

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

CYWEE GROUP LTD.,

Plaintiff

v.

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

Defendants.

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NO. 2:17-CV-00140-WCB-RSP

**DEFENDANTS SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG  
ELECTRONICS AMERICA, INC.’S MOTION TO STAY  
PENDING INTER PARTES REVIEW PROCEEDINGS**

The majority of the asserted claims in this case are likely to be invalidated by recently instituted *inter partes* review proceedings (“IPRs”). A stay of this case pending these IPRs is warranted because it will likely significantly simplify the issues for trial. CyWee will not be prejudiced by this stay, and in fact has already agreed to stay five parallel cases asserting the same patents in light of these IPRs. Therefore, Samsung respectfully requests a stay of this case until the Patent Trial and Appeal Board (“PTAB”) concludes the IPRs as to U.S. Patent Nos. 8,441,438 (the “’438 Patent”) and 8,552,978 (the “’978” Patent) and any appeals have been exhausted.

**I. BACKGROUND**

**A. Nature and Stage of the Proceedings**

Plaintiff CyWee Group Ltd. (“CyWee”) brought this action against Samsung Electronics Co., Ltd. (“SEC”) and Samsung Electronics America, Inc. (“SEA”) (collectively “Samsung”) on February 17, 2017 alleging infringement of the ’438 and ’978 Patents. CyWee filed its First

Amended Complaint on March 3, 2017. Dkt. No. 9. CyWee served its original infringement contentions on July 12, 2017, alleging direct infringement of Claims 1, 3–5, 14–17, and 19 of the '438 Patent and Claims 10 and 12 of the '978 Patent. CyWee served supplemental infringement contentions on September 18, 2017, September 10, 2018, October 4, 2018, and October 25, 2018. The same asserted claims are identified in each set of infringement contentions.

Significant case milestones lie ahead. Although the deadline for expert discovery passed on January 10, 2019 (Dkt. No. 280), CyWee has been unable to make its damages expert, Mr. Walter Bratic, available for his deposition until February 20, 2019. Ex. 1.<sup>1</sup> CyWee does not oppose this deposition occurring after the deadline and will not oppose a motion to extend the February 6, 2019 deadline for motions that relate to Mr. Bratic. Ex. 1. Thus, certain critical expert discovery still remains in this case. As noted above, the deadline for dispositive motions and motions to strike expert testimony is February 6, 2019. Dkt. No. 280. The pretrial conference is set for April 29, 2019, and jury selection is set for May 13, 2019. *Id.*

#### **B. Overview of the IPR Proceedings**

On June 14, 2018, Google LLC filed two IPR Petitions asking the PTAB to invalidate Claims 1 and 3–5 of the '438 Patent (IPR2018-01258) and Claims 10 and 12 of the '978 Patent (IPR2018-01257). Of the claims asserted in this case, only Claims 14–17 and 19 of the '438 Patent are not challenged in the IPRs. The PTAB granted Google's IPR Petitions on December 11, 2018, finding that Google had demonstrated a "reasonable likelihood of success" that the challenged claims are unpatentable. On January 8, 2019, SEC moved for joinder to Google's IPRs and, accordingly, filed its own IPR Petitions; SEA is identified as a real-party-in-interest in each. *Samsung Elecs. Co., Ltd. v. CyWee Grp. Ltd.*, IPR2019-00534, Paper 1 (PTAB Jan. 8,

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<sup>1</sup> CyWee further maintains that one of its three survey experts, Dr. Arvind Raghu, is unwilling to appear for deposition unless compelled, which has required Samsung to seek his deposition via a Letter of Request under the Hague Convention. Dkt. No. 279.

2019) (“IPR2019-00534”) (Ex. 2); *Samsung Elecs. Co., Ltd. v. CyWee Grp. Ltd.*, IPR2019-00535, Paper 1 (PTAB Jan. 8, 2019) (“IPR2019-00535”) (Ex. 3); IPR2019-00534, Paper 3 (Ex. 4); IPR2019-00535, Paper 3 (Ex. 5). As a result, SEC’s IPR Petitions, mirroring Google’s instituted petitions, challenge the validity of a majority of the asserted claims in this case, including all asserted claims of the ’978 Patent.

## II. ARGUMENT

A district court has broad discretion to stay proceedings as part of its power to control its own docket. *See Clinton v. Jones*, 520 U.S. 681, 706 (1997). The specific question of whether to stay a case pending IPR is committed to the court’s discretion. *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426–27 (Fed. Cir. 1988). Courts typically consider three factors when determining whether to grant a stay in these circumstances: (1) whether the stay will likely simplify the case; (2) whether the stay will unduly prejudice the nonmoving party; and (3) whether the case before the court has reached an advanced stage. *See NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-CV-1058-WCB, 2015 WL 1069111, at \*2 (E.D. Tex. Mar. 11, 2015). Based on those factors, courts weigh the benefits of a stay against the costs of postponing resolution of the litigation. *EchoStar Techs. Corp. v. TiVo, Inc.*, No. 5:05-cv-81, 2006 WL 2501494 (E.D. Tex. July 14, 2006).

