Marla R. Butler, *pro hac vice*
marla.butler@thompsonhine.com
Two Alliance Center
3560 Lenox Road Suite 1600
Atlanta, Georgia 30326-4266
Telephone: (404) 407-3680

Jeffrey C. Metzcar, *pro hac vice*
jeff.metzcar@thompsonhine.com
10050 Innovation Dr., #400
Miamisburg, OH 45342
Telephone: (937) 443-6841

Jesse L. Jenike-Godshalk, *pro hac vice*
Jesse.Godshalk@ThompsonHine.com
312 Walnut Street, Suite 2000
Cincinnati, Ohio 45202
Tel.: (513) 352-6700
Fax: (513) 241-4771

Andrew Himebaugh, *pro hac vice*
andy.himebaugh@thompsonhine.com
20 N. Clark Street, Suite 3200
Chicago, IL 60602
Telephone: (312) 998-4247

Jennifer Seraphine (State Bar No. 245463)
seraphine@turnerboyd.com
Vyson Hsu (State Bar No. 322336)
hsu@turnerboyd.com
TURNER BOYD SERAPHINE LLP
155 Bovet Road, Suite 750
San Mateo, CA 94402
Telephone: (650) 521-5930

Attorneys for Defendants/Counterclaim-Plaintiffs Caption Health, Inc. & GE HealthCare Technologies Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNIVERSITY OF BRITISH COLUMBIA,

Plaintiff,

v.

CAPTION HEALTH, INC.; GE HEALTHCARE TECHNOLOGIES INC.,

Defendants.

Case No. 5:24-cv-03200-EKL

DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY CASE PENDING *INTER PARTES* REVIEW

Date: July 29, 2025
Time: 10:30 a.m.
Place: Courtroom 7, 4th Floor
Judge: Eumi K. Lee

CAPTION HEALTH Ex1037
Caption Health, Inc. v.
University of British Columbia
Trial IPR2025-01066

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NOTICE OF MOTION

Please take notice that on Tuesday, July 29, 2025 at 10:30 a.m., or as soon thereafter as the matter may be heard, in the courtroom of the Honorable Eumi K. Lee located in the United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 7, 4th Floor, 280 South First Street, San Jose, CA 95113, Defendants Caption Health, Inc. and GE HealthCare Inc. ("Defendants") will and hereby do move for an order staying all proceedings in this action pending final resolution of the pending *inter partes* review ("IPR") proceedings relating to U.S. Patent Nos. 11,129,591 ("the '591 patent") and 10,751,029 ("the '029 patent")[1] before the Patent Trial and Appeal Board ("PTAB"), including any appeals therefrom.

STATEMENT OF RELIEF SOUGHT

Defendants respectfully request that the Court order this case stayed pending *inter partes* review of the '591 and '029 patents.

[1] Defendants intend to file a petition for IPR of the '029 patent long before the statutory deadline of December 20, 2025.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants respectfully request that the Court stay this case pending IPR proceedings. Plaintiff, the University of British Columbia ("Plaintiff" or "UBC"), asserts infringement of the '591 patent and the '029 patent. Defendants recently petitioned for *inter partes* review of the '591 patent and will soon petition for *inter partes* review of the '029 patent.

Each of the relevant factors justifies a stay of this case. First, the case is still at an early stage. Though the parties have exchanged some discovery, there has been no email discovery, no depositions, no expert discovery, no *Markman* hearing (or briefing), and no dispositive motions. Indeed, Plaintiff has barely begun its document production (producing only 69 documents to date). Second, a stay would simplify the issues in this case. A stay will save the Court and the parties from spending significant resources on issues that PTAB review will narrow or potentially foreclose. Defendants submit that the IPR proceedings will likely invalidate all of Plaintiff's asserted claims under the '591 and '029 patents. Third, a stay will not cause any undue prejudice or tactical disadvantage to Plaintiff. Defendants promptly filed their first IPR petition after receiving Plaintiff's infringement contentions and filed this motion shortly after filing their first IPR petition (for the '591 patent). Further, by Plaintiff's own admission, Defendants and Plaintiff are not competitors. Defendants are commercial entities that sell products, whereas Plaintiff is an educational institution that does not sell or license competing products or services. Accordingly, Defendants respectfully request that the Court stay this case pending resolution of the IPR petitions.

