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 **JURY TRIAL DEMANDED**

MOSKOWITZ'S OPPOSITION
TO MEDTRONIC'S MOTION TO STAY

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A	Venable LLP Article, *PGR and IPR Institution Rates Over Time*, December 31, 2024
B	Jones Day, PTAB Litigation Blog Article, *Discretionary Decision Statistics Update,* November 5, 2025
C	USPTO, Patent Trial and Appeal Board, *PTAB Trial Statistics December 2025*
D	USPTO, Patent Trial and Appeal Board, *PTAB Trial Statistics January 2026*
E	Compilation of PTAB Institution Decisions in Technology Center 3700
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G	ORDER, *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 (PTAB, November 5, 2025)
H	ORDER, *Generac Power Systems, Inc. v. Champion Power Equipment, Inc.*, IPR2025-00805, IPR2025-00951, Paper 40 (PTAB, February 3, 2026)

I. INTRODUCTION

Medtronic asks this Court to halt a year-old case based on PTAB proceedings that have not been instituted and may never occur. No IPR has been instituted. And even in Medtronic's most optimistic scenario—every petition instituted and every claim invalidated—this case would not disappear. The core infringement dispute would proceed largely unchanged. Four asserted patents and six accused product lines would remain. A stay would not "simplify" the case. It would simply stop it.

The motion is also premature. Institution is not automatic—particularly in today's PTAB environment—and Medtronic structured its filings to ensure months of uncertainty. This case was filed in February 2025. Medtronic waited until the end of the statutory window, staggered its petitions, and now asks the Court to pause the litigation because institution decisions are pending. The uncertainty Medtronic invokes is self-created. The stay factors do not reward that strategy.

A stay would also confer a tactical advantage. Under the current schedule, Medtronic must soon commit to its district-court invalidity positions—including indefiniteness—and the claim construction process will begin. Yet in its IPR petitions, Medtronic has largely relied on plain and ordinary meaning, proposing constructions for only a few means-plus-function terms. A stay would allow Medtronic to delay crystallizing its district-court positions while preserving flexibility before the PTAB. That is not efficiency; it is leverage.

The prejudice from that delay is concrete and one-sided. This case concerns Dr. Moskowitz's life's work. He is nearly 70 years old and is the principal technical

witness. A stay pending institution decisions, then PTAB proceedings, then appeal would push merits adjudication years into the future—well toward the end of the decade. Memories fade. Context is lost. A multinational corporation can absorb that delay. Dr. Moskowitz cannot simply "wait it out" without consequence.

Applying the stay factors confirms the answer. A stay would not meaningfully simplify this litigation because it would not remove the products at issue, eliminate the bulk of asserted patents, or resolve the core infringement disputes. At most, it could narrow the subset of claims ultimately presented at trial—a routine refinement that can be addressed if and when it occurs. What a stay would do immediately is halt a progressing case, reward strategic delay, and impose substantial prejudice on the inventor whose rights are at stake. The motion should be denied.

II. BACKGROUND

A. Medtronic Had Longstanding Notice of the Patent Family While Dr. Moskowitz Actively Prosecuted and Enforced It.

Medtronic has known about Dr. Moskowitz's spinal-fusion technology for nearly two decades. Dr. Moskowitz first presented his innovations to Medtronic engineers and executives in 2005. That was not an isolated contact. The discussions spanned years, included follow-up meetings, technical materials, and additional disclosures at Medtronic's request, as well as sustained engagement with Medtronic's technical leadership.

In 2015, after the asserted '293 patent issued, Dr. Moskowitz's counsel sent formal, portfolio-wide notice letters to Medtronic's General Counsel and technical leadership. Those letters identified more than thirty issued patents and pending applications. The other

patents asserted in this case are continuations of those pending applications. They share the same technical specification and figures Medtronic reviewed in 2015.

Medtronic acknowledged receipt. Its counsel confirmed that the portfolio was under internal review and coordinated that review with Medtronic's R&D personnel. The patent family and its priority chain also surfaced in Medtronic's own prosecution activity. By the time Medtronic chose to file IPR petitions—and by the time it sought a stay—it had long possessed detailed knowledge of the patent family, its scope, and its lineage.

Dr. Moskowitz did not "sit on" his rights. After providing formal notice in 2015, he retained Fish & Richardson in 2016 to continue prosecution of the portfolio and, in 2018, to pursue enforcement. In 2019, he sued Globus Medical. That case triggered eight IPR petitions—each denied in 2021—and proceeded through full discovery and trial in December 2023. While that matter was pending, Dr. Moskowitz filed suit against ZimVie in 2022, which was later dismissed due to a conflict of counsel, not inactivity. Following trial in Globus, Dr. Moskowitz retained new counsel and, in February 2025, filed this action against Medtronic, followed shortly by a suit against NuVasive.

