

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PAYRANGE INC.,)	
)	
Plaintiff,)	C.A. No. 23-278-MN
)	
v.)	JURY TRIAL DEMANDED
)	
CSC SERVICEWORKS, INC.,)	
)	
Defendant.)	

**PLAINTIFF PAYRANGE INC.’S OPPOSITION TO DEFENDANT
CSC SERVICEWORKS INC.’S
MOTION TO STAY PENDING INTER PARTES REVIEW**

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I. INTRODUCTION

CSC has filed the instant motion to stay the entire litigation through the entire IPR process based on a single institution of IPR for one of four Asserted Patents¹. But a stay is not warranted under the circumstances of the present case.

First, CSC’s motion is premature because the PTAB has still not yet issued an institution decision on the last of four Asserted Patents. That decision is due soon in April 2024. The appropriate time to consider a stay is after all of the institution decisions have been entered, especially here where CSC seeks to stay the *entire* case until all of its IPRs are exhausted. In less than two months, the parties and the Court will be in a better position to determine the potential impact of the PTAB’s IPR decisions.

Second, the factors that courts typically consider weigh against a stay. The potential to simplify issues through a stay is limited because the PTAB has already *denied* institution for two of the four Asserted Patents. As a result, the parties must litigate the issues of validity and infringement of the non-instituted ’208 and ’608 Patents—which comprise two-thirds of the total asserted claims—regardless of the outcome of the pending IPRs on the ’045 and ’772 Patents. For similar reasons, the potential benefits of reduced discovery are also unlikely to be so significant to the parties that they warrant taking this case off of its present scheduling track. Moreover, CSC’s request to stay the *entire* litigation substantially prejudices PayRange in the adjudication of its non-instituted claims and will also cause undue prejudice because CSC and PayRange are direct competitors in the market for mobile payments for laundry services, and PayRange thus suffers ongoing harm from CSC’s infringement.

¹ “Asserted Patents” refers to U.S. Patent Nos. 8,856,045 (“’045 Patent”); 10,438,208 (“’208 Patent”); 10,891,608 (“’608 Patent”); and 11,481,772 (“’772 Patent”).

Accordingly, because CSC has failed to show that a stay is appropriate at this stage of the case, and will not prejudice PayRange, CSC's motion should be denied.

II. BACKGROUND

PayRange is a pioneer and innovator. PayRange's acclaimed technology enables its customers to upgrade a coin-operated unattended retail machine into a state-of-the-art mobile payment solution with a small module, called "BluKey," which enables mobile transactions using a mobile payment app. In 2016, CSC sought to upgrade its payment systems and entered discussions with PayRange regarding PayRange's mobile payment technology. During that time, CSC began working on building its own solution and ultimately released the CSCPay Mobile app in 2018 and then the CSC Go app shortly thereafter without any proper license.

Thus, PayRange filed the instant suit on March 15, 2023—which was just five months after the October 25, 2022 issuance of the '772 Patent—seeking remedy based on CSC's infringement of four of PayRange's patents directed to mobile payment technology.

On June 17, 2023, CSC filed three IPR petitions for the '045, '208 and '608 Patents, and then filed a fourth IPR petition for the '772 Patent on October 9, 2023. On January 19, 2024, the PTAB instituted review of the '045 Patent only and denied institution for the '208 and '608 Patents. The institution decision for the '772 Patent is still pending. The status of the IPRs are summarized in the chart below:

Case No.	Asserted Patent	Asserted Claims	Institution Decision
IPR2023-01186	'045 Patent	1-3, 10-12, and 18-19	Instituted
IPR2023-01187	'208 Patent	1-2, 12-13 and 17-18	Institution Denied
IPR2023-01188	'608 Patent	1-2, 5-6, 7-8, 11-14 and 17-20	Institution Denied
IPR2023-01449	'772 Patent	11	Pending Institution Decision

Ex.² A (IPR2023-01186 Institution Decision); Ex. B (IPR2023-01187 Institution Decision); Ex. C (IPR2023-01188 Institution Decision); Ex. D (IPR2023-01449 Petition).

On February 9, 2024, CSC filed the instant motion to stay. D.I. 52 (“Op. Br.”).

