

IPR2026-00348
Patent 11,997,568

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BK TECHNOLOGIES, INC.

Plaintiff/Counterclaim Defendant,

v.

AT&T MOBILITY, LLC and
AT&T SERVICES, INC.

Defendants/Counterclaim Plaintiff.

Case No.: 2:26-cv-00090 (RWS)

**NOTICE OF MOTION TO STAY UPON
INSTITUTION OF INTER PARTES
REVIEW**

PLEASE TAKE NOTICE that, on a date to be determined by the Court, or as soon thereafter as the parties may be heard, Defendants AT&T Mobility LLC and AT&T Services, Inc. (collectively, “Defendants”), shall move before the Hon. Robert W. Schroeder, III, for an Order staying this action in the event the Patent Trial and Appeal Board (“PTAB”) institutes *inter partes* review (“IPR”) of the asserted claims of U.S. Patent No. 11,997,568 and U.S. Patent No. 12,375,890.

IPR2026-00348
Patent 11,997,568

PLEASE TAKE FURTHER NOTICE that Defendants will rely upon the accompanying Brief in support of this Motion.

PLEASE TAKE FUTHER NOTICE that a proposed form of Order is also submitted herewith.

Dated: August 5, 2026

/s/ Joseph V. Saphia

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DEFENDANTS' BRIEF IN SUPPORT OF MOTION TO STAY
UPON INSTITUTION OF INTER PARTES REVIEW

TABLE OF CONTENTS

	Page(s)
INTRODUCTION	1
FACTUAL BACKGROUND.....	3
LEGAL STANDARD.....	4
ARGUMENT	5
I. BKT WILL NOT SUFFER UNDUE PREJUDICE IF THE COURT STAYS THIS ACTION FOLLOWING INSTITUTION.	5
II. THE PROCEEDINGS HAVE NOT REACHED AN ADVANCED STAGE.....	7
III. A STAY WILL SIMPLIFY THE ISSUES BEFORE THE COURT.	8
CONCLUSION	10

TABLE OF AUTHORITIES

Cases	Page(s)
<i>3rd Eye Surveillance, LLC v. Stealth Monitoring, Inc.</i> , No. 6:14-cv-162-JDL, 2015 WL 179000 (E.D. Tex. Jan. 14, 2015)	4
<i>Cellular Commc'ns Equip., LLC v. Samsung Elecs. Co., Ltd.</i> , No. 6:14-cv-759, 2015 WL 11143485 (E.D. Tex. Dec. 16, 2015)	5
<i>E-Watch, Inc. v. Lorex Canada, Inc.</i> , No. 12-cv-3314, 2013 WL 5425298 (S.D. Tex. Sept. 26, 2013)	5
<i>Ericsson Inc. v. TCL Commc'n Tech. Holdings, Ltd.</i> , No. 2:15-cv- 11-RSP, 2016 WL 1162162 (E.D. Tex. Mar. 23, 2016)	4
<i>Landis v. N. Am. Co.</i> , 299 U.S. 248 (1936)	4
<i>Landmark Tech., LLC v. iRobot Corp.</i> , No. 6:13-cv-411-JDL, 2014 WL 486836 (E.D. Tex. Jan. 24, 2014)	7
<i>MCM Portfolio LLC v. Hewlett-Packard Co.</i> , 812 F.3d 1284 (Fed. Cir. 2015)	6
<i>NFC Tech. LLC v. HTC Am.</i> , No. 2:13-cv-1058-WCB, 2015 WL 1069111 (E.D. Tex. Mar. 11, 2015)	5, 8
<i>Norman IP Holdings, LLC v. TP-Link Techs., Co.</i> , No. 6:13-cv-384-JDL, 2014 WL 5035718 (E.D. Tex. Oct. 8, 2014)	7
<i>SB IP Holdings, LLC v. Vivint, Inc.</i> , No. 4:21-cv-00912, Dkt. No. 59 (E.D. Tex. Apr. 6, 2023)	10
<i>In re Sotera Wireless, Inc.</i> , FTC Docket No. 9345 (2012)	2, 9
<i>Versata Software, Inc. v. Callidus Software, Inc.</i> , 771 F.3d 1368 (Fed. Cir. 2014)	8
<i>VirtualAgility Inc. v. Salesforce.com, Inc.</i> , 759 F.3d 1307 (Fed. Cir. 2014)	5, 7
 Statutes	
35 U.S.C. § 102	4
35 U.S.C. § 314(a)	9

