IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

MOSKOWITZ FAMILY LLC, Plaintiff, v. MEDTRONIC, INC., MEDTRONIC SOFAMOR DANEK, INC., MEDTRONIC SOFAMOR DANEK USA, INC., WARSAW ORTHOPEDIC, INC., and TITAN SPINE, INC., Defendants.	Case No. 25-cv-00769-PJS-DLM Date: March 6, 2026 Time: 1:00 pm (CT) (Zoom) Judge: Hon. M.J. Douglas L. Micko

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STAY

Defendants Medtronic, Inc., Medtronic Sofamor Danek, Inc., Medtronic Sofamor Danek USA, Inc., Warsaw Orthopedic, Inc., and Titan Spine, Inc. (collectively "Medtronic" or "Defendants") submit this memorandum in support of their motion to stay this case pending conclusion of petitions for *Inter Partes* Review (IPR).

I. INTRODUCTION

Plaintiff Moskowitz Family LLC ("Moskowitz") sued Medtronic in February 2025, nearly a decade after Medtronic told Dr. Nathan Moskowitz that it was not interested in his technology. By any measure, this resulting litigation is extraordinarily complex. It spans 12 patents, over 100 asserted patent claims, targeted at 8 different spinal surgery product lines and against 5 defendants. Because of its complexity, although commenced a year ago, the litigation is still very much in its infancy. Medtronic filed its responsive pleading to Moskowitz's operative complaint yesterday. And despite having exchanged written

discovery requests, the parties have produced fewer than 7,500 documents. Yet, unless the litigation is stayed, the parties are set to embark on time-consuming, expensive, and what may ultimately be unnecessary discovery—a process that will surely require judicial intervention along the way—to say nothing of claim construction concerning potentially irrelevant claims.

To be clear, however, Medtronic has not been idle. To date, Medtronic has filed IPR petitions as to eight of the asserted patents, covering patents asserted against each of the eight accused product lines, and Medtronic is finalizing an IPR petition as to one more. While none of Medtronic's IPR petitions have yet been instituted, the first-filed petition was referred for merits review on January 27, 2026. And because Moskowitz did not file a preliminary response to that IPR petition, Medtronic expects the Patent Trial and Appeal Board ("PTAB") to institute review. In light of these developments, and the current stage of the litigation, Medtronic seeks a stay of this matter pending the conclusion of the petitions for IPR.

The Court should exercise its inherent discretionary authority to stay the litigation for three reasons.

First, a stay pending IPR will significantly simplify the issues in this case by giving the PTAB the first opportunity to determine whether the asserted claims are unpatentable. Importantly, the case will be simplified regardless of how the PTAB rules. If the PTAB determines that any of the asserted claims are unpatentable, those claims will be removed from this case. But even if the PTAB rules against Medtronic, such a ruling would still simplify this case because Medtronic would be statutorily estopped from arguing invalidity

on any ground that was "raised or reasonably could have raised during that inter partes review." 35 U.S.C. § 315(e)(2); *see also* Dkt. Nos. 38, 41, 50, 58.

Second, a stay pending IPR will not prejudice Moskowitz. Critically, Moskowitz does not compete with Medtronic. As Moskowitz admits, neither Moskowitz nor any licensee (to the extent any even exist) has ever "practiced any of the Asserted Patents through commercial manufacture, sale, offer for sale, or importation[.]" Second Amended Compl. ("SAC") (Dkt. 48) ¶ 35. Moreover, Moskowitz seeks monetary damages. Moskowitz has not sought a preliminary injunction. Nor could it for the 10 asserted patents that have already expired. Moskowitz waited a decade to sue Medtronic. Any short delay associated with a stay would have no impact on the damages available, should Moskowitz prevail.

Third, a stay of litigation pending IPR review conserves the parties' resources and promotes judicial economy. Although this case is still in its infancy, the parties are on the brink of expending significant resources. Medtronic's non-infringement contentions and invalidity contentions are due on April 28, 2026. Dkt. 44. Document production, while still limited, is ongoing, with burdensome and expensive email discovery and privilege logging still to come. Given the number of claims currently at issue, Medtronic anticipates discovery motion practice, which would burden the Court. And looking ahead, the *Markman* exchange process starts in the fall, with the close of fact discovery in April 2027 and expert discovery in July 2027.

