

1 William E. Thomson, Jr. (SBN 47195)
BROOKS KUSHMAN P.C.
601 S. Figueroa Street, Suite 2080
2 Los Angeles, California 90017-5780
Phone: (213) 622-3003
3 wthomson@brookskushman.com

4 Marc Lorelli (Admitted *pro hac vice*)
mlorelli@brookskushman.com
5 John P. Rondini (Admitted *pro hac vice*)
jrondini@brookskushman.com
6 Mark A. Cantor (Admitted *pro hac vice*)
mcantor@brookskushman.com
7 John S. LeRoy (Admitted *pro hac vice*)
jleroy@brookskushman.com

8 **BROOKS KUSHMAN P.C.**
1000 Town Center, 22nd Floor
9 Southfield, MI 48075
Phone: (248) 358-4400

10
11 *Attorneys for Plaintiff*
Ancora Technologies, Inc.

12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 ANCORA TECHNOLOGIES,
16 INC.

17 Plaintiff,

18 v.

19 TCT MOBILE (US) INC.,
HUIZHOU TCL MOBILE
COMMUNICATION CO.,
20 LTD., and SHENZHEN TCL
CREATIVE CLOUD
21 TECHNOLOGY CO., LTD.,

22 Defendants.

Case No. 8:19-cv-02192-GW-ASx
(LEAD CASE)

Consolidated Case
No. 2:20-cv-01252-GW-ASx

PLAINTIFF'S BRIEF IN
OPPOSITION TO DEFENDANTS'
MOTION TO STAY PENDING
INTER PARTES REVIEW

Hearing Date: November 12, 2020
Time: 8:30 am
Before Hon. George H. Wu
United States Courthouse
Courtroom: 9D, 9th Floor

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

TABLE OF AUTHORITIES ii

I. INTRODUCTION 1

II. CONCISE STATEMENT OF FACTS 3

III. ARGUMENT 4

 A. Legal Standards 4

 B. Defendants have not carried their burden of showing a stay is warranted 5

 1. This case is not in infancy 5

 2. A stay will not simplify issues 7

 3. Ancora will be unduly prejudiced if Defendants’ motion is granted 10

 4. The USPTO’s “recent changes” are not only irrelevant, but also weight against granting a stay 12

IV. CONCLUSION13

TABLE OF AUTHORITIES

Cases

1

2

3 *Ambato Media, LLC v. Clarion Co., Ltd.*, No. 2:09-cv-242-JRG,
2012 U.S. Dist. LEXIS 7558 (E.D. Tex. Jan. 23, 2012) 11

4

5 *Ancora Techs. v. Apple, Inc.*,
744 F.3d 732 (Fed. Cir. 2014)..... 3

6 *Ancora Techs. v. HTC Am., Inc.*,
908 F.3d 1343 (Fed. Cir. 2018) 3

7

8 *Carl Zeiss A.G. v. Nikon Corp.*, No. 2:17-cv-03221-RGK-MRW,
2018 U.S. Dist. LEXIS 199080 (C.D. Cal. Feb. 9, 2018) 9

9 *Comcast Cable Communs. Corp. v. Finisar Corp.*, No. C 06-04206 WHA,
2007 U.S. Dist. LEXIS (N.D. Cal. Apr. 5, 2007) 5

10

11 *Date, Inc. v. AMP Plus, Inc.*, No. 2:18-cv-07090-CAS (GJSx),
2019 U.S. Dist. LEXIS 224636 (C.D. Cal. Dec. 13, 2010)..... 5

12 *e.Digital Corp. v. Dropcam, Inc.*, No. 14-cv-04922-JST,
2016 U.S. Dist. LEXIS 20609 (N.D. Cal. Feb. 18, 2016)..... 11

13

14 *Ellison Educ. Equip., Inc. v. Stephanie Barnard Designs, Inc.*,
No. SA CV 18-2043-DOC (ADSx),
2020 U.S. Dist. LEXIS 80901 (C.D. Cal. Jan. 13, 2020).....4, 7

15

16 *Ethicon, Inc. v. Quigg*,
849 F.2d 1422 (Fed. Cir. 1988)..... 4

17 *Everlight Elecs. Co. v. Bridgelux, Inc.* No. C 17-03363 JSW,
2018 U.S. Dist. LEXIS 221485 (N.D. Cal. Sep. 14, 2018)..... 8

18

19 *Intellectual Ventures I LLC v. Toshiba Corp.*, No. 13-453-SLR/SRF,
2015 U.S. Dist. LEXIS 63859 (D. Del. May 15, 2015) 13

20 *Interwoven, Inc. v. Vertical Computer Sys.*, No. C-10-04645 RS,
2012 U.S. Dist. LEXIS 30946 (N.D. Cal. Mar. 8, 2012) 7

21

22 *Invensas Corp. v. Samsung Elecs. Co.*, No. 17-1363-MN-SRF,
2018 U.S. Dis. LEXIS 169999 (D. Del. Oct. 2, 2018)..... 13

