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11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15
16 INARI MEDICAL, INC.,

17 Plaintiff,

18 v.

19 IMPERATIVE CARE, INC.,

20 Defendant.
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Civil Action No. 5:24-cv-03117-EKL-SVKx

**IMPERATIVE CARE, INC.’S NOTICE
OF MOTION AND MOTION TO STAY
PENDING *INTER PARTES* REVIEW**

Hearing Date: July 16, 2025

Time: 10:00 a.m.

Courtroom: 7

Hon. Eumi K. Lee

27 Inari-2005
Imperative Care, Inc. v. Inari Medical, Inc.
28 IPR2025-00728

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1 case will be further narrowed. And, even if some claims survive IPR, this case would be
2 simplified because (a) Imperative Care would be estopped from presenting certain invalidity
3 arguments, and (b) Stryker/Inari's arguments in the IPR and any claim-construction issues
4 addressed by the PTO would aid this Court in performing its own claim-construction analysis.

5 Finally, a stay would not cause undue prejudice to Stryker/Inari. Stryker/Inari cannot
6 show it would be prejudiced by having to wait for legal or equitable relief. Regarding
7 monetary relief, Stryker/Inari has unlimited resources following its acquisition by Stryker,
8 one of the world's largest medical device companies, so it cannot claim any economic
9 hardship. Plus, prejudgment interest can compensate Stryker/Inari for any delayed recovery.
10 Regarding equitable relief, Imperative Care proposes the Court decide the pending PI Motion
11 before issuing a stay so Stryker/Inari will have an opportunity for equitable relief. Imperative
12 Care welcomes the upcoming hearing so it can clear the unfair cloud Stryker/Inari has cast
13 over its business. Presumably, Stryker/Inari selected its three best patent claims to assert in
14 that motion. Thus, a denial of the PI Motion would confirm that Stryker/Inari is unlikely to
15 prevail on the merits and/or could not show irreparable harm or hardships for an injunction.
16 Conversely, in the unlikely event the Court were to grant the PI, Stryker/Inari would probably
17 welcome a stay because Symphony Thrombectomy System ("Symphony") would be off the
18 market, satisfying its primary goal for filing suit.

19 Courts in this district routinely stay patent cases pending IPRs on the asserted patents.
20 And they do so without waiting for the PTO's institution decision. Accordingly, the Court
21 should stay this case during the pendency of the IPR proceedings concerning all the patents
22 which Stryker/Inari may assert against the sale of Symphony.

23 **II. FACTUAL BACKGROUND**

24 **A. Stryker/Inari Asserts a Growing Number of Patents Against Imperative Care**

25 On May 22, 2024, Stryker/Inari filed its initial Complaint, which accused Imperative
26 Care's manufacture and sale of Symphony of infringing eight patents, including U.S. Patent
27 No. 11,697,011 ("the '011 Patent"). Dkt. 1. On July 9, 2024, Stryker/Inari filed a First
28 Amended Complaint, which added a ninth patent to the lawsuit. Dkt. 20.

1 On July 24, 2024, Stryker/Inari filed its PI Motion to enjoin the sale of Symphony,
2 asserting three claims from two of the eight patents. Dkt. 24.

3 On February 7, 2025—the deadline to amend the pleadings (Dkt. 54)—Stryker/Inari
4 filed a Second Amended Complaint, withdrawing the '011 Patent (shortly after the PTO
5 instituted an IPR on that patent) and adding two new patents. Dkt. 68. Stryker/Inari also
6 served supplemental infringement contentions, which identified 181 asserted claims from the
7 ten patents asserted in the Second Amended Complaint. Ex. 1.

8 On March 5, 2025, Stryker/Inari filed a Motion for Leave to File a Third Amended
9 Complaint (“Motion to Amend”). Dkt. 88. That Motion, pending for hearing on May 28,
10 seeks to add an eleventh patent to this case. *Id.* Imperative Care conditionally opposed that
11 motion, requesting that the Court vacate the schedule to allow Stryker/Inari to obtain and
12 assert all its patents against Symphony. Dkt. 98. Also on March 5, 2025, Stryker/Inari
13 served more supplemental infringement contentions, which identified 21 asserted claims from
14 this eleventh patent. Ex. 2. Stryker/Inari has presently identified 202 asserted claims from
15 these eleven patents in an apparent attempt to overwhelm its early-stage competitor.

