IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ATLEISURE, LLC, Plaintiff, v. TREASURE GARDEN, INC., QINGDAO ACTIVA SHADE, INC., and ACTIVA LEISURE, INC. Defendant.	Case No. 1:24-cv-02270-TRJ Consolidated with Case No. 1:24-cv-05424- TRJ Hon. Tiffany R. Johnson

DEFENDANTS' OPENING BRIEF IN SUPPORT OF MOTION TO STAY THE PROCEEDINGS PENDING *INTER PARTES* REVIEW

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I. INTRODUCTION

Defendants submit this memorandum in support of their motion to stay this action in its entirety pending disposition of the *inter partes* review ("IPR") petitions IPR2025-01005 and IPR 2025-01006 filed by Treasure Garden on May 22, 2025. These IPR petitions set forth strong grounds for invalidating all of the claims of the '492 Patent. Accordingly, in the interest of conserving the resources of the Court and the parties, Defendants request that the Court stay this litigation pending the disposition of the IPR petitions. All of the relevant factors favor a stay.

First, this case is in its early stages. ATLeisure's later filed action against Qingdao Activa Shade Inc. and Activa Leisure, Inc. (collectively "Activa") was consolidated with this action just over a month ago on April 9, 2025. Accordingly, the parties jointly submitted a proposed Revised Patent Schedule setting the fact discovery cut-off for October 2025. The parties have yet to notice any depositions. Further, although the parties briefed claim construction, the Court has not yet conducted claim construction and has indicated the intent to submit the case to a special master.

Second, a stay will simplify the issues for the court. The Patent Trial and Appeal Board (the "Board") may potentially streamline the case by invalidating all claims of the '492 Patent. Even if some claims survive, this record could inform the Court on various issues, including claim construction and invalidity.

Third, a stay will not create any undue prejudice to ATLeisure. Treasure Garden filed its IPR petition before the one-year statutory deadline, and the stay will be finite in time —only extending through the pendency of the IPR.

Because the three factors weigh in favor of a stay, the court should grant Treasure Garden's Motion and order a stay pending the disposition of IPRs IPR2025-01005 and IPR2025-01006.

II. BACKGROUND

ATLeisure filed this action against Treasure Garden alleging infringement of the '492 Patent on May 23, 2024. Doc. 1. On November 25, 2024, ATLeisure filed a second action against Activa also alleging infringement of the '492 Patent. Katzenellenbogen Decl. Ex. 3. The parties jointly requested that the cases be consolidated, and that request was granted on April 9, 2025 consolidating both cases into this action. *Id.* Ex. 4. On April 10, the parties jointly submitted a proposed Revised Patent Scheduling Order in view of the consolidation of the new claims against Activa. Dkt. 61-1.

In accordance with the parties' proposed revised schedule, the defendants' Disclosure of Non-Infringement and Invalidity Contentions is not due until September 23, 2025, and the close of fact discovery is not until October 24, 2025. Dkt. 61. The parties submitted opening claim construction briefs on January 16, 2025 and responsive claim construction briefs on February 6, 2025. Dkts. 45-46 and 48-49. On February 28, 2025, the Court issued a notice of intent to appoint a special master. Dkt. 55. However, the special master has not yet been appointed by the

Court, and no date has been set for a Markman hearing. Katzenellenbogen Decl. ¶ 3. To date, the parties have engaged in written discovery but have not taken any depositions. *Id.* ¶ 4. No trial date has been set. Dkt. 22.

On May 22, 2025, Treasure Garden timely filed two parallel IPRs against all claims of the '492 Patent (the "Petition") in the PTAB. Katzenellenbogen Decl. ¶ 7, *see* Exs. 1, 2.

III. LEGAL STANDARD

The Court considers three factors in deciding whether to stay litigation pending an IPR determination: "(1) whether discovery is complete and a trial date has been set; (2) whether a stay will simplify the issues in the case; and (3) whether a stay would unduly prejudice or present a tactical disadvantage to the nonmovant." *Epic Tech*, 2020 WL 8258736, at *2 (*quoting Interface Inc. v. Tandus Flooring, Inc.*, No. 4:13-cv-46-WSD, 2013 WL 5945177, at *4 (N.D. Ga. Nov. 5, 2013).

