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

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| SITEPRO, INC.,<br><br>Plaintiff,<br><br>v.<br><br>TANKLOGIX, LLC,<br><br>Defendant. | **C.A. No. 6:24-CV-643-XR-DTG** |

**SITEPRO'S RESPONSE TO TANKLOGIX'S MOTION TO STAY**

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## I. INTRODUCTION

Plaintiff SitePro files this Response in Opposition to Defendant TankLogix's Motion to Stay. ECF No. 28 (the "Motion"). In its Motion, TankLogix seeks to stay SitePro's entire case pending both this Court's resolution of TankLogix's Motion to Dismiss ***and*** the PTAB's resolution of TankLogix's IPR petitions. That is, TankLogix wants to put SitePro's case on ice while TankLogix first pursues its defenses in this Court ***and*** the PTAB. TankLogix's Motion falls far short of the heavy burden it must meet for a stay.

TankLogix's Motion is based on two high-level arguments: first, that SitePro cannot demonstrate prejudice from a stay, and second, that a stay will "likely" resolve or simplify the issues for this case. As to the first issue, TankLogix improperly flips the burden on SitePro, stating that "SitePro cannot credibly complain about prejudice or any tactical advantage." But this is TankLogix's burden to meet. And it fails to even mention, much less address, that SitePro and TankLogix are direct competitors. As such, a stay would delay SitePro's enforcement of its patent rights against its direct competitor and may allow TankLogix to unfairly preview SitePro's validity arguments. As to its second argument about simplification, TankLogix ignores this Court's repeated guidance that any potential simplification afforded by a stay is too speculative prior to the institution of IPRs. TankLogix has not shown that a stay is warranted here.

Moreover, TankLogix ignores the fact that this Court rarely grants a stay pending resolution of a motion to dismiss, except in unusual circumstances where there is good cause to do so. TankLogix has made no attempt to demonstrate why it should be entitled to such a rare stay pending resolution of a motion to dismiss. TankLogix's Motion to stay should be denied.

## II. BACKGROUND

SitePro filed its Original Complaint on December 20, 2024. TankLogix then filed its Motion to Dismiss on February 27, 2025. The next day, TankLogix filed IPR petitions against the '078, '871, and '403 Patents.[1] These three patents were previously subject to IPR proceedings that were terminated, and TankLogix asserts the same grounds as those raised in the previous IPR proceedings.[2] SitePro filed its Amended Complaint on March 13, 2025, and TankLogix filed a renewed Motion to Dismiss on March 21, 2025. TankLogix filed an IPR petition for the remaining asserted patent, U.S. Patent No. 12,019,461 (the "'461 Patent") on April 11, 2025.[3] The instant Motion to Stay was filed on April 16, 2025, the same day the IPRs regarding the '078, '871, and '403 Patents received their filing date notices. The IPR regarding the '461 Patent has not yet received a notice of filing date.

## III. ARGUMENT

"The party seeking a stay bears the burden of showing that a stay is appropriate." *MiMedx Grp., Inc. v. Tissue Transplant Tech. Ltd.*, No. 5:14-cv-00719, 2015 WL 11573771, at *2 (W.D. Tex. Jan. 5, 2015). TankLogix has failed to meet its burden. Courts generally consider three factors when deciding a motion to stay a patent case: "(1) whether a stay would unduly prejudice or present a clear tactical disadvantage to the nonmoving party; (2) whether a stay will simplify the issues in question; and (3) whether litigation is at an early stage." *Id.* The first two factors weigh heavily against a stay here.

[1] IPR 2025-00649, IPR 2025-00650, and IPR 2025-00652.
[2] *See* IPR 2024-00738, IPR 2024-00741, and IPR 2024-00742.
[3] IPR 2025-00761.

### A. TankLogix Has Not Demonstrated That a Stay Would Not Unduly Prejudice or Disadvantage SitePro

To meet its heavy burden, TankLogix provides only three paragraphs supporting its assertion that SitePro will not be prejudiced by a stay. Specifically, TankLogix notes only that SitePro will not be prejudiced by a delay in collecting damages, that SitePro has not sought a preliminary injunction, and that if the IPRs are not instituted, the delay would not be that long. TankLogix's conclusory argument cannot support a stay.