16 Stryker/Inari has threatened to add even more patents and claims to this litigation. On
17 February 18, 2025, Stryker/Inari sent a letter to Imperative Care identifying an additional five
18 patents and 82 patent claims to “consider ... before attempting to commercialize any blood
19 return system” for use with the Symphony system. Ex. 3. On March 14, 2025, Stryker/Inari
20 moved to compel the production of information about an unaccused blood-return device
21 developed by Imperative Care that has never been commercialized and has not yet received
22 FDA approval. In its motion Inari even admitted that it was seeking the discovery to develop
23 new infringement claims to assert in this case. Dkt. 94. Then, in correspondence concerning
24 its Motion to Amend, Stryker/Inari again confirmed its intent to continue to expand this case
25 by asserting new patents. Ex. 4.

26 **B. Imperative Care Continues to File IPR Petitions on the Asserted Patents**

27 An IPR is a proceeding for challenging the validity of an issued patent at the PTO. 35
28 U.S.C. §§ 311-319. To initiate an IPR, a party files a petition requesting that the PTO cancel

1 one or more claims of the patent under 35 U.S.C. § 102 (lack of novelty) or 35 U.S.C. § 103
2 (obviousness) based on prior-art patents and printed publications. 35 U.S.C. § 311(b). The
3 filing fee for each IPR is \$51,875. 37 C.F.R. § 42.15(a)(1)-(2).

4 On July 8, 2024, Imperative Care filed its first IPR petition against the '011 patent.
5 Dkt. 24-35. Imperative Care argued that the claims of the '011 patent were invalid because
6 they did not describe a new and nonobvious invention in view of prior art references that the
7 PTO did not consider when it allowed that patent. *Id.* at 1-6. Imperative Care has since filed
8 IPR petitions challenging four other Stryker/Inari patents asserted in this case. Stowell Decl.,
9 ¶ 2. Imperative Care is also preparing IPR petitions for the remaining asserted patents and
10 expects to file several of those petitions before the hearing on this Motion. *Id.*, ¶ 3. For the
11 remaining more recently issued patents, Imperative Care must wait to file its petitions until
12 nine months after the patent issuance date. *See* 35 U.S.C. § 311(c)(1).

13 On January 23, 2025, the PTAB instituted the '011 Patent IPR, finding Imperative
14 Care was likely to show invalidity. Ex. 5. On February 7, the PTAB declined to institute IPR
15 of the '691 Patent for reasons unrelated to any of the other asserted patents. Ex. 6; Dkt. 89 at
16 8-9. That day, Stryker/Inari withdrew the '011 Patent from this litigation, showing how IPRs
17 can simplify this case. Since then, the Court has allowed the parties to submit supplemental
18 briefs over the relevance to the PI Motion of those two institution decisions and Stryker
19 Corporation's ("Stryker") recent acquisition of Inari. Dkt. 89; Dkt. 97. This Court will hear
20 argument on both the PI Motion and the Motion to Amend on May 28, 2025.

21 By statute, the PTAB must issue its final written decision on the '011 Patent IPR by
22 January 2026. 35 U.S.C. § 316(a)(11). Because the PTAB must decide whether to institute
23 an IPR within about six months of filing, its institution decisions on its pending IPR petitions
24 will issue between May and September 2025.

25 **III. LEGAL STANDARD**

26 Congress established IPRs to provide "a more efficient system for challenging patents
27 that should not have issued" and to reduce "unwarranted litigation costs." H.R. Rep. No.
28 112-98, at 39-40 (2011). The Federal Circuit's affirmance of a PTAB decision canceling a

1 patent “has an immediate issue-preclusive effect on any pending or co-pending actions
2 involving the patent,” *XY, LLC v. Trans Ova Genetics, L.C.*, 890 F.3d 1282, 1294 (Fed. Cir.
3 2018), and the Federal Circuit will vacate a district court’s judgment in the patentee’s favor
4 once it affirms an IPR decision invalidating a patent, *Soverain Software LLC v. Victoria’s*
5 *Secret Direct Brand Mgmt., LLC*, 778 F.3d 1311, 1313, 1320 (Fed. Cir. 2015).

6 District courts have inherent power to stay a patent case in view of a co-pending IPR.
7 *Murata Mach. USA v. Daifuku Co.*, 830 F.3d 1357, 1361 (Fed. Cir. 2016). There is “a liberal
8 policy in favor of granting motions to stay” in view of pending PTO proceedings. *Finjan,*
9 *Inc. v. Symantec Corp.*, 139 F. Supp. 3d 1032, 1035 (N.D. Cal 2015) (internal quotes and
10 citation omitted). Courts in this district routinely stay patent cases where the PTAB has
11 instituted IPR on one or more asserted patents, or even where institution of the IPRs is still
12 pending. *See, e.g., Google LLC v. EcoFactor, Inc.*, No. 21-cv-03220-HSG, 2022 WL
13 6837715 (N.D. Cal. Oct. 11, 2022) (IPRs instituted for three of four asserted patents); *IXI*
14 *Mobile (R & D) Ltd. v. Samsung Elecs. Co Ltd*, No. 15-CV-03752-HSG, 2015 WL 7015415
15 (N.D. Cal. Nov. 12, 2015) (three pending IPRs petitions); *Speir Techs. Ltd. v. Apple, Inc.*, No.
16 5:23-CV-00095-EJD, 2023 WL 2714931 (N.D. Cal. Mar. 30, 2023) (similar).