III. LEGAL STANDARDS

The decision whether to grant a stay is generally committed to the district court’s discretion. *Cost Bros., Inc. v. Travelers Indem. Co.*, 760 F.2d 58, 60–61 (3d Cir. 1985) (collecting cases). This discretion includes “whether to stay proceedings pending review by the Patent and Trademark Office (“PTO”) of the validity of the patent or patents at issue in the lawsuit.” *IOENGINE, LLC v. PayPal Holdings, Inc.*, C.A. Nos. 18-452-WCB, 18-826-WCB, 2019 WL 3943058 (D. Del. Aug. 21, 2019) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422 (Fed. Cir. 1988)). District courts typically consider three factors when determining whether to grant a stay pending *inter partes* review of the patent in suit: “(1) whether granting the stay will simplify the issues for trial; (2) the status of the litigation, particularly when discovery is complete and a trial date has been set; and (3) whether a stay would cause the non-movant to suffer undue prejudice from any delay, or allow the movant to gain a clear tactical advantage.” *IOENGINE*,

² Exhibits are attached to the Declaration of Jamie Otto filed herewith in support of PayRange’s Opposition to CSC’s Motion to Stay.

2019 WL 3943058 (quoting *Princeton Digit. Image Corp. v. Konami Digit. Ent. Inc.*, C.A. Nos. 12-1461-LPS-CJB, 13-335-LPS-CJB, 2014 WL 3819458 (D. Del. Jan. 15, 2014) (collecting cases)); see also *In re Cygnus Telecomm. Tech., LLC., Patent Litig.*, 385 F. Supp. 2d 1022 (N.D. Cal. 2005).

IV. ARGUMENT

A. CSC's request for a stay is premature.

CSC's request for a stay is premature because "courts almost invariably deny requests for stays pending IPR proceedings when the stay requests are filed before the IPR is instituted, and a pre-institution request therefore would have been futile." *IOENGINE*, 2019 WL 3943058, *6 (citing *Invensas Corp. v. Samsung Elecs. Co.*, C.A. No. 17-1363, 2018 WL 4762957, at *6 (D. Del. Oct. 2, 2018); *Universal Secure Registry, LLC v. Apple Inc.*, C.A. No. 17-585, 2018 WL 4486379, at *4-5 (D. Del. Sept. 19, 2018); *454 Life Scis. Corp. v. ION Torrent Sys., Inc.*, C.A. No. 15-595, 2016 WL 6594083, at *4 (D. Del. Nov. 7, 2016) (stay motion filed shortly after PTAB issued its institution decisions, "which is generally the ideal time at which to file such a request.")).

Here, the PTAB has still not yet issued an institution decision on the '772 Patent. Until then, CSC's request is premature, particularly since CSC's request seeks to stay the *entire* case for all Asserted Patents. However, in less than two months, the PTAB will issue the final institution decision for the last Asserted Patent, at which point the parties and the Court will be in a better position to determine the potential impact of the PTAB's IPR decisions. Therefore, CSC's request should be denied at this time.

B. Factor 1: A stay would not simply the issues in question and trial of the case.

The parties agree that the most important factor in determining whether to stay is whether the stay is likely to simplify the issues at trial. *See* Op. Br. 5 (citing *Brit. Telecomms. PLC v. IAC/InterActieCorp*, C.A. No. 18-366-WCB, 2020 WL 5517283, at *9 (D. Del. Sept. 11, 2020)). But contrary to CSC’s arguments, here, a stay may not simplify the issues in the case as CSC contends and certainly could never eliminate the need for a trial because the PTAB has already denied institution for two of four IPR petitions filed by CSC. As a result, more than half of the asserted claims will need to be litigated in district court, regardless of the outcome of the two pending IPR proceedings. Thus, even if the PTAB grants institution of the ’772 Patent, less than a third of the asserted claims will continue to be in the reexamination proceeding. *See Kaavo Inc. v. Cognizant Tech. Sols. Corp.*, C.A. No. 14-1192-LPS-CJB, 2015 WL 1737476, at *1 (D. Del. Apr. 9, 2015) (citing *SenoRx, Inc. v. Hologic, Inc.*, C.A. No. 12-173-LPS, 2013 WL 144255, at *3-4 (D. Del. Jan. 11, 2013) (“in assessing the simplification factor as to a request for a stay in favor of *inter partes* reexamination, examining what *percentage* of the asserted claims are at issue in the reexamination proceeding.”) (emphasis added)). Thus, CSC’s cited patent office statistics regarding the likelihood of survival of claims following IPR has little informative value here, where majority of the claims at issue have already survived. *See* Op. Br. 7.

