

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SRC LABS LLC and SAINT REGIS  
MOHAWK TRIBE,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

Case No. 2:18-cv-00321-JLR

MICROSOFT CORPORATION'S  
MOTION TO STAY PENDING  
*INTER PARTES* REVIEW

**NOTED FOR:  
FRIDAY, OCTOBER 26, 2018**

MICROSOFT CORP.'S MOTION TO STAY  
(2:18-cv-00321-JLR)

LAW OFFICES  
CALFO EAKES & OSTROVSKY PLLC  
1301 SECOND AVENUE, SUITE 2800  
SEATTLE, WA 98101  
TEL (206) 407-2200 FAX (206) 407-2224

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**Table of Contents**

I. INTRODUCTION ..... 1

II. BACKGROUND ..... 2

III. LEGAL STANDARD..... 3

IV. THE DISTRICT COURT CASE SHOULD BE STAYED  
PENDING RESOLUTION OF MICROSOFT’S IPR PETITIONS. .... 4

    A. A Stay Will Likely Simplify the Issues in this Case..... 4

    B. The Early Stage of this Litigation Weighs in Favor of a Stay..... 6

    C. SRC Labs and SRMT Will Not Be Prejudiced by a Stay..... 7

    D. Plaintiffs’ Attempt to Avoid IPR Should Have No  
    Impact on Whether a Stay is Appropriate..... 7

V. CONCLUSION..... 10

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Allergan, Inc. v. Teva Pharm. USA, Inc.</i> , No. 2:15-CV-1455-WCB, 2017 WL4619790 (E.D. Tex. Oct. 16, 2017).....	8, 9
<i>Aylus Networks, Inc. v. Apple Inc.</i> , 856 F.3d 1353 (Fed. Cir. 2017).....	6
<i>Fisher-Price, Inc. v. Dynacraft BSC, Inc.</i> , No. 17-cv-3745-PJH, 2017 WL 5153588 (N.D. Cal. Nov. 7, 2017) .....	3
<i>Implicit Networks, Inc. v. Advanced Micro Devices, Inc.</i> , No. C08-0184JLR, 2009 WL 357902 (W.D. Wash. Feb. 9, 2009) .....	7
<i>Mylan Pharm., Inc. v. Allergan, Inc.</i> , IPR2016-01127 (PTAB).....	<i>passim</i>
<i>Nat’l Prods., Inc. v. Arkon Res., Inc.</i> , No. C15-1984JLR (W.D. Wash. Oct. 14, 2016).....	<i>passim</i>
<i>Nat’l Prods., Inc. v. Arkon Res., Inc.</i> , No. C15-1984JLR (W.D. Wash. Sept. 30, 2016) .....	6
<i>Pacific Bioscience Labs., Inc. v. Pretika Corp.</i> , 760 F. Supp. 2d 1061 (W.D. Wash. 2011).....	6
<i>Pactool Int’l Ltd. v. Dewalt Indus. Tool Co.</i> , No. C06-5367, 2008 WL 312677 (W.D. Wash. Feb. 1, 2008) (Settle, J.).....	3
<i>Pragmatus AV, LLC v. Facebook, Inc.</i> , No. 11-CV-02168-EJD, 2011 WL 4802958 (N.D. Cal. Oct. 11, 2011) .....	4
<i>Recognicorp, LLC v. Nintendo Co. Ltd.</i> , No. C12-1873, 2013 WL 2099518 (W.D. Wash. May 8, 2013) (Jones, J.).....	3
<i>RW Distrib., Inc. v. Waterfall Pond Supply of Wash., Inc.</i> , No. C10-1626, 2011 WL 13192713 (W.D. Wash. May 19, 2011) (Lasnik, J.).....	4
<i>Saint Regis Mohawk Tribe v. Mylan Pharm. Inc.</i> , 896 F.3d 1322 (Fed. Cir. 2018).....	9
<i>Supercell Oy v. Rothschild Digital Media Innovations, LLC</i> , No. C15-1119JLR, 2016 WL 9226493 (W.D. Wash. July 28, 2016).....	3

1 *Wi-Fi One, LLC v. Broadcom Corp.*,  
2 878 F.3d 1364 (Fed. Cir. 2018)..... 8

3 **Statutes**

4 35 U.S.C. § 314(b)..... 8

5 35 U.S.C. § 315(b)..... 8

6 35 U.S.C. § 316(a)(11)..... 8

7 **Other Authorities**

8 “Trial Statistics: IPR, PGR, DBM,” PTAB, August 2018..... 4

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

1 **I. INTRODUCTION**

2 SRC Labs, LLC (“SRC”) and the Saint Regis Mohawk Tribe (“SRMT”) (collectively,  
3 “Plaintiffs”) allege that Microsoft Corporation (“Microsoft”) infringes six U.S. patents.  
4 Microsoft recently filed ten petitions for *inter partes* review (“IPR”) to invalidate all asserted  
5 claims of all six patents. Based on the time of filing, the Patent Trial and Appeal Board  
6 (“PTAB”) will decide whether to institute those IPRs in March and April of 2019, and for any  
7 IPRs instituted, final written decisions will follow within one year thereafter.

8 Microsoft’s pending IPR petitions warrant a stay of this litigation until they are  
9 resolved. First, the PTAB’s rulings on Microsoft’s petitions are likely to simplify the issues in  
10 question and the trial of this case by invalidating some or all of the asserted claims. Even a  
11 partial reduction in the number of claims will significantly reduce the number of technical  
12 expert reports, scale back related *Daubert* and summary judgment briefing, and eliminate the  
13 need for trial on those claims. Second, this case is still in its early stages, with only written  
14 discovery and document production, and a single deposition calendared to take place this  
15 month. Third, a stay would not unduly prejudice Plaintiffs. Four of the six asserted patents  
16 have already expired. Neither SRC Labs, LLC (a Texas LLC run by an investment manager in  
17 Dallas) nor SRMT (a sovereign American Indian tribe located in upstate New York) is a  
18 competitor of Microsoft, and any delay resulting from a stay could be remedied by monetary  
19 damages (if any damages ultimately are due).

20 Plaintiffs’ opposition to Microsoft’s motion rests (at least in part) on the apparent  
21 transfer of the patents to SRMT: Plaintiffs theorize that the patents are immune from challenge  
22 in IPR proceedings based on SRMT’s status as a sovereign tribe, such that Microsoft’s petitions  
23 cannot succeed. But the Federal Circuit has already rejected that theory, as applied to SRMT  
24 itself. Although the Federal Circuit may yet hear that issue en banc, or SRMT may pursue it  
25 further in the Supreme Court, that only counsels in favor of a stay at least until that threshold  
26 issue is resolved.

27 Accordingly, Microsoft respectfully requests a stay of this case pending resolution of