

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Aplix IP Holdings Corporation,

Plaintiff,

v.

Sony Computer Entertainment, Inc. and
Sony Computer Entertainment America,
LLC,

Defendants.

Civil Action No. 1:14-cv-12745-MLW

**APLIX’S BRIEF OPPOSING
DEFENDANTS’ MOTION TO STAY**

Defendants’ motion for a stay is, at best, premature and should be denied. There is no active proceeding in the United States Patent and Trademark Office with respect to a single patent in this lawsuit. Defendants have asked the Patent Trial and Appeal Board (“the Board”) to review claims in only three of the five patents-in-suit, but the Board has not yet agreed to institute any review. Plaintiff Aplix IP Holdings Corporation (“Aplix”) has not yet filed an opposition to any of those petitions. And defendant Sony Computer Entertainment America, LLC (“SCEA”) acknowledges that it has not even filed all of its petitions for review with the Board; it represents only an intention to file additional petitions “soon.” Courts have not hesitated to find a stay premature in any single one of these situations, let alone this combination. In these circumstances, a stay would not result in judicial economy, but would instead prejudice Plaintiff—delaying the case

indefinitely and for no reason beyond Defendants' speculation that it will succeed on its petitions, including those it has not yet filed. For these reasons, Aplix asks this Court to deny Defendants' motion to stay proceedings.

BACKGROUND

A. A team of Massachusetts inventors, led by Dr. Beth Marcus, develop unique technologies for improving data entry, control, and game-play on hand-held devices and host devices.

This case concerns patented technology covering game devices such as the hand-held Sony PlayStation Vita gaming console as well as the Sony PlayStation DualShock 3 and DualShock 4 controllers.¹

Beginning in 2003, a group of Massachusetts inventors, led by Dr. Beth Marcus, developed interactive-design technologies for improving data entry, control, and game-play on hand-held devices and host devices.² Among other advancements, Dr. Marcus and her team deployed configurable input systems and elements on multiple surfaces of a hand-held device, implementing unique combinations of and applications for particular types of input elements.³ The team designed hand-held accessory devices that would enable users to remotely operate (and play video games on) cell phones and tablet devices.⁴ Without discussing any of the patent claim language, Defendants mischaracterize the scope of these inventions, reducing them to single aspects of single figures included in the patents, and falsely claim that the USPTO “did not have an

¹ Amended Complaint, ¶ 1 (ECF Docket No. 23).

² Amended Complaint, ¶ 2.

³ Amended Complaint, ¶ 2.

⁴ Amended Complaint, ¶ 2.

opportunity” to analyze the prior art during examination of the patents.⁵ However, the issued claims, which are the only appropriate measure of “the invention,” reflect that Dr. Marcus and her team’s innovations were well ahead of their time in the infancy of the smartphone world.

Marcus and her team applied for patents on their inventions, and, after a thorough review, the United States Patent & Trademark Office awarded them several patents.⁶ These patents were assigned to Dr. Marcus’ company, Zeemote, Inc., a Boston-area start-up, which sought to commercialize the technology.⁷ Aplix, a Japanese operating company, acquired Zeemote’s assets, including the patents.⁸ This lawsuit asks the Court to find that the Defendants infringe the patents by importing, marketing, selling, and using the PlayStation Vita and accessories, including memory cards and pre-installed or bundled games, as well as the DualShock 3 and DualShock 4 controllers.⁹

B. Aplix files suit in June 2014; grants Defendants multiple extensions to respond.

Aplix filed this lawsuit seven months ago, accusing Sony Computer Entertainment, Inc. (“SCEI”) and Sony Computer Entertainment America, LLC (“SCEA”) of infringing Aplix’s patents.¹⁰ Aplix’s initial complaint sought to vindicate

⁵ Defendants’ Brief at 6, 7, and 8.

⁶ Amended Complaint, ¶ 2.

⁷ Amended Complaint, ¶ 2.

⁸ Amended Complaint, ¶¶ 2, 17.

⁹ Amended Complaint, ¶ 2.

¹⁰ June 27, 2014 Complaint (ECF Docket No. 1).

its rights with respect to three patents: U.S. Patent Nos. 7,218,313; 7,463,245; and 7,667,692 (referred to herein as the '313, '245, and '692 patents, respectively).¹¹

Defendant SCEA requested, and Aplix agreed to, a 75-day extension of Defendant SCEA's deadline to respond to the complaint.¹² On October 6, 2014, Defendants answered Aplix's complaint and SCEA filed a counterclaim.¹³

Within the requisite period, Aplix amended its complaint, adding allegations relating to two additional patents: U.S. Patent Nos. 7,280,097 and 7,932,892 (referred to as the '097 and '892 patents, respectively).¹⁴ Defendants again requested an extension of their time to answer, and Aplix agreed to a 45-day extension.¹⁵ Aplix agreed to 120 days of extensions in total.

On December 31, 2014, Defendants answered Aplix's amended complaint and SCEA filed another counterclaim.¹⁶ Aplix answered the counterclaim two weeks later.¹⁷

C. Defendants seek Board review of only *some* of the claims of only *some* of the patents-in-suit.

Inter partes review provides a mechanism by which the Patent Office may elect to review a patent's validity in light of prior patents and printed publications identified by a third party. The procedure addresses no other issues of validity or infringement.

¹¹ June 27, 2014 Complaint, ¶¶ 10-12.

¹² ECF Docket No. 8 at 1.

¹³ ECF Docket Nos. 17, 18.

¹⁴ Amended Complaint, ¶¶ 13,16.

¹⁵ ECF Docket No. 25.

¹⁶ ECF Docket Nos. 28, 29.

¹⁷ ECF Docket No. 32.

If the Board grants a petition, it has 12 months (which can be extended to 18 months), to issue a final decision.¹⁸ Either party may appeal a final decision to the Federal Circuit Court of Appeals—it is not yet clear how long this entire process will take. As Defendants’ own exhibit provides, “the true extent to which IPR simplifies patent litigation remains to be seen.”¹⁹

Five months after Aplix filed suit, defendant SCEA filed its first two petitions for *inter partes* review with the Board, purporting to seek review of the ’245 patent and claims 1-3, 5-13, and 15-20 of the ’692 patent. Since then, SCEA has filed three additional petitions for *inter partes* review, each relating to the ’313 patent. These petitions do not seek review of every claim at issue in Aplix’s first complaint.²⁰ And defendant SCEI is not a party to any of the petitions for review.²¹

Aplix’s preliminary responses to the ’245 and ’692 petitions are not due until early March and its responses to the ’313 petitions are not due until late April.²² Once Aplix submits each response, the Board has up to three months to decide whether to grant the requested review.²³ Accordingly, the Board will have until late July to evaluate whether even to grant these petitions—more than one year after Aplix filed its lawsuit in this Court.

¹⁸ 35 U.S.C. § 316(a)(11).

¹⁹ Defendants’ Ex. N, Love & Ambwani, at 105.

²⁰ Defendants’ Brief at 8 (conceding that 16 of the claims in the ’245, ’692 and ’313 patents are not included in Defendant SCEA’s “first round of IPRs”).

²¹ *Id.*

²² 35 U.S.C. § 313; 37 C.F.R. § 42.107(b).

²³ 77 Fed. Reg. 48,655.

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