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Creative Cloud Technology Co., Ltd.  
9

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12

13 ANCORA TECHNOLOGIES, INC.,  
14 Plaintiff,

15 v.

16 TCT MOBILE (US) INC., HUIZHOU  
17 TCL MOBILE COMMUNICATION  
CO. LTD., and SHENZHEN TCL  
18 CREATIVE CLOUD TECHNOLOGY  
CO., LTD.,

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

Case No. 2:20-cv-01252-GW-ASx  
(CONSOLIDATED CASE)

Judge: Hon. George H. Wu  
Judge: Hon. Alka Sagar

**TCL'S REPLY MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION TO  
STAY PENDING *INTER PARTES*  
REVIEW**

1 **I. INTRODUCTION**

2 The Court should grant TCL's Motion to Stay Pending *inter partes* review.  
3 Two separate petitions are pending institution before the Patent Office, and for all  
4 claims of the only patent asserted in this lawsuit. Both petitions will receive  
5 institution decisions within five months. After accusing a third-party smartphone  
6 maker of infringing the asserted patent based on Android functionality, Ancora  
7 waited **three years** to bring nearly identical allegations against TCL in this lawsuit.  
8 Ancora waited so long that the patent had **expired** by the time it brought this  
9 lawsuit. There is no way that Ancora can reasonably claim that waiting a few more  
10 months in the name of conserving Court and party resources will effect any  
11 prejudice on a non-practicing entity like Ancora.

12 Moreover, the change in policy by the Patent Office within the last year  
13 applying its *NHK* and *Fintiv* precedents warrants a pre-institution stay in a way that  
14 this Court did not have occasion to consider in its past decisions. As TCL  
15 explained in its opening brief, the Patent Office's institution decisions are now  
16 highly dependent on the stage of the district court case, and denying a stay in this  
17 case is likely effective to cause denial of TCL's *inter partes* review petition without  
18 the merits ever being considered. (TCL Opening Br. (Dkt. No 59-1) at 12–17.)

19 Ancora's primary responses are that this case is actually very far along  
20 (Opposition Br. (Dkt. No. 63) at 5–7), and that TCL should have filed its petition  
21 for *inter partes* review sooner. (*Id.* at 12–13.) Regarding the former, Ancora did  
22 not even bother to serve any discovery requests until **two days before** the instant  
23 motion was filed. This case is not far along. Regarding the latter, TCL filed its  
24 *inter partes* review petition within the one-year period that Congress saw fit to  
25 allow a defendant in a patent infringement lawsuit, and Ancora admits that TCL  
26 filed its petition based on prior art that it discovered **about four months** prior to the  
27 filing. (Opposition Br. at 6.) Ancora does not even attempt to reconcile its delay of  
28

1 **three years** in bringing this lawsuit with its complaint about TCL taking a  
2 reasonable four months to file its petition for *inter partes* review.

3 For the reasons stated in TCL's Opening Brief and here, the unique facts of  
4 this case warrant the granting of a stay at this stage. TCL respectfully requests the  
5 Court grant the Motion on that basis.

## 6 **II. ARGUMENT**

### 7 **A. The Early Stage of the Case Favors a Stay.**

8 Ancora disagrees that this case is in its infancy, but the facts belie Ancora's  
9 assertion. Where no depositions have been scheduled and expert and fact discovery  
10 will presumably not close for many months, a case is still in its earliest stages.

11 *Polaris PowerLED Techs., LLC v. Hisense Elecs. Mfg. Co. of Am. Corp. et al.*, No.  
12 20-00123, 2020 WL 6064638, at \*2 (C.D. Cal. Aug. 26, 2020). The Court here has  
13 yet to set a trial date and deadlines for fact and expert discovery. As TCL pointed  
14 out in its opening brief (*see* TCL Opening Br. at 7), courts have routinely stayed  
15 cases at this stage of the litigation. *See Wonderland Nursery Goods Co. v. Baby*  
16 *Trend, Inc.*, No. 14-01153, 2015 WL 1809309, at \*3 (C.D. Cal. Apr. 20, 2015)  
17 (finding the stage of litigation weighed in favor of a stay where fact discovery was  
18 underway, expert discovery had not begun, and a trial date had not yet been set);  
19 *PersonalWeb Techs., LLC v. Facebook, Inc.*, 2014 WL 116340, at \*3 (N.D. Cal.  
20 Jan. 13, 2014) (granting stay although "a claim construction order has been issued  
21 and the close of fact discovery is fast approaching" because "a substantial portion  
22 of the work—expert discovery, summary judgment, pre-trial preparation, and trial  
23 itself—lies ahead").