INTRODUCTION

Defendants AT&T Mobility LLC and AT&T Services, Inc. (collectively, “AT&T”) respectfully move to stay this action in the event the Patent Trial and Appeal Board (“PTAB”) institutes *inter partes* review (“IPR”) of the asserted claims of U.S. Patent Nos. 11,997,568 (the “568 Patent”) and U.S. Patent No. 12,375,890 (the “890 Patent”) (collectively, the “Asserted Patents”).¹ AT&T does not seek a stay merely because IPR petitions have been filed. Rather, AT&T seeks relief only in the event the PTAB determines that review is warranted. Accordingly, AT&T respectfully requests that the Court determine now that, if the PTAB institutes review of the Asserted Patents, this action will be stayed pending a final written decision in those proceedings. Alternatively, if the Court concludes that a stay determination should await the PTAB’s institution decisions, AT&T respectfully requests that the Court defer ruling on this Motion until those decisions issue.

IPR proceedings serve a public purpose that extends beyond the interests of the litigants. Congress created IPR as a mechanism through which the PTAB may reconsider whether issued patent claims are novel and nonobvious and thus satisfy these statutory requirements for patentability. Accordingly, once the PTAB determines that review is warranted, principles of judicial economy favor allowing the agency charged with that responsibility to complete its review before the parties and the Court expend substantial resources litigating the same patentability issues. Approximately 70% of IPRs reaching a final written decision result in all challenged claims

¹ StreamWIDE Inc. (“StreamWIDE”) has moved to intervene in this case. Dkt. No. 16. While StreamWIDE’s Motion has not yet been granted, Streamwide, Inc. confirms that, if its Motion is granted, it too seeks this relief.

being found unpatentable, and approximately 78% of challenged claims are found unpatentable overall.²

Under the circumstances particular to this case, the factors governing a stay weigh strongly in favor of a stay. First, a stay will not unduly prejudice BK Technologies, Inc. (“BKT”) because Defendants seek a stay only if the PTAB institutes review, and any prejudice can be adequately addressed through monetary relief should BKT ultimately prevail. Second, this case in its infancy -- no case management conference has been held, no discovery scheduling order has been entered, claim construction has not begun, and no trial date has been set. Third, a stay would substantially simplify the case because the IPR petitions challenge all asserted claims of both the Asserted Patents. If the PTAB invalidates the claims of these patents, the case before this Court would be resolved entirely. Even if the PTAB does not invalidate all claims, the issues before this Court would be narrowed significantly, especially in light of Defendants’ *Sotera* stipulation as submitted to the PTAB agreeing not to advance any invalidity theories in the District Court that were raised or could have been raised in the PTAB.³

Further, should the PTAB institute review of the Asserted Patents and the Court grant StreamWIDE’s pending motion to intervene, StreamWIDE has stipulated that it will not raise before this Court the non-patent claims (breach of contract and tortious interference) currently included in its proposed intervenor pleading.⁴ PTAB institution will thus have the added benefit of simplifying the case by removing StreamWIDE’s non-patent compulsory counterclaims,

² Stephen Schreiner, *The PTAB’s 70% All-Claims Invalidation Rate Continues to Be a Source of Concern*, IPWatchdog (Jan. 12, 2025), <https://ipwatchdog.com/2025/01/12/ptab-70-claims-invalidation-rate-continues-source-concern/> (citing USPTO PTAB statistics).

³ See *In re Sotera Wireless, Inc.*, FTC Docket No. 9345 (2012).

⁴ This representation by StreamWIDE was also made to the PTAB in the Petitions for IPR.

ensuring that the PTAB proceeding can resolve the present case in its entirety. Accordingly, if the PTAB institutes review, a stay will conserve, rather than duplicate, judicial and party resources.

