

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MARMON FOODSERVICE
TECHNOLOGIES, INC.,

Plaintiff,

v.

DUKE MANUFACTURING CO.,

Defendant.

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Case No. 4:25-cv-01491-ZMB

**DUKE MANUFACTURING CO.'S MEMORANDUM IN SUPPORT OF ITS MOTION
TO STAY PENDING *INTER PARTES* REVIEW PROCEEDINGS**

INTRODUCTION

Defendant Duke Manufacturing Co. (“Duke”) has challenged each of the 198 utility patent claims asserted by Plaintiff Marmon Food Service Technologies, Inc. (“Marmon”) in this litigation. Collectively, Duke’s seven Petitions for *Inter Partes Review* (“IPR”): (1) raise invalidity grounds not considered by the USPTO during prosecution of Marmon’s asserted patents; (2) utilize prior art from Duke and other competitors’ products that Marmon withheld from the USPTO during prosecution; and (3) address claim construction issues that the Patent Trial and Appeal Board (“PTAB”) may resolve during the proceedings. Should the PTAB resolve any of these issues while this litigation is pending—*e.g.*, issue a claim construction—it necessarily becomes part of the record. This would require the Court to revisit similar issues already addressed and any related rulings that may be impacted (*e.g.*, a summary judgment order that depends on a claim construction order). The PTAB may also narrow the case by invalidating some or all the asserted claims. For these reasons, and to promote judicial (and party) efficiency, the Court should stay this case pending resolution of all of Duke’s currently pending IPRs.

FACTUAL BACKGROUND

I. Status of the District Court Litigation

On October 3, 2025, Marmon filed this action asserting that certain Duke holding bin products infringe seven Marmon utility patents¹ and two design patents². *See* Doc. [1]. The utility

¹ Specifically, Marmon asserts the following utility patents: U.S. Pat. No. 9,976,750 (the “’750 Patent”), U.S. Pat. No. 9,980,322 (the “’322 Patent”), U.S. Pat. No. 10,492,641 (the “’641 Patent”), U.S. Pat. No. 10,512,363 (the “’363 Patent”), U.S. Pat. No. 10,841,981 (the “’981 Patent”), U.S. Pat. No. 10,852,002 (the “’002 Patent”), and U.S. Pat. No. 11,771,264 (the “’264 Patent”).

² Specifically, Marmon asserts the following design patents: U.S. Design Pat. No. D1,020,445 (the “D’445 Patent”), and U.S. Design Pat. No. D1,064,814 (the “D’814 Patent”).

patents are each a member of one of two patent families³ and are each generally directed to a multi-zone food holding bin having one or more compartments for receiving pans of food, each compartment having multiple zones with each food holding zone having independently controllable heating. *See* Doc. [1-1] ('750 Patent), at Fig. 1 (below).

