UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

SOUNDCLEAR TECHNOLOGIES LLC,	§	
	§	
Plaintiff,	§	
	§	**Case No. 3:24-cv-00540-MHL**
v.	§	
	§	**JURY TRIAL DEMANDED**
GOOGLE LLC,	§	
	§	
Defendant.	§	
	§	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT GOOGLE LLC'S UNOPPOSED MOTION TO STAY PENDING *INTER PARTES* REVIEW

SoundClear Exhibit 2012
Google v. SoundClear - IPR2025-01177

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I. INTRODUCTION

Defendant Google LLC ("Google") seeks this unopposed stay of this patent litigation pending *inter partes* review ("IPR"). Another court in this District recently granted a nearly identical motion in *SoundClear Techs., LLC v. Amazon.com, Inc.*, No. 1:24-cv-01283-AJT-WBP, ECF No. 140 (E.D. Va. Mar. 26, 2025) ("*Amazon II*"), a case filed by the same plaintiff asserting the same three patents involved here. In *Amazon II*, the court analyzed the relevant factors and stayed the case pending IPR. The same outcome is warranted here: Google's unopposed motion to stay should also be granted. All the relevant factors favor a stay:

- **Stage of the Litigation**. This factor strongly favors a stay when no pretrial conference has been set, no fact discovery and claim construction have started, and no trial date has been set, which are all true here. That a motion to dismiss is pending makes no difference–this case is still at its infancy. Thus, this factor strongly favors a stay.

- **Simplification of the Issues**. This case involves three patents. The claims for one patent have already been held patent ineligible under 35 U.S.C. § 101 in *Amazon II*. As for the two remaining patents, *all* claims are challenged as invalid in pending IPRs before the Patent Trial and Appeal Board ("PTAB"). If those claims are cancelled, then Plaintiff will lose any cause of action based on those claims, rendering the litigation moot. Where, as here, IPR proceedings potentially dispose of all remaining claims, the simplification factor favors a stay.

- **No Undue Prejudice**. Under this District's precedent, plaintiffs that do not directly compete with defendants cannot show *undue* prejudice under this factor because money damages are available as a remedy and can always be determined regardless of a stay. Here, it is undisputed that Plaintiff does not directly compete with Google. Thus, this factor favors a stay.

To avoid wasting time and resources over ultimately unnecessary disputes, this Court should grant Google's unopposed motion to stay pending IPR.

II. BACKGROUND

A. In an earlier litigation involving the same parties, another court in this District granted Google's motion to stay.

In an earlier litigation, SoundClear filed a complaint on May 1, 2024 against Google, alleging infringement of three patents involving audio technologies that were originally obtained by JVC Kenwood. *SoundClear Technologies LLC v. Google LLC*, No. 2:24-cv-00321-AWA-DEM, ECF No. 84 at *1 (E.D. Va. Mar. 31, 2025) ("*Google I*").[1] Google moved to dismiss based on patent ineligibility under 35 U.S.C. § 101 and for failure to state a plausible claim for relief. *Id*., at *2. Google also moved to transfer, and SoundClear requested venue discovery. *Id*.

On February 10, 2025, Google initiated IPR proceedings for 2 of the 3 patents asserted in that case. One week later, Google moved to stay the district court case pending IPR. *Id.*, at *2-3. No Rule 16(b) conference or scheduling order had yet occurred, and "discovery ha[d] not begun, claim construction ha[d] not occurred, and no trial date ha[d] been set." *Id*., at *2. On March 31, 2025, the Court granted Google's motion, and stayed *Google I* pending IPR. *Id*., at *7-8.