17 Three factors guide the stay inquiry: “(1) whether discovery is complete and a trial
18 date has been set; (2) whether a stay will simplify the issues in question and trial of the case;
19 and (3) whether a stay would unduly prejudice or present a clear tactical disadvantage to the
20 nonmoving party.” *PersonalWeb Techs., LLC v. Apple Inc.*, 69 F. Supp. 3d 1022, 1025 (N.D.
21 Cal. 2014). Courts can also consider other factors in assessing a stay. *See Murata*, 830 F.3d
22 at 1362 (“Attendant to the district court’s inherent power to stay proceedings is the court’s
23 discretionary prerogative to balance considerations beyond those captured by the three-factor
24 stay test.”). All factors favor granting a stay in this case.

25 **IV. ARGUMENT**

26 **A. This Case Is In Its Early Stages**

27 In analyzing the first stay factor, “the proper time to measure the stage of litigation” is
28 “the date of the filing of the motion to stay.” *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759

1 F.3d 1307, 1316 (2014). “Issues for consideration include whether the parties have engaged
2 in costly expert discovery and dispositive motion practice, whether the parties have fully
3 briefed the issue of claim construction, attended a *Markman* hearing and received a claim
4 construction order, and whether a court has set a trial date.” *HD Silicon Solutions LLC v.*
5 *Microchip Tech. Inc.*, No. 21-cv-08295-SK, 2022 WL 3084315 *2 (N.D. Cal. Aug. 3, 2022).
6 Grant of a “stay is particularly appropriate for cases in the initial stages of litigation or in
7 which there has been little discovery.” *Finjan, Inc. v. Symantec Corp.*, 139 F. Supp. 3d 1032,
8 1035 (N.D. Cal. 2015).

9 Here, the parties agree that “discovery is at an early stage” Dkt. 88 at 2. Outside
10 of limited discovery as part of the PI Motion, the parties have not engaged in any costly
11 expert discovery or filed dispositive motions. The parties have also not briefed the issue of
12 claim construction and are not due to file their Joint Claim Construction & Prehearing
13 Statement until April 28, 2025. Nor are they scheduled to participate in the claim-
14 construction hearing until July 24, 2024. Dkt. 54. Finally, the Court has not set a trial date or
15 dates for the close of fact or expert discovery. *Id.*

16 Moreover, Stryker/Inari is still amending the pleadings to assert additional patents.
17 For example, on February 7, 2025, Stryker/Inari filed a Second Amended Complaint, which
18 asserted two additional patents in the case. Dkt. 68. On March 5, 2025, Stryker/Inari sought
19 leave to file a Third Amended Complaint, which would add yet another patent to the case.
20 Dkt. 88. Stryker/Inari has also threatened to continue to add even more patents to this case
21 against a pre-commercial, developmental-stage blood-return device it believes could be used
22 with Symphony. Ex. 3; Dkt. 94 at 6. If the Court allows Stryker/Inari to add patents, the
23 parties will be forced to engage in a seemingly never-ending cycle of contentions, claim-
24 construction proceedings, and discovery, which will extend the case schedule significantly.
25 Accordingly, the first factor weighs heavily in favor of a stay because the parties agree the
26 case is in its early stages.

27 **B. A Stay Will Simplify This Case**

28 “Staying the case pending the outcome of IPR could simplify the case by rendering

1 some or all of [Stryker/Inari’s] infringement claims moot, estopping [Imperative Care] from
2 asserting any arguments they raised or reasonably could have raised in the IPR[s], and
3 providing the Court with [the] PTAB’s expert opinion on the claims at issue.” *IXI Mobile*,
4 2015 WL 7015415 at *3. Thus, this factor also favors a stay.

5 Imperative Care has already sought IPR of all the asserted claims of five of
6 Stryker/Inari’s asserted patents. Although the PTAB declined to institute IPR of the ’691
7 Patent (while instituting on the ’011 Patent), it has not yet issued institution decisions for the
8 other three pending IPR petitions. Stowell Decl., ¶ 2. Courts in this district grant stays under
9 similar circumstances. *See, e.g., EcoFactor*, 2022 WL 6837715 at *2 (granting stay despite
10 PTAB declining to institute IPR on one of several asserted patents).

