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17 Attorneys for Defendant
18 Pilot, Inc.

19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA

21
22 Shenzhen Gooloo E-Commerce Co.,
23 Ltd.,

24 Plaintiff,

25 v.

26 PILOT, INC.,

27 Defendant.

Case No. 22-cv-02219-RGK-E

**RENEWED JOINT STIPULATION
TO STAY CASE PENDING
RESOLUTION OF *INTER PARTES*
REVIEWS OF '653 PATENT**

Judge: Hon. R. Gary Klausner
Magistrate: Hon. Charles F. Eick

EXHIBIT

2011

1 Pursuant to Local Rules 7-1 and 15, Plaintiff Shenzhen Gooloo E-Commerce
2 Co., Ltd. (“Gooloo”) and Defendant Pilot, Inc. (“Pilot”) (collectively, the
3 “Parties”), by and through their respective counsel, hereby stipulate and agree as
4 follows:

5 1. The parties previously filed a joint stipulation requesting that the Court
6 grant the same relief herein requested on December 28, 2022. (ECF No. 90).

7 2. On January 3, 2023, the Court denied the requested stay as premature
8 stating:

9 The Court deems the stipulation premature because the Patent Trial
10 and Appeal Board's ("PTAB") decision on one of the IPRs, PTAB
11 Case No. IPR2021-01232, is imminent. (See *id.* at 2.) The result of that
12 ruling, along with any involved party's decision to appeal the ruling to
13 the Federal Circuit, may inform the Court's decision regarding a stay.
14 Accordingly, the Stipulation is **DENIED without prejudice**. The
15 parties may file a renewed stipulation once the PTAB rules on the
16 outstanding IPR and any appeal has been filed.
17 (ECF No. 93).

18 3. The actions identified by the Court have now occurred, and the Parties
19 therefore present this renewed joint stipulation.

20 4. The Parties are currently engaged in discovery. Fact discovery is
21 scheduled to close on February 10, 2023.

22 5. Gooloo’s Complaint is focused on issues related to invalidity and
23 infringement of the ‘653 Patent. In particular, Gooloo seeks a declaratory judgment
24 of non-infringement claims 1-20 of the ‘653 Patent (ECF No. 30 ¶¶ 104-115);
25 declaratory judgment of invalidity of claims 7-20 of the ‘653 Patent under 35
26 U.S.C. § 102 (*Id.* ¶¶ 116-125); declaratory judgment of invalidity of claims 1 and 3-
27 20 of the ‘653 Patent under 35 U.S.C. § 103 (*Id.* ¶¶ 126-137); declaratory judgment
28 of invalidity of claims 4, 10, and 13 of the ‘653 Patent under 35 U.S.C. § 112(a) for

1 lack of written description (*Id.* ¶¶ 138-159); and declaratory judgment of invalidity
2 of claims 1-6 of the '653 Patent under 35 U.S.C. § 112(a) for lack of enablement
3 (*Id.* ¶¶ 160-169).

4 6. Nearly all of the claims at issue in these five counts have been found
5 invalid by the United States Patent and Trademark Office Patent Trial and Appeal
6 Board ("PTAB"). These decisions are on appeal before the United States Court of
7 Appeals for the Federal Circuit.

8 7. On April 7, 2021, non-party The NOCO Company, Inc. ("NOCO")
9 filed a Petition for *Inter Partes Review* of U.S. Patent No. 10,046,653 before the
10 PTAB challenging nearly every claim of the '653 Patent at issue in this litigation,
11 docketed as PTAB Case No. IPR2021-00777. On October 5, 2021, the PTAB
12 instituted *inter partes review* of the challenged claims ("NOCO IPR"). On October
13 3, 2022, the PTAB held in a final written decision that all but one of the challenged
14 claims were unpatentable (i.e. invalid). On December 5, 2022, Pilot filed a notice
15 of appeal to the United States Court of Appeals for the Federal Circuit. That appeal
16 is pending as U.S. Federal Circuit Case No. 23-1234.

