

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**

**TABLE OF CONTENTS**

I. FACTUAL AND PROCEDURAL HISTORY ..... 2

II. LEGAL STANDARD ..... 4

III. ARGUMENT..... 6

    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

IV. CONCLUSION..... 13

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>The Armor All/STP Products Co. v. Aerospace Commc’ns Holdings Co., Ltd.</i> , Case No. 6:15-CV-00781-JRG-KNM, 2016 WL 6397269 (E.D. Tex. Oct. 28, 2016) .....	6
<i>e-Watch, Inc. v. Lorex Canada, Inc.</i> , No. H-12-3314, 2013 WL 5425298 (S.D. Tex. Sept. 26, 2013).....	7, 11, 12
<i>EchoStar Techs. Corp. v. TiVo, Inc.</i> , No. 5:05-cv-81, 2006 WL 2501494 (E.D. Tex. July 14, 2006).....	5, 10, 12
<i>Emp’t Law Compliance, Inc. v. Compli, Inc.</i> , No. 3:13-cv-3574-N, 2014 WL 3739770 (N.D. Tex. May 27, 2014) .....	6, 7, 12
<i>Ericsson Inc., et al. v. TCL Commc’n Tech. Holdings, Ltd.</i> , No. 2:15-cv-00011-RSP, 2016 WL 1162162 (E.D. Tex. Mar. 23, 2016).....	9
<i>Evolutionary Intelligence, LLC v. Apple, Inc.</i> , No. C 13-04201, 2014 WL 93954 (N.D. Cal. Jan. 9, 2014).....	10
<i>Fall Line Patents, LLC v. American Airlines Group Inc., et al.</i> , No. 6:17-cv-202-RWS.....	2
<i>Intellectual Ventures II LLC v. Commerce Bancshares, Inc.</i> , No. 2:13-cv-4160-NKL, 2014 WL 2511308 (W.D. Mo. June 4, 2014) .....	11
<i>LakeSouth Holdings, LLC v. Ace Evert, Inc.</i> , No. 3:14-cv-1348-N, 2015 WL 10818619 (N.D. Tex. June 17, 2015).....	5
<i>Landis v. N. Am. Co.</i> , 299 U.S. 248 (1936).....	4
<i>Lennon Image Techs., LLC v. Macy’s Retail Holdings, Inc.</i> , No. 2:13-cv-00235-JRG, 2014 WL 4652117 (E.D. Tex. Sep. 18, 2014).....	5
<i>Micrografx, LLC v. Google, Inc.</i> , No. 3:13-CV-3595-N, 2014 WL 12580455 (N.D. Tex. July 9, 2014).....	12
<i>Murata Mach. USA v. Daifuki Co.</i> , 830 F.3d 1357 (Fed. Cir. 2016).....	4, 5
<i>Neste Oil OYJ v. Dynamic Fuels, LLC</i> , No. 1:12-1744-GMS, 2013 WL 3353984 (D. Del. July 2, 2013).....	7
<i>Network-1 Sec. Sols., Inc. v. Alcatel-Lucent USA Inc.</i> , No. 6:11cv492, 2015 WL 11439060 (E.D. Tex. Jan. 5, 2015) .....	11

*NFC Tech. LLC v. HTC Am., Inc.*,  
 No. 2:13-cv-1058-WCB, 2015 WL 1069111 (E.D. Tex. Mar. 11, 2015) (Bryson,  
 J.)..... *passim*

*Norman IP Holdings, LLC v. TP-Link Techs., Co.*,  
 No. 6:13-cv-384-JDL, 2014 WL 5035718 (E.D. Tex. Oct. 8, 2014) ..... 7

*Princeton Dig. Image Corp. v. Konami Dig. Entm't Inc.*,  
 No. 12-1461-LPS-CJB, 2014 WL 3819458 (D. Del. Jan. 15, 2014)..... 11

*SAS Inst., Inc. v. Iancu*,  
 138 S. Ct. 1348 (2018)..... 9

*Sovereign Software LLC v. Amazon.com, Inc.*  
 356 F.Supp.2d 660 (E.D. Tex. 2005) .....1, 5

*TAS Energy, Inc. v. San Diego Gas & Elec. Co.*,  
 No. 12-cv-2777-GPC(BGS), 2014 WL 794215 (S.D. Cal. Feb. 26, 2014) ..... 12

*Tinnus Enters., LLC v. Telebrands Corp.*,  
 No. 6:15-cv-551-RC-JDL, 2017 WL 379471 (E.D. Tex. Jan. 24, 2017)..... 6

*Trover Group, Inc. v. Dedicated Micros USA*,  
 No. 2:13-cv-1047-WCB, 2015 WL 1069179 (E.D. Tex. Mar. 11, 2015) (Bryson,  
 J.)..... 4

*Virtual Agility Inc. v. Salesforce.com, Inc.*,  
 759 F.3d 1307 (Fed. Cir. 2014) .....6, 11

*ZitoVault, LLC v. IBM*,  
 No. 3:16-cv-00962-M, 2016 WL 9244739 (N.D. Tex. July 11, 2016) ..... 8

**Statutes**

35 U.S.C. § 314(a)..... 9

**Other Authorities**

Fed. R. Civ. P. 12(c)..... 3

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.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.