The assertion that the pending ’045 and ’772 IPRs will have any effect on the non-instituted ’208 and ’608 Patents is highly speculative. *See* Op. Br. 5-6. Contrary to CSC’s arguments, the instituted ’045 IPR is unlikely to provide guidance on the issues of the two non-instituted ’208 and ’608 Patents because the PTAB’s determinations are not generally binding on this Court. *Liqwd, Inc. v. L’Oréal USA, Inc.*, C.A. No. 17-14-JFB-SRF, 2019 WL 1873281, *4 (D. Del. Apr. 25, 2019). It is especially unlikely that the PTAB will provide any relevant

guidance on claim construction disputes, given that CSC's IPR petitions did not identify any terms for construction and the Board has stated that all terms should therefore be given their plain and ordinary meaning. *See, e.g.*, Ex. A at 11; Ex. B at 10; Ex. C at 9-10; Ex. D at 13.

Additionally, CSC's speculation regarding the scope and effect of IPR estoppel does not warrant a stay. The scope of IPR estoppel under 35 U.S.C. § 315(e)(2) can be determined at the moment of institution because it is “‘the petition, not the institution decision’ [that] ‘defines the scope of the IPR’ litigation.” *Ironburg Inventions Ltd. v. Valve Corp.*, 64 F.4th 1274, 1297 (Fed. Cir. 2023) (quoting *Click-to-Call Techs. LP v. Ingenio, Inc.*, 45 F.4th 1363, 1369 (Fed. Cir. 2022)); *see also* Op. Br. 7. Since the PTAB has already issued institution decisions for three of the four Asserted Patents, there is no need to stay the litigation as to those patents because the PTAB's final written decision on the sole instituted '045 Patent will not change the scope of IPR estoppel. The only possible change in the scope of IPR estoppel that may occur during a stay would be for the single asserted claim of the last '772 IPR petition that is still awaiting an institution decision. Thus, a stay would provide very minimal simplification, if at all, based on IPR estoppel.

Moreover, the IPRs only related to CSC's invalidity challenges under 35 U.S.C. §§ 102 and 103 for prior art reference-based grounds. *See generally*, Exs. A-D. But according to CSC's Initial Invalidity Contentions, CSC also raises numerous Section 101 and Section 112 invalidity challenges, which the PTAB cannot determine through its claim construction. *CAO Lighting, Inc. v. Gen. Elec. Co.*, C.A. No. 20-681-GBW, 2022 WL 17752270, at *2 (D. Del. Dec. 19, 2022) (holding this factor neutral when “‘the issues before the PTAB are not the only defenses asserted by Defendants in [the] actions.’”). Also, more than half of CSC's prior art combinations

are centered on prior art systems. None of these invalidity defenses will be impacted by IPR estoppel.

Although CSC points to cases where courts have stayed a case in its entirety even when IPR was instituted on fewer than all claims, many of these cases do not involve situations where the PTAB had already *denied* institution for majority of the claims at issue. *See, e.g., Bonutti Skeletal Innovations, L.L.C. v. Zimmer Holdings, Inc.*, No. 12-CV-1107 (GMS), 2014 WL 1369721, at *1 (D. Del. Apr. 7, 2014) (IPR instituted for two of six asserted patents and none denied institution.); *Pegasus Dev. Corp. v. Directv, Inc.*, No. CIV.A. 00-1020-GMS, 2003 WL 21105073, at *1 (D. Del. May 14, 2003) (Ex Parte Reexamination instituted for one of six asserted patents and none denied institution.); *Nike, Inc. v. Lululemon USA Inc.*, No. 22-CV-00082 (RA) (OTW), 2023 WL 2214884, at *1 (S.D.N.Y. Feb. 24, 2023) (All the IPRs are pending and thus none denied institution.). In another cited case, *Kannuu Pty Ltd. v. Samsung Elecs. Co.*, the PTAB issued institution decisions on all filed IPRs, which enabled the court to make a knowledgeable decision on the entire scope of the issues involved in the IPR proceedings. *Kannuu Pty Ltd. v. Samsung Elecs. Co.*, No. 19 Civ. 4297 (ER), 2021 WL 195163, at *2 (S.D.N.Y. Jan. 19, 2021), *aff'd*, 15 F.4th 1101 (Fed. Cir. 2021). In *IOENGINE*, out of the twelve IPR petitions, one was instituted and one was denied institution, but the remaining ten were still awaiting institution decisions. *IOENGINE*, 2019 WL 3943058, at *1. In all of these cases, the pending IPRs had the potential to significantly simplify the issues due to the large percentage of asserted claims under review. Here, in contrast, majority of the asserted claims will not be further reviewed by the PTAB.