B. Another court in this District granted Amazon's motion to stay in *Amazon II* pending IPR challenges.

On July 25, 2024, SoundClear filed a complaint against Amazon.com, Inc. and affiliates, (collectively, "Amazon") asserting the same three patents asserted here: U.S. Patent Nos. 11,069,337 (the "'337 patent"); 11,244,675 (the "'675 patent"); and 9,223,487 (the "'487 patent") (collectively, "Asserted Patents"). *Amazon II*, No. 1:24-cv-1283-AJT-WBP, ECF No. 1.[2] These

[1] In *Google I*, SoundClear asserted U.S. Patent Nos. 9,031,259 (the "'259 patent"); 9,070,374 (the "'374 patent"); and 9,804,819 (the "'819 patent").
[2] SoundClear previously sued Amazon in *SoundClear Technologies, LLC v. Amazon.com, Inc.*, No. 2:24-cv-00320-AWA-LRL, ECF No. 1 (E.D. Va. May 1, 2024) ("*Amazon I*").

patents were also originally obtained from JVC Kenwood. *Id*. at ¶¶ 58-59. In *Amazon II*, Amazon moved to dismiss based on patent ineligibility under 35 U.S.C. § 101 and for failure to state a plausible claim for relief. ECF Nos. 31 and 32. Amazon also moved to transfer. ECF Nos. 40 and 41. On November 8, 2024, the court denied Amazon's transfer motion, and initially granted Amazon's motion to dismiss in its entirety. ECF No. 63. Later, the court revised its decision, holding only the '487 patent ineligible under § 101. ECF No. 65. SoundClear has indicated that it plans to appeal the court's patent ineligibility decision for the '487 patent. ECF No. 106 at 10 n.3, 45, and 52.

On January 31, 2025 and February 27, 2025, Amazon filed IPR petitions challenging the validity of all claims of the remaining '337 and '675 patents. Exs. 1-2. Amazon then moved to stay pending IPR. ECF No. 109. In *Amazon II*, the parties had begun discovery, including initial disclosures, written discovery requests, document production, and depositions. ECF No. 109 at 3. On March 26, 2025, the court granted Amazon's motion, and stayed *Amazon II* pending IPR. ECF No. 140. SoundClear estimates that the PTAB will decide whether to institute Amazon's IPRs by September 2025. ECF No. 126 at *3.

C. In this case, the stage of litigation is at its infancy.

On July 25, 2024, SoundClear filed its complaint in the present case against Google ("*Google II*") alleging infringement of the same three patents asserted in *Amazon II*: the '337, '675, and '487 patents. ECF No. 1. On September 30, 2024, Google moved to dismiss based on patent ineligibility under 35 U.S.C. § 101 and for failure to state a plausible claim for relief. Dkts. 16 and 17. The parties filed notices of supplemental authority based on developments in *Amazon II*. Dkts. 39 and 45. Google's motion to dismiss is currently pending.

In this case, no scheduling order has been entered. No trial date or pretrial schedule has been set. Fact discovery has not opened. No written discovery requests have been promulgated, no

subpoenas have been issued, and no depositions have been taken or noticed. No claim construction terms or proposed constructions have been formally exchanged, and no claim construction briefing has been filed.

III. LEGAL STANDARD

A. Inter Partes Review

Parties may challenge the validity of a patent before the PTAB through IPR. 35 U.S.C. § 311. An IPR proceeding is initiated by filing a petition with the PTAB, requesting that one or more of the patent's claims be canceled as unpatentable under 35 U.S.C. § 102 (novelty) or § 103 (obviousness). 35 U.S.C. § 311(b). The PTAB will institute IPR of the patent claims if "there is a reasonable likelihood that the petitioner would prevail with respect to at least [one] of the claims challenged in the petition." 35 U.S.C. § 314. If IPR is instituted, the PTAB must execute a final written decision within a year, but that deadline can be extended by six months for "good cause." 35 U.S.C. § 316(a)(11).

B. Stays Pending IPR

"The power to stay proceedings is incidental to the power inherent in every court to control disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Google I*, No. 2:24-cv-00321-AWA-DEM, ECF No. 84 at *3-4 (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). When an IPR petition is filed, the decision to stay district court proceedings "is left to the district court's discretion." *Id*. (quoting *Sec. First Innovations, LLC v. Google LLC*, No. 2:23cv97, 2024 WL 234720, at *1 (E.D. Va. Jan. 22, 2024) ("*SFI*")). "District courts consider the following three factors in deciding whether to issue a stay pending IPR proceedings:

(1) the stage of the litigation;

(2) whether the stay would simplify the issues before the court; and

(3) whether the stay would unduly prejudice the nonmoving party."