Meanwhile, the patent family continued to mature. Additional patents issued between 2018 and 2025, including patents issued in 2024 and 2025 that are asserted here. Prosecution and enforcement proceeded in parallel.

Medtronic is a sophisticated patent litigant and the world's largest medical device company. It had early, detailed notice of the patent family, it observed enforcement actions against competitors, and it knew these patents were being actively enforced. The record reflects continuous prosecution and ongoing enforcement—not delay.

B. The PTAB Institution Landscape Has Materially Tightened, Undermining Medtronic's Assumptions About Likely Review.

For most of the past decade, IPR institution was common. From 2013 through 2024, annual institution rates regularly exceeded sixty-five percent—and in several years were substantially higher. Exhibit A. Many of the stay decisions Medtronic relies upon—including decisions from 2014 through 2019—were rendered in that environment, when institution was statistically more likely than not. *E.g.*, *Select Comfort Corp., v. Tempur Sealy Int'l, Inc.*, No. CV 14-245 (JNE/JSM), 2014 WL 12600114, at *4 (D. Minn. Oct. 10, 2014) (relying on 2014 statistics showing a 75% likelihood of institution).

That landscape shifted in 2025. Public PTAB statistics reflect a pronounced decline in institution rates in the final months of FY2025, with monthly institution rates of 24%, 20%, and 27% from July through September 2025. Exhibit B at 2. Those figures mark a sharp departure from the prior multi-year trend and coincide with a heightened emphasis on discretionary denial, particularly in cases involving parallel district court proceedings and petitions filed late in the statutory window.

The institution framework changed again in October 2025 when the USPTO Director assumed direct authority over all IPR institution decisions, replacing the prior panel-based practice.[1] Institution determinations are now centrally reviewed and expressly guided by discretionary considerations that account directly for duplicative litigation, case timing, and efficiency. Institution is no longer treated as a routine gateway to merits review, but as a discretionary determination informed by parallel district-court activity.

[1] www.uspto.gov/sites/default/files/documents/open-letter-and-memo_20251017.pdf.

The decisionmaker—and the governing approach to institution—are therefore materially different from those in place when the older stay cases Medtronic cites were decided. This motion must be evaluated under the PTAB regime that exists today, not the statistical and procedural landscape of a decade ago.

C. This Case Is Well Underway, and the Pending—Uninstituted—IPRs Do Not Alter Its Scope.

Moskowitz filed this action in February 2025. It has now been pending for one year. During that time, the pleadings were resolved, a scheduling order was entered, and Moskowitz served detailed infringement contentions addressing 150 asserted claims across twelve patents and seven accused product lines.

Those accused product lines are Medtronic's Divergence, Sovereign, Endoskeleton TAS, Endoskeleton TCS, Elevate, Catalyft, and T2 Stratosphere. The asserted patents are directed to these systems as follows:

- The '293 patent is asserted against Divergence, Sovereign, Endoskeleton TAS, and Endoskeleton TCS.
- The '674 and '505 patents are asserted against Divergence.
- The '738 and '183 patents are asserted against Sovereign.
- The '284, '633, '797, '136, '367, and '088 patents are asserted against Elevate and Catalyft.
- The '755 patent is asserted against the T2 Stratosphere.

The case is not at the pleading stage. It has already entered the phase that defines and crystallizes issues for trial.

Under the Court's schedule, the Medtronic Defendants' invalidity contentions—including any indefiniteness positions—are due in April 2026. The claim construction process begins shortly thereafter, with the Markman exchange set for late summer 2026. Fact discovery closes in April 2027, and the parties are scheduled to be trial ready in early 2028. The schedule was structured with awareness that IPR petitions would likely be filed and places trial months after the anticipated window for any final written decisions.

Against that backdrop, Medtronic has filed IPR petitions challenging certain claims of nine of the twelve asserted patents. Three asserted patents—the '505, '674, and '088—are not subject to any petition. And for the '293 patent, Medtronic challenges only a single claim (claim 43), leaving fourteen asserted claims untouched. Regardless of what happens at the PTAB, multiple patents and the majority of the accused product lines would remain before this Court.

No petition has been instituted. Institution decisions for most petitions remain months away. The petitions were filed in staggered waves near the end of the statutory window, ensuring that the full scope of any potential review will not be known until well into 2026. While the litigation has advanced; the PTAB proceedings have not.