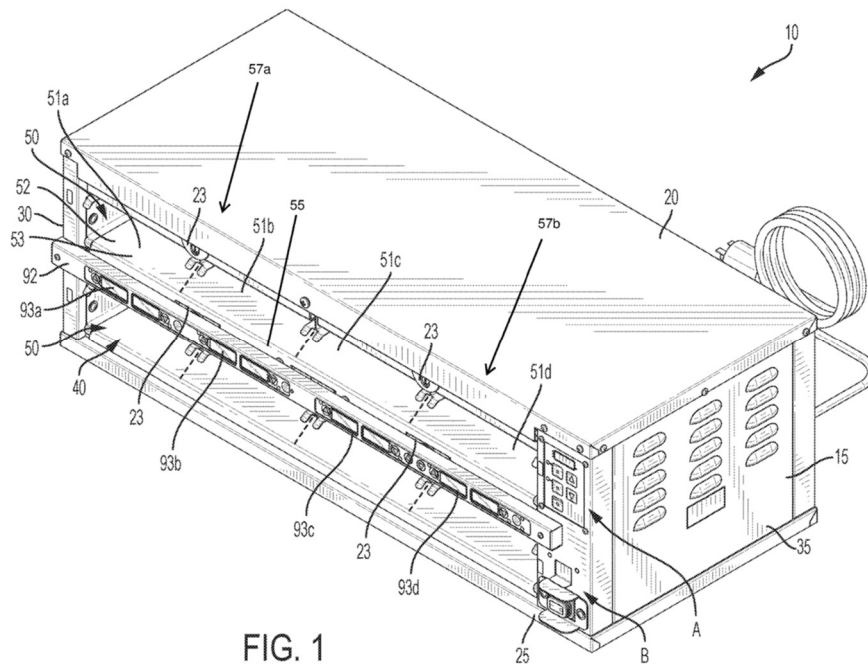


FIG. 1

While each patent and claim must be treated individually, there are large areas of overlap. Each patent claims the same type of article with similar features—multi-zone food holding bins featuring independently controllable heating zones coupled with related features, such as lids, lid latches, user interfaces, and specific heating element configurations.

Despite its age, this case is still in its early stages. The Court conducted the Rule 16 conference on September 3, 2026—about a month ago—and issued the case management order seven days later. *See* Docs. [51], [52]. While the parties have served Rule 26(a) disclosures and

³ The '981 Patent is a continuation of the '641 Patent, which is a continuation of the '322 Patent. The '264 Patent is a continuation of the '002 Patent, which is a continuation of the '363 Patent, which in turn is a continuation of the '750 Patent.

initial discovery requests, no depositions have occurred. On September 24, 2026—only 12 days ago—Marmon served its Disclosure of Asserted Claims and Preliminary Infringement Contentions, wherein it asserts the following claims:

Patent	Asserted Claims	Count
'750 Patent	Claims 1–10	10
'322 Patent	Claims 1–10	10
'641 Patent	Claims 1–11, 13–24, 26–30, 32–34	31
'363 Patent	Claims 1–26, 28–33, 35–37	35
'981 Patent	Claims 1–29, 31–54, 56–66	64
'002 Patent	Claims 1–21, 23–29	28
'264 Patent	Claims 1–20	20
	TOTAL	198

Exhibit 1 (Marmon’s Prelim. Infring. Cont.), at pg. 2.

Duke’s counter-infringement contentions and invalidity contentions are not due until December 4 and 21, 2026, respectively. Doc. [52] (Case Mgm’t Order), at § I.e.ii–iii. The claim construction process is not set to begin until January 7, 2027. *Id.* at § I.f.i (exchange of proposed claim construction terms). Recently, Marmon filed its First Amended Complaint and Duke’s response is due October 9, 2026. Docs. [54], [55].

II. Duke’s seven IPR petitions are directed at all (198) of Marmon’s asserted claims.

On July 2, 2026, Duke filed its first IPR petition, seeking invalidation of all the ’002 Patent’s claims. *Duke Manuf. Co. v. Marmon Foodservice Techs., Inc.*, PTAB2026-00406, Paper 1 (PTAB July 2, 2026); *see also* **Exhibit 2** (’002 IPR Petition) **Exhibit 3** (Eidson Decl.), at ¶ 4. Due to the number of asserted patents and the potential for hundreds of asserted claims, the six other IPR petitions were filed by October 2, 2026. **Ex. 3** (Eidson Decl.), at ¶ 5.

Each IPR petition challenges the validity of the claims in Marmon’s asserted utility patents on two general categories of obviousness grounds. The first category relies primarily on Duke’s

own IRHS (*i.e.*, “InfraRed HeatSink”) product⁴ documentation—including an operator’s manual, a specifications sheet, Duke’s website (as of January 2015) advertising the IRHS, and an IRHS service manual (the “IRHS Documents”)—which describe multi-zone food holding bins embodying the same core features claimed in Marmon’s utility patents. *See, e.g.*, **Ex. 2** (’002 IPR Petition), at pg. 3–4. The second category demonstrates that even apart from the IRHS Documents, the asserted patents merely combine well-known features of food warming cabinets already taught in the prior art in view of other references in this field.

Across Duke’s IPR petitions, Duke presents a variety of grounds for invalidity which methodically show how Marmon’s claims merely combine well-known features—such as multi-bay configurations, independent temperature control, lid-holding shelves, lid latches, user interfaces, and specific heating element arrangements—according to their establish functions and yielding predictable results.