Id. (citations omitted). A motion to stay pending IPR is proper even when the asserted patents are challenged by IPR by a different party. *XY, LLC v. Trans Ova Genetics, L.C.*, 890 F.3d 1282, 1295 (Fed. Cir. 2018) ("the fact that the Defendant in this case and the Petitioners in an *inter partes* review at the Board were different parties is of no consequence").

IV. ARGUMENT

The purpose of the statute establishing the IPR proceedings was "to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs." *Audio MPEG, Inc. v. HP Comp.*, No. 2:15-cv-00073-MSD-RJK, 2015 WL 5567085, at *2 (E.D. Va. Sept. 21, 2015) (citing 77 Fed. Reg. 48,680-01 (Aug. 14, 2012)). Staying litigation pending IPR furthers this goal of "limit[ing] unnecessary and counterproductive litigation costs." *Id*. Consequently, courts in this District have commonly exercised their discretion to stay cases pending the PTAB's decision to institute IPR proceedings. *See, e.g., SFI*, 2024 WL 234720, at *5 (staying case before IPR institution); *Google I*, No. 2:24-cv-00321-AWA-DEM, ECF No. 84 (same); *Amazon II*, No. 1:24-cv-01283-AJT-WBP, ECF No. 109 (same). Granting a stay would further the goals contemplated by Congress, and, as discussed below, all three factors favor a stay in this case.

A. The stage of the litigation strongly favors a stay.

"A stay pending IPR at the early stages of a lawsuit has the potential to save 'a significant amount of time and effort by all parties involved through a simplification of the issues presented.'" *Va. Innovation Scis., Inc. v. Samsung Elecs. Co., Ltd.*, No. 2:14CV217, 2014 WL 13059257, at *2 (E.D. Va. Nov. 18, 2014) ("*VIS*"). Thus, courts in this District have held that an early stage of litigation "heavily favors" a stay. *Id*. at *2 (citing *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759

F.3d 1307, 1317 (Fed. Cir. 2014)[3] (for a motion to stay pending CBM review, stage of litigation "factor heavily favors Defendants" where "there remained eight months of fact discovery, the joint claim construction statements had yet to be filed, and jury selection was a year away")).

In *VIS*, the court explained that the case was "at an early stage: discovery has barely begun—discovery is far from 'complete'—and no trial date has been set." *Id*. Therefore, the court held that "the early stage of this litigation '*heavily* favors' a stay." *Id*. (emphasis added).

Likewise, in *Audio MPEG*, the court explained that discovery had "not begun in this case. Additionally, no trial date has been set, the Court has not set a *Markman* hearing, and the Court has not set a scheduling conference. Therefore, this case remains in its infancy, which *strongly* supports granting a stay." *Audio MPEG*, 2015 WL 5567085, at *4 (emphasis added); *see also id*. at *6 ("The fact that this case is in such an early stage *heavily* favors granting a stay.") (emphasis added); *Health Diagnostic Lab'y, Inc. v. Bos. Heart Diagnostics Corp.*, No. 3:14CV796-HEH, 2015 WL 13879824, at *2 (E.D. Va. Feb. 4, 2015) (where the court had not entered a scheduling order and no discovery had taken place, the stage of litigation factor was "*particularly* compelling") (emphasis added).

The same was true in *Google I*, No. 2:24-cv-00321-AWA-DEM, ECF No. 84. There, the court explained that "no Rule 16(b) scheduling order has been entered, discovery has not begun, and no trial date has been set." *Id*. at *4. Accordingly, the court found that "the 'stage of litigation factor favors issuing a stay.'" *Id*. at *5 (citations omitted).

