ATTACHMENT L

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Trading Technologies

Plaintiff(s),

v.

BGC Partners, Inc.

Defendant(s).

Case No. 10 c 715
Judge Virginia M. Kendall

ORDER

The Court grants TT's motion to lift the stay in this case (Dkt. No. 604) and declines to impose a new stay at this time. The parties must submit proposed discovery and case management schedules by August 31, 2015.

STATEMENT

In 2010, Plaintiff Trading Technologies International, Inc. ("TT") filed multiple cases in this District alleging infringement of a number of patents regarding electronic commodity trading software against a litany of defendants. On March 25, 2015, the Court stayed the consolidated cases because the United States Patent and Trademark Office ("PTO") instituted reexamination of some of the patents in suit pursuant to the PTO's transitional program for covered business method patent review ("CBM review") due to Defendant TD Ameritrade's request. TT immediately appealed the Court's stay under Section 18(b)(2) of the America Invents Act ("AIA"). While both the CBM review and appeal were progressing, TT and TD Ameritrade settled. Pursuant to the settlement, the PTO terminated its CBM review. Because CBM review of the patents in suit is no longer ongoing, TT moves the Court to lift the stay in the consolidated cases.[1] For the following reasons, the Court lifts the current stay instituted pursuant to the AIA because the basis for the stay no longer exists. The Court further declines to institute a new stay under its inherent authority to do so.

A. The Court Lifts the Current Stay

TT has moved the Court to lift the stay originally imposed pursuant to the AIA. The Court grants this motion both because the Defendants agree that "the statutory basis under which this Court had the authority to grant the March 25, 2015 stay under the AIA . . . no longer exists" and because there is no pending CBM review of any patent in the litigation. *See* Dkt. No. 613 at 3; *see also Intellectual Ventures II LLC v. JPMorgan Chase & Co.*, 781 F.3d 1372, 1375-78 (Fed. Cir. 2015) (courts of appeal lack jurisdiction under the AIA to consider appeals of a court's denial of a motion to stay pending CBM review when there is no CBM review instituted).

[1] Although titled as an "Emergency Motion for Order Confirming that Stay is Lifted," the motion essentially seeks a

Because the law requires the institution of CBM review to warrant a stay under the AIA and there is no current CBM review of the patents here, the force behind the Court's original stay is gone and the Court correspondingly lifts the stay. This decision is bolstered by the fact that the Defendants agree that the Court should terminate the current stay.

B. The Court Declines to Impose a New Stay

While recognizing that the basis for the stay under the AIA no longer exists, the Defendants simultaneously ask the Court to enter a new stay of the proceedings under its inherent power to do so. The Court "has broad discretion to stay proceedings as an incident to its power to control its own docket." *See Clinton v. Jones*, 520 U.S. 681, 706 (1997); *Trippe Mfg. Co. v. Am. Power Conversion Corp.*, 46 F.3d 624, 629 (7th Cir. 1995). In deciding whether to stay an action, courts tend to consider: "(i) whether a stay will unduly prejudice or tactically disadvantage the non-moving party, (ii) whether a stay will simplify the issues in question and streamline the trial, and (iii) whether a stay will reduce the burden of litigation on the parties and on the court." *See, e.g.*, *Select Retrieval, LLC v. ABT Elecs.*, No. 11 C 03752, 2013 WL 6576861, at *3 (N.D. Ill. Dec. 13, 2013); *Pfizer, Inc. v. Apotex, Inc.*, 640 F. Supp. 2d 1006, 1007 (N.D. Ill. 2009).

The Court declines to exercise its discretion and does not impose a new stay pursuant to its power to manage its docket. Although "the federal trial courts have a duty to prevent duplicative litigation," *Select Retrieval*, 2013 WL 6576861, at *3, the Court is not presented with that situation here. There are no other proceedings between the parties at the moment. The PTO is not conducting CBM review on any of the patents in suit. In fact, the Defendants have not even sought CBM review of a majority of the patents at this point. *See* Dkt. No. 613 at 7 (the Defendants "plan to request that the PTAB decide the validity of TT's patents . . . in the next several weeks."). Moreover, the PTO denied Defendant CQG's petition for CBM review of two of the challenged patents.[2] There is a fundamental difference between seeking reexamination and reexamination itself: only the latter presents a concern of duplicative efforts. Because that concern is not present currently, the Court is not compelled to stay the consolidated cases.

Considering the totality of factors that weigh on the ultimate judicial goals of promoting efficiency and minimizing prejudice, the Court concludes that a stay under its inherent discretion is inappropriate at this juncture. All of the Defendants' arguments regarding simplifying the issues and reducing the burden of litigation on both the parties and the Court rely on the PTO canceling claims and narrowing issues in the patents in the future. As of now, however, the PTO is not reviewing any of the patents in this suit and unless it does, the Defendants' arguments are too speculative to warrant a stay. While initiating a new stay pending further action by the Defendants or the PTO would not necessarily unduly prejudice TT or provide the Defendants with a tactical advantage outside of further delaying discovery, the Defendants have simply not met their burden of showing that a stay is warranted at this point.

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[2] The PTO denied the institution of CBM review for U.S. Patent Nos. 6,766,304 and 6,772,132 on July 10, 2015.

Date: 7/24/2015

Virginia M. Kendall
United States District Judge