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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

LYFT, INC.

Plaintiff,

v.

AGIS SOFTWARE DEVELOPMENT LLC,

Defendant.

Case No. 5:21-cv-04653-BLF

**PLAINTIFF LYFT, INC.’S AMENDED
REPLY IN SUPPORT OF ITS MOTION
TO STAY PENDING PATENT OFFICE
PROCEEDINGS INVOLVING THE
PATENTS-IN-SUIT**

Date: August 11, 2022
Time: 9:00 a.m.
Judge: Hon. Beth Labson Freeman
Trial Date: October 16, 2023
Courtroom: 3, Fifth Floor

I. INTRODUCTION

None of the arguments presented by AGIS in its Opposition (Dkt. 120) (“Opp’n”) to Lyft’s Motion to Stay (Dkt. 103) (“Motion”) overcome the virtual certainty of modification to the asserted claims, which would streamline the issues in this case and avoid the time-consuming proceeding that would be rendered duplicative or unnecessary following the pending Patent Office proceedings. As an initial matter, any argument concerning the ’970 Patent is a red herring. AGIS has not asserted any valid claim of the ’970 Patent against Lyft, and thus it is currently immaterial to this Court’s analysis concerning a stay. With respect to the remaining four patents, the stay factors overwhelmingly favor granting a stay in this case, largely based on undisputed evidence. First, AGIS’s argument that it is too early to know whether the Patent Office proceedings will result in a simplification of the issues is not persuasive as the Patent Office has already confirmed that the invalidity bases articulated in Lyft’s IPR petitions and the EPR requests have merit, and historical Patent Office statistics corroborate Lyft’s contention that the Patent Office proceedings will almost certainly impact the scope of this case. Second, this case is in the early stages of litigation, where motions on the pleadings are still pending and the parties have not engaged in merits discovery. Lastly, because AGIS is seeking a monetary award for any alleged infringement, AGIS has failed to articulate undue prejudice supported by caselaw that would result from a stay of this case.

II. ARGUMENT

A. Simplification of the Issues

A stay will almost certainly simplify the issues in the instant case. Indeed, as Lyft pointed out in its Motion, there is a ~99.8% chance that at least one of the claims asserted in this action will either be canceled or amended as a result of the pending Patent Office proceedings. *See* Motion at 6. The Patent Office has already determined that the invalidity bases identified in each of the IPR petitions and EPR requests have merit, thus undermining any argument that simplification is speculative at this point. *See* Dkts. 103-3; 103-4; 103-7; 103-8; 103-9. Specifically, with respect to the IPR petitions concerning the ’100 and ’838 Patents, the Patent Office previously instituted IPRs on precisely the *same* invalidity grounds presented in Lyft’s petitions. *See* Dkts. 103-7; 103-8; 103-9. As this Court has previously recognized, “the PTAB’s prior institution decisions are strong

1 indicators that IPR will again be instituted here.” *Lighting Sci. Grp. Corp. v. Shenzhen Jiawei*
2 *Photovoltaic Lighting Co., Ltd.*, No. 16-cv-03886-BLF, 2017 U.S. Dist. LEXIS 94182, at *9 (N.D.
3 Cal. June 19, 2017). In *Lighting Sci.*, the patent challenger argued that there was a high likelihood
4 of IPR institution based on the substantive overlap between already-instituted IPR petitions and non-
5 instituted IPR petitions. *See generally, id.* The Court specifically opined that it seemed “highly
6 likely” that the “PTAB repeats its previous institution decisions” concerning the same claims and
7 grounds of the challenged patents. *Id.* at *8. The circumstances presented here are just as in *Lighting*
8 *Sci.*, as Lyft’s IPR petitions substantially overlap with the previously-instituted Uber petitions.

9 Likewise, it is highly likely (and not speculative) that formal rejections concerning the
10 claims of the ’728 and ’724 Patents are forthcoming in the relevant EPRs. The Patent Office issued
11 its initial findings concerning the patentability of these claims in view of the grounds raised in the
12 respective EPR requests, and AGIS failed to contest them by its extended deadline to do so. *See*
13 *Motion at 2.* It seems improbable that the Patent Office would change course at this stage and
14 decline to issue rejections in the EPRs without any opposing argument from AGIS.

15 Though AGIS contests the likelihood of IPR institutions and EPR rejections (which, as Lyft
16 demonstrates above, are actually *likely* to occur), AGIS does not challenge that the original, asserted
17 claims are unlikely to survive IPR and/or EPR. Indeed, AGIS recognizes in its Opposition that
18 original claims survive EPR only in the minority of cases (~20%), and that it is far more likely that
19 claims will be amended or canceled during reexamination. *See Opp’n at 5-6.* AGIS also does not
20 dispute that at least one challenged claim in an IPR petition is found to be unpatentable about 80%
21 of the time. *Compare Motion at 6 with Opp’n.* These Patent Office statistics make it virtually
22 certain that the pending IPR and EPR proceedings will impact the scope of this case, and proceeding
23 in parallel or in advance of the conclusions from the Patent Office proceedings will result in
24 duplicative and unnecessary efforts by the parties and this Court.

