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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

INTREPID AUTOMATION, INC., a
Delaware Corporation;

Plaintiff,

v.

3D SYSTEMS CORPORATION, a
Delaware Corporation; and 3D
SYSTEMS, INC., a California
Corporation.

Defendants.

**PLAINTIFF INTREPID
AUTOMATION'S OPPOSITION TO
DEFENDANTS' MOTION TO STAY
PROCEEDINGS**

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1 One week before Defendants filed this motion to stay, Intrepid informed 3DS of its
2 intent to file an *ex parte* application for early, expedited discovery to support a preliminary
3 injunction motion. Armed with that information, Defendants filed the stay motion as a
4 tactic to preemptively thwart Intrepid from moving for injunctive relief. For the reasons
5 set forth below, because Defendants’ motion is bereft of any legitimate basis for a stay, it
6 should be summarily denied.

7 First, 3DS seeks an indefinite stay – likely to endure as long as 2.5 to 3 years – and,
8 as such, faces a very high hurdle to justify a stay, a hurdle Defendants cannot overcome.
9 Second, Intrepid seeks injunctive relief – including a forthcoming motion for preliminary
10 injunction – which itself raises a more than “fair possibility” that Intrepid would incur harm
11 due to a stay. Third, the impending launch of 3DS’s infringing PSLA 270 and the other
12 printers in its “family” are likely to cause serious, irreparable harm to Intrepid. Fourth,
13 3DS has failed to make a “clear case of hardship or inequity in being required to go
14 forward,” as required under the circumstances and, indeed, points to nothing more than the
15 typical burdens associated with the defense of a lawsuit. Fifth, 3DS has not articulated how
16 resolution of the Trade Secrets Case will simplify this patent infringement case. Finally,
17 the issues in the two cases are not sufficiently similar to justify a stay under the first-to-file
18 rule, particularly given that the cases have been assigned to the same District and
19 Magistrate Judges under the Low Number Rule.

20 For these reasons and those that follow, the Court should deny Defendants’ motion
21 and allow this case to proceed to early, expedited discovery and preliminary injunction.

22 **I. FACTUAL BACKGROUND**

23 **A. 3DS and the Founders of Intrepid**

24 3DS is a publicly-traded company that was a market leader in 3D printing, beginning
25 in the 1980s. For decades, 3DS’s stereolithographic offerings were traditional, laser-based
26
27
28

1 SLA printers.¹ In 2016, 3DS began plans to enter the DLP 3D printer market; however, it
2 lacked the technical expertise to make it work. As such, 3DS's then-CEO sought out Ben
3 Wynne, Christopher Tanner, Robert Mueller, Jamie Etcheson, and Ivan Chousal (the
4 "Architects"), a team of five, multi-disciplinary engineers with substantial training and
5 experience with Hewlett-Packard and the ideal background to develop 3DS's DLP printer
6 system, to be called Figure 4. Ex. B, Joshi Dep at 71:3-19. The Architects were given the
7 title "Principal Architect" and the responsibility to bring to market "Figure 4." Tanner Decl.
8 ¶ 2-3.

9 The Architects achieved great success at 3DS in only a short amount of time. In a
10 period of just fourteen months, the Architects developed: (i) three iterations of single-
11 projector DLP print engines (Enso 2.5, Enso 2.6, and Enso 3.0); (ii) the production version
12 of the Figure 4 printer system; (iii) the JanBot printer system prototype; (iv) the ProBot
13 printer system prototypes; (v) the SLABot 2 and 3 technology demonstrators; and (vi)
14 custom platform assets, including the Aurora custom projector and the Halo custom circuit
15 board. Wynne Decl. ¶ 3; Tanner Decl at ¶ 3.

16 Despite their great success, the Architects were poorly treated by 3DS. Wynne Decl.
17 ¶ 4. In early August 2017, the Architects resigned from 3DS. *Id.*

18 **B. Intrepid's Founding and Development of DLP Multiprojection**

19 The Architects formed Intrepid Automation in late August / early September 2017.
20 Wynne Decl. ¶ 4. Within the first 18 months of its existence, Intrepid filed patent
21 applications on a variety of technologies – including as relevant here DLP multiprojection
22 technology. Intrepid approached the multiprojection challenge from a software-first
23 perspective, eschewing mechanical approaches for alignment, calibration and correction.
24

25 ¹ Intrepid submits that a background on the scientific principles involved in this case is
26 unnecessary to the disposition of this case. However, in the event such a discussion would
27 aid the Court, Intrepid attaches to this the Catalano Declaration as Exhibit A, the initial
28 expert of Will Allen from the Trade Secrets Case, which includes a tutorial of
stereolithography (SLA), laser-based systems, DLP systems, and comparison of the two.
Ex. A, Allen Report at 3-11.

1 *Id.* ¶ 5. Intrepid understood, as described in its patent filings, a series of digital filters could
2 be employed by a computer-based display subsystem to solve the problems preventing the
3 development of a commercially-viable DLP multiprojection 3D printer. *See* Wynne Decl.
4 ¶ 13.

5 Over months, Intrepid developed a number of test beds and apparatuses that
6 employed its multiprojection technology, including Covalent, a dual projector membrane-
7 based printer test bed, and its DLP Multiprojection Test Bed, a six-projector testbed
8 commissioned by an aerospace company used to show proof of concept of a large-format
9 DLP multiprojection 3D printer. Wynne Decl. ¶ 7-15. The Test Bed was taller than a
10 human and consisted of six 4k-resolution projectors bolted to a plate in a specific
11 configuration, with four projectors arranged in 2X2 projecting downward and an additional
12 2 projectors facing laterally and being re-directed via bounce mirrors. *Id.* at ¶ 8. The light
13 from the six projectors was directed downward onto a sheet of paper, which served as a
14 stand in for a large-vat-based print platform, and digitally “stitched together” to form a
15 single, high-resolution composite image nearly six-times larger and containing six-times
16 as many pixels as any one sub-image (an image from a single-projector). *Id.* at ¶¶ 8-10.

17 The DLP Multiprojection Test Bed *became* the first Valkyrie (Range) 3D printer;
18 the physical structure, imaging system, and automatic calibration methods from the Test
19 Bed are in the first Range printer. Wynne Decl. ¶ 15. Range is the only large-format DLP
20 multiprojection 3D printer on the market.² *Id.* ¶ 16. As discussed herein, because Range
21 employs DLP technology, it is several times faster than laser-based 3D printers. Wynne
22 Decl. ¶ 25. Because Range employs Intrepid’s multiprojection technology, its build area –
23 approximately 30 inches by 26 inches – is several times larger than the single-projector
24 DLP printers on the market, which have build areas about the size of a large iPhone. *Id.*

25
26
27 ² A company called Desktop Metal sells the only other DLP multiprojection system on the
28 market, the Extreme 8K, a smaller, two-projector device at the low-end of the market.
Wynne Decl. n. 2.