"Courts have inherent power to manage their dockets and stay proceedings" pending the conclusion of related proceedings at the PTAB. *Epic Tech, LLC v. Pen-Tech Assocs., Inc.*, No. 1:20-CV-2428-MHC, 2020 WL 8258736, at *2 (N.D. Ga. Sept. 28, 2020) (quoting *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426-27 (Fed. Cir. 1988). "[T]here is a liberal policy in favor of granting motions to stay proceedings pending the outcoming of the USPTO" proceeding. *Southwire Co. v. Cerro Wire, Inc.*, No. 3:08-CV-92-JTC, 2009 WL 10664896, at *2 (N.D. Ga. May 12, 2009) (citations omitted). Where the PTAB finds "effective invalidity of the patent", the IPR outcome will likely result in dismissal of the suit. *Tomco Equip. Co. v. Se. Agri-Sys., Inc.*, 542 F. Supp. 2d 1303, 1307 (N.D. Ga. 2008); *Aegis 11 S.A. v. Hisense*

Co., Ltd., No. 1-20-cv-03891-MHC, 2021 WL 12300139 at *2 (N.D. Ga. June 23, 2021). Even if the claims of a challenged patent survive, the record developed in the PTAB proceeding will "reduc[e] the complexity and length of the [patent] litigation," streamline issues, and conserve resources of the parties and the Court. *Id*.

This Court has repeatedly noted the benefits of staying patent infringement litigation pending disposition of post-grant petitions by the PTO, including that:

- All prior art presented to the Court will have been first considered by the PTO, with its particular expertise;
- Many discovery problems relating to prior art can be alleviated by the PTO examination;
- In those cases resulting in effective invalidity of the patent, the suit will likely be dismissed;
- The outcome of the reexamination may encourage a settlement without the further use of the Court;
- The record of reexamination would likely be entered at trial, thereby reducing the complexity and length of the litigation;
- Issues, defenses, and evidence will be more easily limited in pretrial conferences after a reexamination; and
- The cost will likely be reduced both for the parties and the Court.

Aegis 11 S.A., 2021 WL 12300139, at *3.

Indeed, this Court has granted stays on numerous occasions with a similar procedural posture and/or schedule. *See, e.g.*, *Interface*, 2013 WL 5945177, at *4;

Intell. Ventures II LLC v. SunTrust Banks, Inc., No. 1:13-CV-02454-WSD, 2014 WL 5019911, at *2 (N.D. Ga. Oct. 7, 2014); *Wonderland Nurserygoods Co., Ltd. v. Kids II, Inc.,* No. 1-13-cv-01114-ELR, 2017 WL 10675430, *2 (N.D. Ga. Jan. 4, 2017); *Best Med. Int'l, Inc. v. Elekta Inc.*, No. 1-19-cv-03409-MLB, Dkt. 150, slip op. at 9 (N.D. Ga. Dec. 4, 2020) (attached as Ex. 6).

IV. THE FACTORS WEIGH IN FAVOR OF A STAY

Because (A) the case and discovery are in their early stages and Court has yet to schedule a trial date, (B) the stay will simplify the issues in the case, and (C) the stay would not unduly prejudice to ATLeisure, the Court should grant Defendant's Motion.

A. The Case is Still in its Early Stages and Court has Yet to Schedule a Trial Date

"Cases in the early stages of litigation are well-positioned for a stay." *IP Co., LLC v. Tropos Networks, Inc.*, No. 1:06-CV-0585-CC, 2014 WL 12622444, at *2 (N.D. Ga. Mar. 5, 2014) (finding the first factor favored of a stay where no claim construction hearing or trial date had been set); *Tomco Equip. Co.* 542 F. Supp. 2d at 1312 (granting a stay where no trial date had been set and discovery was ongoing).

