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

INTELLECTUAL VENTURES I LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 2:17-CV-00577-JRG**
	§	
T MOBILE USA, INC., T-MOBILE US, INC., ERICSSON INC., TELEFONAKTIEBOLAGET LM ERICSSON,	§ § § §	
	§	
Defendants.	§	

ORDER DENYING MOTION TO STAY

Before the Court is Defendant's Renewed Motion to Stay Pending *Inter Partes* Review (Dkt. No. 200) ("the Motion"). For the following reasons, the Motion is **DENIED**.

I. BACKGROUND

On August 8, 2017, Intellectual Ventures brought suit against T-Mobile USA, Inc. and T-Mobile US, Inc. (collectively, "T-Mobile"), and Ericsson Inc. and Telefonaktiebolaget LM Ericsson (collectively, "Ericsson"), alleging infringement of United States Patent Nos. 6,628,629 ("the '629 Patent"), 7,359,971 ("the '971 Patent"), 7,412,517 ("the '517 Patent"), and RE 46,206 ("the '206 Patent"). (Complaint, Dkt. No. 1.)

On November 27, 2017, Plaintiff served Defendants with its initial infringement contentions. (Dkt. No. 42.)

Between March 1, 2018 and May 2, 2018, Ericsson filed a total of four IPR petitions, covering "all 17 remaining asserted claims.". (Dkt. No. 200 at 3.) The PTAB instituted the first three IPRs on October 5, 2018 and instituted the fourth on November 13, 2018.

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On November 14, Defendant filed the instant motion and moved for expedited briefing. (Dkt. Nos. 200, 201.) The Court granted the motion for expedited briefing on November 15, 2018.

On November 19, 2018, prior to Plaintiff's response, the Parties filed their motions for summary judgment and *Daubert* motions.

Pretrial is currently scheduled for January 4, 2018.

Trial is scheduled for February 4, 2018.

II. LEGAL STANDARD

District courts have broad discretion to manage their dockets, including the power to grant a stay of proceedings. *The Procter & Gamble Co. v. Kraft Foods Global, Inc.*, 549 F.3d 842, 848–49 (Fed. Cir. 2008) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of causes on its docket with economy of time and effort for itself, for counsel, and for litigants.")). When considering motions to stay, courts "must weigh competing interests and maintain an even balance." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

To strike the balance when a patent challenger moves to stay a litigation pending an IPR, courts in this district consider three factors: (1) whether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party; (2) whether discovery is complete and whether a trial date has been set; and (3) whether a stay will simplify issues in question and trial of the case. *Lennon Image Techs., LLC v. Macy's Retail Holdings, Inc.*, No. 2:13-CV-00235-JRG, 2014 U.S. Dist. LEXIS 130645, at *8 (E.D. Tex. Sept. 17, 2014). "Essentially, courts determine whether the benefits of a stay outweigh the inherent costs based on those factors." *EchoStar Techs. Corp. v. TiVo, Inc.*, No. 5:05-CV-00081, 2006 U.S. Dist. LEXIS 48431, at *4 (E.D. Tex. July 14, 2006).

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III. DISCUSSION

A. Whether a Stay Will Unduly Prejudice or Present a Clear Tactical Disadvantage to the Nonmoving Party

Defendants assert that Plaintiff will not "suffer any undue prejudice from a stay." (Dkt. No. 200 at 12.) While Defendant concedes that delaying Plaintiff's ability to timely enforce its patent rights is a form of undue prejudice, the "delay in enforcing patent rights is inherent in any stay, . . . 'it is therefore not sufficient, standing alone, to defeat a stay motion.'" (*Id.* at 13 (quoting *NFC Tech. LLC v. HTC Am., Inc.*, 2:13-cv-1058-WCB, 2015 U.S. Dist. LEXIS 29573, at *7 (E.D. Tex. Mar. 11, 2015)).) Defendants further assert that "IV can be adequately compensated by money damages to the extent it has suffered any injury to its patent rights," because "IV seeks only money damages, not injunctive relief," and "[m]ere delay in collecting money damages does not constitute undue prejudice." (*Id.* (citing *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1318 (Fed. Cir. 2014)).)

Plaintiff responds that "a patent holder has 'a recognized interest in the timely enforcement of its patent rights,'" and that, although "'a delay in vindication of patent rights alone is insufficient to prevent a motion to stay from being granted,' the Court has explained that 'such a delay should still be considered in determining the extent of undue prejudice.'" (Dkt. No. 230 at 12 (quoting *Unifi Sci. Batteries, LLC v. Sony Mobile Commc'ns AB*, No. No. 6:12-cv-221-LED-JDL, 2014 U.S. Dist. LEXIS 129388, at *9–10 (E.D. Tex. Jan. 14, 2014); *Intellectual Ventures II LLC v. Sprint Spectrum, L.P.*, No. 2:17-cv-00662-JRG-RSP (E.D. Tex. Nov. 19, 2018) (Dkt. No. 233)).)