C. Trade Secrets Litigation

In May 2021, almost four years following the Architects’ resignation, 3DS filed a Complaint for trade secret misappropriation now pending before this Court. 3:21-cv-1141-AGS-DDL (the “Trade Secrets Case”). 3DS alleges that the Architects and Intrepid misappropriated twelve purported trade secrets, including two related to DLP multiprojection. Trade Secrets Case, Dkt. 6 (Amended Compl.); Dkt. 531-3 at ECF Page 82-83 (Trade Secret Identification Rog Response). The Amended Complaint in the Trade Secrets case asserts that certain of these alleged trade secrets were disclosed in Intrepid’s patent filings, including U.S. Pat. No. 10,780,640. Neither the Asserted Patents nor any of the four key filters are mentioned in the Amended Complaint. Trade Secrets Case, Dkt. 6. Instead, 3DS’s Amended Complaint makes vague references to “edge blending and calibration techniques,” images of the Enso print engine allegedly taken from CAD files, and the concept of a plurality of projectors. Trade Secrets Case, Dkt. 6 ¶¶ 52-54. 3DS’s identification of trade secrets described the trade secrets at an exceedingly high level. Trade Secrets Case, Dkt. 531-3 at ECF Page 82 (bullet one). The Amended Complaint did not include a count for declaratory judgment that Intrepid’s patents were invalid or unenforceable, nor did it pray for any relief related to the ownership of any Intrepid Patent. *See* Trade Secrets Case, Dkt. 6.

The Trade Secrets Case currently awaits ruling on summary judgment and *Daubert* motions, which are fully briefed. Intrepid argued on summary judgment that 3DS’s trade secret claims should be dismissed for four reasons: (1) the claims are barred by the three-year statute of limitations; (2) 3DS failed to adequately protect its purported trade secrets, (3) the alleged trade secrets were not identified with sufficient particularity as required under the Ninth Circuit’s *Imax* case, and (4) there is no evidence that 3DS actually possessed the trade secrets it asserted. Trade Secrets Case, Dkt. 531.

1 **D. 3DS’s Display of a “Model” PSLA 270 at FormNext 2023**

2 In November 2023, just weeks after the close of discovery in the Trade Secrets case,
3 3DS displayed at its booth at the FormNext conference in Germany a model of a dual
4 projection DLP printer labelled the PSLA 270. Tanner Decl. ¶¶ 11-14. There was no
5 information as to how the PSLA 270 worked and, indeed, from Chris Tanner’s observation,
6 it appeared that the model was non-functional. *Id.* Nor was there any marketing materials
7 or other information disclosing a sale, offer for sale, or anticipated time to market. Wynne
8 Decl. ¶ 20.

9 Although discovery had closed, Intrepid sought production of information related to
10 the development and operation of the PSLA 270, which Intrepid maintained were
11 responsive to previously-issued requests. Catalano Decl. ¶ 9. 3DS opposed the request to
12 reopen discovery. *Id.* At an IDC on December 1, 2023, Magistrate Judge Leshner indicated
13 his belief that the documents were disproportional to the needs of the Trade Secret Case.
14 *Id.* ¶ 9. 3DS produced no discovery related to the PSLA 270 during the Trade Secrets Case.
15 *Id.* ¶ 10.

16 **E. Commercial Launch of PSLA 270, Marketing Materials, and Need for**
17 **Discovery**

18 In early November 2024, 3DS began publicly promoting the PSLA 270. Dkt 1,
19 Complaint ¶ 53. On November 7, 2024, 3DS issued a press release announcing “several
20 new products it [was to] showcase at Formnext 2024.” *Id.* ¶ 54; Ex. C. The press release
21 included a link to the PSLA 270 webpage, which included information on the operation of
22 the PSLA 270, including a diagram of the projector alignment, discussion and diagrams
23 showing its “advanced pixel projection techniques,” and more. Compl. at ¶¶ 56-62; Ex. D.

24 The web page touts that the PSLA 270 relies on 3DS’s “trade secret pixel blending
25 methods,” which were identified in the trade secret case as “comprising multiple
26 permutations of proprietary forms of “geometric distortion correction or digital filters or
27 masks, that achieve or comprise *warp correction*, pixel blending, *edge blending bars*,
28 stitching, *irradiance* and *gamma adjustment*.” Complaint ¶ 60; Ex. E. Each of the four

1 digital filters claimed in the Asserted Patents are included within the alleged trade secret
2 referenced in 3DS's marketing materials. *Compare* Ex. E with Ex. F, 301 Patent, Claim 1.

3 Based on Intrepid's investigation, none of the information referenced above was
4 publicly available prior to November 2024. Wynne Decl. ¶¶ 20-21. Intrepid was unaware
5 of any evidence as to the methods of operation of the PSLA 270 until November 2024. *Id.*

6 3DS's press release states that the commercial availability of the PSLA 270 is
7 anticipated for the first quarter of 2025. Complaint ¶ 65, Ex. C. And the PSLA 270 is just
8 the tip of the iceberg. 3DS's CEO Jeffrey Graves told investors at 3DS's 3Q 2024 earnings
9 call that the PSLA 270 is just the first in an entire family of DLP multiprojection printers.
10 Compl. 71; Ex. G. This representation, along with statements of 3DS's Product Manager
11 overheard by Intrepid's CEO, suggest that 3DS will release a large-format DLP
12 multiprojection system imminently. Wynne Decl. ¶¶ 22-23.

13 **F. Impending Harm**

14 Launch of the PSLA 270 DLP multiprojection 3D printer will cause Intrepid
15 irreparable harm. Currently, Intrepid's Range is the only large-format DLP 3D printer in
16 the marketplace. Wynne Decl. ¶ 25. Because it combines the speed and accuracy of DLP
17 with a large build area currently only achievable in laser-based SLA systems, Range has a
18 substantial competitive advantage over other large-format 3D printers, particularly when
19 producing large, intricate or numerous parts. *Id.*

20 Range is an expensive product, with the price of a single printer system being
21 upwards of a half a million dollars. Wynne Decl. ¶ 19. Introduction of an alternative
22 supplier of DLP multiprojection systems – especially one from a publicly traded company
23 like 3DS – is likely to cause price erosion. *Id.* ¶ 27. Moreover, sales of 3D printer systems
24 like the Range typically include a number of convoyed products (such as photopolymer
25 resin, which is continually supplied over time) and equipment maintenance and repair
26 services. *Id.* ¶¶ 18-19. The addition of these products and services means that once a single
27 sale is lost, substantial revenue is lost over the course of years. *Id.* Further, sales of 3D
28

1 printer systems tend to be sticky, as each company's machines have special requirements
2 for resin, software, maintenance, and operational know-how. *Id.* ¶ 29. Switching costs are
3 exacerbated in highly-regulated industries, such as aerospace and defense. *Id.*

4 3DS's announcement of its forthcoming "family" of DLP multiprojection printers
5 raises the specter for additional, significant irreparable harm. Range is the only large-
6 format DLP multiprojection printer system on the market and has a significant competitive
7 advantage over all other large-format printers on the market. Wynne Decl. ¶¶ 16-17, 25.
8 As comments from 3DS's Product Manager corroborate, 3DS appears to be using the
9 PSLA 270 as a beachhead to launch a more complicated, more expensive, large-format
10 DLP multiprojection printer systems aimed directly at Range's target market. *Id.* ¶¶ 22, 28-
11 30. The impending launch of 3DS's large-format DLP multiprojection system would
12 destroy Intrepid's market exclusivity.