Here, the proceeding is still in its early stages. The parties' proposed Revised Patent Scheduling Order sets the close of fact discovery on October 24, 2025, and the parties have not noticed any depositions. Dkt. 61; Katzenellenbogen Decl. ¶ 4. The parties have also not conducted any expert discovery. Katzenellenbogen Decl. ¶ 6. Moreover, although the parties have briefed claim construction, and the Court

has indicated the intent to appoint a special master for at least claim construction, the special master has not yet been appointed. Dkt. 55; Katzenellenbogen Decl. ¶ 3. Further, no trial date has been set, and the Parties have not submitted any *Daubert* motions, summary judgment briefs, or motions *in limine*. Thus, there is significantly "more work ahead of the parties and the Court than behind" and this factor weighs in favor of a stay. *Aegis 11 S.A.*, 2021 WL 12300139, at *3.

Indeed, this Court has repeatedly stayed cases at a similar or later stage. *See*, *e.g.*, *Interface*, 2013 WL 5945177, at *4 (staying a case with three months left in discovery); *Intell. Ventures II LLC v. SunTrust Banks, Inc.*, No. 1:13-CV-02454-WSD, 2014 WL 5019911, at *2 (N.D. Ga. Oct. 7, 2014) ("early stage" of the case favored a stay where no *Markman* hearing had been held, even though four depositions had been taken); *Wonderland Nurserygoods Co., Ltd. v. Kids II, Inc.,* No. 1-13-cv-01114-ELR, 2017 WL 10675430, *2 (N.D. Ga. Jan. 4, 2017) (staying a case after discovery because "there remain[ed] a great deal of work to be done, in terms of motion practice, review, and judicial resources"); *Best Med. Int'l, Inc. v. Elekta Inc.*, No. 1-19-cv-03409-MLB, Dkt. 150, slip op. at 9 (staying case where claim construction had been fully briefed) (attached as Ex. 6).

B. <u>A Stay Will Simplify the Issues for the Court</u>

If the PTAB invalidates the challenged claims, the "infringement litigation becomes moot," and the stay will have avoided the unnecessary expenditure of judicial resources in claim construction, expert discovery, summary judgment, pre-trial, and trial proceedings. *Interface*, 2013 WL 5945177, at *3 (citing 35 U.S.C. § 311). Moreover, if the Board's decision invalidates only "a portion of" the claims,

this would still "simplify the issues and support[] a stay." *Best Med Int'l*, slip op. at 11-12 (*quoting Cooper Lighting*, 2018 WL 11350482, at *4).

Even in the unlikely event that the PTAB invalidates *none* of the challenged claims, or declines to institute IPR entirely, the Court would still benefit from the PTAB's review. *AirWatch LLC v. Good Technology Corp*., No. 1-14-cv-02281-SCJ, Dkt. 45, slip op. at 4-5 (N.D. Ga. Feb. 13, 2015) (recognizing that the Court will benefit from the arguments and evidence developed and presented during IPR proceedings even if claims survive) (attached as Ex. 5). "Even if the PTO validates the claims, the decision of the PTO will greatly assist the Court in defining the scope of the claims at issue and rendering an ultimate determination as to infringement." *IP Co.*, 2014 WL 12622444, at *3. Further, the Court will benefit from the PTAB's review "even if the PTAB simply issues a decision in which it declines to institute review." *AirWatch LLC*, No. 1-14-cv-02281-SCJ, Dkt. 45 (slip op.) at 5.

Lastly, this Court has granted a stay pending the PTAB's institution in other cases. *See e.g. Aegis 11 S.A.*, 2021 WL 12300139, at *3-4 (granting a stay pending the PTAB's institution decision where the institution decision was expected five months later.); *Epic Tech*, 2020 WL 8258736, at *5 ("a stay is warranted pending the determination of whether the petition for IPR will be granted"); *Cooper Lighting, LLC v. Cordelia Lighting, Inc.*, No. 1:16-CV-2669-MHC, 2017 WL 11629195, at *8 (N.D. Ga. Nov. 13, 2017) ("the Court finds that a stay is appropriate through at least PTAB's institution decision"). Staying this case at its current, early stage will allow the Court to benefit from the PTAB's specialized expertise during claim construction and in considering issues regarding prior art. *See Tomco Equip. Co.* 542

F. Supp. 2d at 1307 (recognizing the benefit of the PTAB's "particular expertise"). *See* 35 U.S.C. § 318. By granting a stay, the Court may spare the time, effort, and expense of analyzing any claims the PTAB determines are invalid.

