

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

NEODRON LTD.,

Plaintiff,

v.

SONY CORPORATION,

Defendant.

Case No. 6:20-cv-00122-ADA

**DEFENDANT SONY CORPORATION'S MOTION  
TO STAY ACTION PENDING ITC DETERMINATION**

Defendant Sony Corporation (hereinafter "Sony") appears specially to move this Court pursuant to 28 U.S.C. § 1659 to stay all proceedings in the above-captioned case until the determination of the United States International Trade Commission ("ITC") in the below-referenced parallel proceeding becomes final, including any appeals. Counsel for Sony contacted counsel for Plaintiff Neodron Ltd. ("Neodron") on three occasions over the past three days to determine Neodron's position. Counsel for Neodron did not respond.

On February 14, 2020, Neodron filed the complaint in this action against Sony alleging infringement of U.S. Patent Nos. 7,903,092 (the "'092 patent") and 8,749,251 (the "'251 patent"). (Dkt. No. 1). On that same day, Neodron filed a complaint with the ITC under Section 337 of the Tariff Act of 1930, as amended, against Sony and several other respondents, requesting that the ITC institute an investigation based on alleged patent infringement. (*See Ex. A, ITC Complaint, Public Version*). Neodron's ITC complaint alleges that Sony infringes the same '092 and '251 patents. (*See id.* at ¶¶ 43-47, 152-157). On March 16, 2020, the ITC

instituted an investigation based on Neodron's complaint, naming Sony as a respondent to the proceeding. (*See* Ex. B, Notice of Institution of Inv. No. 337-TA-1193).

Pursuant to 28 U.S.C. § 1659, District Court claims that involve the same issues as a parallel ITC proceeding are subject to a mandatory stay. Specifically, the statute provides:

(a) Stay. In a civil action involving parties that are also parties to a proceeding before the United States International Trade Commission under section 337 of the Tariff Act of 1930, at the request of a party to the civil action that is also a respondent in the proceeding before the Commission, the district court shall stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission, but only if such request is made within –

(1) 30 days after the party is named as a respondent in the proceeding before the Commission, or

(2) 30 days after the district court action is filed, whichever is later.

28 U.S.C. § 1659(a). A stay issued under this statute must remain in effect during any appeal(s) and must continue “until the Commission proceedings are no longer subject to judicial review.”

*In re Princo Corp.*, 478 F.3d 1345, 1355 (Fed. Cir. 2007).

Sony is both the defendant in this action and a respondent in the ITC investigation. The claims asserted in this action involve the exact same issues as the claims in the ITC investigation. Indeed, in both, Neodron asserts the same patents and alleges infringement of many of the same patent claims. (*See* Dkt. No. 1 ¶¶ 13, 21; Ex. A ¶¶ 152, 155). This motion is timely under 28 U.S.C. § 1659(a)(1) because it was filed within 30 days after Sony was named as a respondent in the ITC Investigation. A stay is, therefore, mandatory under § 1659(a).

For the foregoing reasons, Sony respectfully requests that the Court enter the attached proposed order staying all proceedings in this action until the determination of the 337-TA-1193 Investigation becomes final, including any appeals and until the ITC proceedings are no longer subject to judicial review.

Sony appears specially to make this motion because Neodron has not yet served process on Sony. Neodron's purported Proof of Service (Dkt. No. 10) shows only that Neodron's regular process server served documents on Neodron's international process server. Doing so does not affect service on Sony, does not satisfy Federal Rule of Civil Procedure 4(h)(2) & (f)(1), does not invoke the procedures of the Hague Convention on Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, and does not comply with this Court's order appointing the process server "to forward to the Central Authority in the applicable country, any and all documents to be served in this case." (Dkt. No. 9).

This service defect does not impact Sony's right to a stay under 28 U.S.C. § 1659. *Polymer Tech. Sys., Inc. v. ACON Labs., Inc.*, No. 18-CV-00805-H-JLB, 2018 WL 3388123, at \*2 (S.D. Cal. July 11, 2018) (staying district court case pending ITC investigation despite request to defer stay pending resolution of service dispute: "[U]nder section 1659(a), the Court is required to stay all the claims in the action as to both defendants, and the Court does not have discretion to delay its entry of a stay to allow the parties to resolve their dispute regarding service as to [one of the two defendants]").

Sony's special appearance does not waive any of its objections and defenses to Neodron's complaint, including, but not limited to, any defenses based on lack of jurisdiction, improper venue, insufficiency of process, and insufficiency of service of process. *See, e.g., Mann v. Castiel*, 681 F.3d 368, 374 (D.C. Cir. 2012) (holding that a motion to stay does not waive an objection to the sufficiency of service of process); *Lane v. XYZ Venture Partners, L.L.C.*, 322 F. App'x 675, 678 (11th Cir. 2009) (holding that defendants "did not waive their defense of lack of personal jurisdiction by moving to stay the proceedings"). Thus, Sony expressly reserves all of its objections and defenses to Neodron's complaint.

**CONCLUSION**

For all the foregoing reasons, Sony respectfully requests that the Court enter the attached proposed order staying all proceedings in this action until the determination of the 337-TA-1193 Investigation becomes final, including any appeals, and until the Commission proceedings are no longer subject to judicial review.

Date: April 1, 2020

/s/ Gerald B. Hrycyszyn

Gerald B. Hrycyszyn

Texas State Bar No. 24043734

WOLF, GREENFIELD & SACKS, P.C.

600 Atlantic Avenue

Boston, MA 02210

Telephone: 617.646.8000

Fax: 617.646.8646

ghrycyszyn@wolfgreenfield.com

Counsel for Defendant Sony Corporation

**CERTIFICATE OF CONFERENCE**

I hereby certify that, pursuant to Local Court Rule CV-7(i), I contacted counsel for Plaintiff Neodron Ltd. concerning the relief sought in this motion (1) on March 30, 2020 via email sent to counsel of record, (2) on March 31, 2020 via email sent to counsel of record, and (3) on April 1, 2020 by voice mail left with counsel Reza Mirzaie. Counsel for Plaintiff Neodron Ltd. did not respond.

Dated: April 1, 2020

/s/ Gerald B. Hrycyszyn

Gerald B. Hrycyszyn

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