17 8. On July 16, 2021, non-party Shenzhen Chic Electronics Co., Ltd.,
18 ("Shenzhen Chic") filed a Petition for *Inter Partes Review* of U.S. Patent No.
19 10,046,653 before the PTAB challenging all but one claim of the '653 Patent,
20 docketed as PTAB Case No. IPR2021-01232. This Petition for *Inter Partes Review*
21 encompassed additional claims not challenged in the NOCO IPR. On January 14,
22 2022, the PTAB instituted *inter partes review* of the challenged claims ("Shenzen
23 Chic IPR"). On October 12, 2022, the PTAB heard oral argument. On January 9,
24 2023, the PTAB again held in a final written decision that all but one of the
25 challenged claims were unpatentable (i.e. invalid). On January 10, 2023, Pilot filed
26 a notice of appeal to the United States Court of Appeals for the Federal Circuit.
27 That appeal is pending but has not yet been given a case number.
28

1 9. The final written decisions in the two IPRs each hold all challenged
2 claims invalid with the sole exception of Claim 3 of the '653 Patent. Claim 3 is
3 subject to a claim construction by the PTAB that is disputed on appeal.

4 10. The parties agree that there is good cause for a stay of this action
5 pending the conclusion of the Federal Circuit appeals of NOCO's IPR in Case No.
6 23-1234 as well as of Shenzhen Chic's IPR, Case No. IPR2021-01232. Gooloo is
7 asserting claims for a declaratory judgment of invalidity of the '653 patent, and
8 such claims will be materially impacted—and perhaps even rendered moot—by any
9 decision of the PTAB and/or Federal Circuit in the pending IPR proceedings and
10 their appeals. Thus, allowing these proceedings to conclude before further litigating
11 this case will both simplify this proceeding by resolving or substantially advancing
12 issues in dispute, such as claim construction and invalidity of claims of the '653
13 patent, as well as create judicial efficiency by postponing further activity until after
14 the Federal Circuit has ruled on these issues. A stay may also prevent potentially
15 inconsistent determinations of validity on the same claims of the '653 Patent. The
16 parties expect that the stay will be in place approximately one year, as the Federal
17 Circuit's median time for appeals from the PTAB has historically been
18 approximately 11 months.

19 11. A district court “has broad discretion to stay proceedings as an incident
20 to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997).
21 For example, a district court “may, with propriety, find it is efficient for its own
22 docket and the fairest course for the parties to enter a stay of an action before it,
23 pending resolution of independent proceedings which bear upon the case.” *Leyva v.*
24 *Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). In such
25 cases, the court “need not find that two cases possess identical issues; a finding that
26 the issues are substantially similar is sufficient to support a stay.” *Moore v.*
27 *Universal Prot. Serv., LP*, No. EDCV 19-2124 JGB (SPx), 2020 U.S. Dist. LEXIS
28

1 88220, at *8 (C.D. Cal. May 15, 2020) (citing *Landis v. N. Am. Co.*, 299 U.S. 248,
2 254 (1936).

3 12. In the context of *inter partes* review proceedings, courts in this district
4 primarily consider three factors: “(1) whether discovery is complete and a trial date
5 has been set; (2) whether a stay will simplify the issues in question and trial of the
6 case; and (3) whether a stay would unduly prejudice or present a clear tactical
7 disadvantage to the nonmoving party.” See *Pause Commers., Inc. v. Hulu, Inc.*, No.
8 2:21-cv-02302-RGK-KES, 2021 U.S. Dist. LEXIS 201641, at *3 (C.D. Cal. June
9 24, 2021). However, the inquiry on whether to grant a stay encompasses the totality
10 of the circumstances. *Id.*

11 13. Discovery is not complete and, although a trial date has been set,
12 dispositive motions have not been filed. Fact discovery does not close until
13 February 10, 2023, and the trial is scheduled for May 9, 2023. (ECF No. 66.)
14 Although the parties have engaged in initial discovery efforts, a significant amount
15 of discovery remains—for example, no depositions have been conducted—and the
16 parties have not filed motions for summary judgment. The Court has also not
17 started the claim construction process. This factor favors a stay. See, e.g.,
18 *Fulfillium, Inc. v. ReShape Med., LLC*, No. 2:17-cv-08419-RGK-PLA, 2018 U.S.
19 Dist. LEXIS 229793, at *4-5 (C.D. Cal. June 4, 2018) (finding this factor weighed
20 slightly in favor of stay where a significant amount of discovery remained and the
21 parties had not yet filed motions for summary judgment, even though the case had
22 been pending for over a year and the Court had already touched on the substantive
23 issues of patent invalidity); *Wonderland Nurserygoods Co. v. Baby Trend, Inc.*, No.
24 EDCV 14-01153-VAP (SPx), 2015 U.S. Dist. LEXIS 53053, at *6-7 (C.D. Cal.
25 Apr. 20, 2015) (finding this factor weights in favor of granting a stay where fact
26 discovery is not complete).

27 14. It does not make sense for the parties or the Court to expend resources
28 litigating issues that would be mooted if the Board’s ruling is affirmed on appeal.

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