II. BACKGROUND

Plaintiff filed its initial Complaint on May 28, 2024, alleging infringement of only the '591 patent. (*See* ECF No. 1.) Defendants responded on August 30, 2024 by filing an Answer and Counterclaims to the Complaint, including claims for declaratory judgment of non-infringement and invalidity of the '591 patent. (*See* ECF No. 33.)

On October 23, 2024, Plaintiff served its Disclosure of Preliminary Asserted Claims and Infringement Contentions. (*See* Declaration of Jesse Jenike-Godshalk ("Godshalk Decl.") at ¶ 2.)

Then on November 22, 2024, it served its First Supplemental Disclosure of Asserted Claims and Preliminary Infringement Contentions. (*Id.* at ¶ 3.)

Plaintiff filed its operative Amended Complaint on December 20, 2024, adding a claim for infringement of the '029 patent. (*See* ECF No. 46.) The '591 and '029 patents are both addressed to the same technology of AI-driven analysis of ultrasonic medical imaging, and Plaintiff admits that it has never commercially practiced or licensed these patents. (*Id.* at ¶ 5 & Ex. 1 at 4, 8.)

On January 2, 2025, the Court issued a Modified Scheduling Order, which remains the operative scheduling order in this case. (*See* ECF No. 49.) The schedule calls for claim construction briefing to begin on July 11, 2025, with the *Markman* hearing set for August 26, 2025. (*Id.* at 2–3.) There currently is no date for the close of fact discovery or for the beginning or close of expert discovery. The Court also has not yet scheduled a date for a jury trial. Indeed, the parties have not even proposed a definite date for trial.

On February 7, 2025, Plaintiff served its Second Supplemental Disclosure of Asserted Claims and Preliminary Infringement Contentions for both the '591 and '029 patents. (Godshalk Decl. at ¶ 4.)[2]

On February 28, 2025, Defendants filed their Answer and Counterclaims to the First Amended Complaint, claiming that both of the asserted patents are not infringed and are invalid. (*See* Doc. No. 52.) On March 21, 2025, Plaintiff answered Defendants' counterclaims, thus closing the pleadings in this case. (*See* Doc. No. 60.)

On May 9, 2025, Plaintiff sought leave to amend its infringement contentions yet again. (Doc. No. 65.) That motion remains pending.

On May 28, 2025, Defendants filed a petition for IPR of the '591 patent. (Godshalk Decl. ¶ 6 & Ex. 2.) Defendants' petition challenges the patentability of all of the claims of the '591 patent that have been asserted in this case. (*Id.*) Defendants intend to file a petition for IPR of the asserted

[2] Plaintiff's supplemental claim charts for the '591 patent are the subject of a pending motion to strike. (*See* Doc. No. 58.)

claims of the '029 patent long before the statutory deadline of December 20, 2025 per 35 U.S.C. § 315(b).

The U.S. Patent and Trademark Office ("PTO") releases trial statistics by fiscal year.[3] For FY2024, the PTO reported that the PTAB instituted review of 74% of patents petitioned. Of those claims instituted for review by the PTAB, only 14% were found patentable in a final written decision. The remainder were either found unpatentable by a final written decision (49%), were disclaimed by the patentee (4%), or resulted in no final written decision, typically because of a settlement (33%). (Godshalk Decl. at ¶ 8 & Ex. 3 at 7–11, 13.)

