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

GESTURE TECHNOLOGY PARTNERS, LLC, Plaintiff v. HUAWEI DEVICE CO., LTD., HUAWEI DEVICE USA, INC., Defendants.	§ § § § § § § § § § §	CASE NO. 2:21-cv-00040-JRG (Lead Case) JURY TRIAL DEMANDED

GESTURE TECHNOLOGY PARTNERS, LLC, Plaintiff v. SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG ELECTRONICS AMERICA, INC., Defendants.	§ § § § § § § § § § §	CASE NO. 2:21-cv-00041-JRG (Member Case) JURY TRIAL DEMANDED

SAMSUNG DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO STAY PENDING *INTER PARTES* REVIEW AND *EX PARTE* REEXAMINATION PROCEEDINGS

I. INTRODUCTION

Since Samsung filed its Motion to Stay on December 21, 2021, the USPTO has additionally instituted Samsung's EPRs as to the '079 and '431 Patents. Exs. 16, 17. This means the USPTO has now instituted Apple's IPRs covering all claims of the Patents-in-Suit, and has instituted Samsung's EPRs covering all asserted claims of the Patents-in-Suit. It is very likely that a stay of this case pending conclusion of these USPTO proceedings will conserve the Court's and the parties' resources by simplifying the issues.[1] It is highly likely at least ***some*** asserted claims will be declared invalid, and there is a "reasonable likelihood" that ***all*** asserted claims will be declared invalid. Either way, the issues will be simplified, and perhaps significantly so. GTP's opposition seeks to minimize this eventuality, but this reality cannot be disputed. Moreover, GTP has failed to show "undue" burden or "unfair" prejudice sufficient to outweigh the other factors all favoring a stay under the circumstances. Samsung respectfully requests that the Court stay this case pending resolution of the Apple IPRs and Samsung EPRs.

II. ARGUMENT

A. Factor 1 – GTP Has Not Articulated Any Undue Burden or Unfair Prejudice That Would Result From a Stay

GTP's complaint of prejudice carries little weight. It is undisputed that Dr. Pryor claims to have discovered the alleged infringement in 2014 but waited ***seven years***—until the Patents-in-Suit had expired—before filing this action in 2021. GTP's seven-year delay is the opposite of "timely enforcement." Opp. at 4. Any claimed prejudice to GTP associated with delaying trial to

[1] In addition to the Apple IPRs and Samsung EPRs, the PTAB has instituted Unified Patents' IPR Petition as to the '431 Patent. *Unified Patents, LLC v. Gesture Technology Partners, LLC*, IPR No. 2021-00917. Also, LG Electronics and Google both filed IPR Petitions and requests to join the Apple IPRs. *LG Electronics, Inc. et al v. Gesture Technology Partners, LLC*, IPR Nos. 2021-01255, 2022-0093, 2022-00091, and 2022-00090; *Google LLC v. Gesture Technology Partners, LLC*, IPR Nos. 2022-00359, 2022-00360, 2022-00361, and 2022-00362.

allow the USPTO to do its important work is of GTP's own making and does not rise to the level of ***undue*** burden or ***unfair*** prejudice. The factual record belies GTP's argument that it would be prejudiced from delaying "its long-awaited day in court." Opp. at 5.[2]

GTP additionally argues that it would suffer prejudice because a "jury could likely equate the period of expiration with a lack of value in the patent" and that the Court should consider Dr. Pryor's age. Opp. at 5. But the patents have already expired, so denying Samsung's motion does not resolve GTP's purported concern. Further, GTP's "octogenarian" argument was offered and rejected in parallel litigation. *See Gesture Technology Partners, LLC v. Apple Inc.*, No. 6:21-cv-00121-ADA, Dkt. 39 ("Dr. Pryor's seniority also militates in favor of denying the Motion."); *id.* Dkt. 41 (granting motion to stay pending IPR). That argument should also fail here.

Finally, GTP's assertion that it will be prejudiced because Samsung will gain the benefit of a stay without expending resources is a red herring. *See* Opp. at 5. Conserving party resources, including Samsung's resources, is obviously a key benefit of a stay. GTP's opposition clouds the appropriate inquiry, which is whether ***GTP*** will be ***unfairly*** prejudiced. It will not. Regardless of whether the Court grants a stay, GTP will expend resources in the USPTO proceedings. A stay does not change this fact. In totality, this factor favors a stay.