[3] *VirtualAgility* is pertinent to whether to stay this case pending IPR even though *VirtualAgility* involved a related, but different, administrative review of patents called a covered business method (CBM) review. *In re TLI Commc'ns LLC*, No. 1:14-md-02534-TSE-JFA, 2014 WL 12615711, at *1 (E.D. Va. Aug. 11, 2014) ("[D]efendants' supplemental brief correctly points out that *VirtualAgility* is pertinent to the instant matter even though that case involved CBM review by the PTO, rather than *inter partes* review (IPR), as involved here.").

Similar to *VIS*, *Audio MPEG*, *Health Diagnostic*, and *Google I*, this case is at its infancy. Fact discovery has not opened, and the claim construction process has not begun. No pretrial schedule or trial date has been set. *See generally* II.C above. Thus, just like those cases, the stage of the litigation factor here strongly favors a stay.

The analysis under this factor focuses on the stage of the litigation, and not how long the case has been pending. In *Centripetal Networks, LLC v. Keysight Techs., Inc.*, for example, the court explained:

> While the Court recognizes that this case has been pending for *over a year* through no fault of the parties, the matter is still in its infancy. No scheduling order has been entered and the parties have yet to begin discovery. Therefore, the stage of litigation factor favors issuing a stay.

No. 2:22-cv-00002-EWH-DEM, 2023 WL 5127163, at *4 (E.D. Va. Mar. 20, 2023) ("*Keysight*") (emphasis added). Similarly, in *Centripetal Networks, Inc. v. Cisco Sys.*, the court explained:

> Although Plaintiff filed its action *one year ago*, there is a pending Motion to Dismiss. Therefore, the Court has not yet entered a scheduling order for discovery, a Markman hearing has not been set, and the case has not been set for trial. Accordingly, this matter is still in the early stages of litigation and this factor weighs in favor of granting a stay.

No. 2:18-cv-00094-EWH-LRL, 2019 WL 8888193, at *3 (E.D. Va. Feb. 25, 2019) ("*Cisco*") (emphasis added). And in *Google I*, the court explained that "[a]lthough it has been pending *ten months* since service of the Complaint, this litigation is still in the early stages. Due to the pending motion to dismiss, Google has not yet answered." No. 2:24-cv-00321-AWA-DEM, ECF No. 84 at *4 (emphasis added). In *Keysight*, *Cisco*, and *Google I*, the fact that a motion to dismiss was pending made no difference–those cases were still in their infancy, and the stage of litigation factor still favored a stay.[4]

[4] Even if this factor considered the time between service and the filing of a motion to stay, the present case has been pending for far shorter than was the case in *Keysight*, *Cisco*, and *Google I.* ECF No. 12 ¶ 1.

The reason for staying the case at the outset is simple and compelling: where, as here, the parties have just begun litigating, a stay will conserve both the Court's and the parties' time and resources by not litigating claims that may eventually be rendered moot. Accordingly, the stage of the litigation is an important factor that strongly favors a stay.

B. A stay would simplify the issues before the court.

The simplification factor favors a stay. "A stay pending the resolution of administrative proceedings will simplify matters before the district court if the administrative proceedings have the potential to dispose of claims entirely." *Google I*, No. 2:24-cv-00321-AWA-DEM, ECF No. 84, at *5 (quoting *Keysight*, 2023 WL 5127163, at *4); *see also VirtualAgility*, 759 F.3d at 1314 (simplification factor favored a stay because PTAB "review could dispose of the entire litigation: the ultimate simplification of issues."); *SFI*, 2024 WL 234720, at *3 (same).

Here, the '487 patent has already been held patent ineligible under 35 U.S.C. § 101. *Amazon II*, Nos. 63 and 84. And the IPR petitions pending before the PTAB are for *all* claims of the remaining '337 and '675 patents. Exs. 1-2. Thus, a stay here will simplify matters because cancellation by the PTAB would moot all remaining claims, disposing of the entire litigation. *Indivior Inc. v. Dr. Reddy's Labs., S.A.*, 930 F.3d 1325, 1349 (Fed. Cir. 2019) ("when a claim is cancelled, the patentee loses any cause of action based on that claim, and any pending litigation in which the claims are asserted becomes moot."); *Fresenius USA, Inc. v. Baxter Int'l, Inc.*, 721 F.3d 1330, 1344 (Fed. Cir. 2013) ("cancellation extinguishes the underlying basis for suits based on the patent").