FACTUAL BACKGROUND

On February 3, 2026, BKT filed this action alleging infringement of the Asserted Patents. *See generally* Dkt. No. 1 (“Compl.”). BKT’s Complaint alleges that AT&T’s FirstNet Fusion platform infringes both Asserted Patents and seeks damages and injunctive relief. *See e.g.*, Compl. ¶¶ 20-21. The Asserted Patents are in the same patent family. The ‘890 Patent issued from a continuation application of the application that matured into the ‘568 Patent and the two patents share a common specification and substantially overlapping subject matter. The Asserted Patents generally concern methods for managing access to push-to-talk-over-cellular (“POC”) talkgroups and facilitating communications between subscriber and non-subscriber users.

On April 13, 2026, AT&T answered BKT’s complaint and asserted counterclaims seeking declaratory judgments of non-infringement and invalidity as to both the Asserted Patents. Dkt. No. 11 (“AT&T Pleading”) at 12-13. BKT thereafter answered those counterclaims on May 4, 2026. Dkt. No. 15. This litigation remains in its infancy. The Court has not yet held a case management conference, and no scheduling order or discovery order have been entered. On May 6, 2026, StreamWIDE Inc. (“StreamWIDE”) filed a motion to intervene, which remains pending before the Court. Dkt. No. 16. BKT did not oppose the motion. Through its proposed pleading in intervention, StreamWIDE seeks to assert additional claims and defenses concerning the Asserted Patents as well as non-patent claims relating to the prior business relationship between BKT and StreamWIDE. Dkt. No. 16-3. Because StreamWIDE’s motion to intervene remains pending, however, StreamWIDE is not presently a party to this action and its proposed claims, including its non-patent claims, are not currently part of this case.

On May 5, 2026, AT&T Services, Inc. and StreamWIDE filed two petitions for IPR challenging the validity of each of the Asserted Patents (collectively, the “Petitions”). The Petitions contend that the challenged claims are unpatentable in view of prior-art references that predate the Asserted Patents, including U.S. Patent No. 9,794,761 (“Mazzarella”), U.S. Patent No. 9,525,981 (“Tillet ‘981”), and U.S. Patent No. 9,763,066 (“Tillet ‘066”). The invalidity arguments raised in these Petitions are largely based on 35 U.S.C. § 102, with the Mazzarella reference anticipating the majority of the claims. A decision on whether the PTAB will institute review is expected this fall. On July 7, 2026, Plaintiff BKT submitted discretionary denial briefs with the PTAB.

LEGAL STANDARD

“A district court has the inherent power to control its own docket, including the power to stay proceedings before it.” *Ericsson Inc. v. TCL Commc’n Tech. Holdings, Ltd.*, No. 2:15-cv- 11-RSP, 2016 WL 1162162, at *1 (E.D. Tex. Mar. 23, 2016); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”). “A stay is particularly justified when ‘the outcome of a PTO proceeding is likely to assist the court in determining patent validity or eliminate the need to try infringement issues.’” *Ericsson*, 2016 WL 1162162, at *1 (quoting *NFC Tech. LLC v. HTC Am.*, No. 2:13-cv-1058-WCB, 2015 WL 1069111, at *1 (E.D. Tex. Mar. 11, 2015); *see also 3rd Eye Surveillance, LLC v. Stealth Monitoring, Inc.*, No. 6:14-cv-162-JDL, 2015 WL 179000, at *1 (E.D. Tex. Jan. 14, 2015).

“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.*, 2015 WL 1069111 at *2. “Based on the[se] factors, courts determine whether the benefits of a stay outweigh the inherent costs of postponing resolution of the litigation.” *Id.*

ARGUMENT

All of the pertinent factors weigh in favor of granting a stay pending the results of the IPR proceedings if the Petitions are instituted. A stay will not cause any undue prejudice, will conserve this Court’s and the parties’ resources, and will simplify this litigation.

I. BKT WILL NOT SUFFER UNDUE PREJUDICE IF THE COURT STAYS THIS ACTION FOLLOWING INSTITUTION.

The first factor favors a stay. “[T]he mere fact of a delay alone does not constitute prejudice sufficient to deny a request for stay.” *E-Watch, Inc. v. Lorex Canada, Inc.*, No. 12-cv-3314, 2013 WL 5425298, at *2 (S.D. Tex. Sept. 26, 2013). Rather, the relevant inquiry is “whether the patentee will be unduly prejudiced by a stay . . . focuses on the patentee’s need for an expeditious resolution of its claim.” *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1318 (Fed. Cir. 2014) (emphasis in original).