13 Finally, Intrepid is a small company with 9 employees that is fighting for a foothold
14 in a market full of conglomerates. *Id.* ¶ 31. Intrepid and its investors have placed a
15 substantial bet on Range due to its unique performance attributes and lack of similar
16 products on the market. *Id.* Lost sales to an unfair competitor not only results in just lower
17 profits but potentially threatens the existence of Intrepid as a company. *Id.*

18 **II. LEGAL FRAMEWORK**

19 "[T]he power to stay proceedings is incidental to the power inherent in every court
20 to control the disposition of the causes on its docket [This] calls for the exercise of
21 judgment, which must weigh competing interests and maintain an even balance." *Landis v.*
22 *N. Am. Co.*, 299 U.S. 248, 254-55 (1936). When considering a motion to stay, courts within
23 the Ninth Circuit have considered three factors: (1) potential prejudice to the non-moving
24 party; (2) hardship and inequity to the moving party if the action is not stayed; and (3) the
25 judicial resources that would be saved by avoiding duplicative litigation. *Rivers v. Walt*
26 *Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997); see also *Single Chip Sys. Corp. v.*
27 *Intermec IP Corp.*, 495 F. Supp. 2d 1052, 1057 (S.D. Cal. 2007).

1 However, the Court’s discretion to weigh the competing interests is not unfettered,
2 but, instead, should be informed by precedent. First, when reviewing stay orders, the Ninth
3 Circuit balances “the length of stay against the strength of the justification given for it . . .
4 [i]f a stay is especially long or its term is indefinite, [the Ninth Circuit] require[s] a greater
5 showing to justify it.” *See Yong v. INS*, 208 F.3d 1116, 1119 (9th Cir. 1979) (citations
6 omitted); *see also In re P&G Corp. Securities Litigation*, 100 F.4th 1076, 1084 (9th Cir.
7 2024) (finding a stay indefinite “because the end date is triggered by the occurrence of an
8 external event that it is not time limited.”). Second, the Ninth Circuit has recognized that
9 “the potential harm of delaying a plaintiff injunctive relief weighs more heavily against
10 granting a stay than the potential harm to a plaintiff seeking only monetary relief.” *D.C. by*
11 *and through Garter v. Cty. of San Diego*, No.: 15cv1868-MMA (NLS), 2017 WL 1365693,
12 *2 (S.D. Cal. Apr. 14, 2017) (citing *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th
13 Cir. 2005)); *see also Aldapa Fowler Packing Co., Inc.*, No. 1:15-cv-00420-DAD-SAB,
14 2016 WL 6124216, *1 (E.D. Cal. Oct. 20, 2016) (citing *Lockyer* for proposition that
15 “staying a suit seeking injunctive relief against ongoing or future harm causes a more
16 significant hardship against a plaintiff resisting a stay than a suit for damages.”). Third,
17 “[i]f there is even a *fair possibility* that the stay ... will work damage to someone else,” the
18 moving party must make out a “clear case of hardship or inequity in being required to go
19 forward” for a stay to be proper. *Landis*, 299 U.S. 248 at 255. Finally, “being required to
20 defend a suit [absent a stay] does not constitute a ‘clear case of hardship or inequity’ within
21 the meaning of *Landis*.” *Dependable Highway Express, Inc. v. Navigators Ins. Co.*, 498
22 F.3d 1059, 1066 (9th Cir. 2007).

23 **III. 3DS’s Request for a *Landis* Stay Should Be Denied**

24 **A. Intrepid is Likely to Suffer Significant Prejudice if the Stay Issues**

25 **1. 3DS’s Proposed Stay is Indefinite, Infringing on Intrepid’s Right to** 26 **a Speedy Resolution of its Serious Claims**

27 First, 3DS requests an indefinite stay, “pending resolution of the Trade Secrets
28 Case.” Dkt. 27 at 9; *see In re PG&E Corp. Sec. Litig.*, 100 F.4d 1076, 1084 (9th Cir. 2024)

1 (finding stay indefinite “because its end date is triggered by the occurrence of an external
2 event that is not time limited.”) Although not *per se* inappropriate, the Ninth Circuit has
3 stated that “[g]enerally, stays should not be indefinite in nature.” *Dependable Highway*,
4 498 F.3d at 1066 (finding error where stay issued pending arbitration without deadline).

5 Although the Trade Secrets Case is at a more advanced stage than the Patent Case,
6 the case is far from over; indeed, no trial date is currently on the docket. The Parties filed
7 cross-motions for summary judgment, which motions are currently pending. If at least one
8 claim or counterclaim remains after summary judgment, the Trade Secret Case will be
9 delayed significantly further, given that there will be (i) pretrial proceedings pursuant to
10 Local Rules 16.1(f)(4-9); (ii) trial likely spanning several weeks (depending on what issues
11 remain); (iii) post-trial briefing under Fed. Civ. P. 50 and/or 59; (iv) ruling on post-trial
12 briefing; (v) appeal to the Ninth Circuit; and, possibly, (vi) proceedings on remand. Under
13 this scenario, the stay would likely last 2.5-3 years,³ depriving Intrepid of its right to a just
14 and speedy determination of its very serious claims. Fed. R. Civ. P. 1.

15 For example, in *Yong*, the Ninth Circuit found a stay that was to terminate “upon the
16 ‘resolution of the [*Ma*] appeal,’ to be indefinite, because “if the Supreme Court should
17 grant certiorari to review this court’s decision in *Ma*, the stay could remain in effect for a
18 lengthy period of time, perhaps years if our decision in *Ma* is reversed and the case is
19 remanded for further proceedings.” *Yong*, 208 F.3d at 1119. This District’s decision in *D.C.*
20 *by and through Garter v. Cty. of San Diego* denied a proposed stay that was found to be
21 “of an indeterminate length with a high potential to last an unreasonably long time,” when
22
23

24 ³ See *D.C. by and through Garter v. Cty. Of San Diego*, No.: 15cv1868-MMA (NLS), 2017
25 WL 1365693, *3 (S.D. Cal. Apr. 14, 2017) (describing timeline for Ninth Circuit appeals
26 as taking twelve to twenty months between notice of appeal and oral argument, three
27 months to a year from oral argument to decision, and further potential delays for rehearing
28 *en banc*, remand, or appeal to the Supreme Court). Indeed, even if the Court grants all
motions for summary judgment – dismissing both 3DS’s claims and Intrepid’s
counterclaims in their entirety – the decision will likely be appealed to the Ninth Circuit
by either or both parties and possibly remanded for further proceedings, resulting in a
minimum stay of well over eighteen months.

1 the benchmark case had already been pending on appeal for over five months but briefing
2 had not concluded and oral argument had not been set. *Id.* at *5.