Because CSC's case law does not apply to the instant facts and because a stay of the entire litigation will not simplify the case for a significant majority of asserted claims and

invalidity issues in the case, this factor weighs against a stay or is at best neutral. To the extent this Court finds that the benefits of proceeding on all the instituted patents is outweighed by the risk, PayRange respectfully requests that this Court grant only a limited stay of just litigation of the instituted '045 Patent.

C. Factor 2: The current status of the litigation and IPR proceedings do not favor a stay.

Although the relatively early stage of the litigation often favors a stay, “the early stage of the litigation must be balanced against the stage of the reexamination proceedings.” *SoftView LLC v. Apple Inc.*, Civ. No. 10-389-LPS, 2012 WL 3061027, *4 (D. Del. Jul. 26, 2012). As explained above for Factor 1, majority of the asserted claims have already survived the IPR process. *See supra* Section I.A. As a result, much of the cost of discovery will be born regardless of the outcome of the pending IPRs because there are substantial number of surviving asserted claims and issues and discovery regarding the accused products will not substantially change, if at all, based on the outcome of the IPRs. Thus, “[t]he potential benefits of reduced discovery are not likely to be so significant to the parties that they warrant taking this case off of its present scheduling track.” *See Nexans Inc. v. Belden Inc.*, C.A. No. 12-1491-SLR-SRF, 2014 WL 651913, at *4 (D. Del. Feb. 19, 2014), report and recommendation adopted, C.A. No. 12-1491-SLR/SRF, 2014 WL 1232218 (D. Del. Mar. 12, 2014).

Finally, contrary to CSC’s arguments, the number of accused products does not favor a stay. CSC cites to no case law suggesting that the number of accused products should be a factor at all when considering a stay. Moreover, PayRange should not be penalized for settling claims to reduce the number of the accused products in this case.

Accordingly, the status of the litigation and IPR proceedings does not favor a stay.

D. Factor 3: A stay would prejudice PayRange.

A stay would prejudice PayRange where the parties are direct competitors and where PayRange has other claims pending that do not depend on the validity of the patents involved in the pending IPRs. “[C]ourts are generally reluctant to stay proceedings where the parties are direct competitors.” *Neste Oil Oyj v. Dynamic Fuels, LLC*, Civil Action No. 12-662-GMS, 2013 WL 424754, at *2 (D. Del. Jan. 31, 2013) (internal citation and quotations omitted). “In such cases, ‘there is a reasonable chance that delay in adjudicating the alleged infringement will have outsized consequences to the party asserting infringement has occurred, including the potential for loss of market share and an erosion of goodwill.’” *Id.*, at *2. Additionally, courts have also held that “a party may be prejudiced when it has other claims pending that do not depend on the validity of the patent involved in the inter partes review and would nevertheless be put on hold during the stay.” *InVue Security Prods. Inc. v. Vanguard Prods. Grp., Inc.*, No. 8:18-cv-2548-T-33SPF, 2019 WL 3958272, at *2 (M.D. Fla. Aug. 22, 2019); *see also Tomco Equip. Co. v. Se. Agri-Sys., Inc.*, 542 F. Supp. 2d 1303, 1308 (N.D. Ga. 2008).

Contrary to CSC’s arguments, CSC and PayRange are direct competitors in the market for mobile payments for laundry services. PayRange offers a mobile payment service for laundry services. *See* Exs. E-F; *see also, e.g.*, D.I. 12 (“Am. Compl.”) ¶¶ 2-4. CSC provides laundry solutions and offers a competing mobile payment services, including the CSCPay Mobile and CSC Mobile apps. *See* Op. Br. 12, *see also, e.g.*, Am. Compl. ¶¶ 20-21, 54. As a result, PayRange suffers ongoing harm from CSC’s infringement. Moreover, PayRange not only seeks monetary damages, but also injunctive relief. Am. Compl. at 27-28.

Finally, as explained above, there are a substantial number of asserted claims that have already survived the IPR process and thus delaying litigation on those claims would naturally prejudice PayRange more than CSC.

Accordingly, because PayRange will suffer undue prejudice from a stay, CSC's motion to stay should be denied.

V. CONCLUSION

Because the CSC's motion to stay is premature and because the factors weigh against staying the instant case, PayRange respectfully requests the Court deny CSC's motion to stay this litigation pending IPR.

Respectfully submitted,

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