UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ADVANCED INTEGRATED CIRCUIT PROCESS LLC, *Plaintiff,* v. UNITED MICROELECTRONICS CORPORATION, *Defendant.*	§ § § § § § § § § § § § §	CIVIL ACTION NO. 2:24-cv-730-JRG (LEAD CASE)
ADVANCED INTEGRATED CIRCUIT PROCESS LLC, *Plaintiff,* v. TAIWAN SEMICONDUCTOR MANUFACTURING COMPANY LIMITED, *Defendant.*	§ § § § § § § § § § § § §	CIVIL ACTION NO. 2:24-cv-623-JRG (MEMBER CASE)

PLAINTIFF'S OPPOSITION TO DEFENDANT TAIWAN SEMICONDUCTOR MANUFACTURING COMPANY LIMITED'S MOTION TO STAY

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INTRODUCTION

Defendant Taiwan Semiconductor Manufacturing Company Limited ("TSMC") asks this Court to depart from its "universal practice" and stay this case before *inter partes* review ("IPR") proceedings are instituted. *Trover Grp., Inc. v. Dedicated Micros USA*, No. 2:13-CV-1047-WCB, 2015 WL 1069179, at *6 (E.D. Tex. Mar. 11, 2015). Motions like TSMC's are "inherently premature," and this Court consistently denies them. *Clear Imaging Rsch., LLC v. Samsung Elecs. Co.*, No. 2:19-CV-00326-JRG, 2020 WL 13886381 (E.D. Tex. Dec. 21, 2020); *see also Barkan Wireless IP Holdings, L.P. v. Samsung Elecs. Co.*, No. 2:18-CV-00028-JRG, 2019 WL 8647996, at *2 (E.D. Tex. Mar. 15, 2019).[1] "For this reason alone," the Court should deny the instant motion. *Force Mos Tech., Co. v. ASUSTek Computer, Inc.*, No. 2:22-CV-00460-JRG, 2024 WL 1586266, at *4 (E.D. Tex. Apr. 11, 2024). The three factors this Court considers lead to the same conclusion.

First, TSMC cannot show that a stay would simplify the issues. As of the date of TSMC's motion, the Patent Trial and Appeal Board ("PTAB") has not even noticed a filing date for most of the patents TSMC challenges, let alone instituted proceedings. There is no indication that any will be instituted, nor that institution would simplify any issues in this case. TSMC's arguments to the contrary consist exclusively of conjecture.

[1] The list goes on: *Varta Microbattery GmbH v. Costco Wholesale Corp.*, No. 2:20-CV-00029-JRG, 2020 WL 9173097, at *1 (E.D. Tex. Oct. 6, 2020); *Snik LLC v. Samsung Elecs. Co.*, No. 2:19-CV-00387-JRG, 2020 WL 9076438, at *1 (E.D. Tex. Oct. 5, 2020); *Acorn Semi, LLC v. Samsung Elecs. Co.*, No. 2:19-CV-00347-JRG, 2020 WL 10284981, at *1 (E.D. Tex. Sept. 14, 2020); *Intell. Ventures I LLC v. T Mobile USA, Inc.*, No. 2:17-CV-00577-JRG, 2018 WL 11363371, at *1 (E.D. Tex. Oct. 2, 2018); *Polaris PowerLED Techs., LLC v. Samsung Elecs. Am., Inc.*, No. 2:17-CV-00715-JRG, 2018 WL 11508221, at *1 (E.D. Tex. Sept. 5, 2018); *Intell. Ventures I LLC v. Sally Beauty Holdings, Inc.*, No. 2:15-CV-1414-JRG, 2016 WL 7042237, at *1 (E.D. Tex. Apr. 8, 2016); *Saint Lawrence Commc'ns LLC v. ZTE Corp.*, No. 2:15-CV-349-JRG, 2016 WL 7338600, at *1 (E.D. Tex. July 15, 2016).

Second, AICP has a right to enforce its patents, and a stay would cause undue prejudice. TSMC cannot deny that a stay would prejudice AICP, but its insistence that proceeding *without* a stay would prejudice TSMC does not matter under the law. A stay would not only delay the case indefinitely; it would also heighten the risk that evidence will become stale before the parties are able to take depositions in discovery.