III. LEGAL STANDARD

"Courts have inherent power to manage their dockets and stay proceedings, . . . including the authority to order a stay pending conclusion of a PTO reexamination." *Oyster Optics, LLC v. Ciena Corp.*, No. 17-cv-05920-JSW, 2021 U.S. Dist. LEXIS 254575, at *3 (N.D. Cal. Nov. 9, 2021) (quoting *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426–27 (Fed. Cir. 1988)). Courts recognize "a liberal policy in favor of granting motions to stay proceedings pending the outcome of USPTO reexamination or reissuance proceedings." *Finjan, Inc. v. Symantec Corp.*, 139 F. Supp. 3d 1032, 1035 (N.D. Cal. 2015) (citation omitted). Courts use a multi-factor test to determine whether to grant a stay pending *inter partes* review considering: "(1) [w]hether discovery is complete and whether a trial date has been set; (2) [w]hether a stay will simplify the issues in question and trial of the case; and (3) [w]hether a stay would unduly prejudice or present a clear tactical disadvantage to the nonmoving party." *HD Silicon Sols. LLC v. Microchip Tech. Inc.*, No. 21-cv-08295-SK, 2022 U.S. Dist. LEXIS 138373, at *3–4 (N.D. Cal. Aug. 3, 2022) (internal citations and quotations omitted); *accord PersonalWeb Techs., LLC v. Apple Inc.*, 69 F. Supp. 3d 1022, 1025 (N.D. Cal. 2014).

[3] The PTO's trial statistics cover IPRs and the closely related post-grant reviews, or PGRs. According to the PTO, 97% of petitions filed in FY2024 were IPR petitions. *See* Ex. E at 3.

IV. ARGUMENT

A. The Early Stage of This Case Favors a Stay.

The early stage of this case favors a stay. When weighing this factor, "courts examine the posture and circumstances of [each] case" on an individual basis. *Cortex MCP, Inc. v. Visa, Inc.*, No. 5:23-cv-05720-EJD, 2024 U.S. Dist. LEXIS 129034, at *5 (N.D. Cal. July 22, 2024) (internal citations omitted). Courts in this District typically look to (1) "whether the parties have engaged in costly expert discovery and dispositive motion practice"; (2) "whether the parties have fully briefed the issue of claim construction, attended a *Markman* hearing and received a claim construction order," and (3) "whether the court has set a trial date." *HD Silicon Sols.*, 2022 U.S. Dist. LEXIS 138373, at *4.

Here, the parties have not engaged in any expert discovery and have not filed any dispositive motions; the parties have not fully briefed claim construction, attended a *Markman* hearing, or received a claim construction order; and the Court has not set a trial date. In addition, the pleadings closed only three months ago, and discovery is far from complete, with no closing date set for fact discovery, and no start date or closing date set for expert discovery. Nor has Plaintiff expended significant resources producing documents, as they have produced only 69 documents to date. (Godshalk Decl. at ¶ 7.) While the parties have exchanged some written discovery and served infringement and invalidity contentions, the resources spent on that work are a fraction of those that would be required for the still-to-come document productions by the parties in addition to pending email discovery, fact depositions, and expert discovery and reports. Moreover, there has been no *Markman*-related briefing or hearing.

In similar circumstances, even where cases were further along, this Court has found this stage-of-case factor to favor a stay. *See Cortex MCP*, 2024 U.S. Dist. LEXIS 129034, at *5 (finding that although "[t]he parties [had] been engaging in discovery and claim construction briefing" that "the claim construction hearing [was] not set until [two months from the order], and there [were] no dates set for the close of fact or expert discovery, dispositive motions briefing, or trial . . . " and thus "[t]here [was] substantial work remaining before the case [would be] ready for trial"); *directPacket Research, Inc. v. Polycom, Inc.*, No. 19-CV-03918-LHK (N.D. Cal. Jan. 16, 2020) (Doc. No. 233 at