Indeed, this Court has recognized that "there is no *per se* rule that patent cases should be stayed pending PTO proceedings, because such a rule would invite parties to unilaterally derail litigation." *USC IP P'ship, L.P. v. Facebook, Inc.*, No. 6:20-cv-00555-ADA, 2021 WL 6201200, at *1 (W.D. Tex. Aug. 5, 2021) (quoting *Realtime Data, LLC v. Rackspace US, Inc.*, No. 6:16-cv-00961, 2017 WL 772654, at *2 (E.D. Tex. Feb. 27, 2017)). That is exactly what TankLogix seeks to do here—derail and hijack SitePro's litigation.

When deciding whether a stay pending IPR will cause a non-movant to suffer undue prejudice or an unfair tactical disadvantage, courts consider the following non-exclusive factors: "(1) the timing of the request for review; (2) the timing of the request for a stay; (3) the status of the review proceedings; and (4) the relationship of the parties." *Prytime Med. Devices v. Front Line Med. Techs., Inc.*, No. 6:24-cv-00001-RP-DTG, ECF No. 37, at 4 (W.D. Tex. July 16, 2024). TankLogix's Motion fails to address this standard. Here, the third and fourth factors—status of the review proceedings and relationship of the parties—weigh strongly against granting a stay.

Looking at the third factor—status of the review proceedings—implementing a stay during such an early stage of the IPR proceedings would unduly prejudice SitePro for two reasons. *First*, should the PTAB institute review of the IPRs, then final written decisions would not be issued in

all of the IPRs until after the trial in this case. *Second*, should the PTAB decide not to institute review of the IPRs, TankLogix would be afforded an unfair advantage on its invalidity positions.

Under the Scheduling Order (ECF No. 32), trial in this case is currently set for October 26, 2026. Should the PTAB institute the IPRs, a final written decision in three of the four IPRs is not expected to issue until October 16, 2026, and may not be issued until April 16, 2027. 35 U.S.C. § 316(a)(11), 37 C.F.R. § 42.100(c); *see Multimedia Content Mgmt., LLC v. Dish Network L.L.C.*, No. 6:18-cv-00207-ADA, 2019 WL 11706231, at *2 (W.D. Tex. May 30, 2019) (noting that the one-year period to issue a final written decision may be extended by six months for good cause, which factors into undue prejudice); *Smart Mobile Techs LLC v. Samsung Elecs. Co., Ltd.*, No. 6:21-cv-00701-ADA, 2023 WL 11999028, at *2 (W.D. Tex. Oct. 24, 2023) (same). Furthermore, one of the four IPRs has not even received a notice of filing date, so it is unlikely the final written decision date will predate trial in this case. The significance of this delay is compounded by the fact that TankLogix seeks a stay through any appeals.

Furthermore, under the Scheduling Order, TankLogix will serve its invalidity contentions on July 9, 2025, more than three months before the PTAB is expected to decide whether to institute the IPRs. If this case were stayed and the PTAB denies the institution of the IPRs, TankLogix "would have the benefit of [SitePro's] [IPR] briefing and the PTAB's [IPR] decision to review and consider before formulating its preliminary invalidity contentions and opening claim construction briefing at this Court. This would effectively allow [TankLogix] to 'have two bites at the [invalidity] apple.'" *Prytime*, No. 6:24-cv-00001-RP-DTG, ECF No. 37, at 7; *see also EON Corp. IP Holdings, LLC v. Sensus USA Inc.*, 6:09-cv-116, 2009 WL 9506927, at *2 (E.D. Tex. Dec. 18, 2009); *Smartflash LLC v. Apple Inc.*, 621 Fed. Appx. 995, 1002–03 (Fed. Cir. 2015); *CANVS Corp. v. United States*, 118 Fed. Cl. 587, 597 (2014); *Segin Sys., Inc. v. Stewart Title Guar. Co.*, 30 F.