Third, this case is no longer in its early stages. The parties have exchanged infringement and invalidity contentions; venue and merits discovery are well underway; and the parties have expended significant resources in motions practice to address issues along the way. That certain milestones lie ahead does not undo the time, effort, and expense the parties—and the Court—have already poured into this case since it was filed nearly nine months ago.

BACKGROUND

On August 1, 2024, AICP brought suit against TSMC in this District for infringing seven patents related to TSMC's manufacturing of semiconductor chips at certain process nodes. *See* 2:24-cv-00623-JRG at ECF No. 1.[2] AICP alleges that TSMC—a semiconductor manufacturer—makes products that infringe various patents and that TSMC makes these products at certain of its foundries' "process nodes."

After several months, on November 29, 2024, TSMC moved to dismiss the case for lack of personal jurisdiction or, in the alternative, to transfer venue. *See* 2:24-cv-00623-JRG at ECF No. 26. Despite contending that this Court lacked personal jurisdiction, TSMC then withdrew that portion of its motion and now only argues that transfer is warranted for convenience. *See* ECF No. 66. On January 2, 2025, the Court granted leave to conduct venue discovery, which remains open. *See* ECF Nos. 42; 69.

[2] Unless otherwise noted, all record citations refer to the lead case, 2:24-cv-730-JRG.

Since then, AICP has served—and TSMC has responded to—multiple requests for documents and interrogatories. During venue discovery, the parties have engaged in extensive dialogue, resulting in TSMC amending and supplementing its responses on multiple occasions. Nevertheless, because TSMC had refused to provide a significant portion of the requested discovery, AICP moved to compel it and the parties ultimately reached an agreement on the issue less than two weeks ago, with TSMC promising to supplement its discovery responses before AICP deposes its witnesses in the coming weeks.

The case has also proceeded on the merits amidst venue discovery. On January 7, 2025, AICP timely served its P.R. 3-1 infringement contentions. Here, too, the parties engaged in lengthy discussions, and AICP subsequently served amended infringement contentions on February 5, 2024. *See* ECF No. 54. And on May 1, 2025, TSMC served its P.R. 3-3 invalidity contentions. *See* ECF No. 104.

Discovery on the merits has also been ongoing for some time. The parties negotiated and filed a proposed discovery order, protective orders, and ESI order, all of which have since been entered, including with the protective order following the Court's intervention in resolving differences. *See* ECF Nos. 50, 71, and 74. The parties have each served interrogatories, exchanged lengthy document production letters, responded to interrogatories, and produced documents. They have also met frequently to discuss the state of discovery, negotiate over requests, and—after discussions reached an impasse—filed multiple motions before this Court to resolve the issues.

Review of sensitive technical information is also beginning. AICP has disclosed two reviewers to TSMC pursuant to the Court's protective order, and TSMC has made arrangements to permit inspection of sensitive information at its counsel's offices. *See* Exh. A (Email from B. Rey to TSMC Counsel, Apr. 24, 2025); Exh. B (same, May 2, 2025)).

The Court has already set a date for trial in this case. Jury selection begins in June 2026, just over one year from now. *See* ECF No. 83.

LEGAL STANDARD

"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) (citation omitted). "The party seeking a stay bears the burden of showing that such a course is appropriate." *Peloton Interactive, Inc. v. Flywheel Sports, Inc.*, No. 2:18-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)).

Courts "typically consider three factors when determining whether to grant a stay pending *inter partes* review of a patent in suit: (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 likely result in simplifying the case before the court." *Solas OLED Ltd. v. Samsung Display Co.*, No. 2:19-CV-00152-JRG, 2020 WL 4040716, at *1 (E.D. Tex. July 17, 2020) (quoting *NFC Techs. LLC v. HTC Am., Inc.*, No. 2:13-cv-1058-WCB, 2015 WL 1069111, at *2 (E.D. Tex. Mar. 11, 2015)).

ARGUMENT

"In this district," it is not just "the majority rule" but the "*universal practice*" to deny motions to stay when the PTAB has yet to act on an IPR petition. *Trover*, 2015 WL 1069179, at *6 (emphasis added) (collecting cases). Accordingly, this Court consistently denies such motions. *See Nanoco Techs. Ltd. v. Samsung Elecs. Co.*, No. 2:20-CV-00038-JRG, 2021 WL 3027335, at *1 (E.D. Tex. Jan. 8, 2021) (referring to it as "consistent practice"); *Tessera Advanced Techs, Inc. v. Samsung Elecs. Co., Ltd.*, No. 17-cv-671-JRG, 2018 WL 3472700, at *4 (E.D. Tex. July 19,

2018) (calling it "well established").

