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

SLYDE ANALYTICS LLC, Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD. and SAMSUNG ELECTORNICS AMERICA, INC., Defendants.	Case No. 2:23-cv-00083-RWS-RSP **JURY TRIAL DEMANDED**

PLAINTIFF SLYDE ANALYTICS LLC'S SUR-REPLY IN RESPONSE TO DEFENDANTS SAMSUNG ELECTRONICS CO., LTD.'S AND SAMSUNG ELECTRONICS AMERICA, INC.'S REPLY IN SUPPORT OF THE MOTION TO STAY PENDING *INTER PARTES* REVIEWS (DKT. 42)

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I. INTRODUCTION

Slyde Analytics LLC ("Slyde" or "Plaintiff") files this sur-reply in response to Defendants Samsung Electronics Co., Ltd.'s and Samsung Electronics America, Inc.'s (collectively, "Samsung" or "Defendants") Reply (Dkt. 47) in support of the Motion and in further opposition of the Motion. Samsung failed to address this Court's "universal practice" of denying motions to stay pending pre-institutions of IPRs. *See, e.g., Apex Beam Technologies LLC v. ZTE Corporation*, Case No. 2:22-cv-31-JRG-RSP (Dkt. 55). In an attempt to circumvent this Court's practice regarding stays pending IPRs, Samsung now, for the first time, frames the requested stay as "a sensibly short stay" to preserve party resource in advance of the PTAB's institutions on the IPRs. Samsung ignores that this "short" stay could last until May 2024, at which point, under the current DCO, the parties will be well into claims construction and document production will be nearly complete. Samsung fails to mention these dates, which undercut the claim that a stay would be "short". The remainder of Samsung's arguments regarding the simplification of issues and prejudice are speculative and premature.

For these reasons, as well as those in the Opposition, the Motion should be denied.

II. ARGUMENT

A. Samsung's Arguments Regarding the Simplification of Issues Weighs Against a Stay.

The simplification of issues factor weighs in against a stay. Samsung's arguments to the contrary are entirely speculative. As Samsung admits, the "issue" of claim construction ***may*** only be arise for the '033 Patent. Reply at 1.

As an initial matter, it is important to further emphasize this Court's case law and standing practice in denying motions to stay pre-institution of IPRs, especially due to their speculative nature. "This Court (and many others) have made clear that an application for a stay after an IPR

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petition has been filed but before the petition has been granted is very likely to be denied." *CyWee Grp. Ltd. v. Samsung Elecs. Co.*, No. 217CV00140WCBRSP, 2019 WL 11023976, at *5 (E.D. Tex. Feb. 14, 2019) (citing *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-CV-1058-WCB, 2015 WL 1069111, at *1 (E.D. Tex. Mar. 11, 2015) ("While the PTAB's decision to institute inter partes review ordinarily means that there is a substantial likelihood of simplification of the district court litigation, that likelihood is far more speculative before the PTAB decides whether to institute inter partes review.")); *see also Allure Energy, Inc. v. Nest Labs, Inc.*, No. 9-13-CV-102, 2015 WL 11110606, at *2 (E.D. Tex. Apr. 2, 2015) (finding that the argument IPRs will simplify the case "fails both because there is no guarantee that IPR will cancel or amend any of the claims at issue and because courts in this district refuse to entertain a per se rule that patent cases shall be stayed during IPR."); *Trover Grp., Inc. v. Dedicated Micros USA*, Case No. 2:13-cv-1047, 2015 WL 1069179, at *5–6 (E.D. Tex. Mar. 11, 2015); *Freeny v. Apple Inc.*, Case No. 2:13-cv-361, 2014 WL 3611948, at *1 (E.D. Tex. July 22, 2014). This Court has expressly noted: "It would have been virtually pointless for Samsung to have sought a stay before the IPR was instituted, as this Court would have almost certainly denied it; the decisions of courts in this district as well as other district courts make that ***abundantly clear***." *Id.* (***emphasis added***). Any arguments to the contrary are nothing more than a perfunctory exercise for Samsung to preserve its right to renew the Motion if all IPRs are instituted.