In addition, "even where the administrative proceeding will not dispose of all claims, 'a stay may simplify matters if it allows the administrative proceedings time to build a record that assists the [district] [c]ourt's claim construction analysis.'" *Google I*, No. 2:24-cv-00321-AWA-DEM, ECF No. 84, at *5 (citing *Keysight*, 2023 WL 5127163, at *4); *see also SFI*, 2024 WL

234720, at *3 ("statements made in the course of an IPR proceeding concerning the patent in issue may also add to the patent's prosecution history, which could assist this Court's claim construction analysis") (quoting *TLI*, 2014 WL 12615711, at *2). Thus, if instituted, a stay will "undoubtedly simplify the issues in this case." *Google I*, No. 2:24-cv-00321-AWA-DEM, ECF No. 84 at *5 (citing *SFI*, 2024 WL 234720, at *1).

Furthermore, "the fact that IPR has not yet been instituted does not weigh against granting a stay in this case." *Google I*, No. 2:24-cv-00321-AWA-DEM, ECF No. 84 at *6 (citing *SFI*, 2024 WL 234720, at *3). This District "does not disfavor stays before IPR is instituted, and this Court has granted a stay in many such instances." *Sharpe Innovations, Inc. v. T-Mobile USA, Inc.*, No. 2:17-cv-000351-RGD-DEM, 2018 WL 11198604, at *3 (E.D. Va. Jan. 10, 2018) (collecting cases). Indeed, "[i]f the Court waits to grant a stay until the PTAB institutes [the] IPR petitions, the parties will necessarily engage in litigation efforts that would be duplicative of their efforts before the PTAB, which 'is precisely what a stay seeks to avoid.'" *Google I*, No. 2:24-cv-00321-AWA-DEM, ECF No. 84 at *6 (quoting *SFI*, 2024 WL 234720, at *3); *see also Sharpe*, 2018 WL 11198604, at *3 (same).

Simplification still favors a stay here even though Amazon, not Google, is the petitioner for the filed IPRs. Exs. 1-2. This is because of the "issue-preclusive effect on any pending *or co-pending* actions involving the patent." *XY*, 890 F.3d at 1294 (emphasis added). The Federal Circuit has repeatedly "applied collateral estoppel to such *co-pending* cases" because a patent owner has "had his 'day in court'" and "a defendant should not have to continue 'defend[ing] a suit for infringement of [an] adjudged invalid patent.'" *Id*. (citations omitted) (emphasis added). The Federal Circuit specifically explained that: "the fact that the Defendant in this case and the Petitioners in an *inter partes* review at the Board were different parties is of no consequence." *Id*.

at 1295. This is because "[a]n unrelated accused infringer may . . . take advantage of an unenforceability decision under the collateral estoppel doctrine." *Id*. (citations omitted). Thus, the fact that it was Amazon, not Google, that petitioned for IPRs is of no consequence. The simplification factor still favors a stay.

C. A stay would not unduly prejudice SoundClear.

Just like in *Google I*, the undue prejudice factor here also favors a stay. "[W]hether the patentee will be *unduly* prejudiced by a stay in the district court proceedings . . . focuses on the patentee's need for an expeditious resolution of its claim." *Google I*, No. 2:24-cv-00321-AWA-DEM, ECF No. 84 at *6 (emphasis original) (quoting *VirtualAgility*, 759 F.3d at 1318). "To show *undue* prejudice, a patentee must demonstrate that monetary damages will be insufficient to remedy their losses." *Id*. (quoting *SFI*, 2024 WL 234720, at *4) (emphasis added); *see also VIS*, 2014 WL 13059257, at *2 (as a general rule, non-practicing entities cannot show undue prejudice); *TLI*, 2014 WL 12615711, at *2 (same).

