

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

CYWEE GROUP LTD.,

*Plaintiff,*

v.

SAMSUNG ELECTRONICS CO. LTD.  
AND SAMSUNG ELECTRONICS  
AMERICA, INC.,

*Defendants.*

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Case No. 2:17-CV-00140-WCB-RSP

**MEMORANDUM OPINION AND ORDER**

**FILED UNDER SEAL**

Before the Court is a motion by defendants Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc., (collectively, “Samsung”) for a stay pending inter partes review proceedings. Dkt. No. 291. The motion is GRANTED.

**BACKGROUND**

Plaintiff CyWee Group Ltd. (“CyWee”) is the owner of U.S. Patent Nos. 8,441,438 (“the ’438 patent”) and 8,552,978 (“the ’978 patent”). CyWee filed its initial complaint in this case on February 17, 2017, and its first amended complaint on March 3, 2017. Dkt. Nos. 1, 19. In its initial infringement contentions, served on July 12, 2017, CyWee asserted that Samsung had directly infringed claims 1, 3–5, 14–17, and 19 of the ’438 patent, and claims 10 and 12 of the ’978 patent. *See* Dkt. No. 291. In supplemental infringement contentions, served in September and October of 2018, CyWee continued to assert the same claims against Samsung. *See id.*

Claim construction in this case has been conducted, and discovery is nearly complete. The trial is set to begin on May 13, 2019. Dkt. No. 280.

This is one of eight similar cases that CyWee has filed against various companies in five different districts. On June 14, 2018, Google, Inc., a defendant in one of the other cases, filed petitions for inter partes review (“IPR”) asking the Patent Trial and Appeals Board (“PTAB”) to invalidate claims 1 and 3–5 of the ’438 patent and claims 10 and 12 of the ’978 patent. On December 11, 2018, the PTAB instituted inter partes review of the six claims identified by Google in its petitions, finding that Google had demonstrated a “reasonable likelihood of success” in showing that the challenged claims are unpatentable. On January 8, 2019, Samsung Electronics Co., Ltd., moved to join Google’s IPRs and filed its own IPR petitions, identifying Samsung Electronics America, Inc., as the real party in interest. As a result of the IPR proceedings by Google and Samsung, six of the eleven asserted claims in this case will be reviewed for unpatentability by the PTAB.

On January 18, 2019, Samsung moved for a stay of further proceedings in this case pending the disposition of the IPR proceedings. Dkt. No. 291. The Court directed that briefing on the motion be conducted on an expedited basis. Although CyWee has consented to stays in five of the other six cases that are concurrently pending,<sup>1</sup> on January 25, CyWee filed an opposition to the motion for a stay in this case. Dkt. No. 297. Samsung filed a reply on January 29, 2019. Dkt. No. 300. CyWee filed a sur-reply on February 5, 2019. Dkt. No. 305.

## DISCUSSION

The question whether a stay of district court proceedings should be granted when inter partes review is instituted on some or all of the claims at issue in the district court litigation has

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<sup>1</sup> One of the original eight cases, *CyWee Group Ltd. v. Apple Inc.*, Case No. 4:14-cv-1853 (N.D. Cal.), has been settled.

arisen on a number of occasions, and the principles governing the decision whether to stay the case have been set forth in some detail.

A district court has inherent power to control its own docket, including the power to stay the proceedings before it. *See Clinton v. Jones*, 520 U.S. 681, 706 (1997). In particular, the question whether to stay proceedings pending review by the Patent and Trademark Office (“PTO”) of the validity of the patent or patents at issue in the lawsuit is a matter committed to the district court’s discretion. *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426–27 (Fed. Cir. 1988) (request for a stay pending inter partes reexamination). A stay is particularly justified when “the outcome of a PTO proceeding is likely to assist the court in determining patent validity or eliminate the need to try infringement issues.” *NFC Tech. LLC v. HTC Am., Inc.*, Case No. 2:13-cv-1058, 2015 WL 1069111, at \*1 (E.D. Tex. Mar. 11, 2015) (citing cases).

District courts typically consider three factors when determining whether to grant a stay pending inter partes review of a patent in suit: “(1) whether the stay will unduly prejudice the nonmoving party; (2) whether the proceedings before the court have reached an advanced stage, including whether discovery is complete and a trial date has been set; and (3) whether the stay will likely result in simplifying the case before the court.” *Papst Licensing GmbH & Co., KG v. Apple, Inc.*, Case No. 6:15-cv-1095, 2018 WL 3656491, at \*2 (E.D. Tex. Aug. 1, 2018) (citing cases). Based on those factors, courts determine whether the benefits of a stay outweigh the inherent costs of postponing resolution of the litigation. *EchoStar Techs. Corp. v. TiVo, Inc.*, No. 5:05-cv-81, 2006 WL 2501494, at \*1 (E.D. Tex. July 14, 2006).