It is well established that Plaintiff's timely enforcement of its patent rights is entitled to some weight, even if that factor is not dispositive. Further, there is no question that Plaintiff will be adequately compensated with monetary relief. Accordingly, the Court finds that this factor weighs slightly against a stay.

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B. Whether Proceedings Have Reached an Advanced Stage

Defendants argue that "[t]he stage of the litigation also favors a stay [because m]uch of the work to be done remains ahead of the parties and the Court in this case[, t]he prior art has not yet been substantively considered by the Court[, and e]xpert discovery closes on November 15, 2018." (Dkt. No. 200 at 9.) Defendants further assert that the "bulk of expert depositions are ongoing, with Defendants deposing all three of IV's experts and IV deposing Defendants' invalidity and damages experts between November 13–15 alone." (*Id.*) Finally, "[d]ispositive and *Daubert* briefing and pretrial disclosures have not yet begun, with dispositive and *Daubert* motions due on November 19, 2018, and opening pretrial disclosures due on November 20, 2018." (*Id.* at 8–9.) "A stay will therefore 'obviate the need to prepare for trial concerning some or all of the patents' claims, thus reducing the burden of litigation on the parties and the Court.'" (*Id.* at 9 (quoting *Stingray Music USA, Inc. v. Music Choice*, 2:16-cv-586-JRG-RSP, 2017 WL 9885167, at *2 (E.D. Tex. Dec. 12, 2017)).)

Plaintiff argues that the stage of the case "weighs against a stay," especially as "most of the examples that Defendants cite in support of [their] argument have since come and gone in the two weeks since Defendants filed their stay motion." (Dkt. No. 230 at 7.) Further, Plaintiff argues that there are only 82 days before jury selection, "well within the range in which multiple courts have denied requests to stay proceedings pending IPRs (or the close related post-grant review)." (*Id.* (citing *Chrimar Sys. v. Adtran, Inc.*, No. 6:15-cv-618-JRG-JDL, 2016 U.S. Dist. LEXIS 188613 (E.D. Tex. Dec. 8, 2016) (denying motion to stay filed 41 days before jury selection); *Carl Zeiss A.G. v. Nikon Corp.*, No. 217-cv-07083-RGK-MRW, 2018 U.S. Dist. LEXIS 181120 (C.D. Cal. Oct. 16, 2018) (denying motion to stay filed 56 days before trial); *Realtime Data LLC v. Actian Corp.*, No. 6:15-cv-463-RWS-JDL, 2016 U.S. Dist. LEXIS 187446 (E.D. Tex. Nov. 29, 2016) (denying motion to stay filed 186 days before jury selection); *Tinnus Enters., LLC v.*

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Telebrands Corp., No. 6:16-cv-033-RWS, 2017 U.S. Dist. LEXIS 110691 (E.D. Tex. April 5, 2017) (denying motion to stay filed 256 days before jury selection) (regarding post-grant review rather than IPR)).)

It is clear to the Court that Defendants are speaking out of both sides of their mouths. In fact, the Court finds it bizarre that Defendants simultaneously assert that "the bulk of expert depositions are ongoing" and that "[m]uch of the work to be done remains ahead of the parties and the Court in this case" while also asserting that they will have completed "deposing all three of IV's experts and IV deposing Defendants' invalidity and damages experts" within a day of the filing of this Motion. Additionally, despite Defendants moving for and obtaining expedited briefing on this Motion, the Parties still filed nine dispositive and *Daubert* motions prior to Plaintiff's response to this Motion. Indeed, it appears that during the pendency of the briefing on this Motion that the vast majority of the Parties' work has already taken place.

While this Court has previously held that delay in filing of IPR petitions of seven months from the filing of the Complaint is not inherently unreasonable, *see NFC Tech.*, 2015 U.S. Dist. LEXIS 29573, at *10–11, Defendants' choice to do so put it firmly at the mercy of the PTAB's institution timing. Defendants' choice is further complicated by their insistence of continually referencing their first filed IPR in their pleadings when it is the last and most recent IPR that is relevant here. Defendants' last IPR was filed two months after their first IPR and as such delayed full institution from October 5, 2018 to November 13, 2018. Then, on November 14, 2018, one day later, Defendants' filed the present Motion. Having elected to engage in parallel proceedings before the PTAB and engaged in conduct that elongated the institution proceedings, Defendants must now accept the consequences.

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