3 3DS's cited cases do not change this result. For instance:

4 • In *Alzheimer's Institute of Am. v. Elan Corp. PLC*, 2011 WL 6748634 (N.D.
5 Cal. Dec. 22, 2011), the law firm representing plaintiff AIA and also a party who had
6 intervened in a earlier-filed Pennsylvania action to assert ownership of the same patents
7 in suit. 2011 WL 6748634, at *1. Trial in the Pennsylvania action was only four
8 months away, and a determination there that AIA was not the patent owner would
9 entirely moot the second-filed action *Id.* at *2. Concurrently with the stay motion,
10 movant's attorneys filed a motion to withdraw as counsel. *Id.* at *1. The stay was
11 granted and the withdraw was denied, given the "relatively brief delay" would allow
12 the Pennsylvania court to decide the potentially dispositive issue of ownership and
13 resolve the law firm conflict.

14 • *Lopez v. Am. Express Bank, FSB*, No. CV 09-07335 SJO MANX, 2010 WL
15 3637755 (C.D. Cal. Sept. 17, 2010) involved a potential class action and the primary
16 issues before the court was whether a class action waiver agreement was
17 unconscionable or whether the parties were compelled to arbitrate any disputes. 2010
18 WL 3637755, at *1. The defendants successfully moved for a stay of the proceedings
19 pending a U.S. Supreme Court decision to be rendered that term that could potentially
20 moot the entire case before the *Lopez* court.

21 • Three other cases cited by 3DS, *Nationstar Mortg., LLC v. RAM LLC*, No. 15-
22 cv-1776, 2017 WL 1752933 (D. Nev. May 4, 2017), *Provo v. Rady Children's Hosp.-*
23 *San Diego*, No. 15-cv-81, 2015 WL 6144029 (S.D. Cal. July 29, 2015), and *Aleisa v.*
24 *Square, Inc.*, 493 F. Supp. 3d 806, 816 (N.D. Cal. 2020), also involved instances where
25 the court granted a motion to stay where the underlying cause of action was at issue in
26 cases that were currently pending before the U.S. Supreme Court and estimated to be
27 decided within one year.

28 • *Ferguson v. CVS Pharmacy, Inc.*, No. 18-CV-1529 JLS (MDD), 2019 WL
4345787 (S.D. Cal., Sept. 12, 2019) involved two class action lawsuits with nearly
identical lawsuits. Settlement in the first action had been certified, and since final
approval of that settlement would settle claims for the *Ferguson* plaintiffs, the Court
granted for a 120-day stay. *Id.* Importantly, the *Ferguson* plaintiffs **consented to the**
stay. *Id.* at *2.

• *Abikar v. Bristol Bay Native Corp.*, No. 18-CV-1700 JLS (AGS), 2020 WL
1287729 (S.D. Cal. Mar. 18, 2020), was similarly stayed pending resolution of another
class action suit in which a notice of proposed settlement had already been filed with
the court. 2020 WL 1287729 at *2-*4.

1 • *Lindell v. Synthes, USA*, No. 1:11-cv-2053 LJO-BAM, 2012 WL 1657197
2 (E.D. Cal. May 10, 2012) yet another class action case, the pertinent issue was whether
3 the proposed class representative lacked standing as he was involved in bankruptcy
4 proceedings that directly affected the case. 2012 WL 1657197, *2. The court, noting
5 that the bankruptcy court would likely be issuing its final determination in about three
6 weeks, granted a short stay. *Id.* at *3.

7 **2. 3DS’s Proposed Stay Seeks to Preempt Intrepid’s Claim for** 8 **Injunctive Relief**

9 As 3DS’s brief acknowledges, prior to the filing of this motion, Intrepid had
10 disclosed to 3DS in the context of a meet and confer its intention to seek expedited
11 discovery in anticipation of a motion for preliminary injunction. *See* Dkt. 27 at 15
12 (discussing meet and confer). As set forth clearly in the Complaint, 3DS recently
13 announced the imminent launch of the PSLA 270 medium-format DLP multiprojection 3D
14 Printer System, which is accused of infringing the Asserted Patents. Compl. ¶¶54-56, 64-
15 7. Further, 3DS’s CEO, on the Q3 2024 earnings call, disclosed to investors that the PSLA
16 270 is just the “first in what will be a family of new projector-over-VAT printing
17 systems...,” which is believed (based on overheard comments of 3DS’s Product Manager)
18 to include a large-format DLP multiprojection printer currently in testing at 3DS. *Id.* ¶ 71-
19 75. The Complaint prays for preliminary and permanent injunctive relief, “enjoining 3DS
20 from making, using, offering to sale, or selling within the United States products that
21 practice the inventions” of the Asserted Patents. Compl. ¶ 141(e-f). Intrepid recently filed
22 a *ex parte* application for early, expedited discovery in order to seek a preliminary
injunction. Dkt. 32. The *ex parte* application for early discovery is set for hearing on
February 20, 2025. Dkt. 33.

23 The fact that Intrepid seeks injunctive relief weighs strongly against the granting of
24 a stay. The Ninth Circuit, in *Lockyer v. Mirant Corp.*, 398 F.3d 1098 (9th Cir. 2005),
25 distinguished its opinions in *CMAX* and *Leyva* (relied on by 3DS) because those cases
26 “sought only damages for past harm” where the *Lockyer* case sought “injunctive relief
27 against ongoing and future harm.” *Id.* at 1112. The case acknowledged that the request
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1 for injunctive relief implicates *Landis*, where the Supreme Court cautioned that “if there is
2 even a fair possibility that the stay ... will work damage to some one else,” the party seeking
3 the stay “must make out a clear case of hardship or inequity.” *Lockyer v. Mirant Corp.*, 398
4 F.3d 1098, 1112 (9th Cir. 2005) (citing *Landis*, 299 U.S. 248 at 255).

5 Cases following *Lockyer* hold that movants face a high bar when seeking to stay a
6 case seeking injunctive relief. For example, in *D.C.*, the court cited *Lockyer* to recognize
7 that “the potential harm of delaying a plaintiff injunctive relief weighs more heavily against
8 granting a stay than the potential harm to a plaintiff seeking only monetary relief.” 2017
9 WL 1365693 at *2. Non-movant’s argument that it “*may* seek injunctive relief going
10 forward” was cited as establishing the “fair possibility that a stay [pending a Ninth Circuit
11 decision in another case] ‘will work damage’ to plaintiff,” requiring movant to make out a
12 clear case of hardship or inequity as required by *Landis*. *Id.* *2. Similarly, in *Aldapa v.*
13 *Fowler Packing Co., Inc.*, No. 1:15-cv-00420-DAD-SAB, 2016 WL 6124216 (E.D. Cal.
14 Oct. 20, 2016), the Eastern District of California followed *Lockyer* to recognize that
15 “staying a suit seeking injunctive relief against ongoing or future harm causes a more
16 significant hardship against a plaintiff resisting a stay than a suit for damages.” *Id.* at *1.

17 Here, 3DS’s motion is, by its own tacit admission, designed to cut off Intrepid’s
18 ability to seek injunctive relief. This fact means a stay may not issue absent a showing of
19 a “clear case of hardship or inequity” by Defendants, something 3DS has failed to show.

