

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FALL LINE PATENTS, LLC, Plaintiff, v. ZOE'S KITCHEN, INC. and ZOE'S KITCHEN USA, LLC, Defendants.	CIVIL ACTION NO. 6:18-cv-407-RWS LEAD CASE JURY TRIAL DEMANDED
AMC ENTERTAINMENT HOLDINGS, INC. and AMERICAN MULTI-CINEMA, INC.	CIVIL ACTION NO. 6:18-cv-408-RWS JURY TRIAL DEMANDED
BOSTON MARKET CORPORATION	CIVIL ACTION NO. 6:18-cv-409-RWS JURY TRIAL DEMANDED
STARBUCKS CORPORATION	CIVIL ACTION NO. 6:18-cv-411-RWS JURY TRIAL DEMANDED
MCDONALD'S CORPORATION and MCDONALD'S USA, LLC,	CIVIL ACTION NO. 6:18-cv-412-RWS JURY TRIAL DEMANDED
PANDA RESTAURANT GROUP, INC. and PANDA EXPRESS, INC.	CIVIL ACTION NO. 6:18-cv-413-RWS JURY TRIAL DEMANDED
PAPA JOHN'S INTERNATIONAL, INC. and STAR PAPA, LP	CIVIL ACTION NO. 6:18-cv-415-RWS JURY TRIAL DEMANDED

**DEFENDANTS' MOTION TO STAY LITIGATION
PENDING INTER PARTES REVIEW OF THE PATENT-IN-SUIT**

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 A. A stay will not unduly prejudice or tactically disadvantage Fall Line because, as a non-practicing entity, Fall Line cannot lose market share or revenue, and seeks only money damages..... 6

 B. A stay will simplify the issues because both Defendants’ IPR and the April 5 written decision of Unified’s IPR will narrow the issues, prevent duplicative discovery, and provide guidance for claim construction..... 7

 C. A stay will not negatively impact close of discovery or trial because both are distant. 11

 D. A stay would limit the burden of litigation on the Court and the parties because it would avoid litigating the validity of the ‘748 Patent in parallel with the PTAB..... 12

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This case is in its early stages, and a motion for judgment on the pleadings is currently pending. It involves a patent that is currently under *inter partes* review (“IPR”) and that is being asserted by a non-practicing entity that would not suffer any prejudice from a stay. Moreover, the patent-in-suit is subject to an additional IPR petition and is a continuation of a patent that had all of its claims cancelled as a result of a re-examination following a years-long litigation campaign by the same plaintiff actors. There are only slight differences between the patent-in-suit and the cancelled parent claims. The Court should thus grant Defendants a stay pending resolution of the most recent petition for IPR, which requires an institution decision from the Patent Trial and Appeal Board (“PTAB”) by August 12, 2019. Defendants’ request meets the requisite test adopted by this Court for determining whether the benefits of a stay outweigh the costs: (a) a stay will not unduly prejudice or tactically disadvantage Fall Line, (b) a stay will simplify the issues, (c) discovery is not complete and trial is distant, and (d) a stay would limit the burden of litigation on the Court and the parties. *Soverain Software LLC v. Amazon.com, Inc.* 356 F.Supp.2d 660, 662 (E.D. Tex. 2005).

Further, the PTAB will issue a final written decision regarding validity of claims 16-19, 21, and 22 of Fall Line’s asserted U.S. Patent No. 9,454,748 (“the ’748 Patent”) on or before April 5, 2019. That petition was filed on October 6, 2017, by Unified Patents, Inc. (“Unified IPR”), and the PTAB’s impending decision will shed light on nearly half of the claims Defendants challenge in their own IPR petition, not to mention provide guidance to the parties and this Court as to the construction of terms found in claims asserted in this litigation.

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