

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HUMANEYES TECHS., LTD.

Plaintiff,

v.

SONY CORP., SONY CORP. OF
AMERICA, SONY ELECS., INC., SONY
MOBILE COMMS. AB, SONY MOBILE
COMMS. (USA), INC.

Defendants.

C.A. No. 12-398-GMS

**HUMANEYES TECHNOLOGIES, LTD.'S, ANSWERING BRIEF IN OPPOSITION TO
SONY'S MOTION TO STAY LITIGATION PENDING THE OUTCOME
OF INTER PARTES REVIEW OF THE PATENTS-IN-SUIT**

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Dated: May 6, 2013

Petition for *Inter Partes* Review
of U.S. Pat. No. 7,477,284
IPR2013-00219
EXHIBIT
Sonv- 1038

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Plaintiff HumanEyes Technologies, Ltd., by and through its attorneys, respectfully submits this brief in opposition to Defendants Sony Corporation, Sony Corporation of America, Sony Electronics Inc., Sony Mobile Communications AB, and Sony Mobile Communications (USA) Inc.'s Motion to Stay Litigation Pending the Outcome of *Inter Partes* Review of the Patents-in-Suit and Sony's Supporting Brief.

I. NATURE AND STAGE OF THE PROCEEDINGS

On March 29, 2012, HumanEyes filed patent infringement suits against Sony in this Court (seeking monetary damages) and at the International Trade Commission ("ITC") (seeking an exclusion order). When the ITC instituted Investigation No. 337-TA-842, Sony exercised its statutory right to stay these district court proceedings until after the Investigation's resolution. For seven months, the parties diligently pursued intensive discovery before the ITC on the same patents and the same accused features and products. The parties completed all liability fact discovery, produced more than 550,000 pages of documents, deposed 22 witnesses, exchanged infringement and invalidity contentions, and exchanged proposed claim constructions. When the ITC Investigation was just four months from trial Sony committed to remove the accused features from its products, thus obviating the need for an ITC exclusion order. As such, HumanEyes sought and obtained voluntary termination of the ITC action, in favor of the action before this Court.

On March 29, 2013, one day shy of the statutory maximum for filing, Sony filed two petitions for *inter partes* review ("IPR"). Those petitions challenge only 14 of the 155 claims of the asserted patents and are based primarily on references charted by Sony seven months ago in its ITC invalidity contentions. The Patent Trial and Appeals Board ("PTAB") reviewing these petitions will not likely reach a substantive decision regarding any claims it decides to review until October 3, 2014 (or April 3, 2015 for good cause); the appeals process may further delay

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