20 **3. Intrepid is Likely to Be Significantly Harmed By a Stay**

21 3DS’s imminent launch of the infringing PSLA 270 into the nascent market for DLP
22 multiprojection printers threatens substantial, irreparable harm to 3DS. First, Intrepid’s
23 Range is one of *only* two DLP multiprojection 3D printers in the marketplace and is the
24 only large-format DLP multiprojection printer commercially available. Wynne Dec. ¶ 25.
25 The mere introduction of a third DLP multiprojection system to the marketplace will
26 completely reform the marketplace *Id.* ¶¶ 25-26. Second, 3DS is a publicly traded company
27 with substantially more resources, including marketing resources; Intrepid is a very small
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1 company with limited resources. *Id.* ¶26. 3DS could (and would) use its size, network, and
2 resources to drown out Intrepid’s messaging regarding Range. *Id.* Third, 3DS’s PSLA 270
3 appears to be designed to be significantly less expensive than Range, putting downward
4 price pressure on Range to compete in a newly reformed market for medium- and large-
5 format DLP multiprojection 3D printers. *Id.* at ¶ 27.⁴

6 Moreover, 3DS’s CEO has represented to investors that the PSLA 270 is just the
7 first of a family of DLP multiprojection 3D printers that 3DS intends to release, a family
8 which is believed to include a large-format DLP multiprojector currently in testing. Compl.
9 ¶ 71-75; Ex. G at 6. 3DS’s launch of the smaller, cheaper PSLA 270 appears to be designed
10 to enable 3DS to form a beachhead from which to launch the more complicated, more
11 expensive, large-format DLP multiprojection 3D printers aimed directly at Range’s target
12 market. Wynne ¶ 28; *see also id.* ¶ 29 (describing how sales of industrial 3D printers tend
13 to be “sticky” given company-specific ecosystem requirements and regulatory
14 requirements).

15 3DS’s requested injunction would buy 3DS time – approximately 2.5 to 3 years –
16 for it to complete development and testing of the large-format printer, to target Intrepid’s
17 customers and prospective customers, and to unfairly compete with Intrepid. The harm
18 from such unfair competition – which the requested stay would enable – would be
19 immense. Intrepid’s Range is *sui generis*, up to 10X faster than any large-format device
20 and perfectly suited for customers in the aerospace and defense industries. Wynne Decl. ¶
21 ¶ 17. 3DS’s introduction of an infringing large-format DLP multiprojection printer would
22 destroy Intrepid’s market exclusivity, inflict reputational harm to Intrepid, and cause lost
23 sales and price erosion, among other harm. *Id.* ¶¶ 25-31.

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26 ⁴ It should be noted that these DLP multiprojection 3D printers are large, expensive
27 industrial machines. Range is taller than a human, includes six 4K DLP light engines, and
28 a build area of approximately 30 inches by 26 inches. Wynne Decl. ¶¶ 8-9. A single Range,
ala carte, can cost in excess of \$500,000, but a sales contract, including resin supply and
related services, may exceed \$1 million dollars for a single Range. *Id.*

1 This is exactly the type of harm that Courts have found to constitute irreparable
2 harm. For example, the Federal Circuit’s recent decision in *Natera Inc. v. NeoGenomics*
3 *Labs, Inc.*, 106 F.4d 1369 (Fed. Cir. 2024), affirmed a finding of irreparable harm even
4 though such harm could not be quantified, citing (i) direct competition between the parties;
5 (ii) a small, two-player market for the relevant product, meaning that a growth by one party
6 necessarily results in lost sales to the patentee; (iii) lost potential customers, profits, and
7 business relationships; (iv) the requirement of “continuity of care” for the products (similar
8 to the resin supply and services attendant to the sale of a 3D printer), and (v) lost repeat
9 customers. *Id.* 1378-79.

10 **4. Intrepid Has Not Unreasonably Delayed**

11 In its motion, 3DS urges the Court to set aside Intrepid’s claim to irreparable harm
12 because Intrepid “has already known about the product since no later than November 2023
13 when Tanner was able to physically inspect the product during a conference to the point
14 where he was able to discern that it was a DLP Multiprojection Printer.” Dkt. 27 at 12.
15 According to 3DS, Intrepid should have sought at that time “a TRO or preliminary
16 injunction to stop any such marketing efforts.” *Id.*

17 3DS is wrong. First, as 3DS acknowledges elsewhere in its motion, the PSLA 270
18 displayed at Formnext 2023 was not a working product, but merely a “model.” *See* Dkt. 27
19 at 5 (“Tanner saw a **model** of the PSLA 270 at Formnext.”); *see also* Tanner Decl. ¶ 11
20 (describing 3DS’s 2023 display as including “a **model** of what is labeled the PSLA 270”).
21 Indeed, the Tanner declaration cited by 3DS in its motion to stay expressly states that, from
22 what Tanner could see, the model displayed at Formnext 2023 was not operational. Tanner
23 Decl. ¶ 14. At the time, Intrepid searched and was unable to find marketing materials,
24 product websites, or anything to suggest that the PSLA 270 was operational, much less on
25 sale in 2023. Wynne Decl. ¶ 20.

26 Second, while Tanner verified that the model he saw in November 2023 was a
27 mockup of a dual projector, vat-based system, Intrepid does not have a patent on vat-based
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1 DLP multiprojection systems generally. Simply put, the Asserted Patents claim a specific
2 display subsystem that employs four digital filters to achieve irradiance uniformity, warp
3 correction, gamma adjustment, and edge-blending. *See e.g.*, Ex. F, 301 Patent at Claim 1.
4 In its motion to dismiss, 3DS (wrongly) argues that Intrepid’s Complaint, which attaches
5 substantial publicly available information from November 2024 regarding the operation of
6 the PSLA 270, does not sufficiently plead facts showing the PSLA 270 uses filters for warp
7 correction and irradiance uniformity. *See. e.g.*, Dkt. 26, Motion to Dismiss at 1 (“To
8 properly plead infringement, the Complaint must factually allege the stack/set of four filters
9 in its entirety”). In 2023, there was no publicly available information describing the
10 operation of the PSLA 270. Wynne Decl. ¶ 20. Intrepid cannot be blamed for not rushing
11 into Court with a Complaint and Motion for TRO to enjoin the display in Germany of a
12 non-operational model with unknown design characteristics.

13 Third, Intrepid sought discovery of the PSLA 270 in the Trade Secrets Case
14 immediately after Formnext 2023. Catalano Decl. ¶ 8. 3DS opposed the request, arguing
15 among other things that Intrepid’s request would require the Court to reopen discovery. *Id.*
16 At an IDC on December 1, 2023, the Court indicated that it did not believe discovery into
17 the PSLA 270 would be proportional to the needs of the Trade Secret Case. *Id.* ¶ 9. Intrepid
18 did not obtain discovery of the PSLA 270 in the trade secret case and, as such, was at the
19 mercy of public information to ascertain the operation of the device. Catalano Decl. ¶ 10.