2) (granting stay pending IPR where "the Court has not held a claim construction hearing, and the parties have not filed dispositive motions, both of which demonstrate that the case is still in its early stages"); *Twilio, Inc. v. TeleSign Corp.*, No. 16-CV-06925-LHK, 2018 U.S. Dist. LEXIS 57057, at *3 (N.D. Cal. Apr. 3, 2018) (finding that the stage of the litigation weighed in favor of a stay where the parties had engaged in some written discovery, but had not taken fact depositions, exchanged expert reports, or produced email discovery, finding that "although the parties have incurred some costs related to discovery, significant discovery-related costs still remain that might be avoided by a stay"); *Uniloc United States, Inc. v. Apple Inc.*, No. 18-cv-00361-PJH, 2018 U.S. Dist. LEXIS 88489, at *7–8 (N.D. Cal. May 25, 2018) (finding, although some discovery had occurred, that "most of both fact and expert discovery [were] still largely incomplete and even unscheduled" and that the analysis of cost, focusing on the *remaining* work in the case should weigh towards a stay since "significant early litigation costs still remain[ed]" at this stage of litigation).

Because a substantial portion of the work has not yet even begun—let alone finished—in this case, this factor weighs in favor of a stay.

B. A Stay Will Simplify the Case.

A stay of the case pending the IPR proceedings will serve to greatly simplify the issues before the Court, as well as conserve judicial resources and avoid inconsistent results, which weighs in favor of a stay. *See Uniloc USA, Inc., et al. v. Apple, Inc.*, No. 18-CV-00357-LHK (N.D. Cal. Apr. 30, 2018) (Doc. No. 144 at 4) ("If the Patent Office invalidates any of the claims at issue, that would narrow the scope of the litigation in this case.") (citations omitted); *HD Silicon Sols.*, 2022 U.S. Dist. LEXIS 138373, at *5 ("A stay may also serve to avoid inconsistent results, obtain guidance from the PTAB, or avoid needless waste of judicial resources." (*citing Slip Track Sys. v. Metal Lite*, 159 F.3d 1337, 1341 (Fed. Cir. 1998))).

Defendants' IPR petitions will challenge all the asserted claims of the '591 and '029 patents. Defendants submit that those claims will all likely be invalidated in the IPR proceedings. Notably, the already-filed petition challenges the '591 patent on multiple grounds, including some prior art references not previously considered by the U.S. Patent and Trademark Office. (*See* Godshalk Decl. ¶ 6 & Ex. 2.) Even if some claims were to survive, the IPR petitions would clarify the scope and

interpretation of those claims. For example, Plaintiff is likely to take positions before the PTAB relating to the scope and meaning of the patent claims. These statements can inform and simplify the issues for this Court in determining the proper construction of any surviving claims after the IPRs have concluded. *See*, *e.g.*, *Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1359 (Fed. Cir. 2017) ("[S]tatements made by a patent owner during an IPR proceeding can be relied on to support a finding of prosecution disclaimer during claim construction.").

Thus, a stay of the case will simplify the issues in the litigation and reduce the burden on the Court and parties—factors that strongly favor a stay.

C. Plaintiff Will Suffer No Undue Prejudice or Tactical Disadvantage from a Stay.

There will be no undue prejudice or tactical disadvantage to Plaintiff, which favors a stay. To weigh this factor, Courts in this District evaluate four subfactors: "(i) the timing of the reexamination request; (ii) the timing of the request for the stay; (iii) the status of reexamination proceedings; and (iv) the relationship of the parties." *Synopsys, Inc. v. Siemens Indus. Software Inc.*, No. 20-cv-04151-WHO, 2022 U.S. Dist. LEXIS 244276, at *9 (N.D. Cal. June 7, 2022) (considering a motion to stay pending IPR) (internal quotations omitted). Each of these subfactors weighs in favor of granting a stay.