There is no reason for the parties and the Court to engage in these time-intensive pretrial activities, particularly when Medtronic's IPRs are highly likely to winnow

Moskowitz's multifarious claims to reveal the true scope of this case. Medtronic thus respectfully requests that the Court stay these proceedings pending resolution of its IPRs.

II. BACKGROUND

A. Moskowitz's Allegations

"Medtronic, Inc. is the world's largest medical device company and a dominant force in the spinal surgery market." SAC ¶ 11. According to Moskowitz, "Medtronic, Inc. oversees and directs its extensive spinal business operations through a network of subsidiaries, including Medtronic Sofamor Danek USA, Inc., Medtronic Sofamor Danek, Inc., Warsaw Orthopedic, Inc., and Titan Spine, Inc." *Id.* "These subsidiaries function collectively to research, develop, manufacture, market, offer for sale, and sell spinal surgery products, including the Accused Instrumentalities: Elevate™ Spinal System ('Elevate'), Divergence™ Anterior Cervical Fusion System ('Divergence'), Sovereign™ Spinal System ('Sovereign'), Catalyft™ PL Expandable Interbody System ('Catalyft PL'), Catalyft™ PL40 Expandable Interbody System ('Catalyft PL40') (Catalyft PL and Catalyft PL40 collectively, 'Catalyft'), Endoskeleton™ TAS Interbody System ('Endoskeleton TAS'), Endoskeleton™ TCS Interbody System ('Endoskeleton TCS'), and T2 Stratosphere™ Expandable Corpectomy System used in the thoracolumbar and/or cervical spine ('T2 Stratosphere')." *Id.*

On February 28, 2025, Moskowitz filed this lawsuit, asserting eleven patents against the above-named eight product lines, as follows:

U.S. Patent No.	Issuance Date	Accused Products
9,005,293 (the "'293 Patent")	April 14, 2015	Divergence, Sovereign,

		Endoskeleton TAS, Endoskeleton TCS
9,907,674 (the "'674 Patent")	March 6, 2018	Divergence
10,016,284 (the "'284 Patent")	July 10, 2018	Elevate and Catalyft
10,064,738 (the "'738 Patent")	April 18, 2017	Sovereign
10,238,505 (the "'505 Patent")	March 26, 2019	Divergence
10,426,633 (the "'633 Patent")	October 1, 2019	Elevate and Catalyft
10,603,183 (the "'183 Patent")	March 31, 2020	Sovereign
11,096,797 (the "'797 Patent")	August 24, 2021	Elevate and Catalyft
11,376,136 (the "'136 Patent")	July 5, 2022	Elevate and Catalyft
11,864,755 (the "'755 Patent")	January 9, 2024	T2 Stratosphere
12,011,367 (the "'367 Patent")	June 18, 2024	Elevate and Catalyft

Complaint (Dkt. 1) ¶¶ 22-33, 52, 71, 93, 112, 134, 155, 174, 196, 218, 240, 259.

On January 29, 2026, Moskowitz filed an amended complaint to assert an additional twelfth patent, U.S. Patent No. 12,491,088 (the "'088 Patent"), against Elevate and Catalyft. SAC ¶ 304.[1] All twelve of the patents are related. Seven of the patents are continuations, directly or via intervening continuations or continuations-in-part, of the '293 Patent. Declaration of Christina Von der Ahe Rayburn ("Rayburn Decl.") ¶¶ 4-5. The remaining four patents share a common parent with the '293 Patent. *Id.* ¶¶ 6-7.

Moskowitz asserts a total of 150 claims across the twelve asserted patents, as follows:

U.S. Patent No.	Asserted Claims
'293 Patent	Claims 1, 6, 7, 8, 9, 17, 18, 26, 27, 30, 39, 43, 44, 46, and 47
'674 Patent	Claims 34, 35, 36, 37, 39, 41, 42, 43, 44, and 46
'284 Patent	Claims 1, 2, 4, 7, 8, 10, 11, 12, 14, 15, 16, and 19

[1] The '088 Patent had issued on December 9, 2025. SAC ¶ 34.