20 Fourth, Intrepid moved expeditiously once publicly available information was
21 available in November 2024, filing its Complaint in early December 2024. Dkt. 1. Further,
22 Intrepid filed an *ex parte* application for early, expedited discovery, in which it explained
23 that certain limited discovery – namely, technical documents, a physical inspection, and a
24 review of source code – is necessary to prepare a motion for preliminary injunction. Dkt.
25 32. Intrepid’s request for early discovery is set for hearing on February 20, 2025. Dkt. 33.
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B. 3DS Has Not Made a Clear Case of Hardship or Inequity in Being Required to Proceed

As set forth above, Intrepid stands to suffer significant, irreparable harm if 3DS’s proposed indefinite stay is granted. Given that there is at least a “fair possibility” of harm to the non-movant, 3DS has the burden to show a “clear case of hardship or inequity in being required to go forward” for a stay to issue. *Landis*, 299 U.S. 248 at 255. 3DS does not even come close to meeting its burden.

3DS points to no concrete harm or burden it would suffer from proceeding, other than the fact that it would have to litigate. But being required to defend a suit [absent a stay] does not constitute a ‘clear case of hardship or inequity’ within the meaning of *Landis*.” *See Dependable*, 498 F.3d at 1059; *Lockyer*, 398 F.3d 1098, 1112 (same).

3DS claims that discovery in the Patent Case will likely be burdensome and, perhaps, duplicative of discovery in the Trade Secrets Case. But the Patent Case is no more burdensome than any other patent case, and the Federal Rules empower the Court to protect against unreasonably cumulative and duplicative discovery. *See Fed. R. Civ. P.* 26(b)(2)(C)(i). Notably, this case was transferred pursuant to Low Number Rule to Judge Schopler and Magistrate Judge Leshner, who are familiar with the Parties and technology from overseeing discovery in the Trade Secrets case. Dkt. 17. As such, Magistrate Judge Leshner is uniquely situated to mitigate undue burden and duplication that may arise.

Moreover, discovery in a patent infringement case focuses on a comparison of the patents-in-suit with the accused products, which in the Patent Case consists of at least the PSLA 270, the other products in that “family” of printers, and the Bioprinter, none of which were part of discovery in the Trade Secrets action. The Trade Secrets Case discovery focused on a failed, experimental test bed called the “4-Pack/6-Pack,” a project which was terminated in 2017. Catalano Decl. ¶¶ 4-5. Further, late in discovery, Intrepid became aware of another failed attempt at multiprojection, a three-projector, membrane-based prototype made on behalf of a company in the athletics industry. *Id.* ¶ 6. This project terminated in Spring of 2019, five years before the PSLA 270 is to be released. *Id.* 3DS

1 did not disclose the existence of the PSLA 270 until after discovery. *Id.* ¶ 7. The technical
2 documentation, marketing and project management documents, email, physical equipment,
3 and source code at the heart of the Patent Case are wholly absent from the Trade Secrets
4 Case. *Id.* ¶ 11.

5 3DS also claims, without explanation, that proceeding in both cases may create the
6 “very real possibility of being subject to overlapping or inconsistent judgments.” Dkt. 27
7 at 13. Even if true (and it is not),⁵ any risk of inconsistent judgments is insufficient to meet
8 3DS’s burden under *Landis*. See *D.C.* 2017 WL 1365693, at *2.

9 However, 3DS’s claim to potential conflicting judgments is unfounded. Without any
10 analysis, 3DS asserts that “a determination in the Trade Secrets Case that the Asserted
11 Patents include 3DS’s trade secrets would conflict with the assumption or determination in
12 the Patent Infringement Case that 3DS is infringing the Asserted Patents, or that the Patents
13 are otherwise valid or otherwise enforceable against 3DS.” Dkt. 27 at 13-14. 3DS fails to
14 explain how any judgment in the Trade Secrets case would affect the validity of the
15 Asserted Patents. The Trade Secret case does not include any cause of action regarding
16 the ownership or validity of the Asserted Patents. In what circumstances would the Trade
17 Secret Case result in a judgment that “the Asserted Patents include 3DS’s trade secrets”
18 arise? It should be noted that 3DS’s Identification of Trade Secrets is far broader and more
19 nebulous than the claims of the Asserted Patents. See Dkt. 531-3 at ECF Page 79-80
20 (identifications). 3DS does not explain how the Trade Secrets Case could lead to a finding
21 that the patents are invalid or unenforceable as to 3DS.

22 Finally, 3DS argues that it should not be required to turn over its technology in
23 discovery to Intrepid, a competitor. Dkt. 27. This is not a real concern, given that the
24 Court will fashion a protective order to ensure confidentiality of both litigants’ trade
25 secrets, as it did in the Trade Secrets Case. *Apple Inc. v. Samsung Elecs. Co., Ltd.*, No. 11-
26

27 ⁵ As discussed herein, 3DS’s claim to potential exposure to inconsistent judgments is
28 speculative. 3DS fails to articulate how a decision in the Trade Secrets case would relate
to the issues in the Patent Case.

CV-01849-LHK, 2011 WL 1938154, at *3 (N.D. Cal. May 18, 2011) (“The Court understands that production of pre-release samples to a competitor can be prejudicial, but believes that this concern can be adequately addressed by a stringent protective order.”). The Protective Order in the Trade Secret Case (Ex. H) includes a number of extensive measures to ensure confidentiality, including by (i) providing strict protection for that information designated CONFIDENTIAL – FOR COUNSEL ONLY [¶¶ 4(b), 8]; (ii) directly addressing confidentiality concerns from physical inspections [¶ 5]; (iii) providing further protections source code [¶¶ 12]; and (iv) barring attorneys and experts with access to confidential source code from engaging in certain activities at the USPTO. [¶ 12(g)]. A stringent protective order, similar to that in the Trade Secrets Case, adequately addresses 3DS’s concern. *Apple Inc.*, 2011 WL 1938154, at *3.

C. 3DS Points to No Concerns Regarding the Orderly Course of Justice that Would Weigh in Favor of a Stay

As with its arguments on burden, 3DS does not coherently articulate how staying the Patent Case would promote the orderly course of justice. Although it is true that courts do not *necessarily* require preclusive effect of the prior litigation (*see* Dkt. 27 at 15), courts carefully scrutinize how the cases relate to assess whether a stay would actually promote judicial economy. For example, in *Lockyer*, the Ninth Circuit reversed a stay, finding among other things, that it was “highly doubtful that the bankruptcy court in Texas will provide legal resolution” or even consider issue asserted to be relevant to the case sought to be stayed. *Lockyer*, 398 F.3d at 1112 (“the bankruptcy court is unlikely to consider ... whether ownership of the plants by a single entity is legal under the Clayton Act.”); *see also Aldapa Fowler Packing Co., Inc.*, No. 1:15-cv-00420-DAD-SAB, 2016 WL 6124216, *3 (E.D. Cal. Oct. 20, 2016) (“it is unclear what, if any, information regarding [the relevant] issue will be gained by awaiting the Ninth Circuit’s resolution of [earlier case]).⁶