III. LEGAL STANDARDS

A stay pending PTAB review is a matter of judicial discretion guided by equitable considerations—even where, unlike here, the PTAB has already instituted review. *See Dane Techs., Inc. v. Gatekeeper Sys., Inc.*, No. 12-2730 ADM/AJB, 2013 WL 4483355, at

*1 (D. Minn. Aug. 20, 2013). In this District, courts evaluate three 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." *Id*. "Additionally, courts consider whether a motion to stay is premature in light of the status of the case." *Stratasys, Inc. v. Microboards Tech., LLC*, No. 13-3228 DWF/TNL, 2015 WL 1608344, at *1–2 (D. Minn. Apr. 10, 2015). The party seeking a stay bears the burden of showing that one is warranted. *Id*.

IV. ARGUMENT

A. A Stay Would Not Meaningfully Simplify This Case.

Medtronic's motion depends on the PTAB review substantially narrowing this case. It will not. The core patents and products remain regardless of the PTAB.

The scope of this litigation makes that clear. Moskowitz asserts twelve patents against seven accused product lines. Medtronic did not seek inter partes review of the '505, '674, or '088 patents. Those patents remain in this Court no matter what happens at the PTAB. For the '293 patent, Medtronic's IPR petition challenges only claim 43, which leaves fourteen asserted claims untouched. Together, the three unchallenged patents and the fourteen claims in the '293 patent implicate all but one accused product line, including Divergence, Elevate, Catalyft, Sovereign, Endoskeleton TAS, and Endoskeleton TCS. Medtronic's suggestion that its petitions "cover" the case because they reference patents asserted against each product line confuses breadth with impact: coverage is not

simplification where the accused products, core technical disputes, and damages issues remain fully in play.

Medtronic cannot justify its narrow petition by pointing to a prior construction of the word "universal" in separate litigation involving different patents. That construction is not binding here. Unless and until this Court adopts Medtronic's preferred construction and resolves the claims on that basis, the fourteen remaining '293 claims must be litigated on the merits. A non-binding construction from another case does not convert a one-claim IPR into case-wide simplification.

Even in Medtronic's best case—every petition instituted and every challenged claim invalidated—four patents and six accused product lines remain. The core infringement dispute survives intact. That is not meaningful narrowing; it is marginal pruning.

The motion is also premature. No petition has been instituted, and most institution decisions remain months away. Institution is not automatic, particularly in medical device cases. Medtronic relies on statistics that aggregate disparate technologies—and even those numbers show that denial now exceeds institution. Dkt. 61 at 11 n.4; Exhibit C at 9 (PTAB Oct.–Dec. 2025 statistics reflecting a 54% denial rate in Mechanical & Business Methods). The denial rate exceeds 60% when January 2026 institution decisions are included. Exhibit D at 9. When considering only medical device and mechanical petitions, the institution denial rate is even higher, about 64%. Exhibit E. The PTAB has tightened scrutiny of parallel proceedings and discretionary denial. A stay based on petitions that may never be instituted is not simplification. It is speculation.

The Director's referral of one petition for merits determination does not signal broader success across the full group of petitions as Medtronic suggests. Referral is not institution, and institution is not invalidation. And even if the petition were instituted and ultimately successful, it would affect only one claim. The Court should not halt a year-old case based on predictive inferences about how the PTAB might rule.

Nor does statutory estoppel or issue preclusion materially simplify this case. Estoppel applies only to grounds that were raised or reasonably could have been raised in an instituted IPR, and only after a final written decision. It does not bar reliance on system prior art, product evidence, combinations of printed publications with system art, or non-prior-art defenses, and does not simplify infringement, claim construction, damages, or the patents Medtronic chose not to challenge. At most, it narrows a subset of prior-art theories—and only if IPRs are instituted and reach a final written decision. That process, including appeal, will take years. Issue preclusion is similarly limited, applying only to claims actually adjudicated by the PTAB and only after final judgment.

Medtronic's PTAB positions further undercut its claim that this case is unwieldy. In its eight petitions, Medtronic largely relied on plain and ordinary meaning, proposing constructions only for a limited number of means-plus-function terms. PTO rules require a petitioner to state how the challenged claims are construed. 37 C.F.R. § 42.104(b)(3). If Medtronic believed that numerous additional terms required constructions, it was required to present those constructions in its petitions. It did not. Medtronic cannot tell the PTAB that most terms require no special construction while telling this Court that claim

construction across twelve patents is unmanageable. If only a handful of terms require construction, a stay pending PTAB review will not materially simplify that process.