LEGAL STANDARD

“A federal court has ‘the inherent power to grant a stay in order to control its docket, conserve judicial resources, and provide for a just determination of the cases pending before it.’” *ZeaVision, LLC v. Bausch & Lomb Inc.*, 2022 WL 715013, at *2 (E.D. Mo. Mar. 10, 2022) (quoting *Webb v. R. Rowland & Co., Inc.*, 800 F.2d 803, 808 (8th Cir. 1986)). “This includes the power to grant a stay pending IPR.” *Id.* (citing *Masa LLC v. Apple Inc.*, 2016 WL 2622395, at *2 (E.D. Mo. May 9, 2016)). “While the decision to grant a stay is a matter within a district court’s discretion,

⁴ As Marmon knows, Duke’s IRHS product was commercially available and publicly documented for years before Marmon’s earliest priority date of April 19, 2016. The IRHS Manual was shipped with over 360 units to customers between February and September 2014, and the IRHS Specifications were distributed to more than 20 organizations at trade shows and via email. **Ex. 2** (’002 IPR Petition), at pg. 3. Marmon never presented any information about Duke’s IRHS product to the USPTO during the prosecution of any of the Asserted Patents.

the ‘interests of judicial economy and deference to the PTO’s expertise have led to a liberal policy in favor of granting stays’ in patent litigation.” *Id.* (quoting *Intellectual Ventures II LLC v. Commerce Bancshares, Inc.*, 2014 WL 2511308, at *2 (W.D. Mo. June 4, 2014)).

When deciding whether to stay a patent case pending IPR, courts in this district consider: (1) “whether discovery is complete and a trial date has been set”; (2) “whether a stay will simplify the issues in the case and facilitate trial”; and (3) “whether a stay would unduly prejudice or present a clear tactical disadvantage for the non-moving party.” *Id.* (citing *Lineweight LLC v. Firstspear, LLC*, 2019 WL 4015824, at *1 (E.D. Mo. Aug. 26, 2019)). “Although some courts have waited until the PTAB has instituted IPR before granting a stay, others have granted stays before the PTAB’s initial decision, and the Federal Circuit has expressed no opinion on which is the better practice.” *Id.* (quoting *Masa*, 2016 WL 2622395, at *2) (internal quotation marks omitted).

ARGUMENT

I. The case is in its infancy with its most significant milestones ahead.

A critical factor in deciding whether to stay a patent infringement case is the stage of the litigation. This factor strongly favors a stay here.

The Court held the Rule 16 conference on September 3, 2026 (Doc. [51]), and issued the first case management order on September 9, 2026 assigning this case as Track 3 (Complex). Doc. [52], at § I.a. While the parties have begun written discovery—*i.e.*, serving their Rule 26(a) disclosures and initial batches of written discovery—no claim construction or other critical case milestones have passed. Duke has not served its preliminary counter-infringement and invalidity contentions, which are due December 4 and 21, 2026, respectively. *Id.* at § I.e.ii–iii. Claim construction is slated to begin January 7, 2027—three-months from today, and the claim

construction hearing is eight months away (June 7, 2027). *Id.* at § I.f.i & I.f.vi. Considering this significant length of time between now and major case milestones, it is no surprise that:

- No depositions have occurred;
- No experts have been disclosed or reports exchanged;
- No non-infringement or invalidity contentions have been disclosed;
- No terms have been identified for claim construction; and
- No summary judgment briefing has begun.

