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

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| CELLSPIN SOFT, INC., | § | |
| | § | |
| *Plaintiff*, | § | |
| | § | |
| v. | § | CIVIL ACTION NO. 2:23-CV-00496-JRG-RSP |
| | § | |
| BYTEDANCE LTD., et al., | § | |
| | § | |
| *Defendants*. | § | |

Before the Court is the Motion to Stay Pending *Inter Partes* Review, filed by ByteDance Ltd., ByteDance Pte. Ltd, and TikTok Pte. Ltd. **Dkt. No. 80**. After consideration, the Court **GRANTS** the Motion to Stay.

## I. BACKGROUND

Plaintiff Cellspin Soft, Inc. filed a complaint against Defendants ByteDance Ltd., ByteDance Pte. Ltd, and TikTok Pte. Ltd on October 20, 2023, asserting infringement of U.S. Patent Nos. 11,659,381; 8,756,336; 8,862,757; 8,898,260; 9,900,766; 8,904,030; and 11,234,121. Dkt. No. 1. On April 19, 2024, the Court issued a Docket Control Order. Dkt. No. 35. Pursuant to that Order, the claim construction hearing is set for February 25, 2025, fact discovery closes on March 17, 2025, expert discovery ends on April 21, 2025, and trial is set to begin on August 4, 2025, among other deadlines. *Id.*

On April 1st and April 5th of 2024, Defendants filed petitions for *inter partes* review on all asserted claims of all Asserted Patents. *See generally* IPR 2024-00757; IPR2024-00759; IPR2024-00760; IPR2024-00770; IPR2024-00767; IPR2024-00768; IPR2024-00769. On September 30 and October 1 of 2024, the Patent Trial and Appeal Board instituted trials for all patents. *Id.* Final written decisions for the IPRs are expected by September 30 and October 1 of 2025. On November



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6, 2024, Defendants filed the instant Motion to Stay, requesting that the Court stay this case until the Board has concluded IPRs of the Asserted Patents. Dkt. No. 80. The matter is now fully briefed.[1]

## II. LEGAL STANDARD

"The party seeking a stay bears the burden of showing that such a course is appropriate." *Peloton Interactive, Inc. v. Flywheel Sports, Inc.*, No. 218-cv-390-RWS-RSP, 2019 WL 3826051, at *1 (E.D. Tex. Aug. 14, 2019) (quoting *Realtime Data, LLC v. Hewlett Packard Enter. Co.*, No. 6:16-cv-86-RWS-JDL, 2017 WL 3712916, at *3 (E.D. Tex. Feb. 3, 2017)); *accord Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). "The decision of whether to extend a stay falls solely within the court's inherent power to control its docket." *Pers. Audio LLC v. Google, Inc.*, 230 F. Supp. 3d 623, 626 (E.D. Tex. 2017) (citing *ThinkOptics, Inc. v. Nintendo*, No. 6:11-cv-455-LED, 2014 WL 4477400, at *1 (E.D. Tex. Feb. 27, 2014)); *accord Clinton v. Jones*, 520 U.S. 681, 706 ("The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.") (citing *Landis*, 299 U.S. at 254).

District courts typically consider three factors when deciding whether to stay litigation pending IPR of the asserted patent(s): "(1) whether the stay will unduly prejudice the nonmoving party, (2) whether the proceedings before the court have reached an advanced stage, including whether discovery is complete and a trial date has been set, and (3) whether the stay will simplify issues in question in the litigation." *Trover Grp., Inc. v. Dedicated Micros USA*, No. 2:13-CV-1047-WCB, 2015 WL 1069179, at *2 (E.D. Tex. Mar. 11, 2015) (collecting cases).

[1] After Defendants filed the Motion on November 6, 2024, Plaintiff responded on November 25, 2024. Dkt. No. 86. Defendants then replied on December 3, 2024, with Plaintiff filing its Sur-Reply on December 17, 2024. Dkt. No. 88; Dkt. No. 96.

## III. ANALYSIS

### a. Undue Prejudice

Defendants argue that Plaintiff will not suffer any undue prejudice if the Court grants a stay because Plaintiff does not make any products or compete with Defendants and, therefore, Plaintiff can be sufficiently compensated through monetary relief for any damages. Dkt. No. 80 at 8.

Plaintiff counters by arguing that a stay would delay its interest in the timely enforcement of its patent rights. Dkt. No. 86 at 7. Plaintiff also argues that they will have greater difficulty gathering evidence because of a possible forthcoming ban of TikTok in the United States. *Id.* at 7-8.