Accordingly, no matter the outcome of the IPR proceedings, this case will be narrowed in scope. *Epic Tech*, 2020 WL 8258736, at *2. Because the IPR proceedings will likely narrow or dispose of this case, a stay would conserve resources for the parties and the Court. Thus, the second factor weighs in favor of a stay.

C. <u>A Stay Would Not Unduly Prejudice ATLeisure</u>

The mere delay inherent to any stay does not establish undue prejudice. *Epic Tech*, 2020 WL 8258736, at *4; *Adair v. Boat Dock Innovations, LLC*, No. 1:12-CV-1930-SCJ, 2013 WL 1859200, at *3 (N.D. Ga. Feb. 27, 2013) ("the general prejudice of having to wait for resolution is not a persuasive reason to deny the motion for stay") (*quoting Graywire, LLC v. Ciena Corp.*, No. 1:08–CV–2993–BBM, 2009 WL 8590870, at *4 (N.D. Ga. July 17, 2009)).

First, Treasure Garden filed its IPR petition within the one-year statutory time limit. This Court has found that a defendant filing its petition "after receiving infringement contentions … does not suggest a bad motive or cause Plaintiff undue prejudice." *Best Med. Int'l,* No. 1-19-cv-03409-MLB, Dkt. 150, slip op. at 17 (Ex. 6). at 17. Courts have also granted stays when the IPR was filed near the deadline. For example, in *Best Med. Int'l*, the court granted a stay where defendant filed petitions "just hours" before the one-year deadline. No. 1-19-cv-03409-MLB, Dkt. 150, slip op. at 16 (N.D. Ga. Dec. 4, 2020) (Ex. 6).

Second, there is no undue prejudice because of the strict schedule governing IPR proceedings. The IPR schedule should "allay any concerns" of open-ended delays. *IP Co.*, 2014 WL 12622444 at *3. The PTAB is required by statute to grant or deny review within six months of a petition's filing date. 35 U.S.C. § 314(b). On one hand, if the PTAB decides not to institute review, the stay will be short and the matter can proceed with minimal delay. *Aegis 11 S.A.*, 2021 WL 12300139 at *3. On the other hand, if the PTAB institutes the Petition, the PTAB's final decision would be due in November of 2026. *See* U.S.C. § 316(a)(11).

Finally, "the availability of money damages is sufficient to protect plaintiff from prejudice." *Tomco*, 542 F. Supp.2d at 1308 (citations omitted). In this action, ATLeisure seeks monetary relief "adequate to compensate" for Defendants' alleged infringement pursuant to 35 U.S.C. § 284. Dkt. 1; Katzenellenbogen Decl. Ex. 3. Should ATLeisure prevail, it "may recoup the full extent of any monetary damages suffered, including any damages resulting from Defendants' actions during the pendency of the stay." *Adair*, 2013 WL 1859200, at *3.

Thus, this third factor weighs in favor of a stay.

V. CONCLUSION

Because (A) discovery is in its early stages and the Court has not set a trial date; (B) a stay will simplify issues for the Court; and (C) a stay will not unduly prejudice ATLeisure, Defendants respectfully request this Court to grant the Motion as it has done in other cases under similar circumstances.

Dated: May 22, 2025

Respectfully Submitted,

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CERTIFICATION OF COMPLIANCE

I hereby certify that the foregoing has been prepared with one of the font and point selections approved by the Court in LR 5.1(B) [Times new Roman 14-point] and does not exceed the page limit set forth in LR 7.1(D).

May 22, 2025

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