JS-6

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

LONGITUDE LICENSING LIMITED,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant,

and

WESTERN DIGITAL TECHNOLOGIES, INC.,

Intervenor-Defendant.

WESTERN DIGITAL TECHNOLOGIES, INC.,

Counterclaimant,

v.

LONGITUDE LICENSING LIMITED,

Counterdefendant,

Case No. 8:23-cv-00039-JWH-DFMx

ORDER GRANTING RENEWED MOTION TO STAY PENDING IPR [ECF No. 69]

REVELYST v. BRAINGUARD
IPR2025-01033
REVELYST 1052

In February 2024, Intervenor-Defendant and Counterclaimant Western Digital Technologies, Inc. ("WD") renewed its motion to stay the instant action pending the resolution of its petitions for *inter partes* review ("IPR") before the Patent Trial and Appeal Board (the "PTAB").[1] Plaintiff and Counterdefendant Longitude Licensing Limited filed an opposition, and WD filed a reply.[2] The Court concludes that this matter is appropriate for resolution without a hearing, and, accordingly, it vacated the hearing set for March 1, 2023.[3] *See* Fed. R. Civ. P. 78; L.R. 7-15. For the following reasons, the Court **GRANTS** WD's Motion.

I. BACKGROUND

The Court provided the relevant background in its prior ruling denying WD's motion to stay pending IPR.[4] The Court incorporates that discussion by reference here.

The Court denied WD's prior motion at least in part because the PTAB had not yet instituted review with respect to any of WD's petitions.[5] The PTAB has now instituted review in three proceedings—concerning the '369, '701, and '539 Patents—and it has denied review concerning the '233 Patent. The chart below summarizes the proceedings and their status:

Proceeding	Challenged Patent	Filing Date	Status
IPR2023-01123	'233 Patent, Claims 1-4 (all claims)	June 29, 2023	Institution ***denied*** on February 21, 2024.

[1] Renewed Mot. to Stay Action Pending *Inter Partes* Review (the "Motion") [ECF No. 69].

[2] Opp'n to Motion (the "Opposition") [ECF No. 75]; Reply in Support of Motion (the "Reply") [ECF No. 76].

[3] Order Vacating Hearing [ECF No. 77].

[4] Order Denying Motion to Stay (the "Prior Order") [ECF No. 61] 2-4.

[5] *Id.* at 6.

Proceeding	Challenged Patent	Filing Date	Status
IPR2023-01200	'369 Patent, Claims 1, 2, 6, 7, 10, 11, 14-19, and 25-57 (all independent claims)	July 14, 2023	Instituted on January 19, 2024, for all challenged claims.
IPR2023-01230	'701 Patent, Claims 1-18 (all claims)	July 20, 2023	Instituted on January 23, 2024, for all challenged claims.
IPR2023-01286	'539 Patent, Claims 1-12 (all independent claims)	August 8, 2023	Instituted on February 21, 2024, for Claim 4.

II. LEGAL STANDARD

The Court provided the relevant legal standard in its prior order denying WD's motion to stay pending IPR.[6] The Court incorporates that discussion by reference here.

III. DISPOSITION

A. Stage of Litigation

This case is at an early stage. First, the Court has not yet conducted a claim construction hearing nor has it issued a claim construction order. *See Wonderland Nursery Goods Co. v. Baby Trend, Inc.*, 2015 WL 1809309, at *3 (C.D. Cal. Apr. 20, 2015) (finding that a stay was warranted when the parties had submitted claim construction briefs, but no claim construction hearing had occurred). Also, at the time of WD's Motion, the parties had not yet filed their claim construction briefs. The stage of the litigation is assessed at the time that

[6] Prior Order 4.

a motion for stay is filed. *See VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1317 (Fed. Cir. 2014).

Second, discovery is still in its early stages. Although the parties have exchanged contentions and written discovery, the parties have not taken any depositions nor have they started expert discovery. *See Locata LBS, LLC v. Yellowpages.com, LLC*, 2014 WL 8103949, at *2-*3 (C.D. Cal. July 11, 2014) (the case was in its early stages when neither party had requested nor taken any depositions and expert discovery had not yet commenced); *see also Pi-Net Int'l, Inc. v. Hertz Corp.*, 2013 WL 7158011, at *2 (C.D. Cal. June 5, 2013). Also, discovery is not complete, and no trial date has been set. *See Universal Elecs., Inc. v. Universal Remote Control, Inc.*, 943 F. Supp. 2d 1028, 1031 (C.D. Cal. 2013) (considering "whether discovery is complete and whether a trial date has been set") (internal quotations and citations omitted).