1. The timing of the IPR petitions

The petition for IPR of the '591 patent was filed on May 28, 2025, and the petition for IPR of the '029 patent will be filed long before the statutory deadline of December 20, 2025. (*See* Godshalk Decl. at ¶ 6.) These filing dates are within the one-year statutory deadline from service of the respective complaints. 35 U.S.C. § 315(b) (providing defendants one year from the date of service of the complaint to submit a petition for IPR). Intrinsically, this timing does not constitute delay or unduly prejudice Plaintiff. *Jenam Tech, LLC v. Google LLC*, No. 21-cv-07994-JST, 2022 U.S. Dist. LEXIS 240241, at *10 (N.D. Cal. Mar. 28, 2022) ("Delay alone [within the statutory deadline] does not usually constitute undue prejudice because parties having protection under the patent statutory framework may not complain of the rights afforded to others by that same statutory framework." (internal citations omitted)). Because a defendant is "statutorily entitled to file its IPR petitions at any point within the one-year limitations period[, courts] [do] not find that [the] decision

to [file for review] at the close of that period demonstrates undue delay." *Id.* (internal quotations omitted).

Further, Defendants filed their first IPR petition less than six months after Plaintiff filed its Amended Complaint, only approximately three months after Plaintiff served its second supplemental infringement contentions for the '591 patent, and less than a month after Plaintiff requested leave to supplement its infringement contentions a third time. "[C]ourts in this District have concluded that waiting until after receiving infringement contentions to analyze the claims alleged and then filing petitions for review does not cause undue prejudice." *Trusted Knight Corp. v. IBM*, No. 19-cv-01206-EMC, 2020 U.S. Dist. LEXIS 158218, at *12 (N.D. Cal. Aug. 31, 2020) (internal quotations omitted); *see also Karl Storz Endoscopy-Am., Inc. v. Stryker Corp.*, No. 14-cv-00876-RS, 2015 U.S. Dist. LEXIS 53627, at *10–11 (N.D. Cal. Mar. 30, 2015) (noting that "the proper frame of reference for evaluating undue prejudice is the interval between [defendant's] receipt of [plaintiff's] infringement contentions and its filing of IPR petitions" and finding a period of three and half to six months reasonable even when outside of the one year statutory deadline under 35 U.S.C. § 315(b)). Here, considering the shifting sands nature of Plaintiff's infringement claims (*see* ECF No. 58, 67), the timing of Defendants' IPR petitions is even more reasonable.

Thus, the timing of the filing of the IPR petitions, which is both within the statutory deadline and within an eminently reasonable time period after receipt of Plaintiff's infringement contentions, shows an absence of any undue prejudice to Plaintiff, which weighs in favor of a stay.

2. The timing of the request for the stay

Defendants bring this motion expeditiously after filing their first IPR petition less than a month ago. Plaintiff cannot credibly argue that such timing constitutes prejudicial delay. Moreover, as discussed above, this case is in the early stages of fact discovery. And while the parties have exchanged proposed terms for claim construction, briefing does not begin until next month, with the *Markman* hearing scheduled for August 26, 2025. Given the early stage of proceedings, and with the close of fact discovery, the start and close of expert discovery, and trial in this matter not currently scheduled, a stay will not result in undue prejudice to Plaintiff. *See Neodron, Ltd. v. Lenovo Grp., Ltd.*, No. 19-cv-05644-SI, 2020 U.S. Dist. LEXIS 155934, at *6 (N.D. Cal. Aug. 27,

2020) (citing *PersonalWeb Techs., LLC v. Apple Inc.*, 69 F. Supp. 3d 1022, 1029 (N.D. Cal. 2014) ("Courts have repeatedly found no undue prejudice unless the patentee makes a specific showing of prejudice beyond the delay necessarily inherent in any stay.")).

3. The status of the review proceedings

Defendants filed their first IPR petition on May 28, 2025. In accordance with a statutory deadline, the PTAB is expected to decide whether to institute proceedings on the '591 patent by no later than about January 2026. *See* 35 U.S.C. § 314(b). By statute, the IPRs will be complete no more than a year later, around January 2027. 37 C.F.R. § 42.100(c). Given that much of this case has not yet been scheduled by the Court, this subfactor also indicates a lack of undue prejudice or tactical disadvantage and thus weighs in favor of a stay.

