UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE NEO WIRELESS, LLC PATENT LITIG.	Case No.: 2:22-md-3034-TGB Hon. Terrence G. Berg

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO STAY PENDING *INTER PARTES* REVIEW OF THE ASSERTED PATENTS

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Defendants' Motion[1] showed that each factor in the stay analysis weighs strongly in favor of granting a stay of the entire MDL. The overwhelming majority of authority supports Defendants' positions. Neo's Response[2] ignores much of this analysis and does not even attempt to distinguish any of Defendants' cases.

Instead, Neo, without any evidence, baselessly accuses Defendants of gamesmanship. Neo accuses Defendants (at ECF No. 148, PageID.10680–683, PageID.10699–704) of a dilatory and "bizarre patchwork of IPR filings" to "increas[e] the likelihood that complete resolution of all outstanding IPRs will take the maximum time possible" and "gamed the MDL framework" by agreeing to have one defendant "carry the load on most IPRs."

Neo's allegations are false. These lawsuits were centralized into an MDL *at Neo's request*. Defendants are coordinating filings and discovery in the MDL because the Court instructed Defendants to do so, but they are situated differently when it comes to IPR filings and in no way coordinated to "game the MDL framework." Each Defendant that has chosen to file IPRs has done so diligently. The statute gives a party sued for patent infringement one year to file an IPR against the patent, *see* 35 U.S.C. § 315(b), for good reason: IPRs are complex and

[1] ECF No. 145 ("Mot."), PageID.10387–10427. MBUSA is not part of this Reply, as it has moved for its own stay of the case in view of settlement discussions with Neo. On June 6, 2023, MBUSA and Neo filed a joint notice of settlement and request for a stay. *See* ECF No. 147.

[2] ECF No. 148 ("Resp."), PageID.10672–10705.

technically intensive submissions that take substantial time to prepare. Simply put, the filing Defendants drafted and filed their petitions as quickly as their ethical obligations to their clients permitted.[3] Neo's assertion otherwise is simply wrong—and notably, Neo include no facts or law that would suggest otherwise.

Neo also does not offer any exigent circumstances that would prevent a stay here. The PTAB has already instituted IPRs on three of the six asserted patents, and the parties expect to receive another institution decision no later than June 21—the date of the *Markman* hearing. Neo's assertion that the other decisions are "months away" is misleading. Neo does not practice these patents, does not compete with any potential defendants, and does not request anything other than money. A stay will indisputably simplify this case; it will indisputably save the parties and (more importantly) the Court substantial resources; and it will indisputably not prejudice Neo's ability to seek damages on valid patents.

I. The Stage of the Case Favors a Stay.

Neo's arguments as to the first stay factor largely boil down to the contention that *Neo* has already done a lot of work. Even assuming that is true, the vast bulk of the work for the parties and—more importantly, the Court—remains.

[3] Neo's focus (at ECF No. 148, PageID.10681, 10683 n.1, 10703–704) on the most-recently filed IPRs is misguided. All but two of these filings are follow-on petitions requesting to be joined to a prior-filed identical IPR petition. These additional petitions weigh in *favor* of a stay because they extend estoppel to additional Defendants and create no additional delay in the schedule.

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