Third, the Court has not conducted substantial hearings in this matter nor has it otherwise expended significant resources. *See id.* ("[T]he Court's expenditure of resources is an important factor in evaluating the stage of the proceedings."). Here, the Court has ruled on only three procedural motions—WD's motions to intervene and to stay action with respect to downstream defendants and WD's initial motion to stay pending IPR.[7] None of those motions significantly advances the stage of litigation, and the initial motion to stay, itself, does not establish that this case is advanced. *See DivX, LLC v. Netflix, Inc.*, 2022 WL 1208167, at *4 (C.D. Cal. Mar. 29, 2022).

Ultimately, "there is more work ahead of the parties and the Court than behind." *Polaris PowerLED Techs., LLC v. LG Elecs., Inc.*, 2020 WL 6064964, at

[7] *See generally* Order Granting WD's Motion to Intervene [ECF No. 42]; Order Granting WD's Motion to Stay Case Against Downstream Defendants [ECF No. 43]; Order Denying Motion to Stay Pending *Inter Partes* Review [ECF No. 61].

*2 (C.D. Cal. Aug. 26, 2020) (internal citations and quotations omitted). Thus, this factor favors a stay.

B. Simplification of the Issues

"There is a 'near uniform line of authority [reflecting the principle that] after the PTAB has instituted review proceedings, the parallel district court litigation ordinarily should be stayed.'" *Versata Software, Inc. v. Configit A/S*, 2022 WL 3598158, at *3 (C.D. Cal. Apr. 27, 2022) (citing *NFC Tech. LLC v. HTC America, Inc.*, 2015 WL 1069111, at *6–*7 (E.D. Tex. Mar. 11, 2015)). Here, the PTAB instituted review of the petitions challenging the '369, '701, and '539 Patents.[8] In light of the fact that those petitions involve most of the patent claims asserted in this action, a stay will likely offer at least some simplification.

Moreover, simplification is likely even though the PTAB will not address all claims of all asserted patents. *See id.* (citing *British Telecom. PLC v. IAC/InteractiveCorp*, 2019 WL 4740156, at * 7 (D. Del. Sept. 27, 2019)) (finding a stay appropriate even when the PTAB instituted review on fewer than all asserted claims). The PTAB denied institution of the petition challenging the four asserted claims of the '233 Patent.[9] Additionally, WD did not challenge four dependent claims of the '369 Patent asserted in this action.[10] Thus, the parties will need to litigate those eight claims in any event. Still, the petitions challenging the '369, '701, and '539 Patents involve 34 patent claims in total and concern all but one asserted independent claim.[11] The scope of the PTAB

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[8] *See* Prior Order 2-4. Longitude filed a disclaimer with the United States Patent and Trademark Office (the "USPTO") [ECF No. 69-6]. Longitude disclaims Claims 1-3 and 5-12 of the '539 Patent. *See id.* Accordingly, only Claim 4 remains at issue in this action and before the PTAB.

[9] *See* Prior Order 2-4.

[10] Opposition 6:23-25.

[11] *See* Prior Order 2-4.

proceedings far outweighs the eight claims that the PTAB will not address, seven of which are dependent claims.

In the event that the PTAB invalidates any challenged claim, some simplification is guaranteed because that decision will eliminate the claim from this case. *See Core Optical Techs., LLC v. Fujitsu Network Commc'ns, Inc.*, 2016 WL 7507760, at *2 (C.D. Cal. Sept. 12, 2016) ("If the PTAB cancels or narrows a portion of the asserted claims, the scope of this litigation may be significantly reduced."). Proceeding with a claim construction hearing and further litigation at this time may involve work that ultimately proves unnecessary, wasting judicial and the parties' resources.

Even if the PTAB does not invalidate any claims, simplification is still possible. *See, e.g.*, *Realtime Data*, 2017 WL 3453295, at *2 (finding that a stay provides "a richer prosecution history upon which to base necessary claim construction determinations"); *Core Optical Techs.*, 2016 WL 7507760, at *2 ("Even if no patent claim is eliminated, the intrinsic record developed during the IPR may inform on issues like claim construction."). Also, to the extent that any asserted claims of the '369, '701, and '539 Patents remain after the conclusion of the IPR proceedings, the estoppel provisions of 35 U.S.C. § 315(e)(2) will apply and will eliminate waived invalidity arguments.

For the foregoing reasons, this factor favors a stay.

