IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

QUANTUM IMAGING, LLC	§	
Plaintiff,	§	
	§	**CASE NO. 1:23-CV-1212-ADA-DTG**
v.	§	
	§	
SONY INTERACTIVE ENTERTAINMENT INC.; SONY INTERACTIVE ENTERTAINMENT LLC; AND BLUEPOINT GAMES, INC.,	§	
Defendants.		

ORDER DENYING DEFENDANTS' MOTION TO STAY (ECF NO. 199)

Before the Court are Defendants' Motion to Stay Pending Resolution of *Inter Partes* Review (ECF No. 199) and Plaintiff's Motion for Leave to File Sur-Reply Brief (ECF No. 209). After careful consideration of the Motions, the parties briefing, and the applicable law, the Court **GRANTS AS UNOPPOSED** Plaintiff's Motion for Leave (ECF No. 209) and **DENIES** Defendants' Motion to Stay (ECF No. 199).

I. BACKGROUND

On December 11, 2023, the U.S. Patent Trial and Appeal Board ("PTAB") instituted *inter partes* review of U.S. Patent Nos. 8,458,028 (the "'028 Patent"); 10,846,941 (the "'941 Patent"); and 10,991,165 (the "'165 Patent") in proceedings IPR2023-00954, IPR2023-00995, and IPR2023-00996 (collectively, "Defendants' IPR Proceedings"). On December 20, 2023, Defendants moved to stay the case pending resolutions of Defendants' IPR Proceedings. *See generally* ECF No. 199. Plaintiff filed its opposition on December 27, 2023. ECF No. 205. Defendants filed a reply brief on January 3, 2024. ECF No. 207.

On January 12, 2024, Plaintiff moved for leave to file a sur-reply brief. ECF No. 209. Defendants did not respond to Plaintiff's Motion for Leave. A sur-reply brief is allowed only with the Court's leave. L.R. CV-7(E)(1). Further, if a response to a motion is not filed within the time period prescribed by Local Rule CV-7, the Court may grant the motion as unopposed. L.R. CV-7(D)(2). Because Defendants did not file a response in opposition to Plaintiff's Motion for Leave, the Court **GRANTS** the Motion **AS UNOPPOSED**.

II. LEGAL STANDARD

District 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. *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-cv-1058, 2015 WL 1069111, at *2 (E.D. Tex. Mar. 11, 2015); *see also CyWee Grp. Ltd. v. Samsung Elecs. Co.*, No. 2:17-CV-00140-WCB-RSP, 2019 WL 11023976, at *2 (E.D. Tex. Feb. 14, 2019). Courts effectively determine whether the benefits of a stay outweigh the inherent costs based on these factors. *EchoStar Techs. Corp. v. TiVo, Inc.*, No. 5:05-CV-81, 2006 WL 2501494, at *1 (E.D. Tex. July 14, 2006).

III. ANALYSIS

A. Undue Prejudice to the Non-Moving Party

Defendants argue that Plaintiff will suffer no prejudice from a stay because Plaintiff is a non-practicing entity that can be fully compensated by money damages. ECF No. 199 at 4. Defendants further argue that Plaintiff would not be prejudiced by any delay in this case because Plaintiff has engaged in dilatory conduct during discovery. *Id.* at 5. Plaintiff responds that it has

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an interest in enforcement of its patent rights and that a stay might interfere with collecting evidence that could be lost during a stay. ECF No. 205 at 3-5.