’738 Patent	Claims 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 22, 24, 25, 28, 30, 31, 32, and 33
’505 Patent	Claims 1, 2, 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 19, and 20
’633 Patent	Claims 1, 2, 4, 7, 8, 9, 10, 11, 12, 14, 16, 17, 19, and 20
’183 Patent	Claims 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, and 20
’797 Patent	Claims 16 and 19
’136 Patent	Claims 9, 10, 11, 12, 14, 16, 18, and 20
’755 Patent	Claims 1, 2, 3, 4, 5, 6, 8, 9, 10, 12, 17, 18, 19, and 20
’367 Patent	Claims 8, 9, 13, 17, 18, 19, 20, and 21
’088 Patent	Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, and 20

Rayburn Decl., Ex. A.

Of the twelve asserted patents, eight expired in August 2025. Rayburn Decl. ¶ 8. Another expired in December 2025, and yet another expired on February 12, 2026. *Id.* Only two asserted patents, the ’293 Patent and the ’088 Patent, have yet to expire. *Id.*

B. Progress of This Case

Moskowitz served its operative infringement contentions on January 30, 2026. Rayburn Decl., Ex. A. Medtronic’s non-infringement contentions and invalidity contentions are due April 28, 2026. Dkt. 44. The *Markman* exchange process will begin in August 2026, and the *Markman* hearing is scheduled to occur by October 13, 2026. *Id.* The close of fact discovery is April 9, 2027. Dkt. 36 at 2. The close of expert discovery is July 30, 2027. *Id.* at 8. The parties are slated to be trial-ready by February 8, 2028. *Id.* at 16.

The parties have, thus far, engaged in only limited document production and written discovery. Rayburn Decl. ¶ 9. Moskowitz has served only twelve of its allowed 35 interrogatories and 54 of its allowed 125 document requests. *Id.*; *see also* Dkt. 36 at 2.

Medtronic has served only twelve of its interrogatories and 87 of its document requests. Rayburn Decl. ¶ 9. No requests for admission have been served. *Id.* Combined, the parties have produced fewer than 7,500 documents. *Id.* There is no ESI Order, and the parties have not engaged in email discovery. *Id.* No depositions have been taken, and no discovery disputes have been raised or resolved. *Id.*

All that said, the parties are on the precipice of having to devote significant resources to discovery, including time-consuming and expensive email discovery and third-party discovery, all with the claim construction process scheduled to begin in August.

C. Medtronic's IPRs

Medtronic has filed IPR petitions as to eight of the asserted patents, and expects to file one more in the very short term, as follows:

Patent	IPR No.	Filing Date	Institution Deadline
'293 Patent	IPR2025-01598	09/29/2025	04/08/2026
'755 Patent	IPR2026-00121	11/10/2025	05/20/2026
'797 Patent	IPR2026-00124	11/10/2025	05/20/2026
'367 Patent	IPR2026-00162	12/02/2025	06/08/2026
'136 Patent	IPR2026-00163	12/01/2025	06/08/2026
'284 Patent	IPR2026-00216	01/16/2026	07/22/2026
'633 Patent	IPR2026-00217	01/16/2026	07/22/2026
'738 Patent	IPR2026-00265	02/20/2026	Expected late 8/2026
'183 Patent		No later than 03/03/2026	Expected early 9/2026

Rayburn Decl. ¶ 10; *see also id.* at Exs. B-I. The only patents for which an IPR is not currently anticipated are the '088 Patent, which was first asserted in January of this year, and the '505 and '674 Patents. *Id.* ¶ 11. As can be seen via comparison with the chart in

Section II.A, above, Medtronic has filed IPRs as to patents asserted against every one of the eight accused product lines. Medtronic's filed IPRs also cover the vast majority of the asserted claims per patent, as follows:

Patent	IPR No.	Claims Challenged in IPR
'293 Patent	IPR2025-01598	Claim 43
'755 Patent	IPR2026-00121	All 14 asserted claims
'797 Patent	IPR2026-00124	Both asserted claims
'367 Patent	IPR2026-00162	All 8 asserted claims
'136 Patent	IPR2026-00163	All 8 asserted claims
'284 Patent	IPR2026-00216	11 of 12 asserted claims
'633 Patent	IPR2026-00217	All 14 asserted claims
'738 Patent	IPR2026-00265	15 of 18 asserted claims

Rayburn Decl., Exs. B-I.