All three factors—simplification of the issues, undue prejudice, and the stage of the case—weigh against a stay here.

A. <u>A Stay Would Not Simplify This Case</u>

Whether a stay will simplify the issues at trial is "the most important factor" courts consider in granting a stay. *Maxell Ltd. v. Apple Inc.*, No. 5:19-CV-00036-RWS, 2020 WL 10458088, at *3 (E.D. Tex. Nov. 17, 2020). The reason why this Court routinely denies motions to stay filed *before* the PTAB has acted on petitions for review is because there is no basis to believe a stay would simplify the case. Thus, TSMC cannot meet its burden of showing that a stay would simplify this case.

That TSMC has successfully petitioned for review of *other* patents owned by *other* patentholders that claim *other* technologies has no bearing—at all—on whether the PTAB will grant the instant petitions, let alone invalidate all of the asserted claims in all seven of AICP's asserted patents. "[T]he likelihood of invalidation depends entirely on the particulars of the patents and claims in dispute." *Trover*, 2015 WL 1069179, at *4. But TSMC offers no reasons in its motion to believe the PTAB will agree with TSMC that review is warranted, let alone that the patents should be invalidated.

Furthermore, the PTAB has recently made significant changes to the institution process that are expected to result in increased discretionary denials, meaning that TSMC's purported record of IPR success carries even less weight. *See* Exh. C (Memorandum from Scott R. Boalick, U.S. Pat. & Trademark Off., Guidance on USPTO's Rescission of "Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation," Mar. 24, 2025); Exh. D (Memorandum from Coke Morgan Stewart, PTAB, Interim Processes for PTAB Workload Management, Mar. 26, 2025).

Even if the Court stayed AICP's case against TSMC (it should not), AICP's related action against United Microelectronics Corporation ("UMC") asserting many of the same patents would continue. UMC has not sought a stay, joined TSMC's IPR petitions, nor filed its own, so AICP would appropriately press forward on those claims. Consequently, a stay would have the opposite effect of simplifying the case; it would duplicate effort on the part of AICP and the Court by causing similar issues to be briefed, argued, and decided on separate occasions—once in the UMC matter and then later again in the TSMC matter. *See Chrimar Sys., Inc. v. Adtran, Inc.*, No. 6:15-CV-618-JRG-JDL, 2016 WL 4080802, at *2 (E.D. Tex. Aug. 1, 2016) (noting that a stay "would effectively bifurcate this action, causing duplicative resources to be expended by the Court and the parties" over the same patents).

Finally, staying this case because TSMC has merely petitioned the PTAB would allow patent infringement defendants to "unilaterally derail litigation." *Realtime Data, LLC v. Rackspace US, Inc.*, No. 6:16-CV-00961, 2017 WL 772654 (E.D. Tex. Feb. 28, 2017) (quoting *Soverain Software LLC v. Amazon.com, Inc.*, 356 F. Supp. 2d 660, 662 (E.D. Tex. 2005)). TSMC acknowledges a stay would be "rare." Mot. at 6. But it does not explain why *this* case is different from every other one in which this Court adhered to its "well established" policy of denying such premature stay motions. *Tessera*, 2018 WL 3472700, at *4. That is because it is not. *See AR Design Innovations LLC v. Ashley Furniture Indus., Inc.*, No. 4:20-CV-392-SDJ, 2021 WL 6496714, at *4 (E.D. Tex. Jan. 11, 2021) (finding the simplification-of-the-issues factor weighed "heavily" against granting a stay because the PTAB had not acted on petitions).

B. <u>A Stay Would Unduly Prejudice AICP</u>

AICP "has an interest in the timely enforcement of its patent rights," and staying this case would cause undue prejudice. *Realtime Data LLC v. Actian Corporation*, No. 6:15-CV-463-RWS-JDL, 2016 WL 3277259, at *4 (E.D. Tex. June 14, 2016). TSMC cannot deny that AICP would

be prejudiced by a stay, so it devotes much of its motion to arguing how *TSMC* would be prejudiced *without* a stay. But that argument flips this Court's inquiry on its head: what matters is "whether a stay will unduly prejudice or present a clear tactical disadvantage *to the nonmoving party*." *Tessera*, 2018 WL 3472700, at *1 (emphasis added). According to that analysis, TSMC's motion fails.

