Timing of the petition and request for a stay.* Google acted diligently in filing
4 its IPR petitions just a few months after receiving Plaintiff’s infringement
5 contentions—which first identified the asserted patent claims—and Plaintiff’s
6 production of its evidence of conception and reduction to practice, which informed
7 Google’s choice of prior art. Google filed the final petition against the ’322 patent
8 less than four months after that patent was added to the case. Courts routinely decline
9 to infer dilatory motive where a defendant timely exercises its statutory right to pursue
10 IPRs. *See, e.g., Bell Semiconductor, LLC v. NXP USA, Inc.*, No. 8:22-cv-2133-HDV-
11 ADS, 2024 WL 3914500, at *2 (C.D. Cal. Feb. 12, 2024) (“Although the filings were
12 made close to the statutory deadline, they were made within the prescribed time
13 period. . . . The Court finds the timing of these filings, standing alone, to be
14 insufficient evidence of undue prejudice.”); *Danco Inc. v. Fluidmaster Inc.*, No. SA
15 CV 23-1156-AB (DFMx), 2024 WL 3914664, at *3 (C.D. Cal. Apr. 3, 2024) (“[I]t
16 was appropriate for Defendant to wait to better understand Plaintiff’s position before
17 filing its petitions.”). Google also promptly moved to stay this case at the first
18 practical opportunity after filing its IPRs. Three of the five Asserted Patents—the
19 ’903, ’517, and ’112 patents—already have expired, further reducing any urgency or
20 risk of prejudice to Plaintiff.

21 *Status of the review proceedings.* The PTAB is expected to issue institution
22 decisions by the end of 2025, meaning Plaintiff would face only a six-month pause if
23 the petitions are not instituted. Given that three patents already have expired and
24 Plaintiff seeks only monetary damages, such a brief delay will not unduly prejudice
25 Plaintiff.

26 *Relationship of the parties.* A critical factor here is that the parties are not
27 market competitors. Plaintiff also has not sought a preliminary injunction. Because
28 Plaintiff “can adequately be compensated with monetary damages for any

1 infringement and will not lose sales or market shares as a result of a stay,” this sub-
2 factor weighs in favor of a stay. *Core Optical*, 2016 WL 7507760, at *2; *see UPL NA,*
3 *Inc. v. Tide Int’l (USA), Inc.*, No. CV 19-1201-RSWL-KSx, 2021 WL 663128, at *4
4 (C.D. Cal. Feb. 19, 2021) (“Plaintiff’s failure to seek a preliminary injunction belies
5 its claims of undue prejudice in the marketplace.”). “The general prejudice of having
6 to wait for resolution is not a persuasive reason to deny the motion for stay.”
7 *Wonderland*, 2015 WL 1809309, at *4.

8 In sum, the three stay factors, the totality of the circumstances, and purpose of
9 the IPR process all favor granting a stay.

10 **IV. CONCLUSION**

11 For the foregoing reasons, Google respectfully requests that the Court enter a
12 stay to remain in effect until the final resolution of Google’s IPRs and any appeals
13 therefrom.

14
15 Respectfully submitted,

16 DATED: May 23, 2025

MUNGER, TOLLES & OLSON LLP

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20 Counsel for Defendant Google LLC
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