Moskowitz will likely note that Medtronic only challenged Claim 43 of the '293 Patent, out of fifteen total asserted claims for that patent. There is a specific reason for this: every other claim asserted for the '293 Patent includes a claim term that has already been construed by another court in a way that confirms that Medtronic's accused products do not infringe.[2] Thus, if Medtronic's IPR as to Claim 43 is successful, it will substantially

[2] *See* Dkt. 1-2 ('293 Patent) at Claims 1 (reciting, in the preamble, a "universal" screw guide); Claims 6-9, 17-18, 26-27, 30, and 39 (depending, directly or indirectly, on Claim 1); Claim 44 (reciting, in the preamble, a "universal" screw guide); Claims 46 and 47 (depending on Claim 44). In *Moskowitz Family LLC v. Globus Medical, Inc.*, Case 2:20-cv-03271-MSG (E.D. Pa. filed Nov. 20, 2019), Moskowitz asserted U.S. Patent No. 9,889,022, which is a member of the same patent family as the '293 Patent. In that case, the court granted summary judgment of non-infringement on the basis that: (1) the term "universal" in the asserted claim's preamble was limiting; (2) the term "universal" required the claimed screw guide to be usable in any region of the spine; and (3) the accused product

simplify the issues for this case, because the only remaining question as to the '293 Patent will be whether, for the remaining claims of the '293 Patent, this Court will adopt the same claim construction that the prior court adopted. If the Court were to do so, that would resolve the '293 Patent in its entirety.[3]

Moskowitz has asked the Director of the U.S. Patent & Trademark Office to discretionarily deny institution of several of Medtronic's filed IPRs. Rayburn Decl. ¶ 12. On January 27, 2026, the Director rejected that request as to Medtronic's IPR as to the '293 Patent and referred Medtronic's petition for review of "merits and non-discretionary considerations." Rayburn Decl., Ex. J. As to that IPR, Moskowitz did not file any other response, on the "merits" or otherwise. Rayburn Decl. ¶ 12. For that reason, Medtronic expects the '293 IPR to be instituted on or before its institution deadline of April 8, 2026.

III. LEGAL STANDARD

Granting a stay pending conclusion of IPR proceedings is within the court's inherent discretionary authority. *Card Tech. Corp. v. DataCard Corp.*, Civ. No. 05-2546 (MJD/SRN), 2007 WL 2156320, at *3 (D. Minn. July 23, 2007); *accord Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426-27 (Fed. Cir. 1988); *Intell. Ventures II LLC v. U.S. Bancorp*, Civ. No. 13-2071 (ADM/JSM), 2014 WL 5369386, at *3 (D. Minn. Aug. 7, 2014). And

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was not usable in any region of the spine. 2022 WL 17876699, at *3-11 (E.D. Pa. Dec. 22, 2022). The same reasoning and outcome are appropriate here.

[3] Notably, the other court's claim construction is currently being appealed to the Federal Circuit, with oral arguments being scheduled for between April and September of 2026. *See Moskowitz Family LLC v. Globus Medical, Inc.*, Case No. 24-1696 (Fed. Cir. filed Apr. 16, 2024). Clarity on whether the Federal Circuit will uphold that claim construction would also simplify the issues in this case.

"courts routinely grant such stays where the circumstances warrant." *Arctic Cat Inc. v. Polaris Indus. Inc.*, Civ. No. 13-3579 (JRT/FLN), 2015 WL 6757533, at *2 (D. Minn. Nov. 5, 2015) (citation and quotation marks omitted). Courts favor granting stays because it is the most efficient and least expensive course of action that allows reliance on the PTAB's expertise. *See Card Tech. Corp. v. DataCard Corp.*, No. 05-2546 (MJD/SRN), 2007 WL 551615, at *3 (D. Minn. Feb. 21, 2007) ("In short, common sense counsels that it is usually prudent for a court to await the PTO's reassessment of the patents at issue before resuming litigation over the validity, enforceability or infringement of those patents.").