C. The Risk of Undue Prejudice

When considering prejudice or a clear tactical disadvantage to the patentee, a court considers "(1) the timing of the petition for review; (2) the timing of the request for the stay; (3) the status of the review proceedings; and (4) the relationship of the parties." *Telesign Corp.*, 2016 WL 6821111, at *4 (quoting *E. Digital Corp. v. Dropcam, Inc.*, 2016 WL 658033, at *4 (N.D. Cal. Feb. 18, 2016)). "Courts have repeatedly found no undue prejudice unless the patentee makes a specific showing of prejudice beyond the delay necessarily

inherent in any stay." *PersonalWeb Techs.*, 69 F. Supp. 3d at 1029; *see also Wonderland Nurserygoods Co.*, 2015 WL 1809309, at *4 ("The general prejudice of having to wait for resolution is not a persuasive reason to deny the motion for stay.").

First, the timing of the petitions and the stay request are not prejudicial. Longitude filed this action on January 9, 2023.[12] WD timely filed its petitions for IPR approximately six months later, during the summer of 2023. *See* 35 U.S.C. § 315(b). WD first moved for a stay on August 9, 2023.[13] The Court denied without prejudice WD's initial motion, in part because the PTAB had not yet instituted review.[14] The PTAB instituted review for two of WD's petitions in late January 2024. WD filed this Motion on February 2, 2024.[15] That timeline establishes that WD acted promptly, both in filing its petitions and in filing its stay requests.

Second, the status of the review proceedings does not, alone, pose undue prejudice. Here, the PTAB should issue its final written decision in the three instituted proceedings within 18 months. *See* 35 U.S.C. § 316(a)(11). Although that is a substantial period of time, it is also a finite, statutory period. *See id.* "Protracted delay is always a risk inherent in granting a stay . . . [and the] general prejudice of having to wait for resolution is not a persuasive reason to deny the motion for stay." *Wonderland Nurserygoods Co.*, 2015 WL 1809309, at *4 (quoting *Sorensen* ex rel. *Sorensen Research and Development Trust v. Black & Decker Corp.*, 2007 WL 2696590, at *4 (S.D. Cal. Sept. 10, 2007)).

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[12] *See generally* Compl. [ECF No. 1].

[13] *See generally* WD's Initial Motion for Stay Pending *Inter Partes* Review [ECF No. 54].

[14] *See* Prior Order 2-4.

[15] See generally Motion.

Third, "[s]peculative assertions that evidence may be lost as a result of a stay pending [IPR] are insufficient." *Evolutionary Intelligence LLC v. Yelp Inc.*, 2013 WL 6672451, at *7 (N.D. Cal. Dec. 18, 2013) (citing *Software Rights Archive, LLC v. Facebook, Inc.*, 2013 WL 5225522, at *5 (N.D. Cal. Sept. 17, 2013)). Longitude does not show that "the risk of evidence loss is greater here than in any other case and that it amounts to more than the delay inherent to the [IPR] process." *Pragmatus AV, LLC v. Facebook, Inc.*, 2011 WL 4802958, at *3 (N.D. Cal. Oct. 11, 2011). General risk of evidence loss does not pose undue prejudice here.

Finally, the relationship of the parties favors a stay. Longitude is a non-practicing entity, and it would not risk losing sales to alleged infringers during a stay. *See Evolutionary Intelligence*, 2013 WL 6672451, at *8; *Cannarella v. Volvo Car USA LLC*, 2016 WL 9450451, at *14 (C.D. Cal. Dec. 12, 2016). A stay likely would not prejudice Longitude, a licensor, because monetary damages provide adequate redress for infringement. *See Evolutionary Intelligence*, 2013 WL 6672451, at *8. Additionally, there is no risk of irreparable harm because Longitude does not practice the invention. *See id.*

Because the Court finds little, if any, risk of undue prejudice to Longitude, the Court declines to balance the parties' competing interests. Accordingly, this factor favors a stay.

IV. DISPOSITION

On balance, the factors demonstrate that a stay is appropriate. Thus, the Court hereby **ORDERS** as follows:

1. WD's Motion is **GRANTED**.

2. This action is **STAYED** pending resolution of IPR2023-01200, IPR2023-01230, and IPR2023-01286. Any party may make a motion at any time to modify or vacate the stay, for good cause shown.

3. Within 10 days of the issuance of final written decisions in the pending IPRs, the parties are **DIRECTED** file a joint report providing their collective or respective positions regarding lifting the stay.

4. The *Markman* hearing set for April 4, 2024, is **VACATED**.

5. The Clerk is **DIRECTED** to close this case administratively.

IT IS SO ORDERED.

Dated: February 26, 2024

John W. Holcomb
UNITED STATES DISTRICT JUDGE