⁶ 3DS cited authority involved cases that were far more similar that those at issue here. *Abikar* related to two wage-and-hour class actions with a common defendant. *Abikar v. Bristol Bay Native Corp.*, 2020 WL 1287729 (S.D.Cal. Mar. 18, 2020). *Montgomery*

3DS does not explain how a judgment of trade secret misappropriation would be conclusive of, simplify, or even affect validity, enforceability, for Infringement of the Asserted Patents. 3DS mischaracterizes Intrepid’s position in the Trade Secrets Case as contending “that the four filters required by the claims of the Asserted Patents are well-known and conventional.” Dkt. 27 at 15. Intrepid’s expert, Will Allen, opined that 3DS’s expert did not “identify any alleged trade secrets with sufficient particularity to separate them from known concepts in the digital display and projection community.” *See* Dkt. 27-5 at 11. Although 3DS asserts at Dkt. 27 at 15, Allen’s opinion “raises serious doubts as to whether the Asserted Patents are valid and enforceable” (which it does not), nothing about the resolution of the Trade Secret case would resolve those doubts. No patent law considerations that are raised in the present action were addressed in the Trade Secrets case. Allen’s report does not address whether the specific claims of the Asserted Patents were anticipated by the prior art or would be obvious to one skilled in the relevant art nor will this issue be addressed in any judgment. Regardless of the outcome of the Trade Secrets Case (*e.g.*, if 3DS’s asserted trade secrets are found invalid under *Imax*), 3DS will bear the burden to show by clear and convincing evidence that the specific claims of the Asserted Patents are anticipated or rendered obvious by the prior art. *See Microsoft Corp. v. i4i Ltd. P’ship*, 564 U.S. 91, 95 (2010).

Third, even if 3DS can, on reply, articulate how a possible judgment in the Trade Secrets Case could impact the merits of the Patent Case, there are a number of other outcomes of the Trade Secret case that would not. For example, Intrepid moved for

involved two class actions against the same defendant for failure failure to provide accurate wage records and similar claims. *Montgomery v. Target Corp.*, 2919 8168064 (C.D. Cal. Sept. 20, 2019). Figueroa involved two putative class actions with allegations of California Labor Code provisions, one against a parent company and the other against a subsidiary. *Figueroa v. Autozoners, LLC*, 2019 WL 11023657 (C.D. Cal. Jan. 31, 2019). *Aliphcom* involved first-filed patent infringement action and a second-filed ITC investigation between the same parties asserting the same patents. *Aliphcom v. Fitbit, Inc.*, 154 F. Supp. 3d 933 (N.D. Cal. 2015) (“the same issues that this Court will confront (claim construction, invalidity, and enforceability of the patents-in-suit.”). *Leyva* did not make a determination on whether the cases were sufficiently related; it just found the district court erred by failing to consider it. *Leyva*, 593 F.2d at 864.

1 summary judgment that 3DS's claims for trade secret misappropriation were barred by the
2 statute of limitations. Dkt. 531 at 11-20. Such a finding would not simplify this case. Even
3 if Intrepid were found to have misappropriated trade secrets, the trade secrets at issue are
4 identified at a high level of generality that such a finding could be based on the *concept* of
5 a DLP multiprojection System or a carton depiction of six-projector layout – *see* Dkt. 27,
6 Sealed Ex. 1 at 3DS_009534 – neither of which have anything to do with the four filters in
7 question. Indeed, there are 12 asserted trade secrets Trade Secret Case, including several
8 purported trade secrets that have nothing to do with multiprojection, such as the “closed
9 loop,” “print spooling,” CAD, and soft trade secrets, such as customer lists. *See* Dkt. 531
10 at 7-9 (discussing purported trade secrets by group). 3DS has not shown that it is *likely* that
11 the resolution of the Trade Secrets Case will bear on any issue in the Patent Case. *See*
12 *Aldapa Fowler Packing Co., Inc.*, No. 1:15-cv-00420-DAD-SAB, 2016 WL 6124216, *3
13 (E.D. Cal. Oct. 20, 2016) (“it is unclear what, if any, information regarding [the relevant]
14 issue will be gained by awaiting the Ninth Circuit’s resolution of [earlier case] ...”).

15 Finally, 3DS's argument ignores the fact that the cases have been assigned under the
16 Low Number Rule to Judge Schopler and Magistrate Judge Leshner, which, as described
17 by Local Rule 40.1(e-j), is employed to “avoid unnecessary duplication of judicial effort.”
18 To the extent 3DS argues that the Patent Case may involve potentially duplicative
19 discovery efforts, (i) the accused instrumentalities were not the subject of discovery in that
20 case; (ii) fact discovery is long closed in the Trade Secret Case; and (iii) Magistrate Judge
21 Leshner is ideally suited to ensure that no unnecessary duplication of effort will occur.

22 **IV. 3DS's Request for a Stay Under the First-to-File Rule Should Be Denied**

23 3DS's motion under the First-to-File Rule should be denied for many of the same
24 reasons set forth above. To be clear, there is no dispute that the Trade Secret Case was
25 filed first or that the Parties substantially overlap. However, the issues in the Trade Secret
26 Case and Patent Case are not sufficiently similar to justify a stay.
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1 Crucially, the two cases assert different forms of intellectual property (trade secrets
2 versus patent), concern the operation of completely different 3DS machines, and involve
3 different bodies of law.

4 The Trade Secret Case concerned 12 ill-defined, disparate purported trade secrets
5 across a wide range of disciplines, whereas the Patent Case is focused on two Asserted
6 Patents with specific, detailed claims limited to a single technology. Unlike the wide-
7 ranging Trade Secrets case, discovery will be laser focused here.

8 Importantly, the accused instrumentalities were not involved at all in the Trade
9 Secrets Case, in which the 3DS-related evidence presented was limited to technology in
10 development in 2016-2017 (while the Architects were employed by 3DS) and shortly
11 thereafter. Catalano Decl. ¶¶ 4-6. The Patent Case will be focused on the conception,
12 design, development and operation of the PSLA 270 (to be launched in Q1 2025), the larger
13 PSLA 270 “family” of products (in development or testing), and the 3DS Bioprinter
14 (believed to be in prototype, testing or available to select partner companies). None of the
15 products in the Patent Case were implicated by discovery in the Trade Secrets Case. *See*
16 *id.* ¶ 11.

17 Moreover, there are few, if any, issues of law common between the cases. The key
18 law at issue in the Trade Secret Case – trade secret identification, trade secret ownership,
19 trade secret misappropriation, public policy related to validity issues, and statute of
20 limitations – are not at issue in the Patent Case. Substantive patent law issues – such as
21 claim construction, infringement/non-infringement, and invalidity (regardless of whether
22 under 35 U.S.C. §§ 102, 103, or 112) – are completely absent from the Trade Secret case.