Ex. 3 (Eidson Decl.), at ¶¶ 7–11. Considering that IPR proceedings offer “‘a timely, cost-effective alternative to litigation,” designed to produce “a more efficient and streamlined patent system that will improve patent quality” and which “limit[s] unnecessary and counterproductive litigation costs,”” it is no surprise that courts have stayed patent litigation in favor of IPR proceedings in cases with similar posture. *Intellectual Ventures II LLC*, 2014 WL 2511308, at *1 (citing *Changes to Implement, Inter Partes Review Proceedings*, 77 Fed. Reg. 48690-01 (Aug. 14, 2012)); *see also id.* at *4 (finding the case was “at a relatively early stage of patent litigation” where trial was set for a year later, “there ha[d] been no depositions, the claim construction hearing ha[d] not occurred, and significant work, including substantive expert discovery and summary judgment motions, remain[ed] to be completed after the claim construction hearing”); *PersonalWeb Techs., LLC v. Facebook, Inc.*, 2014 WL 116340, at *3 (N.D. Cal. Jan. 13, 2014) (finding patent infringement case was in its “early stage” where “expert discovery, summary judgment, pre-trial preparation, and trial itself . . . lie[d] ahead”); *Amsted Rail Co., Inc. v. Hum Indus. Tech., Inc.*, 2023 WL 2864553, at *3 (E.D. Mo. Apr. 10, 2023) (finding the case at its “very early stages” and that this factor strongly favored a stay where “no depositions ha[d] been taken” and the “bulk of fact and expert discovery, as well as the majority of the claim construction proceedings, still lie ahead”);

Sec. People, Inc. v. Ojmar US, LLC, 2015 WL 3453780, at *2 (N.D. Cal. May 29, 2015) (finding the stage of litigation factor “heavily” favored a stay where “[v]irtually all the activity in this action (e.g., the filing of the answer and counterclaims, the first case management conference, service of [plaintiff]’s infringement contentions) has occurred in the last three months.”). Because “there is more work ahead of the parties and the Court than behind the parties and the Court,” this factor strongly supports a stay. *Tierravision, Inc. v. Google, Inc.*, 2012 WL 559993, at *2 (S.D. Cal. Feb. 21, 2012).

II. A stay is likely to simplify the issues.

“The second factor for determining the appropriateness of a stay is whether it would simplify the issues in the litigation and facilitate the trial of the case.” *Graphic Packaging Int’l, Inc. v. Inline Packaging, Inc.*, 2016 WL 11641977, at *5 (D. Minn. Apr. 6, 2016) (quoting *Arctic Cat Inc. v. Polaris Indus. Inc.*, 2015 WL 6757533, at *3 (D. Minn. Nov. 5, 2015)). Courts recognize several efficiencies flowing from PTAB review, including:

- (1) “all prior art presented to the Court will have been first considered by the PTO, with its particular expertise”;
- (2) “many discovery problems related to the 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 re-examination may encourage a settlement without the further use of the Court”;
- (5) “the record of re-examination 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 pre-trial conferences after a reexamination”; and
- (7) “the cost will likely be reduced for both the parties and the Court.”

Intellectual Ventures II LLC v. U.S. Bancorp, 2014 WL 5369386, at *5–6 (D. Minn. Aug. 7, 2014).

Considering the numerous benefits following prior PTAB review, “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 validity, enforceability or infringement of those patents.” *Card Tech. Corp. v. DataCard Corp.*, 2007 WL 551615, at *3 (D. Minn. Feb. 21, 2007); *see also 3M Innovative Props. Co. v. Dupont Dow Elastomers LLC*, 2005 WL 2216317, at *2 (D. Minn. Sept. 8, 2005) (“Granting a stay will promote judicial economy by ‘maximiz[ing] the likelihood that neither the court nor the parties expend their assets addressing invalid claims.’”) (quoting *Softview Computer Prods. Corp. v. Haworth, Inc.*, 56 U.S.P.Q.2d 1633, 1636 (S.D.N.Y. 2000)). These are efficiencies that would result if a stay is entered here.

As of October 2, 2026, Duke has filed seven (7) IPR petitions. **Ex. 3** (Eidson Decl.), at ¶¶ 4–5. Each IPR petition is lengthy with thousands of pages of supporting documents. *See, e.g., Ex. 2* ('002 IPR Petition). The IPR petitions are also compelling. For example, Duke began selling its own IRHS product (*i.e.*, the Duke “InfraRed HeatSink” or “IRHS”) years before Marmon filed its first Asserted Patent application. **Ex. 2** ('002 IPR Petition), at pg. 3 (noting that Duke's IRHS product literature was shipped with hundreds of units to Duke's customers from February through September of 2014). The IRHS was a multi-zone food holding bin having one or more food holding compartments for receiving pans



of food, each compartment having multiple food holding zones with each zone having independently controllable heating:

See **Exhibit 4** (Duke IRHS Operators Manual – Burger King).⁵

Although it was (and is) Duke’s direct competitor, Marmon never presented information about Duke’s IRHS product to the United States Patent and Trademark Office (the “USPTO”). Marmon’s Asserted Patents issued because the USPTO was unaware that Duke had already created and commercialized all the core technology claimed in the Asserted Patents. The PTAB will now sort whether the Asserted Patents were predated by Duke’s earlier technology offering.