Conversely, if Medtronic now advances materially narrower constructions or indefiniteness positions in this Court, those positions risk undermining its pending IPR petitions. The Director has recently denied petitions or vacated institutions where petitioners advanced inconsistent claim construction or indefiniteness positions across forums. *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 (Director Nov. 3, 2025) (vacating institution due to inconsistent claim construction positions in IPR and parallel district court action) (Exhibit F); *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 (Director Nov. 5, 2025) (extending *Revvo's* reasoning to inconsistent indefinite positions) (Exhibit G); *Generac Power Sys., Inc. v. Champion Power Equip., Inc.*, IPR2025-00805 & IPR2025-00951, Paper 40 (Director Feb. 3, 2026) (applying *Revvo* and *Tesla*) (Exhibit H). A stay would allow Medtronic to delay committing to its district-court positions while preserving flexibility before the PTAB. That is not judicial economy. It is gamesmanship.

Medtronic (12–13) relies on pre-institution stay decisions between 2014 and 2018—*Select Comfort*, *Arctic Cat*, *Intellectual Ventures II*, and *Niazi*—when institution rates were dramatically higher and discretionary denial was comparatively rare, making pre-institution stays relatively low-risk because review was statistically likely. With institution far less likely, particularly in parallel district court litigation and in medical device cases, a stay that once rested on probability now rests on speculation.

Even apart from the changed landscape, Medtronic's cases involved petitions likely to eliminate core patents or product lines. Here, three asserted patents are untouched, the '293 petition only impacts a single claim, and all but one accused product line remain in suit even under Medtronic's best-case scenario. Courts routinely deny stays where IPRs have not been instituted or would not meaningfully narrow the case. *E.g.*, *Hutchinson Tech. Inc. v. Nitto Denko Corp.*, No. 17-CV-1992, 2018 WL 5984873, at *14–15 (D. Minn. Sep. 19, 2018); *Stratasys*, 2015 WL 1608344, at *2; *Dane*, 2013 WL 4483355, at *2–3; *TwinStrand Biosciences, Inc. v. Guardant Health, Inc.*, No. 21-1126, 2023 WL 2563179, at *2 (D. Del. Mar. 17, 2023). And the uncertainty Medtronic invokes is self-created. Medtronic waited until the end of the statutory window and staggered its filings.

For these reasons, the simplification factor weighs strongly against a stay. There is no justification to stop a year-old case in its tracks based on speculative PTAB outcomes that would not materially narrow discovery, eliminate the core patents or products at issue, or meaningfully alter the Court's ultimate adjudication of the merits.

B. A Stay Would Prejudice Moskowitz and Reward Strategic Delay.

A stay here would not preserve fairness. It would reward strategic delay and impose concrete, asymmetric harm.

Medtronic has known of Dr. Moskowitz's patents for years. Yet after this action was filed in February 2025, Medtronic waited nearly a full year—until the end of the statutory window—to file staggered IPR petitions and move to stay. The present uncertainty about whether any petition will be instituted is not the product of timing beyond anyone's control. It is the result of Medtronic's decision to wait.

Courts recognize that sequence for what it is. A defendant that waits deep into litigation to seek Patent Office review, then asks the court to stop the case, seeks a tactical advantage—not efficiency. *E.g.*, *SoftView LLC v. Apple Inc.*, 2012 WL 3061027, at *4 (D. Del. July 26, 2012) (finding undue prejudice where defendant "did not file its request for inter partes reexamination until approximately one year after this litigation began").

The timing here is particularly telling. Medtronic filed its petitions after receiving detailed infringement contentions spanning 150 claims across eleven patents—but before serving its own invalidity and indefiniteness contentions. Under the current schedule, those positions are due in April, and claim construction will begin shortly thereafter. A stay would allow Medtronic to postpone committing to narrowing constructions or indefiniteness theories that could bear directly on the viability of its pending IPR petitions. It would preserve flexibility in one forum by freezing the other. That is a tactical advantage.

Nor can Medtronic justify its delay by invoking newly discovered prior art. It does not contend the references were previously unavailable; many were cited on the face of the patents. Medtronic simply chose to wait until the statutory deadline approached. Delay born of strategy weighs against a stay.

The resulting delay would be prolonged and disruptive. This case has already been pending for a year. A stay pending institution decisions, then PTAB proceedings, and then appeals would push merits adjudication years into the future. Even assuming the earliest possible institution decisions, IPR proceedings typically consume up to eighteen months, followed by up to another eighteen months for appeal. By the time this case resumes, trial would be pushed to the end of the decade. That is not a brief or temporary pause.

