

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SOFTVIEW LLC,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 10-389-LPS
)	(CONSOLIDATED)
APPLE INC.; AT&T MOBILITY LLC;)	
DELL INC.; HTC CORP.; HTC AMERICA,)	
INC.; HUAWEI TECHNOLOGIES CO.,)	
LTD.; FUTUREWEI TECHNOLOGIES,)	
INC.; KYOCERA CORP.; KYOCERA)	
WIRELESS CORP.; LG ELECTRONICS,)	
INC.; LG ELECTRONICS USA, INC.; LG)	
ELECTRONICS MOBILECOMM U.S.A.,)	
INC.; MOTOROLA MOBILITY LLC;)	
SAMSUNG ELECTRONICS CO., LTD.;)	
SAMSUNG ELECTRONICS AMERICA,)	
INC.; and SAMSUNG)	
TELECOMMUNICATIONS AMERICA,)	
LLC)	
)	
Defendants.)	
)	
)	

**MOVING DEFENDANTS’ REPLY IN SUPPORT OF MOTION TO STAY PENDING
INTER PARTES REVIEW BY THE PATENT TRIAL AND APPEAL BOARD**

The issue presented by this motion is whether the potential resolution of this entire litigation—or at a minimum, the significant simplification of the issues involved—warrants the ten-month delay that would result from a stay pending the outcome of *inter partes* reviews. Accordingly, the circumstances presented here are entirely different from the facts underlying previous motions to stay pending the outcome of *inter partes* and *ex parte* reexaminations, notwithstanding SoftView’s efforts to conflate the two situations. In particular, in the context of the previous motion to stay, the Court recognized that 14 of the 20 patent claims asserted in this litigation stood confirmed by the Patent Office in the reexaminations. D.I. 439 (Mem. Op. re

Mots. to Stay and Mots. to Dismiss) at 5. In contrast, the Patent Office has now found it reasonably likely that every single patent claim asserted against all Defendants will be found unpatentable in the *inter partes* reviews. Given this key distinction (among others)—which SoftView ignores in its Opposition brief—the decision whether to stay this case is no longer, as the Court previously acknowledged, a “close call.” Instead, all of the facts point in favor of a stay. D.I. 369 (Hr’g Tr.) at 73:11-15.

ARGUMENT

A. A Stay May Resolve This Litigation in Its Entirety and Would at Least Simplify the Issues while Conserving Party and Court Resources.

The pending *inter partes* reviews have placed at issue the validity of all 20 claims asserted in this litigation and therefore may resolve the case in its entirety. As noted, this is a key distinction from the earlier reexaminations that prompted the Defendants’ previous motion to stay, in which only 6 of the 20 asserted patent claims stood rejected. D.I. 439 at 5. The potential efficiency benefits of a stay are far greater here than they were in the context of the earlier reexaminations, as there is now the reasonable likelihood that all further litigation over these patents will be ended.

The *inter partes* reviews also present a greater likelihood that the patent claims will be invalidated than did the earlier reexaminations. The PTAB has found a “reasonable likelihood” that all claims asserted in this litigation will be found unpatentable based on, for example, combinations of the Zaurus and Pad++ prior art references. *See, e.g.*, Ex. A at 27 (“[W]e agree that Petitioner has demonstrated a reasonable likelihood of prevailing in its challenge to claims 1, 33, 36, 43, 118, 149, 183, 252, and 283 based on the combination of Zaurus [sic] and Pad++.”). The “reasonable likelihood” standard is a higher bar to clear than the standard applied to *inter partes* reexaminations. *See, e.g., Universal Elecs., Inc. v. Universal Remote Control, Inc.*,

SACV 12-0329 (AG), 2013 WL 1876459, at *4 (C.D. Cal. May 2, 2013). Indeed, in *Universal Elecs.*, the court found that this difference between *inter partes* review and reexamination proceedings weighed in favor of a stay when—unlike in this case—the petition for *inter partes* review had not even yet been granted.¹

SoftView attempts to diminish the importance of the PTAB’s finding under the “more restrictive standard” applied to *inter partes* review proceedings by invoking statistics purporting to show that the percentage of *inter partes* review petitions granted is the same as the percentage of requests for *inter partes* reexaminations granted. Pl.’s Opp. (D.I. 995) at 4. These statistics do not show that the same standard is being applied to the two sets of proceedings, however. In particular, the statistics do not take into account other differences in the circumstances surrounding the two sets of proceedings, such as the fact that parties with less meritorious invalidity arguments are less likely to subject themselves to the more rigorous (and expensive) process involved in an *inter partes* review, when perhaps they would have previously decided to initiate the reexamination process. Nor is there any merit to SoftView’s reliance on *Everlight Elecs. Co. v. Nichia Corp.*, 4:12-cv-11758 (GAD) (MKM) (E.D. Mich. Apr. 30, 2013). See D.I. 995 Ex. 2. The statistics in *Everlight*—for which the court cited no source—purportedly referred to “both the new and old *reexamination* procedures.” Slip op. at 16 (emphasis added). Thus, these statistics not only fail to reflect the rate at which claims will be rejected in *inter partes* review—as no *inter partes* review has yet reached a final decision—but they may even include