Here, BKT cannot demonstrate undue prejudice. As an initial matter, BKT has not moved the Court for preliminary injunctive relief and it principally seeks monetary damages for the alleged infringement. The Federal Circuit has explained, a “stay will not diminish the monetary damages to which [BKT] will be entitled if it succeeds in its infringement suit—it only delays realization of those damages and delays any potential injunctive remedy.” *VirtualAgility Inc.*, 759 F.3d at 1318; *Cellular Commc’ns Equip., LLC v. Samsung Elecs. Co., Ltd.*, No. 6:14-cv-759, 2015 WL 11143485, at *2 (E.D. Tex. Dec. 16, 2015) (internal citations omitted) (“mere delay in collecting [] damages does not constitute undue prejudice”). Additionally, BKT’s passing request for injunctive relief does not establish undue prejudice. Although BKT requests injunctive relief

in its Complaint, it has not moved for a preliminary injunction. Nor is it likely that BKT would ever obtain injunctive relief. AT&T's accused system is a mission-critical communications platform developed for and deployed by the federal government to enable communications among first responders during disasters and other emergencies. Under these circumstances, the prospect of injunctive relief is remote, and any recovery available to BKT is readily compensable through monetary damages.

Unlike BKT, AT&T would be substantially prejudiced absent a stay. Without a stay upon institution, the parties and the Court would be required to expend significant resources litigating the validity and infringement of claims that are the subject of pending IPR Petitions challenging every asserted claim of both Asserted Patents. AT&T and StreamWIDE filed the Petitions promptly, less than one month after AT&T answered the Complaint. A stay, therefore, would promote the very purpose for which Congress created IPR, which is providing "a more efficient system for challenging patents that should not have issued" and to "establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs." *MCM Portfolio LLC v. Hewlett-Packard Co.*, 812 F.3d 1284, 1290-91 (Fed. Cir. 2015) (quoting *H.R. Rep. No. 112-98*, 2011 U.S.C.C.A.N. 67, 69, at 39-40). The requested stay would therefore serve more than private convenience. In these circumstances, allowing the PTAB to first determine the validity of the Asserted Patents will conserve both party and judicial resources and avoid the risk of litigating issues that may ultimately be narrowed or eliminated through the IPR process.

AT&T does not seek to delay this action based solely on the filing of IPR Petitions. Rather, AT&T seeks a stay only if the PTAB institutes review after determining that there is reasonable likelihood that Petitioner will prevail. If institution is denied, the requested stay becomes

unnecessary and the District Court case proceeds. By only seeking a stay to the extent the PTAB institutes the Petitions, AT&T minimizes any potential prejudice while allowing the agency entrusted by Congress with reconsidering patentability to evaluate the validity of the Asserted Patents in the first instance.

Finally, any delay resulting from a stay is limited. A final written decision is expected no later than November 2027. Accordingly, BKT cannot demonstrate that it will suffer undue prejudice if this action is stayed pending IPR.

II. THE PROCEEDINGS HAVE NOT REACHED AN ADVANCED STAGE.

The fact that this case is just getting started and “there remains a significant amount of work ahead for the parties and the court” also weighs in favor of a stay. *Norman IP Holdings, LLC v. TP-Link Techs., Co.*, No. 6:13-cv-384-JDL, 2014 WL 5035718, at *3 (E.D. Tex. Oct. 8, 2014) (quoting *Destination Maternity Corp. v. Target Corp.*, No. 12-cv-5680, 2014 WL 1202941, at *6 (E.D. Pa. Mar. 24, 2014)); *see also Landmark Tech., LLC v. iRobot Corp.*, No. 6:13-cv-411-JDL, 2014 WL 486836, at *3 (E.D. Tex. Jan. 24, 2014) (“Staying a case at an early juncture can advance judicial efficiency and maximize the likelihood that neither the court nor the parties expend their assets addressing invalid claims.”) (quotation omitted).

