**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**MARSHALL DIVISION**

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| MYPORT, INC., | § | |
| | § | |
| *Plaintiff*, | § | |
| | § | |
| v. | § | |
| | § | CIVIL ACTION NO. 2:22-CV-00114-JRG |
| SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC., | § | |
| | § | |
| *Defendants*. | § | |
| | § | |

**ORDER**

Before the Court is the Motion to Stay Pending *Inter Partes* Review of the Asserted Patents (the "Motion") filed by Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, "Samsung"). (Dkt. No. 32.) In the Motion, Samsung moves to stay this case pending *inter partes* review ("IPR") of all remaining asserted claims of the three patents-in-suit. (*Id.* at 1.) Based on the briefing and oral argument before the Court, and for the reasons described herein, the Motion is **DENIED**.

## I. BACKGROUND

Plaintiff MyPort IP, Inc. ("MyPort") filed suit against Samsung on April 15, 2022, asserting infringement of three patents: U.S. Patent No. 9,832,017 (the "'017 patent"), U.S. Patent No. 10,721,066 (the "'066 patent"), and U.S. Patent No. 10,237,067 (the "'067 patent") (collectively, the "Asserted Patents"). (Dkt. No. 1.) On October 11, 2022, Samsung filed three IPR petitions challenging the patentability of all claims of the Asserted Patents. (Dkt. Nos. 32-6, 32-7, 32-8.) At the time the Motion was filed, the United States Patent Trial and Appeal Board ("PTAB") had not yet instituted IPR proceedings. (Dkt. No. 32 at 3.) On April 24, 2023, the PTAB granted

institution of IPR of all remaining asserted claims for each of the three Asserted Patents. (Dkt. Nos. 57, 57-1, 57-2, 57-3.)

The Claim Construction hearing in this case is set for August 15, 2023. (Dkt. No. 26 at 3.) Discovery in this case is well underway, with the deadline to substantially complete document production on July 5, 2023. Trial is scheduled for February 5, 2024.

## II. LEGAL STANDARD

The district court has the inherent power to control its own docket, including the power to stay proceedings. *Clinton v. Jones*, 520 U.S. 681, 706 (1997). How to best manage the court's docket "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936).

"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 Techs. LLC v. HTC Am., Inc.*, 2015 WL 1069111, at *2 (E.D. Tex. Mar. 11, 2015). "Based on th[ese] factors, courts determine whether the benefits of a stay outweigh the inherent costs of postponing resolution of the litigation." *Id.*

## III. DISCUSSION

After reviewing the arguments of the parties as presented in the briefing and during oral argument, the Court finds that a stay is not appropriate for the reasons described herein.

### A. A Stay Will Unduly Prejudice MyPort.

As this Court has recognized, a plaintiff has a right to timely enforcement of its patent rights. *Trover Grp. Inc. v. Dedicated Micros USA*, 2015 WL 1069179, at *2 (E.D. Tex. Mar. 11,

2015). MyPort would be prejudiced by a delay in its ability to vindicate its patent rights caused by a stay, which weighs against granting this Motion.

Samsung points out that the timely enforcement of patent rights by itself is insufficient alone to defeat a motion to stay, because such timely enforcement is an interest present in every case in which a patentee resists a stay. (Dkt. No. 32 at 8, citing *NFC Tech. LLC v. HTC Am., Inc.*, 2015 WL 1069111, at *2 (E.D. Tex. Mar. 11, 2015).) At the telephonic hearing on its Motion, Samsung argued that there is no *undue* prejudice to MyPort because it seeks exclusively monetary damages, and the mere delay in collecting such damages does not constitute undue prejudice. (*See* Dkt. 66 at 4:22–25, 5:12–15.) Samsung further emphasizes MyPort's alleged delay in filing suit, arguing that that Mr. Malone, the sole inventor and owner of MyPort, waited years (after having a case dismissed in 2017 against Samsung on the parent patents) to form a new company and pursue claims of infringement. (Dkt. 32 at 8.)

MyPort responds that Mr. Malone has an interest in the timely enforcement of his patent rights, and that to stay this case would essentially deprive Mr. Malone of his chosen venue. (Dkt. No. 66 at 13:1–2.) As the PTAB's final decision is not due until April 26, 2024 (which can be extended until October 2024), MyPort argues that staying this case pending resolution of the IPRs could result in a delay of nearly two years. (Dkt. No. 36 at 4.) MyPort further contends that the fact that Mr. Malone is the sole inventor and employee of MyPort—who rarely files suits—moves the needle on this factor in MyPort's favor. (*See* Dkt. No. 66 at 12:17–19; 13:20–22.) MyPort additionally argues that prejudice will be caused by the possibility of lost testimonial and documentary evidence.[1] (*Id.* at 13:24–25; 14:2–3.) MyPort also asserts that Samsung's contention

[1] For example, MyPort points out that Samsung has raised a marking defense from a license from 2011. MyPort's counsel emphasized that in response to this defense, it has subpoenaed Motorola, arguing that the license agreement is old at this point—if there were to be a stay, there would be a greater possibility of loss of evidence. (*See* Dkt. No. 66 at 14:1–7.)

that it "waited years" to file suit is incorrect—MyPort filed suit on April 15, 2022, less than 2 years after the issuance of the last patent. (Dkt. No. 36 at 5.) It contends that given the complexity of preparing for a patent infringement suit, this did not constitute unreasonable delay.