Neither side's arguments concerning how a stay would affect discovery are persuasive. Discovery in this case closed on June 10, 2024. ECF No. 258 at 1. Plaintiff has an interest in the timely enforcement of its patent rights. *See Kirsch Rsch. & Dev., LLC v. Tarco Specialty Prods., Inc.*, No. 6:20-CV-00318-ADA, 2021 WL 4555804, at *2 (W.D. Tex. Oct. 4, 2021) (citing *MiMedx Grp., Inc. v. Tissue Transplant Tech. Ltd.*, No. SA-14-CA-719, 2015 WL 11573771, at *2 (W.D. Tex. Jan 5, 2015)). The Federal Circuit encourages courts to recognize the public policy in favor or quickly resolving cases. *Kahn v. GMC*, 889 F.2d 1078, 1080 (Fed. Cir. 1989). Congress has recognized as much, establishing the PTAB to provide a forum for the "quick" resolution of patent disputes. *See, e.g., Ethicon Endo-Surgery, Inc. v. Covidien LP*, 826 F.3d 1366, 1367 (Fed. Cir. 2016). While this interest may be diminished here because Plaintiff only seeks a monetary recovery, that interest is not eliminated. *Kirsch Rsch. & Dev., LLC v. Tarco Specialty Prod., Inc.*, No. 6:20-CV-00318-ADA, 2021 WL 4555804, at *2 (W.D. Tex. Oct. 4, 2021). Accordingly, this factor weighs slightly against a stay.

B. Stage of Proceedings

The advanced stage of this case weighs heavily against a stay. This factor weighs against a stay if protracted and expansive discovery has already occurred, or the court has expended significant resources. *CANVS Corp. v. United States*, 118 Fed. Cl. 587, 595 (2014); *SenoRx, Inc. v. Hologic, Inc.*, No. 12-173-LPS-CJB, 2013 WL 144255, at *5– 6 (D. Del. Jan. 11, 2013) (recognizing that once significant resources have been spent, the court and parties are best served by seeing a case through). In this case, the Court held a *Markman* hearing on October 10, 2023, fact discovery closed on June 10, 2024, expert discovery closed on September 2, 2024, the parties have completed briefing on dispositive and *Daubert* motions, and the parties are

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finalizing their Joint Pretrial Order and Pretrial Submissions (proposed jury instructions, exhibit lists, witness lists, deposition designations, etc.). The Court and the parties have expended significant resources in this case, and the Court is prepared to usher this case to trial. Given the foregoing, this factor weighs heavily against a stay.

C. Simplification of the Issues

Defendants assert that the IPR Proceedings will moot this case because the PTAB has instituted review of all asserted claims. ECF No. 199 at 8-10. Because *inter partes* review has been instituted on all asserted claims of all asserted patents in this case, it is possible that the cancellation of some or all of the claims would result in simplification of issues. That simplification, however, is not certain. *See Netlist, Inc. v. Samsung Electronics Co., Ltd.*, Case No. 2:22-cv-00293-JRG, Dkt. No. 689, at 5 (E.D. Tex. Mar. 11, 2024). This case will be entirely disposed of if, and only if, the PTAB invalidates all claims of the asserted patents-in-suit and the Federal Circuit affirms the PTAB on appeal. The Court finds that at this stage of the case the prejudice to Plaintiff outweighs the possibility that Defendants' IPR Proceedings and any subsequent appeals will simplify this case. *See Netlist, Inc. v. Micron Tech., Inc.*, Case No. 2:22-cv-00294-JRG, Dkt. No. 72, at 3 (E.D. Tex. Mar. 11, 2024); *see also Ravgen, Inc. v. Lab. Corp. of Am. Holdings*, No. 6:20-cv-00969-ADA, Dkt. 185 at 8 (W.D. Tex. Aug. 16, 2022) (stating that institution alone is not enough to show that the PTAB is likely to invalidate every asserted claim).

IV. CONCLUSION

Weighing all of the relevant facts in the balance, the Court finds those factors weigh against granting a stay. Accordingly, in the exercise of its discretion, the Court **DENIES** Defendants' Motion to Stay Pending Resolution of *Inter Partes* Review (ECF No. 199). Additionally, the Court **GRANTS AS UNOPPOSED** Plaintiff's Motion for Leave to File Sur-

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Reply Brief (ECF No. 209). Plaintiff's Sur-Reply Brief (ECF No. 209-2) and accompanying exhibits (ECF Nos. 209-3 through 209-9) are accepted for filing.

SIGNED this 4th day of December, 2024.

DEREK T. GILLILAND

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