Regarding claim construction, it is "exclusively within the province of the court." *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). Moreover, when claim construction is an issue before the PTAB, a district court is not necessarily bound by the PTAB's claim construction. *See, e.g., XMTT, Inc. v. Intel Corp.*, No. CV 18-1810-MFK, 2022 WL 2904308, at *6 (D. Del. July 22, 2022) (holding that the court was not required to adopt the PTAB's

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claim construction because claim construction was not addressed by the Federal Circuit on appeal, and because the plaintiff maintained consistent constructions before the PTAB and the district court) (citing *SkyHawke Techs., LLC v. Deca Int'l Corp.*, 828 F.3d 1373, 1376-77 (Fed. Cir. 2016)). This only further highlights the speculative nature of the Motion.

In support of its position that a pre-institution stay should be issued, Samsung relies upon *Chart Trading Dev., LLC v. Tradestation Grp., Inc.*, 2016 WL 1246579, at *2 (E.D. Tex. Mar. 29, 2016). The case in *Chart Trading* is readily distinguishable. There, the patents at issue were challenged before the PTAB under Covered Business Method review ("CBM review"). 2016 WL 1246579, at *2. As noted by the court, "Section 18 of the AIA establishes the Transitional Program for CBM review." *Id.* (citing 157 Cong. Rec. S1360-02(2011); AIA § 18). The transitional program includes a statutory stay provision, which heavily favors a district court granting the stay. *Id.* Courts are directed to consider four factors when determining whether to grant a stay. *Id.* These factors are similar to those courts consider when assessing a motion to stay pending *inter partes* or *ex parte* review. *Id.* However, as noted by the court, the fourth factor, "whether a stay, or the denial thereof, will reduce the burden of litigation on the parties and on the court", has been considered as "'[having] ease[d] the movant's task of demonstrating the need for a stay.'" *Id.* (quoting *Mkt.-Alerts Pty. Ltd. v. Bloomberg Fin. L.P.*, 922 F. Supp. 2d 486, 489 (D. Del. 2013)). The decision in *Chart Trading* is distinguishable from the case here because CMB review is not implicated, and there is no statutory provision allowing for a stay that lowers the movant's burden. Samsung must meet a higher standard than the movant in *Chart Trading*, which it has not. And, while Court's may consider the fourth CBM review factor, they are not required to do so.

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Samsung's arguments regarding potential claim construction issues and prosecution disclaimer that may never arise are insufficient to warrant a stay. For this reason alone, the Motion should be denied.

B. Samsung Ignored Slyde's Arguments Regarding Undue Prejudice.

Contrary to Samsung's arguments in the Motion and the Reply, a stay would unduly prejudice Slyde. Samsung argues that the issues of trial delay, potential for witness and evidence availability, and impairment to Slyde's ability to license the Patents-in-Suit are present in all patent infringement cases and do not amount to undue prejudice. Samsung cites no case law in support of this proposition. Indeed, the balance of the case law holds that these factors do create undue prejudice. *See Allvoice Developments US, LLC v. Microsoft Corp.*, No. 6:09-CV-366, 2010 WL 11469800, at *4 (E.D. Tex. June 4, 2010) (finding a ten-month stay would "create a substantial delay that could cause prejudice by preventing Plaintiff from moving forward with its infringement claims and by risking the loss of evidence as witnesses become unavailable and memories fade"); *Allure Energy, Inc.* No. 9-13-CV-102, 2015 WL 11110606, at *1 (find that "a stay also tactically disadvantages [the plaintiff], as the longer [a case] persists, the more likely it is that evidence and witnesses' memories will disappear or deteriorate.") ; *Anascape, Ltd. v. Microsoft Corp.*, 475 F. Supp. 2d 612, 617 (E.D. Tex. 2007) ("It does seem that crucial witnesses are more likely to be located if discovery is allowed to proceed now, rather than later.").

Regarding the right to a speedy resolution of the litigation, "[t]he The Federal Circuit has long held that [r]ecognition must be given to the strong public policy favoring expeditious resolution of litigation. *Smart Mobile Techs. LLC v. Apple Inc.*, No. 6:21-CV-00603-ADA, 2023 WL 5051374, at *3 (W.D. Tex. Aug. 8, 2023) (quoting *Kahn v. GMC*, 889 F.2d 1078, 1080 (Fed. Cir. 1989) (internal quotations omitted). In fact, the purpose of establishing the PTAB was to provide a forum for quick resolution of patent disputes. *See id.* (citing *Ethicon Endo-Surgery, Inc.*

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