A stay would substantially delay this case. As of the date of TSMC's motion, the PTAB has not even noticed dates of filing for five of TSMC's seven petitions. *See* Mot. at 3. In other words, the clock for institution has not even started ticking, meaning the PTAB has more than six months to even decide whether to review most of the patents TSMC challenges. If the Court were to grant a stay, the parties might have to wait six months for the PTAB to simply deny institution. For the other two patents, the PTAB has until October to institute proceedings. If it does, it could be another year until it issues a decision. Jury selection in this case begins in thirteen months, but if this case is stayed—and if TSMC exercises it right to appeal denials of *any* of its seven petitions to the Federal Circuit—it could be years before AICP is able to obtain relief in this action.

On top of the delay AICP would experience in vindicating its legal rights, there are additional reasons why a stay would cause undue prejudice to AICP. The parties have engaged in written and document discovery, but they have yet to take any depositions. As time passes, the risk increases that evidence critical to AICP's claims will be lost, forgotten, or otherwise become unavailable. TSMC employees could leave the company, and other witnesses and third parties connected to the accused products may forget about their features, manufacturing, and value. The risk of stale memories and unavailable evidence has led Courts to deny motions to stay like TSMC's here. *See, e.g.*, *EMG Tech., LLC v. Apple, Inc.*, 2010 WL 10029483, at *2 (E.D. Tex. Nov. 15, 2010) ("Defendants' arguments for a stay are clearly outweighed by [plaintiff's] concerns

regarding witnesses' memories and lost evidence."); *BarTex Rsch., LLC v. FedEx Corp.*, 611 F. Supp. 2d 647, 651 (E.D. Tex. 2009) (noting the plaintiff would be "tactically disadvantaged by a stay" because evidence and witnesses may become unavailable). Moreover, staying this case would tactically disadvantage AICP by hindering its ability to obtain necessary third-party discovery to defend against TSMC's invalidity theories. The named inventors of the asserted patents, plus the previous patent owners, are located in Japan, and the discovery tools available in this litigation are necessary to secure evidence from them that may dispose of TSMC's putative prior art references.

In support of its motion, TSMC claims that AICP will not suffer undue prejudice because it does not compete with TSMC, so monetary damages will provide sufficient relief. But the "mere fact" that a plaintiff does not practice the asserted patents has no bearing on prejudice. *Rembrandt Wireless Techs. L.P. v. Samsung Elecs. Co.*, No. 2:13CV213-JRG-RSP, 2015 WL 627887, at *2 (E.D. Tex. Jan. 29, 2015). "Every patentee"—including AICP—"has equal rights under the law to enforce his patent rights." *Parallel Net, LLC v. Netflix, Inc.*, No. 2:07-CV-562-DF, 2008 WL 8793607, at *2 (E.D. Tex. Dec. 23, 2008). Contrary to TSMC's assertions, AICP's pursuit of monetary damages does not eliminate the prejudice a stay will cause. "[T]his Court has repeatedly found that a delay in recovering monetary damages is 'far from non-prejudicial' and is entitled to weight under this factor." *Koninklijke KPN N.V. v. Telefonaktiebolaget LM Ericsson*, No. 2:21-CV-00113-JRG, 2022 WL 17484264, at *2 (E.D. Tex. July 7, 2022) (citation omitted).

Finally, there is no need for the PTAB to get a "second look" before this Court gets a first. Mot. at 15. TSMC insists the Patent Office must be allowed to "double check[]" its work because there is a public interest in allowing it to review patents that have been previously issued. *Id.* This argument flies in the face of the legal presumption that issued patents are valid. *See Microsoft*

Corp. v. I4I Ltd. P'ship, 564 U.S. 91, 102 (2011) ("[B]y the time Congress enacted [35 U.S.C.] § 282 and declared that a patent is 'presumed valid,' the presumption of patent validity had long been a fixture of the common law"). Even if any potential prejudice to TSMC mattered under the law—and it does not—proceeding with this case would cause no prejudice to TSMC in any IPR proceedings. The continuation of this case has no impact on the PTAB's authority to review the patents nor on TSMC's ability to argue they are invalid.

