

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

BLITZSAFE TEXAS, LLC,

Plaintiff,

v.

HONDA MOTOR CO., LTD, *et al.*,

Defendants.

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No. 2:15-CV-01274 (Lead Case)

**PLAINTIFF'S RESPONSE BRIEF IN OPPOSITION TO
DEFENDANTS' MOTION TO STAY**

Plaintiff, Blitzsafe Texas, LLC (“Plaintiff” or “Blitzsafe”), files this Response in Opposition to Defendants’ Motion Stay pending the resolution of the current *inter partes* review proceedings filed by the Volkswagen, Toyota, Honda, and Hyundai/Kia Defendants against U.S. Patent Nos. 7,489,786 (the “’786 Patent”) and 8,155,342 (the “’342 Patent”) (collectively, the “Asserted Patents”). (Dkt. 133.)

I. INTRODUCTION

This Court should deny motion to stay because none of the three factors considered by this Court are met. The prejudice or tactical disadvantage factor weighs against a stay because the last of the currently pending IPRs, if instituted, would likely not be decided until February 2018. Since Defendants seek a stay through the conclusion of all appeals, the stay could potentially last until the end of 2018. Given that this case is scheduled for trial on February 6, 2017, the prejudice to Plaintiff’s entitlement to a trial on the merits is overwhelming.

A stay is unlikely to lead to a simplification of the issues because none of the claims of the ’786 Patent currently being asserted in this action is subject to an instituted IPR. Even if all of the currently instituted claims of the ’342 Patent were cancelled, the breadth of the case would not be significantly narrowed because every product that is accused of infringing the ’342 Patent is also accused of infringing the ’786 Patent.

The final factor, whether discovery is complete and a trial date has been set, weighs heavily against a stay because discovery will be complete at the time this motion is fully briefed, and trial will be less than 5 months away. Opening expert reports will also have been exchanged. In addition, the claim construction hearing was held two months ago and the issuance of a claim construction order is expected imminently.

For these reasons, all three factors weigh against the issuance of a stay, and Defendants' motion should be denied.

II. STATEMENT OF FACTS

These consolidated actions were filed on July 16, 2015. The *Markman* hearing was held on July 1, 2016. (Dkt. 56.) Fact discovery is scheduled to be completed and initial expert reports exchanged on September 19, 2016. (Dkt. 117.) Expert discovery will be completed and motions for summary judgment, if any, will be filed by October 31, 2016. (*Id.*) Trial is scheduled for February 6, 2016. (*Id.*)

An IPR against the '342 Patent was filed by Unified Patents Inc., on October 30, 2015. (*See* Ex. A¹.) Toyota, Honda and Nissan are subscribers of Unified Patents. (*See* Ex. B ¶ 3.) The IPR was denied institution on April 27, 2016. (*See* Ex. C.)

Toyota filed four IPRs against the Asserted Patents on December 30, 2016: two against the '342 Patent and two against the '786 Patent. One of the IPRs filed against the '786 Patent was denied institution (*see* Ex. D), and the other was instituted as to two claims, claims 44 and 47, that Plaintiff did not include in its preliminary election of asserted claims. (Dkt. 133-T3, 133-14.) Therefore, none of the claims of the '786 Patent which are the focus of this lawsuit are being challenged in an instituted IPR.

One of the two Toyota IPRs against the '342 Patent was denied institution (Ex. E), but the other was instituted on all claims asserted in Plaintiff's preliminary election of asserted claims. (Dkt. 133-3.) A hearing has been scheduled for February 9, 2016 (Dkt. 133-18, 133-19), and a final written decision would be expected to issue in July 2017, approximately five months after the trial date in this lawsuit.

¹ All exhibits to Blitzsafe's response in opposition to Defendants' motion to stay are attached to the declaration of Peter Lambrianakos, attached hereto.

The remaining IPRs against the Asserted Patents were filed just before the one-year bar date at the end of July 2016 and were assigned filing dates in August 2016. Decisions on the institution of those IPRs will not be due until February 2017, and final written decisions on the instituted petitions, if any, would not be expected until February 2018.

III. ARGUMENT

District Courts use a three-part test to determine whether to grant a motion to stay pending *inter partes* review of an asserted patent: “(1) whether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether discovery is complete and whether a trial date has been set.” *Rembrandt Wireless Technologies, LP v. Samsung Electronics Co.*, No. 2:13CV213–JRG–RSP, 2015 WL 627887, at *1 (E.D. Tex. Jan. 29, 2015); *Lennon Image Techs., LLC, v. Macy’s Retail Hldgs, Inc.*, No. 2:13-cv-00235-JRG, 2014 WL 4652117, at *2 (E.D. Tex. Sept. 18, 2014) (citing *Soverain Software LLC v. Amazon, Inc.*, 356 F.Supp.2d 660, 662 (E.D. Tex. 2005)).

A. A Stay Would Unduly Prejudice and Present a Clear Tactical Disadvantage to Plaintiff

The first factor considered in whether to issue a stay weighs in favor of denial because a stay may delay Plaintiff’s ability to obtain a trial on the merits for at least one year and potentially longer. Defendants seek a stay pending the resolution of all of the currently filed IPRs, including IPRs filed in late July 2016—just prior to the one-year bar and after the *Markman* hearing in this matter. If any of these IPRs is instituted, they are unlikely to be concluded before February 2018, and any appeals will extend the date of final resolution into late 2018 at the earliest.

In the meantime, this lawsuit is scheduled for trial on February 6, 2017. A stay of this matter through the resolutions of all appeals of the pending IPRs (assuming that at least one is instituted) could potentially result in the postponement of a trial in this matter into late 2018 or early 2019—delaying trial nearly two years.

Courts have found that delaying trial for a year or more weighs against granting a motion to stay because it weighs against the patent owner's interest in the timely enforcement of its patent rights. *See Unifi Scientific Batteries, LLC v. Sony Mobile Comm's AB*, No. 6:12-cv-224 JDL, 2014 WL 4494479, at *2 (E.D. Tex. Jan 14, 2014) (denying a stay through September 2014 when the plaintiff had trial dates of November 10, 2014 and February 9, 2015 because the trial would not occur until beyond 2015); *Rembrandt Wireless Tech.*, 2015 WL 627887, at *2 (denying a motion to stay pending resolution of "recently-filed" IPRs because a trial scheduled for the following month would be delayed, resulting in significant prejudice to plaintiff); *Invensys Sys., Inc., v. Emerson Electric Co.*, No. 6:12-CV-00799, 2014 WL 4477393, *2 (E.D. Tex. Jul. 25, 2014) (refusing to stay a matter scheduled for trial on October 13, 2015 when the PTAB's final written decisions were expected by February 2016).

Plaintiff will also suffer prejudice because it is in the business of selling interface products that compete with Defendants' infotainment systems. (Dkt. 1 ¶ 1.) Defendants' arguments that Plaintiff is a mere patent holding company, which is false, and that Plaintiff's parent company does not compete with Defendants because Defendants have installed Plaintiff's patented technology behind the dashboard of their automobiles, are disingenuous at best. (Dkt. 133 at 8, n.12.) In any event, this Court has recognized that allegations, even if true, that a plaintiff is not practicing the asserted patents is not sufficient to demonstrate that a plaintiff is not

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