In determining whether a stay is appropriate, courts consider the following factors:

> (1) whether a stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party; (2) whether a stay will simplify the issues in the litigation and facilitate the trial of that case; and (3) whether discovery is complete and a trial date is set.

Intell. Ventures II LLC, 2014 WL 5369386, at *4 (citation omitted); *accord Select Comfort Corp., v. Tempur Sealy Int'l, Inc.*, Civ. No. 14-245 (JNE/JSM), 2014 WL 12600114, at *3 (D. Minn. Oct. 10, 2014); *Skky, Inc. v. Manwin USA, Inc.*, Civ. No. 13-2085 (PJS/JJG), 2014 WL 12527215, at *2 (D. Minn. Oct. 29, 2014); *Oticon A/S v. GN Resound A/S*, Civ. No. 15-2066 (PJS/HB), 2015 WL 5752429, at *2 (D. Minn. Aug. 5, 2015).

IV. ARGUMENT

A. A Stay Will Simplify the Issues in the Litigation and Facilitate Trial of the Case.

There is a substantial likelihood that the PTAB will institute review on at least some

of Medtronic's IPRs.[4] This is particularly so for the IPR as to the '293 Patent, which the patent owner did not challenge on the merits. In similar situations, it has been held that "it is not sheer speculation on the part of this Court to conclude that the USPTO will more likely than not grant review[.]" *Select Comfort Corp.*, 2014 WL 12600114, at *4 (granting stay before IPR had been instituted). And when the PTAB does institute review, the benefits of efficiency and simplification will be realized. *See 3M Innovative Props. Co. v. Dupont Dow Elastomers LLC*, No. 03-3364 (MJD/AJB), 2005 WL 2216317, at *2 (D. Minn. Sept. 8, 2005) (citation omitted). These include:

1. All prior art presented to the Court will have been first considered by the PTO, with its particular expertise.
2. Many discovery problems relating to prior art can be alleviated by the PTO examination.
3. In those cases resulting in effective invalidity of the patent, the suit will likely be dismissed.
4. The outcome of the reexamination may encourage a settlement without the further use of the Court.
5. The record of reexamination would likely be entered at trial, thereby reducing the complexity and length of the litigation.
6. Issues, defenses, and evidence will be more easily limited in pretrial conferences after a reexamination.
7. The cost will likely be reduced both for the parties and the Court.

Arctic Cat Inc., 2015 WL 6757533, at *3 (quoting *3M Innovative Props.*, 2005 WL 2216317, at *2); *accord Card Tech. Corp.*, 2007 WL 2156320, at *4 (collecting cases).

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[4] The PTAB's institution rate for mechanical inventions like the patents at issue in this case is 46%. *See* US Patent & Trademark Office, *PTAB Trial Statistics*, at 9 (Dec. 2025), https://www.uspto.gov/sites/default/files/documents/trial_stats_december_2025.pdf.

If the IPR petitions are successful in invalidating any asserted claims, then this case will necessarily be simplified. Moskowitz would be precluded from asserting those invalidated claims against Medtronic, and those claims would be removed from this litigation. *See Select Comfort Corp.*, 2014 WL 12600114, at *8 ("If the USPTO cancels all of the asserted claims, this would likely eliminate the need for the parties to litigate them."). A final judgment from the PTAB on the invalidity of a patent claim has an issue-preclusive effect on any pending actions involving that patent. *XY, LLC v. Trans Ova Genetics*, 890 F.3d 1282, 1294 (Fed. Cir. 2018). Indeed, even if the PTAB rules against Medtronic, the case would still be simplified because Medtronic would be statutorily estopped from arguing invalidity on any ground was "raised or reasonably could have raised during that inter partes review." 35 U.S.C. § 315(e)(2).