The Court finds that this factor disfavors a stay. As urged by MyPort, it has an interest in the timely enforcement of its patent rights. Granting a stay in this case could delay the case by nearly two years, as the PTAB decision is not due until over two months after jury trial is set to begin.[2] There was no unreasonable delay in filing suit on part of MyPort. Thus, this factor weighs against a stay.

**B. The Stage of Litigation Disfavors a Stay.**

Samsung argues that under this Court's case law, the proper inquiry regarding the stage of the litigation is frozen at the time the Motion was filed—here, October 26, 2022. (*See* Dkt. No. 32; *see also* Dkt. No. 66 at 18:1–7.) However, the Court is persuaded by MyPort's argument that because Samsung is receiving the benefit of post-motion facts—the PTAB decision instituting IPR—MyPort should receive the same regarding the stage of litigation. (*See* Dkt. No. 66 at 19:11–17, 20–25.) Therefore, the relevant period of time for the purposes of this factor is May 11, 2023, the date of the hearing on this Motion.

The stage of the case disfavors a stay. This case has been pending for over a year and is set for jury selection on February 5, 2024. (Dkt. No. 26.) Discovery is well underway. The parties have exchanged thousands of documents, MyPort has taken depositions of Samsung witnesses in Korea, and numerous source code inspections have taken place. (Dkt. No. 66 at 15:1–6.) The Markman hearing is set for August 15, 2023, and the claim construction process is underway. (Dkt.

[2] As this Court has observed, the fact that a plaintiff seeks a monetary recovery from a well-heeled defendant does not mean, *ipso facto*, that a lengthy delay in adjudicating the plaintiff's patent rights does it no prejudice. Samsung's assertion in this respect is simply wrong.

No. 26; *see also* Dkt. No. 66 at 15:9.) As noted above, the deadline for the PTAB's final written decision is April 26, 2024—over two and a half months after trial is set to begin in this case. (Dkt. No. 66 at 16:4–11.) Given the substantial amount of work and financial resources already poured into this case, this factor does not favor a stay.

**C. A Stay Is Unlikely to Simplify the Issues in this Case.**

At the hearing on May 11, Samsung urged that now that the PTAB has instituted review on all changed claims in the Asserted Patents, Samsung is certain there will be some degree of simplification of the issues before the Court following the PTAB's final written decision. (*Id.* at 6:18–22.) Samsung argues that regardless of the result—whether all, some, or none of the claims are canceled—statutory estoppel will attach to Samsung, necessarily simplifying the issues before the Court. (*Id.* at 7:22–25, 8:1–2.)

In response, MyPort first asserts that the petition for IPR was filed by Samsung Electronics Co., Ltd. alone, such that it is unclear whether statutory estoppel would attach to Samsung Electronics America. (*Id.* at 12:5–7.) MyPort further argues that Samsung has raised numerous invalidity theories in this case that go well beyond the scope of the IPRs. (*Id.* at 11:22–23.) For example, Samsung has raised indefiniteness and thirty-seven prior art systems in its invalidity contentions, neither of which will be addressed by the PTAB's final decision. (*Id.* at 11:22–25, 12:1–4.)

MyPort's main contention, however, is that Samsung has not demonstrated a likelihood of success on most of the asserted claims. (*Id.* at 10:16–18.) MyPort argues that although the PTAB has instituted review on all asserted claims, it must do so even where only some of the claims have a likelihood of being shown to be unpatentable. (*Id.* at 10:3–10.) MyPort points to the decisions granting institution of IPR (Dkt. Nos. 57-1, 57-2, 57-3) to demonstrate that only some of the claims

at issue here were found likely to be unpatentable. For example, with regard to the ’017 patent, Samsung raised five grounds of unpatentability; the PTAB decision found that Samsung had a likelihood of success on only two grounds, and only with respect to claim 13 (out of twelve challenged claims). (Dkt. No. 66 at 10:11–18; *see also* Dkt. No. 57-1 (“For at least these reasons, we question whether Petitioner demonstrates a reasonable likelihood of prevailing in showing that independent claims 6 and 13 and their dependent claims 7-12 and 14-17 would have been obvious in view of [prior art].”).)

Samsung argues that although the PTAB said that Samsung was unlikely to prevail as to claims 6 through 12, Samsung believes the Board read a limitation into the claim that was not present—it argues that Samsung will contend to the PTAB that it erred. (*Id.* at 17:4–11.) Samsung also points out that both Samsung defendants in this case are named as the real parties in interest in the PTAB decisions instituting review, such that estoppel would apply to both. (*Id.* 18 – 21.) MyPort correctly notes that the Board already made its decision, making it unlikely that the PTAB will reverse itself on any of the asserted claims given the prohibition on Samsung adding new evidence and arguments before the PTAB. (*Id.* at 19:5–10.)

The Court is persuaded that this factor weighs against granting a stay. Samsung does not meaningfully dispute that the PTAB found that Samsung has not demonstrated a likelihood of success on many of the asserted claims, in particular with respect to claims 6 through 12 of the ’017 patent. Rather, Samsung only asserts that the PTAB erred in its regarding the ’017 patent. The Court is reluctant to grant a stay, thereby delaying timely enforcement of MyPort’s patent rights for months (and possibly years), where the PTAB has not found that Samsung is likely to succeed on most, if not all, of the asserted claims. This is especially true where Samsung has raised

multiple invalidity theories that will not go before the PTAB, and where a resulting stay here would leave in limbo these invalidity theories which will not go before the Board.

## IV. CONCLUSION

Given that each of the factors weighs against granting a stay, the Motion is **DENIED**.

**So ORDERED and SIGNED this 12th day of June, 2023.**

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE