

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DRONE TECHNOLOGIES, INC.,

Plaintiff,

14cv0111

ELECTRONICALLY FILED

v.

PARROT S.A., PARROT, INC.,

Defendants.

**MEMORANDUM ORDER DEFENDANTS' MOTION TO STAY PENDING APPEAL
OR IN THE ALTERNATIVE TO STAY PENDING INTER PARTES REVIEW (DOC.
NO. 112)¹**

I. Introduction

The Court has written extensively on this patent infringement case and therefore, will not recount the full procedural posture of this case. See Doc. No. 106 for a complete discussion of the procedural posture to date, summarizing Defendants' relentless efforts to thwart the "just, speedy, and inexpensive determination" of this action. However, it is necessary to note the following:

Plaintiff filed a Complaint against Defendants in January 2014. Doc. No. 1. On May 6, 2014, Defendants filed two petitions in the United States Patent and Trademark Office seeking *Inter Partes* review of the patents that Defendants allegedly infringed. Defendants filed a Motion to Stay Pending *Inter Partes* Review (or to alternatively transfer venue to the United States District Court for the Eastern District of Michigan) contemporaneously with its Answer.

¹ This Motion is Defendants' third motion to stay these proceedings. See Doc. No. 17: Motion to Stay Pending *Inter Partes* Review, and Doc. No. 74: Motion for Relief from the Court's Order Dated July 25, 2014, or, in the Alternative, for a Stay Pending a Petition for Writ of Mandamus.

Doc. Nos. 16-17. The Court denied Defendants' Motion to Stay Pending *Inter Partes* Review and to Transfer. Doc. No. 29.

The Parties have been at loggerheads over Defendants' Court-Ordered discovery obligations since June 2014. Doc. No. 41. Defendants have repeatedly refused to comply with the Court's Orders to provide complete initial disclosures. Doc. Nos. 51, 61, 74. Plaintiff filed a Motion for Order to Show Cause Why Defendants Should Not be Held in Contempt on August 18, 2014. Doc. No. 78. On September 24, 2014, Defendants filed two petitions for writ of mandamus in the United States Court of Appeals for the Federal Circuit. *In re: Parrot S.A.*, 14-156, 14-157. Defendants contend that Writs of Mandamus should issue because: (1) this Court exceeded its authority by compelling Defendants to produce confidential source code without a showing of relevance and without adequate protections; and (2) this Court abused its discretion by refusing to grant Defendants' Motion to Transfer this case to the United States District Court for the Eastern District of Michigan. *Id.* This appeal remains pending.

The Court held an evidentiary hearing on Plaintiff's Motion to Show Cause Why Defendants Should Not be Held in Contempt on October 23, 2014. Doc. No. 99.

On October 28, 2014, the United States Patent and Trademark Office Patent Trials and Appeals Board issued institutional decisions in both *Inter Partes* review proceedings. The Board ordered the institution of *Inter Partes* review as to all claims in both patents based on obviousness or anticipation over prior art. IPR2014-00730, Paper No. 8, 2; IPR2014-0732, Paper No. 8, 2.

On November 3, 2014, the Court issued a Memorandum Opinion and Order in which the Court set forth that it was compelled to strike Defendants' counterclaims and enter default judgment against Defendants for infringement of the relevant patents based upon review of the

six (6) factors set forth in *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863 (3d Cir. 1984). Doc. Nos. 106-107. Defendants filed an appeal of this Order and seven (7) other underlying Orders to the United States Court of Appeals for the Federal Circuit. *Drone Technologies, Inc. v. Parrot S.A.*, 15-1138.² This appeal remains pending.

Following the entry of default judgment as to liability, the Court ordered the Parties to meet and confer and to file a Proposed Case Management Order as to any remaining issues. 11/03/2014 Text Order. The Parties were unable to reach agreement and have filed separate Proposed Case Management Orders. Doc. Nos. 111, 114.³

Presently before this Court is Defendants' Motion to Stay Pending Appeal or, in the Alternative, to Stay Pending *Inter Partes* Review. Doc. No. 112. Defendants move this Court to stay this matter pending the outcome of their appeal to the United States Court of Appeals for the Federal Circuit. *Id.* Defendants alternatively move this Court to stay the case pending the outcome of the *Inter Partes* Review of the patents at issue at the United States Patent and Trademark Office. *Id.* Plaintiff opposes this Motion in its entirety. Doc. No. 123.

II. Standard of Review

The Parties agree that this Court has the power to stay this proceeding pending appeal.

The following four factors guide a Court's determination of whether a stay is appropriate:

² Defendants have appealed the following seven (7) Orders: Doc. No. 29: Order on Motion to Transfer, Order on Motion for Reconsideration; Doc. No. 77: Order on Motion [for] Relief from the Court's Order Dated July 25, 2014, Order on Motion to Compel; Doc. No. 81: Order on Motion to Compel; Doc. No. 70: Order on Motion to Modify, Order on Motion to Bifurcate; Doc. No. 63: Order on Motion to Compel; Doc. No. 107: Order on Motion for Leave to File. Doc. No. 48: Order on Motion to Compel.

³ The Court notes that Plaintiff has offered to withdraw its claim for willful infringement so that the case may proceed solely as to damages. Doc. No. 111, 2. Defendants' Proposed Case Management Order, which was filed after Plaintiff's Proposed Case Management Order, included dates for both damages and willfulness. Doc. No. 114, ¶¶ (1)-(2).

- (1) Whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
- (2) Whether the applicant will be irreparably injured absent a stay;
- (3) Whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
- (4) Where the public interest lies.

Standard Havens Prods. v. Gencor Indus., 897 F.2d 511, 512 (Fed. Cir. 1990).

District Courts may also stay an action pending *Inter Partes* Review at the United States Patent and Trademark Office. As set forth by Defendants, District Courts have considered the following in determining whether to stay patent litigation pending Patent Office proceedings:

- (1) whether a stay would unduly prejudice the nonmoving party or present a clear tactical advantage for the moving party;
- (2) whether a stay will simplify the issues; and
- (3) whether discovery is complete and whether a trial date has been set

In re Laughlin, 265 F. Supp.2d 525, 530 (W.D. Pa. 2003).

III. Discussion

A. Defendants Have Not Demonstrated a Strong Showing of a Likelihood of Success

On July 1, 2014, the Court ordered Defendants to produce the following:

[A]ll source code, specifications, schematics, flow charts, or other technical documentation relating to the operation of the accused products (Parrot's AR.Drone, AR.Drone 2.0, MiniDrone, and Bebop Drone) and any associated remote-controller software applications, including all versions and drafts of Defendants' FreeFlight software app on or before July 9, 2014.

Doc. No. 48. As set forth in the Court's Memorandum Opinion on Plaintiff's Motion for Order to Show Cause Why Defendants Should Not be Held in Contempt, Defendants have advanced

numerous arguments in an attempt to skirt their obligation to produce this material. Doc. No. 106. The Court rejected each of these arguments and found that Defendants have not complied with this Court's Discovery Orders. Defendants have appealed these Orders to the United States Court of Appeals for the Federal Circuit through a Petition for Writ of Mandamus and a direct appeal. Defendants contend that these appeals are likely to succeed. Nothing has occurred since the Court entered its Order on July 1, 2014, which would excuse Defendants from their obligation to produce these materials. Defendants contend that their appeals will be successful because this Court has misapplied and misconstrued the relevant facts and law and has abused its discretion in entering default judgment. The Court has rejected Defendants' arguments as to why they should not have to comply with Orders of Court or why they should be deemed to have complied. Defendants present many of these same arguments to the United States Court of Appeals for the Federal Circuit. This is insufficient to demonstrate that there is a "strong showing that [they are] likely to succeed on the merits."

Defendants alternatively move this Court to stay this litigation pending *Inter Partes* Review at the Patent Office. Defendants contend that "it is a matter of time" before Plaintiff's patents are determined to be invalid. The Court finds that this statement is unsupported because Plaintiff has viable arguments to present to the Patent Office. The result of the *Inter Partes* review is undeterminable, not inevitable.

B. Defendants Will Not Be Irreparably Injured if the Court Does Not Stay this Case

Defendants argue that they will suffer irreparable harm if these proceedings continue because the Parties and Court "will waste resources that can never be recovered." Defendants also express concern about their ability to recover fees and costs from an "undercapitalized" foreign company. This situation is one of Defendants' own making. Defendants have repeatedly

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.