The Court has discretion to stay proceedings before institution. *See Select Comfort Corp*., 2014 WL 12600114, at *4 ("Congress did not categorically decide that patent suits should or should not be stayed pending a decision by the USPTO to grant or deny a petition for an IPR. Instead, courts were left with the discretion to decide whether the specific facts presented by the motion warranted a stay."); *Pragmatus AV, LLC v. Facebook, Inc.*, No. 11-CV-02168-EJD, 2011 WL 4802958, at *3 (N.D. Cal. Oct. 11, 2011) ("[I]t is not uncommon for this court to grant stays pending reexamination prior to the PTO deciding to reexamine the patent."). Here, the Court should exercise that discretion to stay the litigation now before formal institution, as many courts in this District have done. *See Niazi Licensing Corp. v. Bos. Sci. Corp.*, Civ. No. 17-5094 (WMW/BRT), 2018 WL 6012443, at *2 (D. Minn. Nov. 16, 2018) (granting stay before institution of IPR); *Arctic*

Cat Inc., 2015 WL 6757533 (same); *Select Comfort Corp.*, 2014 WL 12600114, at *9 (same); *Intellectual Ventures II LLC*, 2014 WL 5369386, at *10 (same); *QXMedical, LLC v. Vascular Solutions, LLC*, Civ. No. 17-CV-01969 (PJS/TNL), Dkt. No. 194 at 2-3 (D. Minn. Dec. 26, 2019) (granting "a stay until such time as the Patent Trial and Appeal Board decides whether to institute review"). The vast complexity of the case, the patent owner's failure to oppose institution on the merits at least as to the '293 Patent, and the timing and scope of the upcoming contention and *Markman* deadlines all weigh in favor of entering a stay now. *See Select Comfort Corp.*, 2014 WL 12600114, at *9 (granting a stay, finding "while no one knows whether the USPTO will accept Tempur Sealy's IPR petition, what cannot be disputed is that the parties will expend significant resources litigating this case over the next six months").

That Medtronic's IPRs are not directed to all asserted claims is no barrier to a stay. Resolution of the IPRs will substantially simplify this case because they are directed to: (1) nine of twelve asserted patents; (2) all of the asserted claims for five of the asserted patents; (3) the vast majority of the claims for three of the asserted patents; (4) the only claim of the '293 Patent that Medtronic believes has any potential to be tried in this matter; and (5) all eight of the accused product families. A successful IPR as to the '755 Patent, for example, will remove the T2 Stratosphere accused product from this case entirely. As another example, a successful IPR as to the '293 Patent, combined with a favorable claim construction as to a single claim term common to every non-IPRed claim of that patent, would result in two products, Endoskeleton TAS and Endoskeleton TCS, being dismissed from the case, along with their related Defendant, Titan Spine, Inc. *See* SAC ¶¶ 15-16

(identifying Titan Spine, Inc. as relevant to the Endoskeleton accused products).

In short, even when IPRs are not directed to every asserted claim, they "will still narrow and streamline the issues, and provide the Court with the benefit of the PTO's guidance on the issues of invalidity," perhaps encouraging settlement and narrowing discovery. *Oticon A/S*, 2015 WL 5752429, at *4; *accord id.* ("[W]ith more than three-quarters of the asserted claims at issue in the IPR, with implications for at least half of the accused products, the scope of discovery would not be the same if the challenged claims were invalidated."); *see also Oxygenator Water Techs., Inc. v. Tennant Co.*, Civ. No. 20-0358 (ECT/HB), 2021 WL 4622241, at *6 (D. Minn. Oct. 7, 2021) (noting that even an IPR that "concerns only ten of thirty asserted claims in this suit" could invalidate the claims for "an entire line of products" and damages arising from them); *Graphic Packaging Int'l, Inc. v. Inline Packaging, LLC*, No. 15-cv-3476 (ADM/LIB), 2016 WL 11641977, at *6 (D. Minn. Apr. 6, 2016) ("[T]he mere fact that the IPR proceedings here do not involve all of the patent claims at issue in the present litigation does not preclude this factor from weighing in favor of granting the requested stay.").