In addition, the IPR proceedings will address certain claim construction issues (*e.g.*, relating to where the “planar surface” extends) that may be relevant for both invalidity and non-infringement purposes. *See, e.g., Ex. 2* (’002 IPR Petition), at pg. 35 (demonstrating how Duke’s IRHS practices the “substantially planar surface” 1.c.2 claim limitation contained in Claims 1 and 13 of the ’002 Patent). Should the Court not stay these proceedings and issue its own claim construction order, the Court may need to revisit its claim construction order—and subsequent orders like summary judgment that rely on that order—due to further development of the intrinsic record of the Asserted Patents at the PTAB. In addition, if the parties have prepared expert reports utilizing the Court’s construction, and that construction changes, the parties will be forced to spend resources re-doing work and analysis. All of these inefficiencies can be avoided if the case is stayed while the Court waits for the PTAB’s guidance.

⁵ As noted in the bottom right corner of the image, the Burger King IRHS manual has been submitted to the PTAB as disabling prior art.

In the event the PTAB institutes IPRs on the utility patents,⁶ there is a high likelihood that this case will be simplified for each of the foregoing reasons considering the PTAB's decision to institute signals that "there is a reasonable likelihood that [Duke] would prevail with respect to at least 1 of the claims" challenged. 35 U.S.C. § 314(a). To conserve judicial and party resources and enable the PTAB to weigh in with its experience and expertise, the Court should stay this case.

III. Granting a stay will not unduly prejudice Marmon or give Duke a clear tactical advantage.

The final factor district courts consider when deciding whether to stay a case pending IPR proceedings is whether granting a stay would unduly prejudice the nonmovant or give the movant a clear tactical advantage. This factor typically favors denying a stay motion where "the movant inexplicably or unjustifiably delayed seeking reexamination, or where the stay will merely delay the proceedings." *U.S. Bancorp*, 2014 WL 5369386, at *4 (citing *Ecolab, Inc. v. FMC Corp.*, 2007 WL 1582677, at *1 (D. Minn. May 30, 2007)). Courts also consider whether the parties are "direct competitors, whether the non-moving party seeks solely monetary damages or instead seeks injunctive relief, and whether the moving party possessed a 'dilatory motive' or is otherwise attempting to gain an unfair tactical advantage." *ZeaVision, LLC*, 2022 WL 715013, at *4 (quoting *Masa*, 2016 WL 2622395, at *3). On balance, this factor weighs in favor of a stay.

⁶ Currently, the PTAB has not decided whether to institute IPR proceedings Duke's petitions. *Ex. 3* (Eidson Decl.), at ¶ 6. The institution decision on the '002 Patent is expected by January 2027 or sooner. The remaining institution decisions are expected by April or May 2027. *See* 37 C.F.R. § 42.107(b) (requiring Patent Owner's Preliminary Response in 3 months from Notice of Filing Date Accorded, which is late January to early February 2027); 35 U.S.C. § 314(b) (requiring institution decision within 3 months after Patent Owner's response, which is late April or early May 2027). The pendency of an IPR institution decision has not stopped courts in this District from staying patent infringement litigation. *See ZeaVision, LLC*, 2022 WL 715013, at *2 (staying patent infringement suit despite the absence of an IPR institution decision); *Masa*, 2016 WL 2622395, at *2 (same); *Amsted Rail Co.*, 2023 WL 2864553, at *4 (same).

