IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

PRESIDENT AND FELLOWS OF	:
HARVARD COLLEGE,	:
	. :
Plaintiff,	:
v.	:
	:
MICRON TECHNOLOGY, INC.,	:
	:
Defendant.	:

Civil Action No. 17-1729-LPS-SRF

ORDER

Having reviewed the parties' submissions (*see, e.g.*, D.I. 187, 188, 195, 200), IT IS HEREBY ORDERED that Defendant's motion to stay this case pending inter partes review of six of the seven asserted patent claims (D.I. 186), contained in the two patents-in-suit, is DENIED.

The PTAB recently denied Defendant's petition to institute IPR with respect to asserted claim 31 of the '539 patent (*see* D.I. 187 at 1), meaning that the Court will have to resolve issues of infringement and validity with respect to at least this claim (even recognizing that claim 31 is dependent on claims for which IPR has been instituted and that Plaintiff alleges infringement of this claim only under the doctrine of equivalents) (*see, e.g.*, D.I. 200 at 1). One or more the six claims that are currently subject to IPR may survive PTAB review; even if not, any PTAB decision (which is due by July 24, 2018) (D.I. 187 at 2) will almost certainly not be final (i.e., appellate rights exhausted) (*see generally* D.I. 195 at 14 n.3) before the jury trial in this matter begins on November 26, 2018 (*see* D.I. 192). Thus, while some simplification would result from a stay, that interest is not sufficient under the totality of circumstances to warrant staying this case, which has already been pending for more than 18 months (*see* D.I. 1), and in which much

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discovery and litigation has occurred (*see generally* D.I. 195 at 3-4, 11-13), two district judges in two different Districts have presided (*see* D.I. 167), and in which trial is scheduled and will begin just ten months from now. Further delay would prejudice Plaintiff (which the Court recognizes does not compete with Defendant and has licensed the patents-in-suit) – a non-dispositive but also not irrelevant factor.

Defendant's concerns about the work that remains to be done (*see, e.g.*, D.I. 187 at 4; D.I. 200 at 6), and additional discovery that might be necessitated should Plaintiff be permitted to add willful infringement to this case, can be addressed in the context of other motions (e.g., Plaintiff's pending motion to amend) and might justify other relief, but do not justify the requested stay (even assuming, arguendo, that the timing of the IPR petition and the timing of the request for a stay support Defendant).

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HONORABLE LEONARD P. STARK UNITED STATES DISTRICT COURT

January 8, 2018 Wilmington, Delaware