Moskowitz may argue that Medtronic's IPRs are unlikely to succeed because the Director has discretionarily denied numerous IPR petitions over the past year. But the IPR as to the '293 Patent makes clear that discretionary denial is far less of a concern for this group of IPRs. Notably, the arguments in Moskowitz's other discretionary denial briefs are similar to those Moskowitz made unsuccessfully against the '293 Patent IPR. Rayburn Decl. ¶ 13. Specifically, a primary argument in Moskowitz's discretionary denial briefs is the idea that the patent inventor, Dr. Moskowitz, began contacting Medtronic about his

purported inventions in 2005. *See, e.g.*, Rayburn Decl., Ex. K at 4-11. As to the '293 Patent IPR, Moskowitz argued that Medtronic's long history with Moskowitz created "strong settled expectations that weigh heavily against institution." *Id.* at 1. Medtronic argued in response that "settled expectations" weighed in *Medtronic's* favor, not Moskowitz's. Rayburn Decl., Ex. L at 13-15. Medtronic explained that it told Moskowitz *in 2016* that it had no desire to license intellectual property from Moskowitz, and that "Moskowitz's failure to sue in a timely manner negates any claim that it has settled expectations of patent validity." *Id.* at 14. Moskowitz's discretionary denial briefs also all argue that status of this federal district court case weighs against institution. Rayburn Decl. ¶ 13. Medtronic disagreed. Rayburn Decl., Ex. L at 16-19. By referring the '293 Patent IPR for a decision on the merits, the Director made clear that Medtronic has the better part of these arguments, which will remain true for every one of Medtronic's IPRs.

Finally, Medtronic's IPRs are also strong on the merits, making it all the more likely that they will be instituted and ultimately successful. Notably, Moskowitz's discretionary denial brief as to the '293 Patent IPR included a section arguing that the petition "Does Not Present Compelling Merits." Rayburn Decl., Ex. K at 18-20. Medtronic responded that its IPR is strong, including because it interprets relevant prior art consistently with how the Patent Office interpreted that same prior art when rejecting later-filed Moskowitz patent applications. Rayburn Decl., Ex. L at 1, 20. Again, in deciding to refer the '293 Patent IPR for a merits determination in spite of Moskowitz's argument against the merits of that petition, the Director has already indicated that Medtronic's IPR is strong. Medtronic's other IPRs are equally strong.

For all these reasons, a stay pending IPR is highly likely to simplify the case before this Court.

B. A Stay Will Not Unduly Prejudice Moskowitz or Present a Clear Tactical Disadvantage.

"Although a stay by definition involves delay, not all delay is necessarily unduly prejudicial and here any cost of the delay is likely offset by the gains to be achieved by obtaining the PTO's expert guidance on these matters." *Card Tech. Corp.*, 2007 WL 2156320, at *4.

Moskowitz will not be unduly prejudiced by the granting of a stay for several reasons.

First, there is no risk of Moskowitz losing sales, profits, or market share as a result of the stay because Moskowitz does not make or license products that practice its patents. SAC ¶ 35 (admitting that neither Moskowitz nor its licensees have ever "practiced any of the Asserted Patents through commercial manufacture, sale, offer for sale, or importation."). Likely for this reason, Moskowitz has not requested a preliminary injunction. A plaintiff's decision not to seek a preliminary injunction against a defendant supports a finding that plaintiff will not be unduly prejudiced by granting a stay. *See Oticon A/S*, 2015 WL 5752429, at *2 ("Plaintiffs' decision not to seek a preliminary injunction against Defendants in this case, while by no means dispositive of the issue, tends to suggest Plaintiffs would not be unduly prejudiced by a stay."); *see also VData, LLC v. Aetna, Inc.*, Civ. No. 06-1701 (JNE/SRN), 2006 WL 3392889, at *5 (D. Minn. Nov. 21, 2006).

Additionally, as set forth above in Section II.A, ten of the twelve asserted patents have already expired. This means that, for those ten patents, damages will not even be accumulating during the time period of the stay. Additionally, for those patents, there is no injunctive relief available.

Second, any alleged infringement could be remedied by monetary damages. If any of Moskowitz's patent claims survive IPR *and* Moskowitz prevails at trial, Moskowitz could be fully compensated by damages and no worse off on account of a stay. As this Court has noted in other cases, delay is not unfairly prejudicial when any alleged harm can be compensated through money damages. *See*, *e.g.*, *Graphic Packaging Int'l*, 2016 WL 11641977, at *3 (allegation of undue prejudice due to delay requires "a showing that the non-movant competitor would in fact suffer some specific harm that could not be remedied by money damages"). Moskowitz has not identified any non-monetary harm it would allegedly suffer if a stay were entered.