11 Moreover, because they appear to be invalid in view of the prior art, Imperative Care
12 intends to file IPR petitions challenging all the asserted claims for each of the remaining
13 asserted patents. Stowell Decl., ¶ 3. If the PTAB institutes any of those IPRs and invalidates
14 the asserted claims, it would significantly simplify the issues. *See Speir Techs.*, 2023 WL
15 2714931 at *2 (“even a single PTAB decision has the potential to streamline the case
16 significantly”); *see also EcoFactor*, 2022 WL 6837715 at *2) (granting stay where “53 of 70
17 claims” were “subject to potential invalidation” at PTAB). Under these circumstances, a stay
18 “effectuates the intent of the AIA by allowing the agency with expertise to have the first
19 crack at cancelling any claims that should not have issued in the patents-in-suit before costly
20 litigation continues.” *Software Rts. Archive, LLC v. Facebook, Inc.*, No. C-12-3970 RMW,
21 2013 WL 5225522, *6 (N.D. Cal. Sept. 17, 2013).

22 The PTAB has already instituted IPR of the ’011 Patent, which Stryker/Inari admits
23 caused it to withdraw the ’011 Patent from this lawsuit. *See* Dkt. 97 at 2, n.1. Four asserted
24 patents share a virtually identical specification with the ’011 Patent, include many of the
25 same claim limitations, and are invalid based on the same prior art. For example, nine of
26 Stryker/Inari’s asserted patents use the term “filament,” which is currently in dispute in the
27 ’011 Patent IPR. Ex. 5. Thus, many of the issues the PTAB considered in its institution
28 decision—and will resolve in a final written decision—are common among these patents.

1 Accordingly, Imperative Care expects the PTAB will institute IPRs against each of these
2 related patents. If Stryker/Inari withdraws any of those patents after the PTAB issues its
3 institution decision—as it did with the '011 Patent—no reason justifies wasting precious
4 judicial resources and Imperative Care’s limited resources litigating those patents now.

5 Alternatively, “[e]ven if all the asserted claims survive [IPR], the case could still be
6 simplified because [Imperative Care] would be bound by the estoppel provisions ... and thus
7 could not raise before this Court any arguments it raised, or reasonably could have raised, at
8 the PTO in its petitions.” *Neodron, Ltd. v. Lenovo Group, Ltd.*, No. 19-cv-05644-SI, 2020
9 WL 5074308 *2 (N.D. Cal., Aug. 27, 2020). Such an outcome “would assist in streamlining
10 the presentation of evidence and benefit the trier of fact by providing the expert opinion of the
11 PTO.” *PersonalWeb Techs.*, 2014 WL 116340 at *4. This “heavily tips the scale in favor of
12 granting the stay.” *Software Rts. Archive*, 2013 WL 5225522 at *4.

13 **C. A Stay Will Not Unduly Prejudice or Tactically Disadvantage Stryker/Inari**

14 Courts “address four considerations when evaluating undue prejudice: (1) the timing
15 of the IPR petition; (2) the timing of the stay request; (3) the status of review; and (4) the
16 relationship of the parties.” *Apple Inc. v. AliveCor, Inc.*, No. 22-cv-07608-HSG, 2023 WL
17 9187388 *3 (N.D. Cal. Dec. 29, 2023). Courts in this district “have repeatedly found no
18 undue prejudice unless the patentee makes a specific showing of prejudice beyond the delay
19 necessarily inherent in any stay.” *PersonalWeb Techs.*, 69 F. Supp. 3d at 1029 (collecting
20 cases). Stryker/Inari cannot make such a showing.

21 First, Stryker/Inari cannot assert any undue prejudice based on the timing of
22 Imperative Care’s IPR petitions. Congress granted defendants the right to file an IPR petition
23 within a year of being served with a patent infringement complaint. 35 U.S.C. § 315(b).
24 Imperative Care has acted diligently to file IPR petitions against Stryker/Inari’s asserted
25 patents within the statutory window. Imperative Care’s timely exercise of its statutory right
26 does not suggest any dilatory motive. *See IXI Mobile*, 2015 WL 7015415 at *4. Further,
27 Imperative Care is required by statute to wait until at least nine months after the issue date of
28 an asserted patent to file an IPR. 35 U.S.C. § 311(c)(1). Stryker/Inari has repeatedly

1 amended its complaint to add newly issued patents, which has restricted when Imperative
2 Care can file its IPR petitions. For example, Imperative Care cannot file an IPR on the
3 recently added '669 Patent until September 2025.