B. Factor 2 – A Stay Will Likely Avoid Significant Pre-Trial, Trial, and Post-Trial Expenditures

Significant and burdensome milestones lie ahead for the Court and the parties in this case. The substantial remaining work with respect to pre-trial, trial, and post-trial matters will impose

[2] Samsung acknowledges that GTP may be prejudiced in the event GTP ultimately demonstrates it is entitled to monetary damages and is delayed in collecting those damages. *See* Order at 3 n.1, *Garrity Power Servs. LLC v. Samsung Elecs. Co.*, No. 2:20-cv-269 (E.D. Tex. Dec. 10, 2021), Dkt. No. 227. Samsung respectfully submits that, in light of the particular facts of this case, such delay will not be ***unfairly*** prejudicial. *Cf. Invensys Sys., Inc. v. Emerson Elec. Co.*, No. 6:12-cv-00799, 2014 WL 4477393, at *2 (E.D. Tex. July 25, 2014) ("This delay is especially burdensome where, like here, the parties are competitors in the marketplace.")

"significant expenses on the parties that might be avoided if the stay results in the simplification (or obviation) of further court proceedings." *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-cv-01058-WCB, 2015 WL 1069111, at *3 (E.D. Tex. Mar. 11, 2015). Indeed, this Court has stayed cases less than a month from the trial setting in recognition of this reality. *See Image Processing Techs., LLC v. Samsung Elecs. Co.*, No. 2:16-cv-505-JRG, 2017 WL 7051628 (E.D. Tex. Oct. 25, 2017) (granting stay after pretrial conference); *Customedia Techs., LLC v. Dish Network Corp.*, No. 2:16-CV-129-JRG, 2017 WL 3836123 (E.D. Tex. Aug. 9, 2017) (granting stay less than a week before pretrial conference).

Notably, it is very possible, if not inevitable, that the upcoming stages of this litigation will require a ***greater*** expenditure of resources than the Court and the parties have already incurred. Presently, there are ***nearly twenty*** motions on the Court's docket for resolution, most of which have the potential to significantly impact on the scope of the case. *See* Dkt. Nos. 23, 51, 76, 84, 94, 99, 100, 107, 128, 133–140. *Cf. USC IP Partnership, L.P. v. Facebook, Inc.*, No. 6:20-CV-00555-ADA, 2021 WL 6201200, at *2 (W.D. Tex. Aug. 5, 2021) ("If the court has expended significant resources, then courts have found that this factor weighs against a stay.") (citation omitted). A number of these outstanding motions have the potential to significantly ***expand*** the scope of the case, necessitating expenditure of still more Court and party resources. For example, depending on the Court's rulings on Samsung's Motion to Dismiss (Dkt. 23), Motion to Strike (Dkt. 51), and Motion for Protective Order (Dkt. 92), and GTP's Motion to Compel (Dkt. 99), the number of accused features at issue could ***more than double***. This would, in turn, likely require re-opening fact discovery, further expert discovery, further motion practice, further pretrial disclosures, etc.—essentially the bulk of an entirely new action concerning the contested features. Similarly, if the Court were to deny Samsung's Motion to Strike (Dkt. No. 133), that would warrant

supplemental rebuttal expert reports, further expert depositions, further motion practice, etc. Either of these scenarios would also likely warrant continuance of the trial. GTP's claim that "nearly all of the heavy lifting of this case is already complete" ignores this reality. Opp. at 6.

A stay will conserve significant Court and party resources, favoring a stay.

C. Factor 3 – The IPR and EPR Proceedings Will Simplify the Issues

This case is fertile ground for "the ultimate simplification of issues." *See VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1314 (Fed. Cir. 2014) ("[W]here [USPTO] review has been granted on all claims of the only patent at issue, the simplification factor weighs heavily in favor of the stay."). It is therefore no surprise that this Court has found simplification of issues in circumstances less clear-cut than those here. *See, e.g.*, *AGIS Software Dev. LLC v. Google LLC*, No. 2:19-cv-00361-JRG, 2021 WL 465424, at *3 (E.D. Tex. Feb. 9, 2021) (granting stay where USPTO denied institution of IPRs but granted institution of EPRs) ("[W]here the PTAB has instituted IPR proceedings or the PTO has granted EPR's as to *all claims of all asserted patents*, this Court has likewise routinely stayed cases because the Court there does not retain before it any intact (as originally asserted) claims that are ready to move forward toward trial") (emphasis in original). Further, GTP's opposition does nothing to refute the reasoning in *Spa Syspatronic, AG v. Verifone, Inc*. that even without estoppel, the USPTO's institution of post-grant review weighed in favor of a stay. No. 2:07-cv-416, 2008 WL 1886020, at *3 (E.D. Tex. Apr. 25, 2008).

In addition, GTP's opposition misstates the applicable legal standard, arguing that a stay must "assuredly" simplify the issues. Opp. at 7. The correct standard, however, is whether it is "***likely***" the asserted claims will be declared invalid. *Scorpcast LLC v. Boutique Media*, No. 2:20-cv-00193-JRG-RSP, 2021 WL 3514751, at *3 (E.D. Tex. June 7, 2021) (emphasis added). Samsung has met that standard. Here, like in *Scorpcast*, the PTAB granted institution "on more than one asserted ground, indeed several different grounds." *Id.* In doing so, the PTAB provided

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