The related context of Covered Business Methods (“CBM”) review provides guidance as to the principles that apply to stay applications in the IPR setting. In the uncodified portion of the Leahy-Smith America Invents Act that was directed to CBM review proceedings, Congress set

forth four factors that govern whether a stay should be granted pending CBM review proceedings before the PTAB. Those four factors are:

- (A) whether a stay, or the denial thereof, will simplify the issues in question and streamline the trial;
- (B) whether discovery is complete and whether a trial date has been set;
- (C) whether a stay, or the denial thereof, would unduly prejudice the nonmoving party or present a clear tactical advantage for the moving party; and
- (D) whether a stay, or the denial thereof, will reduce the burden of litigation on the parties and on the court.

Pub. L. No. 112-29, § 18(b)(1), 125 Stat. 284, 331 (2011). Those statutory factors largely track the three factors traditionally used by courts in determining whether to grant stays pending post-grant review proceedings, with a fourth factor added. The fourth factor, which requires an inquiry into whether a stay will reduce the burden of litigation on the parties and the court, indicates that special attention should be given to minimizing the burdens of litigation. While the four-factor test that Congress enacted for stays in CBM proceedings does not expressly extend to IPR cases, the policy considerations that apply in the two contexts are similar, and the Federal Circuit has held that the fourth factor set forth in the CBM statute may properly be applied to stays in IPR cases as well. *See Murata Mach. USA v. Daifuku Co.*, 830 F.3d 1357, 1362 (Fed. Cir. 2016); *see also Neuro Cardiac Techs., LLC v. LivaNova, Inc.*, Civil Action No. H-18-1517, 2018 WL 4901035, at \*2 (S.D. Tex. Oct. 9, 2018); *Ultratec, Inc. v. Sorenson Commc'ns, Inc.*, No. 13-cv-346, 2013 WL 6044407, at \*2 (W.D. Wis. Nov. 14, 2013). The Court will therefore address the “burden of litigation” factor under the rubric of the “simplifying the issues” factor.

The legislative history of the AIA makes it apparent that Congress intended for district courts to be liberal in granting stays pending CBM review. As Senator Schumer observed regarding the CBM review provision, Congress intended to place “a very heavy thumb on the scale

in favor of a stay being granted” once the PTAB instituted CBM review proceedings. 157 Cong. Rec. S1363 (daily ed. Mar. 8, 2011) (statement of Sen. Chuck Schumer).

Congress’s desire to enhance the role of the PTO and limit the burden of litigation on courts and parties was not limited to the CBM review context. The legislative history indicates that Congress recognized that the same underlying policy considerations that apply to CBM review apply to inter partes review as well. *See* H. Rep. No. 112-98, Part I, at 48 (2011) (statutory post-grant review procedures were designed to be “quick and cost effective alternatives to litigation”); 157 Cong. Rec. S952 (daily ed. Feb. 28, 2011) (inter partes review was intended to provide a “faster, less costly alternative[] to civil litigation to challenge patents”) (statement of Sen. Chuck Grassley); *id.* at S5319 (daily ed. Sept. 6, 2011) (post-grant review of patents, including inter partes review, was meant to be “an inexpensive substitute for district court litigation” that “allows key issues to be addressed by experts in the field”) (statement of Sen. Jon Kyl). In light of the parallel policies underlying the CBM and inter partes review proceedings, it is not surprising that courts have applied generally similar analysis to requests for stays in both settings.

The benefits of inter partes review are the same as those served by CBM review: giving the agency an opportunity to reconsider patents that have become the focus of litigation, relieving the courts of some of the burdens of deciding issues of obviousness and anticipation, and saving the courts from having to adjudicate infringement claims based on patents of questionable validity. For those reasons, courts have concluded that the “liberal policy” in favor of stays in CBM cases also applies to stays pending instituted IPR proceedings. *See Nautilus, Inc. v. ICON Health & Fitness, Inc.*, Case No. 1:17-cv-154, 2018 WL 4215095, at \*2 (D. Utah Sept. 4, 2018); *Qualcomm Inc. v. Apple Inc.*, Case No. 3:17-cv-2403, 2018 WL 4104966, at \*1 (S.D. Cal. Aug. 29, 2018); *Canfield Sci., Inc. v. Drugge*, Case No. 16-4636, 2018 WL 2973404, at \*2 (D.N.J. June 13, 2018);

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