4 Second, Stryker/Inari cannot assert any undue prejudice or surprise based on the
5 timing of this motion. During the Court's initial case management conference, Imperative
6 Care notified the Court that it would seek a stay once the PTAB started issuing institution
7 decisions. Ex. 7 at 31:1-3. The Court responded that it was "very clear" to the Court already.
8 *Id.* at 31:4. Under these circumstances, Stryker/Inari can claim no prejudice or surprise. *See*
9 *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 6068407 *3 (N.D. Cal. Nov.
10 13, 2014) (finding potential prejudice not significant where stay would allow more orderly
11 claim construction if new patents were added to suit).

12 Third, the PTAB has already instituted one IPR, and did so on grounds that suggest
13 other IPRs will also be instituted. The next institution decisions are due between May and
14 September 2025.

15 Finally, the relationship between the parties is not a source of undue prejudice. Even
16 where the parties are direct competitors, the question of "whether the patentee will be unduly
17 prejudiced by a stay in the district court proceedings ..., like the irreparable harm-type
18 inquiry, focuses on the patentee's need for an expeditious resolution of its claim."
19 *VirtualAgility*, 759 F.3d at 1318. Presumably, Stryker/Inari presented its best case for
20 expeditious resolution of its claims in its PI Motion. Yet, Stryker/Inari's evidence is woefully
21 deficient and cannot support a finding of undue prejudice that might weigh against a stay.

22 Stryker/Inari argued that Imperative Care's sale of the Symphony will irreparably
23 harm Stryker/Inari's market position. Dkt. 24 at 30-33. Yet, Stryker/Inari has presented no
24 evidence on the PI Motion that Imperative Care is causing it irreparable harm. The sales of
25 the accused Symphony remain minimal, especially when compared to Stryker/Inari and other
26 larger competitors, such as Penumbra. The overwhelming evidence indicates that Penumbra,
27 and not Imperative Care, is taking sales from Stryker/Inari. Dkt. 34-5 at 30-31.
28 Stryker/Inari's further speculation that Imperative Care's future sales of Symphony to treat

1 pulmonary embolisms (“PE”) may cause irreparable harm is, at best, premature because the
2 FDA has not even cleared Symphony for treating PE. *Id.* at 1. Thus, Stryker/Inari has not
3 shown it is entitled to expedited equitable relief.

4 Similarly, Stryker/Inari has not shown a need for expedited monetary relief.
5 Stryker/Inari has unlimited resources following its acquisition by Stryker, a company with
6 annual sales exceeding \$20 billion. *See* Dkt. 89 at 9. As part of this international
7 conglomerate, Stryker/Inari can no longer claim the types of irreparable harm that might
8 result from Imperative Care’s relatively minor sales of Symphony. *Id.* at 9-10.

9 **D. Imperative Care Would Be Unfairly Prejudiced Without A Stay**

10 In addition to the three common factors, this Court should exercise its discretion to
11 consider the harm to Imperative Care without a stay. *See Murata*, 830 F.3d at 1362.
12 Stryker/Inari is determined to expand the scope of this case indefinitely, thereby forcing the
13 parties to re-engage in discovery and re-litigate claim construction every time the PTO issues
14 a new Stryker/Inari patent. Dkt. 98 at 1-2. Simultaneously, Stryker/Inari has shown a
15 tendency to drop patents once the PTO institutes an IPR. Thus, the Imperative Care will be
16 forced to repeat case activities as new patents are added and waste resources litigating patents
17 that will never reach trial. In addition, the large number of patents has caused Imperative
18 Care to incur significant attorney’s fees and filing fees to prepare and file its IPR petitions.
19 Further, as Imperative Care explained in its opposition to the Motion to Amend,
20 Stryker/Inari’s strategy of serially asserting patents as they issue from the PTO prejudices
21 Imperative Care because it impairs this Court’s ability to finally determine if Imperative Care
22 can sell Symphony. *Id.* For that reason, Imperative Care urged the Court to vacate the case
23 schedule to allow Stryker/Inari to assert all the patents it wants against Symphony. Granting
24 this motion would also stay discovery and further conserve judicial and party resources.

25 **V. CONCLUSION**

26 For the foregoing reasons, this Court should stay this case until final written decisions
27 issue in all of the IPRs concerning the asserted patents.

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Respectfully Submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: April 2, 2025

By: /s/ Joshua J. Stowell

Joseph R. Re

Joshua J. Stowell

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