4. The relationship of the parties

Plaintiff admits that it does not offer products or services that practice any claim of the asserted patents and does not compete with Defendants. (Godshalk Decl., ¶ 5 & Ex. 1 at 4 ("UBC has never licensed the patents[.]"); *id.* at 6 ("UBC and Defendants do not participate in the same line of business and are not competitors."); *id.* at 8 ("UBC . . . has no commercial embodiment of the patented invention.").) Thus, there can be no dispute that Plaintiff and Defendants are not in competition and that Plaintiff will not suffer prejudice if the case is stayed. *See Cortex MCP*, 2024 U.S. Dist. LEXIS 129034, at *8 (finding that since the parties were not direct competitors this "alleviate[d] the risk of prejudice" especially since the non-moving party was "a non-practicing entity without any products or market share related to the Patents-in-Suit"); *Uniloc*, No. 18-CV-00357-LHK (Doc. No. 144 at 5) (finding lack of undue prejudice and granting a motion to stay where the plaintiff was "a 'non-practicing entity that licenses its intellectual property' and therefore 'does not compete directly with [defendant]'"); *see also Finjan, Inc. v. Symantec Corp.*, 139 F. Supp. 3d 1032, 1038 (N.D. Cal. 2015) (quoting *DSS Tech. Mgmt., Inc. v. Apple, Inc.*, No. 14-cv-05330-HSG, 2015 U.S. Dist. LEXIS 57704, at * 4 (N.D. Cal. May 1, 2015) ("[C]ourts generally find that a plaintiff 'does not risk irreparable harm by [the defendant's] continued use of the accused technology and can be fully restored to the *status quo ante* with monetary relief'" if there is no

indication that the parties "are direct competitors and that the plaintiff's competitive position would be prejudiced by a stay.").

For these reasons, the non-competitive relationship between Defendants and Plaintiff weighs in favor of a stay.

V. CONCLUSION

Because all the relevant factors support a stay of this action pending resolution of Defendants' IPR petitions, Defendants respectfully request that the Court grant its motion to stay this case pending final resolution of the IPR proceedings.

Dated: June 27, 2025

/s/ Marla R. Butler

Marla R. Butler, pro hac vice
marla.butler@thompsonhine.com
Two Alliance Center
3560 Lenox Road Suite 1600
Atlanta, Georgia 30326-4266
Telephone: (404) 407-3680

Jeffrey C. Metzcar, pro hac vice
jeff.metzcar@thompsonhine.com
10050 Innovation Dr., #400
Miamisburg, OH 45342
Telephone: (937) 443-6841

Jesse L. Jenike-Godshalk, pro hac vice
Jesse.Godshalk@ThompsonHine.com
312 Walnut Street, Suite 2000
Cincinnati, Ohio 45202
Tel.: (513) 352-6700
Fax: (513) 241-4771

Andrew Himebaugh, pro hac vice
andy.himebaugh@thompsonhine.com
20 N. Clark Street, Suite 3200
Chicago, IL 60602
Telephone: (312) 998-4247

Jennifer Seraphine (State Bar No. 245463)
seraphine@turnerboyd.com
Vyson Hsu (State Bar No. 322336)
hsu@turnerboyd.com
TURNER BOYD SERAPHINE LLP
155 Bovet Road, Suite 750
San Mateo, CA 94402
Telephone: (650) 521-5930

Attorneys for Defendants/Counterclaim-Plaintiffs Caption Health, Inc. & GE HealthCare Technologies Inc.

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2025, I caused a true and correct copy of the foregoing to be filed in this Court's CM/ECF system, which will send notification of such filings to all parties who have appeared in this matter.

/s/ Jesse Jenike-Godshalk
Jesse Jenike-Godshalk