

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

NICHIA CORPORATION,

Plaintiff,

v.

TCL MULTIMEDIA TECHNOLOGY
HOLDINGS LIMITED and TTE
TECHNOLOGY, INC.,

Defendants.

Case Action No. 16-681-RGA

**DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO STAY PENDING
INTER PARTES REVIEW OF THE PATENTS-IN-SUIT**

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2. *Plaintiff Does Not Allege It Will Suffer Any Competitive Harm*

Plaintiff fails to dispute that the parties are not direct competitors in the same market, nor alleges that monetary harm is an insufficient remedy. Rather, Plaintiff agrees that TCL and Nichia are not direct competitors. Opp. at 20. That should end the inquiry. See *Alerts Pty. Ltd. v. Bloomberg Finance, L.P., et al.*, 922 F. Supp. 2d 486, 494-95 (D. Del. Feb. 5, 2013). Instead, Plaintiff argues that, because TCL is a “downstream entity,” a stay could prejudice Plaintiff’s ability to prosecute this case because “third-party discovery” could be lost or destroyed. Opp. at 20. This argument appears manufactured for purposes of resisting Defendants’ motion to stay, and is not supported by Plaintiff’s actions in the case so far, or the facts at issue.

Indeed, Plaintiff fails to identify any third-party, or type of evidence, that may be compromised. Plaintiff vaguely refers to Defendants’ licensing defense as requiring third party discovery, but this too is irrelevant. First, Plaintiff has not yet served any subpoenas on any third parties in this case, despite discovery being open for a number of months. Second, Defendants’ licensing defense is based on licenses to the patents-in-suit, which are owned, and have always been owned, by Plaintiff. Therefore, the most relevant documents to Defendants’ licensing defense would be the licenses themselves, which should be in the possession of Plaintiff, and not subject to any third-party loss or destruction.

Indeed, Plaintiff cannot articulate any concrete prejudice that it would suffer on account of a stay because *every patent* at issue in this case will have expired before November 1, 2017. Even if Defendants are found liable, they will, at most, be responsible for past money damages. There is no ongoing harm, and there is no possibility for any injunctive relief. Therefore, “monetary damages will be sufficient to compensate [Nichia] for any infringement” and can easily be calculated regardless of any delay attributable to the stay. See *Virtual Agility Inc. v. Salesforce, Inc.*, 759 F.3d 1307, 1318 (Fed. Cir. 2014). A stay in this action will likely either

narrow or eliminate the pool of patents in dispute. That will make any calculation of damages *easier* and *simpler* should there be any finding of infringement.

Plaintiff then appears to suggest that time itself would somehow decrease the value of its patents during a stay, but again offers no evidence to support this claim. Indeed, Plaintiff ignores a clear line of cases finding this argument unavailing. *See Message Notification Techs. LLC v. Microsoft Corp.*, C.A. No. 13-1881-GMS, *D.I.* 38, n.4 (D. Del. Feb. 24, 2015).

3. *Defendants Diligently Filed the IPRs and Stay Motion*

Plaintiff also makes the spurious suggestion that it was somehow prejudiced by Defendants' "delay" in filing an IPR petition. *Opp.* at 18-19. However, the IPR petitions were filed timely, and the motion to stay was made promptly thereafter. Defendants filed the IPR petitions on August 25, 2017, within the one-year period permitted by statute. A few weeks later, Defendants filed their motion to stay. *See D.I.* 51.

Plaintiff also inappropriately implies that Defendants have somehow acted in bad faith by delaying the filing of their IPR papers. *Opp.* at 4-5, 18-20. The facts refute this suggestion. In December 2016, Defendants told this Court that it had made *no decision* about whether to file an IPR petition.¹ Defendants rightfully considered the merits and costs of filing an IPR petition, within the time allowed by statute. *See* 35 U.S.C. § 315(b); *see also Opp.* at 18-19. Moreover, it made absolute sense for Defendants to wait until after the PTAB's decision regarding the *Vizio* IPRs to determine if it should file its own IPRs. The PTAB's rules specifically contemplate that parties will wait until after an IPR institution decision to join a previously filed IPR. 37 C.F.R. § 42.122(b). Defendants simply acted within statutory deadlines and caused no prejudice to

¹ *D.I.* 19 at 14:12-18 (“[The Court:] Is this the kind of case where there is likely to be IPRs on these four patents? MR. GLASS: The decision has not been made, your honor. THE COURT: But I take it would be fair to say without trying to penetrate too deeply into your strategy, that its’ [sic] under active consideration? MR. GLASS: Of course.”).

Plaintiff. Plaintiff has not shown that the timing of Defendants' petitions suggests an unfair tactical advantage or dilatory motive.

B. A Stay Would Simplify the Litigation

1. *Plaintiff's Own Statistics Confirm a Stay is Likely to Simplify the Case*

Plaintiff does not dispute that a stay pending resolution of Defendants' IPR petitions would likely simplify the issues in this case. In fact, Plaintiff's own statistics confirm that the PTAB will likely invalidate several of its asserted claims. For instance, applying Plaintiff's statistic that 70% of all petitions are instituted, it is statistically probable that the PTAB will institute at least three of Defendants' four IPRs. Opp. at 13. Plaintiff further concedes that all challenged claims are invalidated in 65% of instituted IPRs, meaning that the PTAB's determination will likely streamline of Plaintiff's assertion of multiple patents-on-suit. *Id.* Thus, even according to Plaintiff, the PTAB's determinations are likely to result in significant simplification of discovery, motion practice, and trial in this action.

Plaintiff attempts to discount these statistics by suggesting that they can not "reliably predict" what will happen in a particular case. Opp. at 13. This is deceptive reasoning: the statistics do not need to "reliably predict" the future in order to guide present action. They only indicate what will *probably happen*. Here, it is highly likely that a stay would save resources on all sides by narrowing the claims at issue in this case, as Plaintiff's own logic dictates.

2. *The Court Should Grant a Stay Now Before the Court and Parties Expend Additional Resources*

The fact that Defendants seek a stay before institution does not, contrary to Plaintiff's argument, weigh against a stay. Opp. at 1. It is not uncommon for courts in this District to grant stays pending an institution decision due to the likelihood of case simplification. *See, e.g., Neste Oil OYJ v. Dynamic Fuels, LLC*, 2013 WL 3353984, at *4 (D. Del. July 2, 2013); *Princeton*

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