The Court has not yet conducted a scheduling conference, no scheduling and discovery orders have been entered, claim construction has not begun, and no trial date has been set. As a result, the parties have not yet undertaken substantial fact discovery, expert discovery, claim-construction proceedings, dispositive motion practice, or trial preparation that typically account for the bulk of the costs of patent litigation. *See, e.g., VirtualAgility*, 759 F.3d at 1317 (finding stay pending CBM review appropriate where “there remained eight months of fact discovery, the joint claim construction statements had yet to be filed, and jury selection was a year away”). Moreover, the scope of this action remains unresolved. StreamWIDE’s motion to intervene is still pending,

and, if granted, StreamWIDE will become a party to this litigation and additional pleadings will be filed. Thus, the parties, claims, and defenses that ultimately will be litigated have not yet been determined.

Staying the case upon institution would undoubtedly conserve substantial party and judicial resources that otherwise may be expended litigating issues the PTAB may narrow or eliminate. *See, e.g., Versata Software, Inc. v. Callidus Software, Inc.*, 771 F.3d 1368, 1374 (Fed. Cir. 2014) (finding that the court should be “mindful of the burden on the parties and the court in completing both fact and expert discovery, resolving summary judgment motions, completing the *Markman* process, and preparing for trial” and further finding that such circumstances weighed strongly in favor of a stay) (opinion vacated because the parties settled the case the day before the opinion issued). Because this case has not yet progressed beyond its initial procedural stages, a stay would permit the PTAB to conduct patentability review before the litigation machinery begins in earnest. Such approach advances and respects judicial economy, while promoting the public function of IPR proceedings as a mechanism for reevaluating issued patent claims through the PTAB’s expertise.

Accordingly, the procedural posture of this case weighs in favor of a stay.

III. A STAY WILL SIMPLIFY THE ISSUES BEFORE THE COURT.

The third factor also strongly favors a stay because PTAB review is likely to substantially simplify, and potentially entirely eliminate, the issues presently before the Court. Indeed, “the most important factor bearing on whether to grant a stay in this case is the prospect that the [IPR] proceeding will result in simplification of the issues before the Court.” *NFC Tech., LLC v. HTC Am., Inc.*, 2015 WL 1069111, at *4. Here, the potential for simplification is substantial because the Petitions challenge every asserted claim of both Asserted Patents and the invalidation of these claims would entirely resolve the present case.

If the PTAB institutes review, it will have determined that the Petitions present at least a “reasonable likelihood” that Petitioners will prevail as to at least one challenged claim. 35 U.S.C. § 314(a). The PTAB may ultimately invalidate some or all of the asserted claims, potentially resolving this action altogether. Even if some claims survive, the IPR proceedings will necessarily narrow the issues for litigation, especially since AT&T and StreamWIDE have submitted a *Sotera* stipulation to the PTAB representing that they would not advance any invalidity theories in this Court that could have been raised at the PTAB. Thus, with institution, the best case scenario is that the PTAB’s final decision fully resolves the present case; worst case, it would simplify the invalidity case substantially by limiting it to only system art that could not be raised at the PTAB. Whether the PTAB cancels all asserted claims, cancels only some claims, or confirms their patentability, its review will materially simplify and focus the issues ultimately presented to this Court.

Finally, should the PTAB institute review and StreamWIDE’s motion to intervene be granted, StreamWIDE will refrain from asserting its non-patent claims contained in its proposed pleading in intervention to ensure that a decision from the PTAB invalidating the claims of the Asserted Patents would resolve the present case in its entirety. Thus, a stay would allow the PTAB to address the patentability of all asserted patent claims without parallel litigation of ancillary non-patent claims, which further maximizes the simplification benefits of a stay and conserving judicial resources.

Accordingly, this factor weighs heavily in favor of a stay.

CONCLUSION⁵

For the foregoing reasons, Defendants respectfully request that the Court stay this action pending completion of the IPR proceedings if the PTAB institutes review of the Asserted Patents. Such a stay would not unduly prejudice BKT, would conserve the resources of the parties and the Court at this early stage of the litigation, and would allow the PTAB to perform its congressionally-assigned role of evaluating the patentability of the asserted claims before substantial litigation resources are expended. In the alternative, to the extent the Court concludes that a stay request should await the PTAB's institution decisions, Defendants respectfully request that the Court defer ruling on this Motion until those decisions issue. If the Court instead denies the Motion as premature, Defendants respectfully request that the Court consider the timing of this Motion in connection with any renewed motion for a stay following institution.