C. <u>This Case Is Well Underway</u>

Contrary to TSMC's assertions, this case is no longer in its "early stages." Mot. at 1. AICP has served infringement contentions; it has amended its infringement contentions; the parties have engaged in both venue discovery and merits discovery; and TSMC has served invalidity contentions. The parties have devoted substantial time and energy corresponding and meeting to resolve various issues and, where necessary, have engaged in motion practice over multiple disputes. The parties have moved this case forward expeditiously as jury selection commences in just thirteen months.

TSMC strains to emphasize its purported diligence in filing its IPR petitions, but it waited over seven months to do so. That TSMC could have delayed even longer before filing its IPR petitions, as TSMC oddly notes, does not justify its unexplained delay. *Chrimar Sys., Inc. v. Adtran, Inc.*, No. 6:15-CV-618-JRG-JDL, 2016 WL 4080802, at *3 (E.D. Tex. Aug. 1, 2016) (noting the defendant's failure to explain why it waited seven months to file IPR petitions).

That certain case deadlines have not yet passed does not mean a stay is warranted. The parties, and this Court, have expended considerable time, resources, and effort on this case already. The parties have exchanged both infringement and invalidity contentions, completing key milestones that require substantial work. Even serving infringement contentions—which AICP did four months ago—is something courts in this district have held weighs against a stay. *See EON*

Corp.IP Holdings, LLC v. Sensus USA Inc., No. 6:09-CV-116, 2009 WL 9506927, at *4 (E.D. Tex. Dec. 18, 2009) (noting that, once the plaintiff had served infringement contentions, the stage of the case "is not [so] early as to weigh in favor of a stay"). Because TSMC has now also served invalidity conditions, the case is even more developed. TSMC cannot show that the stage of the case favors a stay, so "at best," this factor is neutral. *KIPB LLC v. Samsung Elecs. Co.*, No. 219CV00056JRGRSP, 2019 WL 6173365, at *4 (E.D. Tex. Nov. 20, 2019) (denying motion to stay).

By the time this motion is fully briefed and decided, the parties will have conducted even more discovery. AICP has already disclosed several experts to TSMC and expects to begin reviewing TSMC's sensitive technical information at specially designated on-site facilities in the next several weeks. Four depositions are set to take place in the next month before the close of venue discovery. As the Court knows based on the parties' recent motions and joint stipulation resolving them, the parties have made significant progress negotiating and resolving their discovery disputes, clearing roadblocks, and allowing this case to proceed full steam.

CONCLUSION

The Court should deny TSMC's motion to stay the case.

Dated: May 12, 2025

Respectfully submitted,

/s/ Justin Nelson

Justin A. Nelson – Lead Counsel
Texas State Bar No. 24034766
SUSMAN GODFREY L.L.P.
1000 Louisiana Street, Suite 5100
Houston, Texas 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666
jnelson@susmangodfrey.com

Kalpana Srinivasan
California State Bar No. 237460
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150
ksrinivasan@susmangodfrey.com

Ian Gore
Washington State Bar No. 54519
Kemper Diehl
Washington State Bar No. 53212
Bianca Rey
Washington State Bar No. 62422
SUSMAN GODFREY L.L.P.
401 Union Street, Suite 3000
Seattle, Washington 98101
Telephone: (206) 516-3880
Facsimile: (206) 516-3883
igore@susmangodfrey.com
kdiehl@susmangodfrey.com
brey@susmangodfrey.com

Ravi Bhalla
New York State Bar No. 5748223
Andrew Nassar
New York State Bar No. 6162226
SUSMAN GODFREY L.L.P.
One Manhattan West, 50th Floor
New York, NY 10001
Telephone: (212) 336-8330
Facsimile: (212) 336-8340
rbhalla@susmangodfrey.com
anassar@susmangodfrey.com

Of Counsel:
Claire Abernathy Henry
Texas State Bar No. 24053063
Andrea Fair
Texas State Bar No. 24078488
MILLER FAIR HENRY PLLC
1507 Bill Owens Parkway
Longview, TX 75604
Telephone: (903) 757-6400

Fax: (903) 757-2323
claire@millerfairhenry.com
andrea@millerfairhenry.com

Attorneys for Plaintiff AICP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic services are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on May 12, 2025.

/s/ Justin Nelson
Justin A. Nelson