24 The cases Ancora cites in the Opposition are inapposite. (*See* Opposition Br.  
25 at 7 (Dkt. No. 63).) For instance, in the *DMF, Inc. v. AMP Plus, Inc.* case, trial was  
26 approximately four months away, fact discovery had closed, and expert discovery  
27 was scheduled to close in two weeks from when the Court issued its order denying  
28 defendant's motion for a stay. No. 2:18-cv-07090, 2019 WL 9077477, at \*7 (C.D.

1 Cal. Dec. 13, 2019). In *Interwoven, Inc. v. Vertical Computer Sys., Inc.*, it was the  
2 *plaintiff* who moved to stay the case pending reexamination, which it sought a year  
3 and three months into litigation and to obtain a tactical advantage after receiving an  
4 unfavorable claim construction order. No. C 10-04645, 2012 WL 761692, at \*2  
5 (N.D. Cal. Mar. 8, 2012).

6 In contrast, the instant case is in its early stages. The parties have performed  
7 mandatory exchanges of infringement contentions and invalidity contentions, but  
8 neither party has supplemented those disclosures. Neither party had exchanged  
9 written discovery prior to the filing of the Motion other than: (1) TCL seeking the  
10 previous invalidity contentions Ancora received in its many other lawsuits, and (2)  
11 Ancora serving its first discovery requests *two days before* the filing of the instant  
12 Motion, to which TCL's response is not due until two weeks from now (November  
13 12, 2020). Ancora clearly took its time in conducting discovery and cannot  
14 credibly deny the discovery is far from complete.

15 This factor weighs strongly in favor of a stay.

16 **B. A Stay Pending *Inter Partes* Review Would Simplify the Issues in**  
17 **This Case.**

18 Ancora argues that it is merely speculative that *inter partes* review trial will  
19 be instituted. But any stay is at least in part speculative. A stay pending settlement  
20 speculates on the possibility that the parties will finalize settlement papers. A stay  
21 pending appeal speculates on affirmance of the court's decision. A stay pending  
22 *inter partes* review is speculative of the results of the *inter partes* review  
23 proceeding, regardless of whether the stay occurs pre-institution or post-institution.  
24 TCL's request for a stay is of course at least in part speculative, because it is a  
25 request for stay and not dismissal.

26 Ancora further argues that the Court must deny TCLs' motion because the  
27 '941 Patent "has already withstood significant scrutiny before both the USPTO and  
28 courts including twice before the Federal Circuit." (Opposition Br. at 8.) Ancora

1 has conveniently omitted the fact that the '941 Patent has *never* been the subject of  
2 *inter partes* review. Only in the *ex parte* reexamination did the tribunal in question  
3 consider prior art-based invalidity of the '941 Patent. The tribunal in an *ex parte*  
4 reexamination is a single patent examiner with no participation by the adverse  
5 party. Notably, TCL's petition for *inter partes* review does not rely on any of the  
6 prior art considered during that *ex parte* reexamination. In fact, the prior art  
7 references cited in TCL's *inter partes* review petition have *never* been before the  
8 USPTO in any prior proceeding. The *inter partes* review proceeding has a high  
9 likelihood of success as the prior art references disclose every element of every  
10 asserted claim.

11 Even if, arguendo, the simplification of issues is speculative, the potential to  
12 save judicial resources favors a stay. *Polaris PowerLED Techs., LLC*, 2020 WL  
13 6064638, at \*2 (granting motion to stay despite denials of institution in prior *inter*  
14 *partes* review proceedings). Because TCL has petitioned for review of all the  
15 claims asserted in this action, the outcome of the *inter partes* review may  
16 significantly narrow the scope and complexity of the litigation and the parties' and  
17 Court's resources are likely to be conserved. And even if some asserted claims  
18 survive, this case would be narrowed substantially—and inconsistent positions  
19 taken by Ancora as to claim scope in attempting to survive *inter partes* review  
20 could be addressed by this Court or a jury. See *PersonalWeb Techs., LLC v.*  
21 *Facebook, Inc.*, No. 5:13-CV-01356-EJD, 2014 WL 116340, at \*4 (N.D. Cal. Jan.  
22 13, 2014) (“Even if the PTAB affirms the validity of every asserted claim ... these  
23 cases would still benefit as such a strong showing would assist in streamlining the  
24 presentation of evidence and benefit the trier of fact by providing the expert opinion  
25 of the PTO. Indeed, allowing these invalidity arguments to be determined once,  
26 employing the specialized expertise of the PTO, produces the exact results—  
27 avoiding duplicative costs and efforts and averting the possibility of inconsistent  
28 judgments—intended by the AIA and previous procedures.”)

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