Moreover, the prejudice is concrete and falls disproportionately on Moskowitz. Medtronic misstates the inquiry when it suggests there can be no undue prejudice because Moskowitz does not seek a preliminary injunction and many asserted patents have expired. Undue prejudice is not limited to ongoing competitive harm. It includes the loss of evidence, diminished witness availability, and impairment of a party's ability to litigate effectively over time. The expiration of patents does not eliminate those harms; if anything, it heightens the need for timely adjudication because the remaining value lies in recovering past damages before evidence grows stale.

Time matters in patent cases, especially those involving products designed and launched years ago. Engineers change roles. Employees leave. Documents are archived. Even when documents remain, the context—the reasons behind design choices, testing decisions, and internal deliberations—often resides in memory. Memory fades.

It matters even more here. Dr. Moskowitz is 68 years old. He is the lead inventor and principal technical witness. A multi-year stay materially increases the risk that he will be denied meaningful participation in the adjudication of his life's work. He cannot simply "wait it out" in the way a multinational corporation can—continuing to infringe while maintaining business as usual.

Nor does the timing of the suit negate prejudice. The asserted patents issued at various times between 2018 and late 2025. Following formal notice to Medtronic in 2015, Dr. Moskowitz retained new prosecution counsel, secured litigation counsel, and proceeded sequentially against major industry participants as resources permitted—filing suit against Globus in 2019, defending eight IPR petitions through denial in 2021, trying

that case to verdict in 2023, and then pursuing additional infringers. The relevant question under the stay analysis is not when the suit was first filed, but whether halting a pending case for years causes concrete harm. It does.

Delay also disrupts enforcement. The related NuVasive action is proceeding toward trial in 2027. Freezing this case while that action moves forward forces Moskowitz to litigate overlapping technical and damages issues on different timelines, requiring duplicative expert work, repeated witness preparation, and strategic recalibration years later when this case restarts. The burden of delay falls entirely onto Moskowitz.

The prejudice factor weighs heavily against a stay. Medtronic chose to wait. It chose to stagger its filings. It now asks this Court to halt a year-old case before committing to its own litigation positions. The stay factors do not reward that strategy.

C. A Stay Is Unnecessary Because the Existing Schedule Already Accounts for Any PTAB Proceedings.

A stay is not required to manage PTAB proceedings. The existing schedule already accommodates it.

The parties agreed to a case schedule that places trial months after the anticipated window for any PTAB final written decisions. That structure allows any instituted IPR to inform the case without stopping it at the outset. Parallel review is meant to proceed in this manner: the district court case advances, and PTAB developments are incorporated if and when they occur.

Medtronic seeks something different. It asks the Court to halt a year-old case entirely—even though the current schedule already accounts for PTAB timing. That would not promote efficiency. It would layer delay on top of a structure designed to avoid it.

The ordinary costs of discovery, claim construction, and motion practice do not constitute undue prejudice. Patent litigation necessarily entails expense, and the prospect of reaching the next phase of litigation is not undue prejudice—particularly where most asserted patents and accused products will remain regardless of PTAB review.

Parallel proceedings are common. Courts routinely manage them without blanket stays, particularly where institution is uncertain and the scope of review is limited. Maintaining the schedule preserves flexibility. If the PTAB institutes review and narrows the case in some way, the Court can adjust at that time. If it does not, the case will not have been paused for months based on contingencies that never materialized.

The scheduling order already strikes the appropriate balance. A stay would not improve it. It would undermine it.

D. If the Court Considers a Stay, It Should Be Deferred Until Institution and Narrowly Tailored.

Moskowitz respectfully submits that a stay is unwarranted. But if the Court is inclined to grant one, it should do so only after the PTAB has actually instituted review and the scope of that review is known.

A pre-institution stay rests on speculation. If any stay is entered, it should be limited to the specific patents and claims the PTAB institutes. The case should proceed as to all

patents, claims, and accused products that will remain regardless of the IPRs. That approach preserves efficiency without freezing issues the PTAB will not address.

Any stay should also preserve Medtronic's existing litigation obligations. At a minimum, Medtronic should be required to serve its invalidity and indefiniteness contentions and continue discovery so that the case does not regress. The parties should also submit regular status reports so that the stay can be lifted or narrowed immediately if petitions are denied or the scope of review contracts.

A stay—if granted at all—must be tailored to actual PTAB proceedings, not hypothetical ones. Anything broader would convert a tool for efficiency into a vehicle for delay.

V. CONCLUSION

For the foregoing reasons, Moskowitz respectfully requests that the Court deny Medtronic's motion to stay.

DATED: February 27, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on February 27, 2026, the undersigned caused the foregoing to be filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record and a copy was served on all counsel of record by email.

/s/Jason M. Zucchi
Jason M. Zucchi