Here, as in *Google I*, "it is undisputed that SoundClear is a non-practicing entity ('NPE') which holds the patents at issue but does not directly compete with Google." *Google I*, No. 2:24-cv-00321-AWA-DEM, at *6. Therefore, the same conclusion is warranted: "SoundClear 'has no reasonable basis for requesting or recovering anything other than monetary damages . . . which of course, can be determined regardless of any delay attributable to a stay.'" *Id*., at *5-6 (citations omitted).

Additionally, SoundClear has never sought injunctive relief, which undercuts any purported need for expeditious resolution of its claim. In *VirtualAgility*, the Federal Circuit noted: "Although this is not dispositive, we note that [plaintiff] did not move for a preliminary injunction against Defendants." 759 F.3d at 1319. The court went on to explain that "the fact that it was not worth the expense to ask for this remedy contradicts [plaintiff's] assertion that it needs injunctive

relief as soon as possible." *Id*. Similarly, in *Limelight Networks, Inc. v. XO Commc'ns, LLC*, No. 3:15-cv-720-JAG, ECF No. 451 at *2 n.1 (E.D. Va. Apr. 7, 2017), the court noted that "The brief timeframe for the current continuation, coupled with the fact that [plaintiff] did not seek a preliminary injunction in this case, lead the Court to conclude that this delay will not unduly prejudice [plaintiff]." And recently, in *SFI*, the court noted that plaintiff had "not moved for a preliminary injunction, nor has SFI sought any form of relief other than damages." *SFI*, 2024 WL 234720, at *4 n.3. The court explained that "[w]hile not dispositive, this fact suggests that monetary damages will be sufficient to remedy [plaintiff's] losses." *Id*. (citations omitted).

Here, SoundClear does not seek injunctive relief in its complaint, and has never moved for a preliminary injunction. ECF No. 1 at 33-34. Thus, as in *VirtualAgility*, *Limelight*, and *SFI*, SoundClear has not sought any form of relief other than monetary damages, which can be determined regardless of any delay from a stay.

Nor has SoundClear suffered any *undue* prejudice from delay. As a preliminary matter, "[d]elays based on statutory frameworks, such as those pursuant to IPR proceedings under AIA § 18(b), do not normally cause *undue* prejudice." *Audio MPEG*, 2015 WL 5567085, at *4 (emphasis added). Congress granted defendants the right to file an IPR petition challenging a patent within a year of being served with a complaint alleging infringement of that patent. 35 U.S.C. § 315(b). Here, Amazon filed its IPR petitions within seven months of SoundClear's complaint, and well within the year allowed by statute, Exs. 1-2, and Google filed its motion to stay within two weeks of the *Amazon II* court's stay decision. This is similar to time frames considered non-prejudicial by other courts in this District. *See, e.g.*, *SFI*, 2024 WL 234720, at *4 ("Google filed its IPR petitions within eight months of the complaint and filed the instant motion to stay just four days after filing its last IPR petition—neither of which suggests dilatory tactics.").

The undue prejudice factor favors a stay.

V. CONCLUSION

Because all relevant factors favor staying the case, and because this motion is unopposed,[5] Google respectfully requests that the Court stay this case pending resolution of the *inter partes* review proceedings.

Date: April 8, 2025

Respectfully submitted,

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[5] SoundClear stated that it does not believe a stay is justified or appropriate. It stated, however, that for purposes of economy and efficiency, it will not oppose the relief set forth in this motion. SoundClear declined to oppose the motion solely in view of the particular circumstances at issue in connection with the present motion (*e.g.*, Judge Trenga having granted a motion to stay in *Amazon II*, in which the same patents are at issue) and not based upon SoundClear's view of the merits of the motion. Accordingly, Google will not rely on the grant of a stay in this case in support of any request or argument in favor of a stay in any other case or future motion between Google and SoundClear.

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