This Court has noted that “special attention should be given to minimizing the burdens of litigation.” *NFC Tech.*, 2015 WL 1069111, at \*2. “[A]fter the PTAB has instituted review proceedings, the parallel district court litigation ordinarily should be stayed.” *Id.* at \*7. Indeed, in recent years “courts have been nearly uniform in granting motions to stay proceedings in the trial court after the PTAB has instituted *inter partes* review proceedings.” *Id.* at \*6. Nothing in this case calls for a departure from that general practice, and the three factors weigh in favor of a stay.

**A. The IPRs Will Significantly Simplify This Case**

The first factor weighs strongly in favor of a stay because the PTAB has instituted the IPRs and is likely to cancel nearly half of the asserted claims of the '438 Patent and all of the asserted claims of the '978 Patent. In November 2018, 64% of instituted IPRs, PGRs, or CBMs found all of the challenged claims unpatentable, and another 17% found at least some claims unpatentable. Ex. 6 at 10. And whether or not the PTAB cancels all of the challenged claims, a stay will simplify the litigation.

Given that the PTAB has instituted these IPRs, the likelihood of simplification here is concrete and substantial. *NFC Tech.*, 2015 WL 1069111, at \*4. As noted by this Court, “the grant of inter partes review has been treated as a highly significant factor in the courts’ determination of whether to stay cases pending PTAB review.” *Id.* The Federal Circuit also has noted that institution “weighs heavily in favor of granting the stay.” *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1314 (Fed. Cir. 2014).

The Court has recognized many benefits of IPRs, including the following four. First, “in those cases resulting in effective invalidity of the patent, the suit will likely be dismissed.” *NFC Tech.*, 2015 WL 1069111, at \*4. Second, “[t]he outcome of the reexamination may encourage a settlement without the further use of the Court.” *Id.* Third, “[i]ssues, defenses, and evidence will be more easily limited in pre-trial conferences after a reexamination.” *Id.* Finally, “[t]he cost will likely be reduced both for the parties and the Court.” *Id.* Certain of these benefits will be realized even if the PTAB confirms patentability of all challenged claims, which as noted above is highly unlikely.

For example, even if all challenged claims are confirmed patentable, estoppel principles will apply and may narrow the invalidity defenses for presentation at trial. SEC has filed its own IPR petitions and sought joinder to Google’s instituted IPRs. SEA is a real party in interest to

SEC's IPR petitions. Therefore, estoppel will prevent both SEC and SEA from raising validity challenges "on any ground that the petitioner raised or reasonably could have raised during that *inter partes* review." 35 U.S.C. § 315(e)(2). That estoppel may limit the issues and evidence that can be presented at trial. The parties and Court would surely recognize cost and time savings as a result.

If the PTAB invalidates most or all of the challenged claims, as is very likely, the case would be substantially simplified and the scope of any trial would be narrowed. Moreover, such a decision could encourage settlement before trial, yielding significant cost and time savings for the parties and the Court.

The IPRs very likely will dispose of most of CyWee's case. Only a few of the asserted claims in this case are not challenged in the IPRs: Claims 14–17 and 19 of the '438 Patent. The Court has held in a closely analogous case that IPRs need not cover every asserted claim to simplify the case. *NFC Tech.*, 2015 WL 1069111, at \* 7. In *NFC v. HTC*, the IPRs challenged all asserted claims from one patent but only some asserted claims from the other patent. This Court granted the stay. "In any event, even if the PTAB restrict[ed] its review to the claims of the '551 patent and the initially asserted claims of the '664 patent, any disposition by the PTAB is likely to simplify the proceedings before this Court, at the very least with respect to the '551 patent." *Id.* This case is highly analogous. Even though not all asserted claims are at issue in Google's IPRs, they are very likely to simplify this case, supporting a stay.

**B. A Stay Will Not Unduly Prejudice CyWee**

CyWee will not suffer any undue prejudice, which heavily favors a stay. It is important to note that "the mere fact of a delay alone does not constitute prejudice sufficient to deny a request for stay." *E-Watch, Inc. v. Lorex Canada, Inc.*, No. CIV.A. H-12-3314, 2013 WL 5425298, at \*2 (S.D. Tex. Sept. 26, 2013). Instead, the Federal Circuit has held in a highly analogous context

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