

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

IMAGE PROCESSING TECHNOLOGIES,
LLC,

Plaintiff,

v.

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

Defendants.

Case No. 2:16-CV-0505-JRG

JURY TRIAL DEMANDED

**PLAINTIFF IMAGE PROCESSING TECHNOLOGIES, LLC'S SUR-REPLY IN
OPPOSITION TO SAMSUNG'S MOTION TO STAY
PENDING DETERMINATION OF *INTER PARTES* REVIEW**

Samsung's claims that a stay will result in simplification of this case are purely speculative. Final decisions in the '134 patent and '518 patent IPRs are not due until June and October 2018, respectively. Regardless of the outcome of those IPRs, the case on the asserted claims of the '293 patent will be tried because those claims have already cleared PTAB review and will be unaffected by the present IPRs.¹ Given the overlap in accused products and features, a trial at this time on all three patents will be substantially similar to a trial later on, either on the asserted claims of the '293 patent only, or on the asserted claims of the '293 patent and asserted claims of the '134 and '518 patents that are affirmed as patentable by the PTAB. Infringement of the accused products and features under the '293 patent, which significantly overlap with the accused products and features under the '134 and '518 patents, will still need to be litigated and any alleged simplification that may or may not result from a stay is minimal at best.

Samsung tries to downplay the significance of the '293 patent by stating that there is “*only one*” product accused of infringing only the '293 patent. D.I. 293 at 1. However, in the very next sentence it proves Image Processing's point regarding the significant overlap in this case by stating, “*all of the accused products* (except this one) are also accused of infringing the '134 Patent and/or the '518 Patent.” *Id.* Indeed, there are no features or products for which the '518 patent is the only asserted patent. D.I. 291, Exhibits 5–7.

This case is trial-ready. Samsung's arguments suggesting that its diligence in filing for a stay weighs against the advanced stage of the case, and its allegations that Image Processing

¹ Samsung's argument that there is overlap between unasserted claim 22 of the '293 patent (for which an IPR has been instituted) and asserted claims 1 and 29 of the '293 patent that could result in simplification is unsupported. *See* D.I. 293 at 1. Important limitations of claims 1 and 29 of the '293 patent include two histograms for one parameter and the automatically updating of classification criteria. D.I. 291-9 at 26:33-26:59, 31:11-32:12. Claim 22 has neither of these limitations. D.I. 291-9 at 29:61-30:17. Thus, there is no likelihood that the IPR on unasserted claim 22 of the '293 patent will have any effect on this case.

“was late” in asserting the ’518 patent in this case (Image Processing amended its complaint to assert the ’518 patent after Samsung’s production of additional source code, D.I. 180 at 2) cannot counter the fact that jury selection will begin in one month. *See* D.I. 180 at 6; D.I. 291 at 3-5. Samsung has known about the ’518 patent since at least June 4, 2013, when it was notified of the ’518 patent by Image Processing (D.I. 1-6 at 1) and did not need to wait to file an IPR on the ’518 patent. Image Processing negotiated for years with Samsung regarding a potential license to the asserted patents, including the ’518 patent (D. I. 180-1 at ¶ 8), and Samsung has been well aware of its infringement. Furthermore, Image Processing has detailed the prejudice it will suffer from a stay. *See* D.I. 291 at 2-3; D.I. 180 at 4; D.I. 180-1.

Given the significant resources that have been expended on this case by the parties and the Court, the trial-ready stage of this case, and that a stay would not substantially reduce the amount of work or simplify this case, there is no reason that would justify delaying resolution of this case to a later date.

Dated: October 13, 2017

Respectfully submitted,

/s/ Michael N. Zachary

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2017, a true and correct copy of this document was served on all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

/s/ Michael N. Zachary