⁵ To the extent the Court determines that a stay request is premature before the PTAB decides whether to institute review, AT&T respectfully requests that the Court defer ruling on this Motion until the PTAB issues its institution decisions. Defendants seek a stay only upon institution, and the PTAB's decisions will directly inform whether any stay is warranted. *See SB IP Holdings, LLC v. Vivint, Inc.*, No. 4:21-cv-00912, Dkt. No. 59 at 2 (E.D. Tex. Apr. 6, 2023). (“[C]ourts in this district typically refrain from ruling on the motion pending action by the PTAB or deny the motion without prejudice to refiling in the event that the PTAB institutes a proceeding.”)

Alternatively, if the Court denies the Motion as premature, Defendants respectfully request that the Court consider the timing of this Motion in connection with any renewed motion for a stay. Defendants filed this Motion at the outset of the litigation, before any scheduling conference, discovery order, claim-construction proceedings, or other substantial case activity, thereby providing prompt notice of their intent to seek a stay and avoiding any suggestion of tactical delay. *See eWatch Inc.*, 2015 WL 12915668, at *3.

Dated: August 5, 2026

Respectfully Submitted,

By: /s/ Joseph V. Saphia

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CERTIFICATE OF SERVICE

The undersigned certifies that, on August 5, 2026, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5. Any other counsel of record will be served by a facsimile transmission and/or first-class mail.

/s/ Joseph V. Saphia

Joseph V. Saphia

CERTIFICATE OF CONFERENCE

The undersigned certifies that, on July 31, 2026, counsel for AT&T Mobility LLC and AT&T Services, Inc. (collectively “AT&T”) met and conferred with counsel for Plaintiff BK Technologies, Inc., Barry Herman, Esq., via a Zoom video conference concerning AT&T’s Motion to Stay. Counsel for AT&T explained the basis for the motion during the conference, and, thereafter, counsel for BKT is opposed to the relief requested herein. The parties were unable to reach an agreement and concluded, in good faith, that discussions have conclusively ended in an impasse, leaving an open issue for the court to resolve.

The parties have complied with the meet and confer requirement in Local Rule CV-7(h).

/s/ Joseph V. Saphia

Joseph V. Saphia

IPR2026-00348
Patent 11,997,568

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

BK TECHNOLOGIES, INC.,

Plaintiff/Counterclaim Defendant,

vs.

AT&T MOBILITY, LLC and
AT&T SERVICES, INC.,

Defendants/Counterclaimants.

Case No.: 2:26-cv-00090 (RWS)

**ORDER GRANTING DEFENDANTS'
MOTION TO STAY UPON
INSTITUTION OF INTER PARTES
REVIEW**

Before the Court is Defendants AT&T Mobility LLC and AT&T Services, Inc.'s (collectively, "AT&T") motion to stay upon institution of *inter partes* review (the "Motion"). Having considered the Motion, the applicable law, and the record, the Court finds that the Motion should be **GRANTED**.

Accordingly, it is **ORDERED**, on _____, 2026, that:

1. The Defendants' Motion is **GRANTED**;
2. If the Patent Trial and Appeal Board ("PTAB") institutes *inter partes* review ("IPR") of the asserted claims of U.S. Patent Nos. 11,997,568 and 12,375,890, this action shall be **STAYED** pending completion of the instituted IPR proceedings, including the issuance of final written decisions by the PTAB, or further order of the Court.
3. Within five business days of the PTAB's institution decisions, the parties shall file a notice advising the Court of the PTAB's decisions.
 - a. If the PTAB institutes review, the stay shall take effect upon the filing of that notice unless otherwise ordered by the Court.
 - b. If the PTAB denies institution, this action shall proceed unless otherwise ordered by the Court.
4. During the stay, all deadlines in this action are suspended. The parties shall file a joint status report within fourteen days after the PTAB issues its final written decisions in the instituted IPR proceedings, and shall advise the Court whether the stay should be lifted and propose a schedule for further proceedings, if necessary.

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Patent 11,997,568

SO ORDERED.

Robert W. Schroeder, III, U.S.D.J.