23 The cases relied upon by 3DS are all readily dissimilar with respect to overlap of the
24 issues. In *Wallerstein v. Dole Fresh Vegetables, Inc.*, 967 F. Supp. 2d. 1289, 1291 (N.D.
25 Cal. 2013), the Northern District of California considered a request to transfer or stay a
26 putative class action against Dole which asserted the “All Natural” label on Dole Salad
27 Kits was “false, deceptive and unfair to consumers because the Salad Kits contain synthetic
28

(man made) ingredients.” The earlier filed case was the same type of case (class action), against the same defendant (Dole), accusing the same product (the same ten varieties of Salad Kits) of having the same label (“All Natural”) which was alleged to be false and misleading under the same laws (UCL and CLRA) for the same reasons (the inclusion of the same synthetic ingredients). *Id.* at 1292. The only difference was that the later-filed case asserted a few additional California law theories and two similar theories under New York law. Not surprisingly, the Court found that the two cases raised substantially similar issues, that there was no reason that Central District of California was better suited to apply New York law, and, accordingly transferred the case. *Id.* at 1297-98. Notably, ***the Wallenstein case did not even reach the issue of whether to stay the case.*** *Id.* at 1298.

Moreover, 3DS’s reliance on *Dumas* is misplaced. *Dumas* involved blatant forum shopping by “various plaintiffs, some acting as overlapping named representatives, have brought suits making similar factual allegations based on similar legal theories.” *See Dumas v. Major League Baseball Props., Inc.*, 52 F. Supp. 1183, 1187 (S.D. Cal. 1999). Moreover, the plaintiffs had achieved “little success” in the earlier-filed cases. The Court found that an adverse decision in the earlier filed action would be binding on a previously-named individual in the later-filed action, although other class members would not be so bound if dismissal were to occur prior to class certification. All relevant cases were RICO actions and the underlying complained-of conduct was “almost identical.” *Id.* at 1193. Given the preclusive effect of the first-filed case on the latter-filed case, the Court stayed the second case, stating “[s]hould [plaintiffs] prevail, this Court will entertain their allegations. Should [d]efendants prevail, they will be dismissed.” *Id.* at 1195.

In re Com21, Inc., 357 B.R. 802, 808 (Bankr. N.D. Cal. 2006) cited by 3DS is also inapposite.⁷ *In re Com21, Inc.* is another forum shopping case with identical issues of fact

⁷ *In re Com21* has a tangled factual and procedural history. The first-filed case was a patent infringement action filed by Hybrid Patents against Charter Communications. Charter Communications contested Hybrid Patents’ ownership and filed a third-party claim for indemnification against its supplier, Arris. Arris, in turn, filed its own third-party

1 and law. Both the first-filed and the second filed cases included the same party making
2 express claims of ownership of the same patents due to the same alleged breach of the same
3 license agreement and the issues were set for trial within seven months of the opinion. This
4 is a far cry from the situation before the Court here. The Trade Secret Case does not include
5 a claim for ownership of the Asserted Patents, and there is no possible outcome of the first-
6 filed case in which 3DS is awarded ownership of the Asserted Patents, the Asserted Patents
7 are found to be invalid, or 3DS is found to not infringe.

8 Finally, 3DS's argument regarding the First-to-File rule ignores the fact that it has
9 effectively already been applied. On December 11, 2024, the Court entered an order of
10 transfer pursuant to the low number rule. (Dkt. No. 17). The concerns of forum shopping
11 so prominent in *Dumas* and *In re Com21*, are mooted by the assignment of the second-filed
12 case to Judge Schopler and Magistrate Judge Leshner, who also preside over the first-filed
13 case. In other words, by operation of the low-number rule, the Court has already provided
14 the relief afforded movant in *Wallenstein*. Indeed, Judge Moskowitz expressly cited this
15 District's low number rule in declining to apply the first-to-file rule:

16 This case was originally filed before Judge Anthony J. Battaglia, but it was
17 transferred to this Court [Judge Moskowitz] pursuant to this district's low-
18 number rule. Thus, the same concerns of judicial efficiency and uniformity
19 are not present. The Court, therefore, follows the lead of several courts in this
20 circuit in declining to apply the first-to-file rule where the two actions at issue
21 are pending before the same judge.

22 *Andreoli v. Youngevity Int'l, Inc.*, No. 16-cv-02922-BTM-JLB, 2018 WL 1470264, *2
23 (S.D. Cal. Mar. 23, 2018). Numerous district courts in this Circuit have similarly declined
24 to apply the first-to-file rule where the two cases are before the same judge. *See, e.g.*,
25 *Henderson v. JPMorgan Chase Bank*, No. 11-cv-3428-PSG-PLAX, 2011 WL 4056004, at
26 *2 (C.D. Cal. Sept. 13, 2011); *Rodriguez v. Taco Bell Corp.*, No. 1:13-cv-01498-SAB,
27 2013 WL 5877788, at *3 (E.D. Cal. Oct. 30, 2013); *Giordani v. Staples the Office*

28 complaint against Hybrid Patents asserted that Arris owned the asserted patents. The
second filed case, filed in bankruptcy court, was filed by Arris against Com21, the Debtor,
and Hybrid Patents claiming ownership of the same patents for the same reason as in the
first-to-file case. Charter sought to intervene in the second case.

1 *Superstore LLC*, No. 5:24-cv-02224-CAS(PDx), 2024 WL 4905965, *5 (C.D. Cal. Nov.
2 25, 2024).

3 **V. Alternatively, the Court Should Deny 3DS's Motion Without Prejudice**
4 **Pending Future Developments**

5 Given (i) the immediacy of the launch of the PSLA 270, (ii) the hearing on Intrepid's
6 *ex parte* application for expedited discovery set for February 20, 2025, (iii) the stated
7 intention by Intrepid that it plans to seek preliminary injunctive relief, (iv) the promised
8 release of additional members of 3DS's "family" of DLP multiprojection machines, and
9 (v) the irreparable harm to Intrepid that would result from an indefinite stay, Intrepid
10 submits that no potential judicial economy or theoretical simplification of efforts could
11 justify a stay at this time. The Court should, at minimum, allow the Patent Case to proceed
12 to a preliminary injunction hearing, and hold in abeyance the motion to stay until, at
13 minimum, resolution of the issues related to preliminary relief. If the Court were to order
14 an injunction, such an order would alleviate much of the prejudice discussed above.

15 **VI. CONCLUSION**

16 For the foregoing reasons, the Court should deny 3DS's Motion to Stay.

17
18 Dated: January 24, 2025

SMITH GAMBRELL & RUSSELL LLP

19 By: /s/ Jeffrey J. Catalano

20 Jeffrey J. Catalano

21 Joseph L. Fogel

Jason P. Stearns

22 Dated: January 24, 2025

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24 By: /s/ Marty B. Ready

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Intrepid Automation Inc., a Delaware Corporation v. 3D Systems Corporation and Inc. and 3D Systems Inc.

U.S. District Court Case No.: 3:24-cv-02262-AGS-DDL

CERTIFICATE OF SERVICE

I, the undersigned, am employed in the county of Cook, State of Illinois. I am over the age of 18 and not a party to the within action; my business address is 311 South Wacker Drive, Suite 3000, Chicago, Illinois 60602. On January 24, 2025, I caused to be served the following document(s):

• **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STAY PROCEEDINGS**

on the following parties in this action:

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by the following method of service:

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5
6 /s/ Jeffrey J. Catalano
7 Jeffrey J. Catalano
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