Plaintiff's initial concern is entitled to some weight. *Uniloc USA, Inc. v. Acronis, Inc.*, No. 615-cv-1001-RWS-KNM, 2017 WL 2899690, at *2 (E.D. Tex. Feb. 9, 2017) (citing *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-CV-1058-WCB, 2015 WL 1069111, at *2 (E.D. Tex. Mar. 11, 2015)). However, this factor is present in every case in which a patentee resists a stay, and is therefore not sufficient, standing alone, to defeat a motion to stay. *Id*. (citing *NFC Tech.*, 2015 WL 1069111, at *2); *see also Trover*, 2015 WL 1069179, at *2 (collecting cases). Where, as here, a patentee seeks exclusively monetary damages, as opposed to a preliminary injunction or other relief, "mere delay in collecting those damages does not constitute undue prejudice." *Id*. (quoting *SSL Servs., LLC v. Cisco Sys., Inc.*, No. 2:15-cv-433-JRG-RSP, 2016 WL 3523871, at *2 (E.D. Tex. June 28, 2016)) (citing *VirtualAgility Inc. v. Salesforce.com*, 759 F.3d 1307, 1318 (Fed. Cir. 2014)).

Plaintiff's second concern is unpersuasive. As this Court has said previously, where a party fails to make any showing as to *particular* evidence or discovery that is at risk of being lost, a

generalized claim of injury is entitled to little weight. *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-CV-1058-WCB, 2015 WL 1069111, at *3 (E.D. Tex. Mar. 11, 2015). "[B]lanket statement[s] that evidence may become stale or be lost does not amount to a compelling showing of prejudice.". *Id.*

Nevertheless, since the final written decisions for the IPRs could issue after the scheduled trial, this factor weighs slightly against a stay.

**b. Stage of the Proceedings**

Defendants argue a stay is warranted because this case is still in its early stages, with significant pre-trial events yet to occur, including in particular the *Markman* hearing. *See* Dkt. No. 80 at 10-11. Plaintiff counters that this case has been pending for nearly 13 months, with many documents produced, interrogatories answered, motions resolved, hearings had, and the like. Dkt. No. 86 at 9-10.

"Usually, the Court evaluates the stage of the case as of the time the motion was filed." *Peloton Interactive*, 2019 WL 3826051, at *5 (quoting *Papst Licensing GMBH & Co., KG v. Apple, Inc.*, 6:15-cv-1095-RWS, slip op. at 7 (E.D. Tex. June 16, 2017)) (citing *VirtualAgility*, 759 F.3d at 1317). The instant Motion was filed on November 6, 2024. Dkt. No. 80. At that point, a trial date had been set (*see* Dkt. No. 35); Discovery Orders had been entered (Dkt. No. 33; Dkt. No. 39); and, as Plaintiff asserts, many pre-trial actions had been undertaken. However, Defendants are correct in asserting that large parts of discovery and many other important deadlines were still left at that point. Accordingly, this factor weighs in favor of a stay.

**c. Issue Simplification**

Whether a stay "will result in simplification of the issues before a court is viewed as the most important factor when evaluating a motion to stay." *Uniloc USA*, 2017 WL 2899690, at *3 (citing *Intellectual Ventures II LLC v. Kemper Corp.*, No. 6:16-cv-81-JRG, 2016 WL 7634422, at

*2 (E.D. Tex. Nov. 7, 2016); *NFC Tech.*, 2015 WL 1069111, at *4). "Simplification of the issues depends on whether the PTAB decides to grant the petition." *Id*. (citing *Trover*, 2015 WL 1069179, at *4; *Loyalty Conversion Sys. Corp. v. Am. Airlines, Inc.*, No. 2:13-cv-655-WCB, 2014 WL 3736514, at *2 (E.D. Tex. July 29, 2014)).

Defendants contend that the IPR proceedings currently pending against Cobblestone's asserted patents will greatly simplify the issues for this Court. Dkt. No. 80 at 5. To demonstrate this, Defendants need to show that every asserted claim has a reasonable likelihood of being invalidated by the Board for the Court to grant the Motion. Here, the Board has instituted a trial covering all asserted claims. *See supra* Section I. Accordingly, the simplification factor weighs in favor of a stay.

## IV. CONCLUSION

The Court finds that, overall, the situation here merits a stay. Accordingly, for the reasons stated above, the Court **GRANTS** Defendants' Motion. This case is hereby **STAYED** pending final written decision by the PTAB in the various IPRs identified above. The parties are directed to file a joint notice within 10 days of the last final written decision, advising the Court of their positions on lifting the stay.

**SIGNED this 26th day of January, 2025.**

ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE