

Court grants Duke's Motion in whole or in part, both parties will waste time and resources addressing discovery on issues removed from the litigation.

II. Marmon will not be prejudiced by waiting for the Court's order on Duke's Motion to Dismiss before proceeding under Rules 26(f) and 16.

Marmon has not identified any prejudice that would result from waiting for the Court's ruling on Duke's Motion to Dismiss before proceeding with Rules 26(f) and/or 16 conference(s) and discovery, nor could it. A short pause pending resolution of the Motion to Dismiss will not impair Marmon's ability to prosecute any claims that survive. To the contrary, the Court's ruling will clarify which claims and issues remain in the case, thereby allowing the parties to conduct a more focused and proportional Rule 26(f) and 16 conferences and discovery process. Because Marmon has not shown any meaningful prejudice from the brief delay in this case, and because deferring proceedings under Rules 26(f) and 16 until after the Court rules promotes efficiency and proportionality, the Court should decline to require the parties to proceed before Duke's Motion to Dismiss is resolved.

III. Duke's forthcoming IPR petitions and anticipated motion to stay further support deferring case management proceedings.

Duke intends to file IPR petitions challenging the asserted patents and will also move to stay this action pending resolution of the IPRs. Courts in the Eighth Circuit routinely stay patent cases—even before the Patent Trial and Appeal Board (PTAB) issues an institution decision—when the defendant promptly seeks review and a decision by the PTAB is likely to streamline the litigation. *See ZeaVision, LLC v. Bausch & Lomb Inc.*, No. 4:21 CV 739 RWS, 2022 WL 715013, at *2–5 (E.D. Mo. Mar. 10, 2022) (granting stay pending then-uninstituted IPR proceedings where: (1) no scheduling order was entered and no discovery had occurred; (2) the case would be streamlined through invalidation of claims or application of statutory estoppel; and (3) a stay would not unduly prejudice the plaintiff since money damages and injunctive relief are available

patent infringement remedies and plaintiff offered no more than conclusory statements of undue prejudice); *Amsted Rail Co., Inc. v. Hum Indus. Tech., Inc.*, No. 4:22-cv-00445-AGF, 2023 WL 2864553, at *3–5 (E.D. Mo. Apr. 10, 2023) (staying litigation pending then-uninstituted IPR proceedings where: (1) no depositions had occurred, and neither a *Markman* hearing nor a trial date has been set; (2) conclusion of IPR proceeding would “significantly narrow the litigation” through statutory estoppel; and (3) plaintiff failed to establish defendants’ dilatory motive or any threat of tactical disadvantage from defendants’ seeking IPR proceedings and, in any event, plaintiff never pursued preliminary injunctive relief); *Masa LLC v. Apple Inc.*, No. 4:15-CV-00889-AGF, 2016 WL 2622395, at *2–3 (E.D. Mo. May 9, 2016) (staying litigation pending then-uninstituted IPR proceedings where: (1) “discovery is not complete, and a trial date has not been set”; (2) “IPR will resolve some or all of the issues in the case if the claims are invalidated,” and “if the claims survive, . . . Apple will be subject to statutory estoppel”; and (3) there was no evidence of dilatory motive as Apple filed its motion to stay four days after filing its IPR petition). If the Court grants Duke’s anticipated motion to stay, any scheduling order entered now would be rendered moot. Deferring case management proceedings until the Court has the benefit of Duke’s IPR filings and stay motion promotes judicial efficiency, conserves the parties’ resources, and avoids unnecessary litigation over deadlines that may never govern this case.

CONCLUSION

For the above reasons, the Court should deny Marmon’s Motion (Doc. [33]) and defer scheduling Rule 16(a) and 26(f) proceedings pending the outcome of Duke’s Motion (Doc. [24]).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on June 8, 2026, the foregoing was filed with the Clerk of Court and served via CM/ECF on all counsel of record.

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