¹ SoftView argues that “reasonable likelihood” does not mean the same thing as “more likely than not.” See Pl.’s Opp. at 3-4. The Moving Defendants need not show, however, that it is “more likely than not” that the claims will be invalidated in order to demonstrate that there are significant efficiency benefits to be gained from a stay.

ex parte reexaminations, which are wholly different, non-adversarial proceedings.²

Nonetheless, if the Court is to use reexaminations as a guide, the *Universal Elecs.* case is more apt, as it does cite a source for its statistics and expressly does not include *ex parte* reexaminations. *See* 2013 WL 1876459, at *7. In particular, *Universal Elecs.* states that 89% of *inter partes* reexaminations have resulted in claim cancellation or amendment. *Id.* Given that patent owners amend claims in reexamination generally to avoid rejection, it stands to reason that, had amendment not been available in those 89% of cases, essentially all of them would have led to claim cancellation. *See id.* Here, given that SoftView has pledged *not* to amend its claims,³ these statistics suggest that SoftView's claims have at least an 89% chance of being cancelled. *See id.* In sum, a stay is appropriate now because all asserted claims have been found likely unpatentable under a new, more difficult to satisfy standard than that for *inter partes* reexamination.

Finally, a stay pending a ruling in the *inter partes* review would simplify the issues before the Court regardless of the outcome. Specifically, should the Court grant the requested stay (D.I. 981), the Moving Defendants would agree to be bound to the PTAB's determinations as to the specific prior art combinations actually considered by the PTAB during the review,⁴

² *Everlight* also purports to rely on situations where claims are amended in reexamination. Slip op. at 16. Here, however, SoftView has pledged not to amend its claims in *inter partes* review. Pl.'s Opp. at 5.

³ SoftView has committed not to amend its asserted patent claims, regardless of the outcome of this motion. As SoftView acknowledges, it agreed not to amend its claims "during the course of the Apple Inc. reexamination proceedings." Pl.'s Opp. at 5. Those reexamination proceedings, which were stayed pending the outcome of the Kyocera *inter partes* review proceedings, have not yet reached conclusion.

⁴ Not merely identified, or identified as cumulative.

after institution of the *inter partes* review proceedings.⁵ Thus, regardless of the outcome, the *inter partes* review will result in a significant narrowing of the issues for, e.g., expert discovery and trial. SoftView argues that even if certain invalidity arguments are thus resolved before the PTAB, other defenses would still be available to the Moving Defendants. However, even if the outcome of the *inter partes* review cannot completely resolve the case in SoftView's favor, any remaining issues will be significantly diminished. The *inter partes* reviews will at a minimum greatly *simplify* the case that is now before the Court.

B. The Stage of the Litigation Favors a Stay.

The PTAB is required by statute to rule on Kyocera's petitions no later than March 29, 2014. See 35 U.S.C. § 316(a)(11). There is no reason to believe it will not do so. While Motorola has filed its own petitions and motions for joinder, Motorola has not raised any new issues before the PTAB that would result in a delay. See Ex. B (Motorola's Mot. for Joinder as to the '353 Patent) at 4; Ex. C (Motorola's Mot. for Joinder as to the '926 Patent) at 4. Nor is there any basis on which to assume that the statutory deadline will be extended. As an initial matter, the PTAB appears to be taking seriously the Congressional mandate to complete *inter partes* review proceedings as quickly as possible and within the presumptive twelve-month timeframe set by Congress, which intended *inter partes* review to be a faster and more cost-effective forum than district courts to resolve disputes regarding patent validity. See Ex. D, PTAB's Order Authorizing Third Party Apple, Inc. to File Mot. for Joinder, Apr. 24, 2013, at 4 (upon Apple Inc.'s request for leave to submit motions to join Kyocera's *inter partes* review proceedings here (which Apple ultimately decided not to submit), ordering that, "in view of the

⁵ Motorola, of course, having filed its own IPR petition, will be bound by the estoppel provisions of 35 U.S.C. §315(e)(2), once a final written decision is issued.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.