25 Finally, this Court should ignore any argument by AGIS regarding the implication of the
26 ’970 Patent on Lyft’s request for a stay. *See, e.g., Opp’n at 4.* As Lyft originally argued in its
27 Motion, AGIS has, to date, only asserted *invalid* claims of the ’970 Patent, and has not alleged that
28 Lyft infringes any *valid* claim of the ’970 Patent. *See Motion at 1; see also Dkts. 84-6 & 84-12*

1 (Exs. E & K) (showing AGIS's infringement allegations regarding invalid claims of the '970
2 Patent). Given the lack of any allegations concerning valid claims of the '970 Patent, it is irrelevant
3 to Lyft's Motion that the '970 is not presently involved in a Patent Office proceeding.

4 In view of the foregoing, the simplification of issues factor favors a stay.

5 **B. Stage of the Case**

6 This case is in its initial stages. At present, the parties await rulings on various gating
7 motions, including Lyft's Motion for Leave to File its First Amended Complaint (Dkt. 78) and
8 AGIS's Motion for Leave to Amend Infringement Contentions (Dkt. 84). These motions won't be
9 heard until later this summer, and no discovery beyond the granted jurisdictional discovery has
10 occurred. Courts in this District routinely grant motions to stay pending the outcome of Patent
11 Office proceedings in cases where the litigation is in comparable or later stages of the case. *See*
12 Motion at 5. A stay is particularly warranted here where the Court has decided not to compel AGIS
13 to comply with Patent L.R. 3-2 while it disputes jurisdiction. Dkt. 129 at 3.

14 **C. Undue Prejudice**

15 1. Timing of the USPTO Review Requests

16 AGIS's arguments concerning the timing of USPTO review requests are directed solely at
17 Lyft's filing of its IPR petitions. *See* Opp'n at 6-7. Specifically, AGIS harps on the fact that Lyft
18 filed its IPR petitions "exactly one year from the date of the filing of the complaint against Lyft in
19 the EDTX," ostensibly suggesting that doing so was unreasonable. *Id.* at 6. But, as explained in its
20 Motion, Lyft acted diligently and reasonably in filing its IPR petitions. *See* Motion at 8-9; *see also*
21 *DSS Tech. Mgmt. v. Apple, Inc.*, No. 14-cv-05330-HSG, 2015 U.S. Dist. LEXIS 57704, at *11 (N.D.
22 Cal. May 1, 2015) (declining to "read a 'dilatatory motive' into Defendant's timely exercise of its
23 statutory rights"). Lyft filed its IPR petitions well within the statutory timeframe, about one month
24 before its bar date and shortly after the Patent Office instituted review of Uber's IPR petitions. *See*
25 35 U.S.C. § 315(b); *Brinkmann Corp. v. A&J Mfg., LLC*, No. IPR2015-00056 (P.T.A.B. Mar. 23,
26 2015) (recognizing that a petitioner is deemed to have been served with the complaint on the date
27 that petitioner's waiver of service is filed with the district court); Waiver of the Service of Summons,
28 *AGIS Software Development LLC v. Lyft, Inc.*, No. 2:21-cv-00024-JRG-RSP (E.D. Tex. Feb. 26,

1 2021), ECF No. 10. In fact, but for AGIS’s decision to dismiss the instituted Uber IPRs following
2 settlement with Uber, Lyft’s IPRs would have been joined with Uber’s IPRs and followed the same
3 schedule. AGIS’s decision to terminate the Uber IPRs delayed resolution of Lyft’s IPRs by at least
4 six months, and belie any argument that it would be prejudiced by delay while Lyft’s IPRs proceed.

5 The fact that Lyft’s co-defendant Uber filed its IPR petitions before Lyft—a fact AGIS raises
6 in its Opposition—has no bearing on Lyft’s diligence in filing its own IPR petitions. *See* Opp’n at
7 7; *Asetek Holdings, Inc. v. Cooler Master Co.*, 2014 U.S. Dist. LEXIS 47134, *15-16 (N.D. Cal.
8 Apr. 3, 2014) (“Provided an accused infringer is diligent, delay due to preparing an IPR petition . . .
9 does not unduly prejudice the patent owner”). As explained previously, AGIS’s actions with respect
10 to the Uber IPRs resulted in the delay that AGIS is now seeking to leverage to avoid a stay.

11 Accordingly, this factor weighs against a finding of undue prejudice.

12 2. Timing of the Stay Request

13 At this Court’s suggestion, Lyft filed its Motion shortly after deciding whether to file IPRs.
14 *See* Ex. 17 (Jan. 27, 2022 Tr. of Proceedings) at 53:24-54:2 & 44:21-45:2. Any minor delay in filing
15 the Motion is hardly dilatory given that Lyft was simultaneously seeking discovery (including filing
16 a motion to compel) and amending its complaint.

17 3. Status of the USPTO Proceedings

18 As discussed *supra* § II(A), it is highly likely that the Patent Office will institute Lyft’s IPRs
19 and issue rejections in the pending EPRs. While the institution decisions on the IPRs may not occur
20 until as late as August 8, 2022, it is possible that the PTAB may issue decisions earlier given its
21 prior decisions to institute IPR on the same grounds. And, as noted above, because the Patent Office
22 instituted IPRs on precisely the same substantive grounds in the Uber IPRs, it is highly likely that
23 the PTAB will institute review based on Lyft’s IPRs. The EPR proceedings are also underway and
24 would have likely already resulted in rejections had AGIS not created unnecessary delay by
25 requesting extensions for its patent owner responses that it never ultimately filed. *See* Motion at 7-
26 8. Indeed, the Patent Office usually issues a first action on the merits within 4.5 months of receiving
27 a reexamination request, which, in this case, would have been in early March. *See* Dkt. 103-7 at 2.

28 4. The Relationship of the Parties

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