First, the mere fact Duke and Marmon are direct competitors is not controlling. *See ZeaVision, LLC*, 2022 WL 715013, at *4 (“Although ZeaVision claims it would be unduly prejudiced by a stay because Bausch is a direct competitor, the parties’ relationship does not necessarily determine the appropriate weight to be given to the third factor.”); *see also Carlson Pet Prods., Inc. v. N. States Indus., Inc.*, 2018 WL 1152001, at *5 (D. Minn. Mar. 5, 2018) (finding that the appropriate weight to be assigned the prejudice factor was not “decisively resolved” by the parties’ competitive relationship, but required “a focus on the specific record presented”); *see also Graphic Packaging Int’l, Inc.*, 2016 WL 11641977, at *3 (noting that “absent a showing that the non-movant competitor would in fact suffer *some specific harm* that could not be remedied by money damages,” courts find the “mere conclusory assertion” that parties are direct competitors insufficient to show a stay would cause undue prejudice) (emphasis added). Indeed, as *ZeaVision* correctly noted: “[a]ny delay could, of course, prejudice [the nonmovant] in the marketplace because [the parties] are competitors,” but “money damages and a permanent injunction are ‘ordinarily adequate to remedy the harm caused by infringement, including loss of sales and market share.’” *ZeaVision, LLC*, 2022 WL 715013, at *4 (quoting *Oticon A/S*, 2015 WL 5752429, at *2 (D. Minn. Aug. 5, 2015)).

Next, Marmon seeks neither a temporary restraining order nor a preliminary injunction—only a **permanent** injunction. *See* Doc. [55] (First Amend. Compl.), at pg. 27, ¶ C. This fact weighs against the finding that a stay would cause undue prejudice. *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1319 (Fed. Cir. 2014) (finding the district court clearly erred in finding undue prejudice factor weighed heavily against a stay where patentee failed to move for preliminary injunctive relief); *VData, LLC v. Aetna, Inc.*, 2006 WL 3392889, at *5 (D. Minn. Nov.

21, 2006) (finding no undue prejudice to warrant denying a stay where plaintiffs “ha[d] not sought a preliminary injunction”).

Next, in addition to undue prejudice to the nonmovant, courts also consider whether the moving party “possessed a ‘dilatory motive’ or is otherwise attempting to gain an unfair tactical advantage.” *Masa*, 2016 WL 2622395, at *3 (quoting *VirtualAgility*, 759 F.3d at 1318–19). Here, there is no evidence of a dilatory motive or tactical advantage to Duke if a stay is granted. As noted, Duke had filed all its IPR petitions by October 2, 2026—just weeks after the Parties’ Rule 16 conference and the issuance of the case management order. *See* Docs. [51], [52]. To date, the case has made little to no progress. *See* Section I, *supra*; *see also Masa*, 2016 WL 2622395, at *1, 3 (finding no undue delay or dilatory motive where defendant moved to stay about nine months after the case was filed, but before claim construction briefing began). To the extent Marmon attempts to cast aspersions at Duke for not filing its IPR petitions sooner, Duke needed time to prepare its lengthy IPR petitions accounting for the seven utility patents and nearly 200 claims Marmon has put at issue in this lawsuit. *See* Docs. [1], [55]; *see also Ex. 1* (Marmon’s Prelim. Infring. Cont.), at pg. 2. IPR petitioners do not get a “do over.” You get one chance to prepare and file a petition for IPR. Duke should not be criticized for taking care, and time, to prepare thoughtful petitions that accounted for all of the claims that Marmon asserts here.

CONCLUSION

All factors favor a stay. This case has made little progress since filing. Discovery just began, and all significant case markers—*i.e.*, non-infringement and invalidity contentions, claim construction briefing, *Markman* hearing, expert disclosures, depositions, and summary judgment practice—all lie ahead. *See* Doc. [52]. Assuming Marmon prevails, there is no threat of undue prejudice which cannot be remedied by an award of damages and permanent injunctive relief. And

there is no evidence that the timing of Duke's Motion shows a dilatory motive or effort to secure a tactical advantage. Duke respectfully requests that the Court grant Duke's Motion to Stay Pending *Inter Partes* Review Proceedings, stay this case pending resolution of all of Duke's IPR petitions, and enter any additional relief deemed just and proper.

Dated: October 6, 2026

Respectfully submitted,

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