Third, Moskowitz's own delay in filing suit shows that it will suffer no prejudice. Moskowitz alleges that the inventor of the asserted patents, Dr. Moskowitz, engaged in discussions with "the Medtronic Defendants" about the patented inventions starting in 2005. SAC ¶¶ 41-45. Moskowitz further alleges that "[b]y 2015, after years of meetings, product demonstrations, and disclosures, Dr. Moskowitz had his attorney formally put the Medtronic Defendants on notice regarding his patent rights" in a letter that identified the '293 Patent and the patent application that would issue as the '674 Patent. *Id.* ¶ 46. Moskowitz alleges that Dr. Moskowitz's attorney similarly put "Titan Spine"—which was then an independent entity selling its own products—on notice in 2015. *Id.* ¶ 50.

Moskowitz further alleges that, by January 2016, Medtronic sent a letter stating that it did not wish to acquire or license Dr. Moskowitz's patents. *Id.* ¶ 49. In other words, Moskowitz has known *since at least 2016* about its purported claims against Medtronic. Nine of the twelve patents issued before 2024. *Id.* ¶¶ 23-31. Moskowitz has offered no reason why it delayed until 2025 to bring this case. Notably, in the meantime, Moskowitz chose to bring infringement cases against other defendants, leaving Medtronic here on the back burner. *See, e.g.*, *Moskowitz Family LLC v. Globus Medical, Inc.*, No. 2:20-cv-3271-MSG (E.D. Pa. filed Nov. 20, 2019); *Moskowitz Family LLC v. ZimVie Inc.*, No. 1:22-cv-01632-CJB (D. Del. filed Dec. 23, 2022). Moskowitz's own decade-long delay in prosecuting this case thus shows that a mere 18-month delay for IPRs will not prejudice it.

Likewise, the granting of a stay will not present a clear tactical disadvantage to Moskowitz. Medtronic did not file the IPRs or this motion for tactical advantage, but instead to resolve potentially dispositive prior art validity issues as quickly and efficiently as possible and before incurring significant cost crafting invalidity contentions and claim construction positions that may well have a significantly different scope after IPRs. Medtronic filed and will file its nine IPR petitions within the statutory deadline set forth in 35 U.S.C. § 315(b), and filed this motion in the early stages of this litigation. Moskowitz cannot show dilatory tactics by Medtronic.

Finally, to the extent Moskowitz argues that the IPRs are not likely to be instituted, even that possibility weighs in favor of a stay here, because the institution decisions will be made no later than September 2026. To the extent Moskowitz is correct that no IPR will be instituted, then the stay will be lifted by September 2026, resulting in a very brief

stay of this litigation at the outset of the case. Given the vast disparities between the great prejudice to Medtronic in proceeding now and the minimal prejudice to Moskowitz that would result from a stay, a stay is warranted.

C. A Stay Is Warranted at This Early Stage in the Litigation.

As set forth above in Section II.B, this case is still in its early stages, discovery is far from complete, and trial is almost two years away. In circumstances like this, a stay is appropriate. *See Card Tech. Corp.*, 2007 WL 551615, at *7 (granting a stay where case was at the early stages of pre-trial matters and discovery was not complete); *VData, LLC,* 2006 WL 3392889, at *8 ("[A] stay would likely conserve discovery resources because it would potentially enable the parties to focus their discovery efforts on a narrower set of issues. Therefore, a stay is particularly appropriate."); *Oticon A/S*, 2015 WL 5752429, at *5 (finding a stay was warranted when litigation had "barely begun"). Without a stay, the parties would have to move forward with contentions, *Markman* proceedings, fact and expert discovery, and costly depositions regarding Moskowitz's twelve patents and Medtronic's eight product lines, all without the benefit of the PTAB's expertise.

V. CONCLUSION

For the reasons set forth above, Medtronic respectfully requests that the Court stay this matter pending resolution of Medtronic's filed and soon-to-be-filed IPRs relating to the asserted patents.

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s/ X. Kevin Zhao

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