23 *Kerr Corp. v. Ultradent Prods.*, No. SACV 14-00236-CJC (ANx),
2014 U.S. Dist. LEXIS 182892 (C.D. Cal. Nov. 13, 2014) 5

24

1 *Landis v. N. Am. Co.*,
299 U.S. 248 (1936)..... 5

2 *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-CV-1058-WCB,
3 2015 U.S. Dist. LEXIS 29573 (E.D. Tex. Mar. 11, 2015) 11

4 *Otto Bock Health Care LP v. Ossur HF*, No. SACV 13-00891-CJC(ANx),
2013 U.S. Dist. LEXIS 1884428 (C.D. Cal. Dec. 16, 2013)..... 9, 12

5 *Polaris Innovations, Ltd v. Kingston Tech. Co.*, No. SACV 16-00300-CJC(RAOx),
6 2016 U.S. Dist. LEXIS 186795 (C.D. Cal. Nov. 17, 2016) 9

7 *Realtime Data LLC v. Action Corp.*, No. 6:15-CV-463-RWS-JDL,
2016 U.S. Dist. LEXIS 77566 (E.D. Tex. June 14, 2016) 12

8 *Rensselaer Polytechnic Inst. v. Apple Inc.*, No. 1:13-CV-0633,
9 2014 U.S. Dist. LEXIS 5186 (N.D. N.Y. Jan. 15, 2014) 10

10 *Robert Bosch Healthcare Sys., Inc. v. Cardiocom, LLC*, No. C-14-1575 EMC,
2014 U.S. Dist. LEXIS 92792 (N.D. Cal. July 3, 2014) 4

11 *Speakware, Inc. v. Microsoft Corp.*, No. CV 18-1293-DOC,
12 2019 U.S. Dist. LEXIS 74579 (C.D. Cal. Feb. 21, 2019) 8

13 *Telesign Corp. v. Twilio, Inc.*, No. CV 15-3240,
2016 U.S. Dist. LEXIS 185572 (C.D. Cal. Mar. 9, 2016) 11

14 *Tessera Advanced Techs., Inc. v. Samsung Elecs. Co.*, No. 2:17-CV-00671-JRG,
15 2018 U.S. Dist. LEXIS 120999 (E.D. Tex. July 19, 2018) 13

16 *Ultratec, Inc. & Captel, Inc. v. Sorenson Commc 'ns, Inc.*, No. 13-cv-346-bbc,
2013 U.S. Dist. LEXIS 162459 (W.D. Wis. Nov. 14, 2013) 13

17 *Universal Elecs., Inc. v. Universal Remote Control, Inc.*,
18 943 F. Supp. 2d 1028 (C.D. Cal. 2013)5, 7, 11

19 **Statutes**

20 28 U.S.C. § 1498.....2, 9

21 **Rules**

22 Fed. R. Civ. P. 1..... 12

23

24

I. INTRODUCTION

1
2 Plaintiff Ancora Technologies, Inc. (“Ancora”) respectfully submits this
3 Response in Opposition to Defendants TCT Mobile (US) Inc., Huizhou TCL Mobile
4 Communication Co., Ltd., and Shenzhen TCL Creative Cloud Technology Co., Ltd.
5 (collectively “TCL”) Motion to Stay Pending *Inter Partes* Review. Dkt. No. 59
6 (hereinafter, “Defendants’ Motion”). Defendants’ Motion should be denied.

7 Defendants’ Motion is premature. For this reason alone, this Court should deny
8 Defendants’ Motion. As Defendants recognize, courts rarely stay a case pending *inter*
9 *partes* review which may or may not be instituted. At the very earliest, the PTAB will
10 not decide whether to institute review until March 10, 2021. *If instituted*, it will take
11 at least another 12 months for the PTAB to issue its Final Written Decision—which
12 again may or may not simplify some of the issues in question here. Defendants’ mere
13 *filing* of a petition is simply too speculative to merit a stay.¹

14 The stage of proceedings in the present case also does not favor a stay. Earlier
15 this year, the parties exchanged infringement, invalidity, and damages contentions.
16 The parties are also engaged in the discovery process. And earlier this month, the
17 parties completed claim construction with the Court issuing a tentative claim
18 construction ruling (Dkt. No. 60) prior to the *Markman* hearing. While this Court has
19 not yet issued its post-*Markman* Scheduling Order, based on this Court’s historical
20 average time-to-trial for patent infringement cases, this case may conclude long before
21 any PTAB Final Written Decision. In contrast, if this Court grants a stay in favor of a

22 _____
23 ¹ Currently, the institution rate for IPR petitions filed in 2020 is 56%. (Ex. 1, pg. 7.)
24 The current USPTO statistics confirm that IPR institution is not certain and even more
unlikely for a patent such as the ‘941 patent that has been subjected to multiple

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.