Supp. 3d 476, 484 (E.D. Va. 2014). TankLogix worsens this problem by arguing that "SitePro may take positions that affect claim interpretation in this action." Mot. at 7; *see Prytime*, No. 6:24-cv-00001-RP-DTG, ECF No. 37, at 7 ("Defendant fails to alleviate—in fact, it exacerbates—this concern by arguing 'the parties' statements . . . may clarify the scope of the claims.'"). "With no more than [four] ***uninstituted*** [IPR] petition[s], it is unfair for Defendant to receive Plaintiff's positions on invalidity before it provides its invalidity contentions and claim construction positions." *Id.* (emphasis added).

Turning to the fourth factor Courts consider regarding prejudice—relationship of the parties—TankLogix completely side-steps the fact that SitePro and TankLogix are direct competitors. A patentee "has an interest in the timely enforcement of its patent rights." *Sonrai Memory Ltd. v. Micron Tech., Inc.*, No. 1:23-cv-01407-ADA, 2024 WL 5185357, at *2 (W.D. Tex. May 29, 2024). "A stay risks the 'loss of evidence as witnesses become unavailable and memories fade.'" *UNM Rainforest Innovations v. D-Link Corp.*, No. 6:20-cv-00143-ADA, 2023 WL 2706748, at *3 (W.D. Tex. Mar. 29, 2023). This is especially true because SitePro and TankLogix are competitors. "When the parties are competitors—such as in this case—'there is a reasonable chance that delay in adjudicating the alleged infringement will have outsized consequences to the party asserting infringement . . . including the potential loss of market share and an erosion of goodwill.'" *Id.* (quoting *Davol, Inc. v. Atrium Med. Corp.*, No. 12-cv-958, 2013 WL 3013343, at *3 (D. Del. June 17, 2013)). Given that a stay would delay SitePro's enforcement of its patent rights, prolonging this litigation (even for the six months it takes to get to the institution decision on the IPRs) would allow TankLogix to continue to unfairly benefit from the use of SitePro's intellectual property in the same market in which SitePro does business, and continue to erode the goodwill SitePro has garnered. TankLogix merely argues that "the absence of seeking early

injunctive relief further weighs in favor of finding that SitePro will not be unduly prejudiced." Mot. at 4. However, "this Court has found that the fact that the nonmoving party 'did not seek a preliminary injunction does not mean that it would not suffer prejudicial harm from its competitor's market activity during a lengthy delay in the case.'" *Impinj, Inc. v. NXP USA, Inc.*, No. 6:21-cv-00530-ADA, 2023 WL 7476347, at *2 (W.D. Tex. Apr. 20, 2023) (quoting *Ravgen, Inc. v. Laboratory Corp. of Am. Holdings*, No. 6:20-cv-00969-ADA, 2022 WL 4240937, at *2 (W.D. Tex. Aug. 16, 2022)); *see also Ravgen*, 2022 WL 4240937, at *2 ("receiving money damages for a practicing entity can make a 'material difference to [Plaintiff's] business'"). TankLogix's Motion is otherwise silent on this factor, and thus, TankLogix cannot meet its burden.

Lastly, concerning its request for a stay pending resolution of its Motion to Dismiss, TankLogix requests "a stay of discovery or other activities." Mot. at 5. But the cases TankLogix relies upon concern only stays of discovery, not a stay of an entire case as TankLogix requests here. *See id.* At least with respect to a stay of discovery, "[t]his Court rarely grants a stay pending resolution of a motion to dismiss, except in unusual circumstances where there is good cause to do so. Good cause may be found where the party from whom discovery is sought would suffer 'annoyance, embarrassment, oppression, or undue burden or expense' if the stay is not granted." *Byteweavr, LLC v. Cloudera, Inc.*, No. 1:24-cv-261-RP, ECF No. 55, at 1 (W.D. Tex. Aug. 5, 2024); *see also YETI Coolers, LLC v. Magnum Solace, LLC*, No. 1:16-cv-663-RP, 2016 WL 10571903, at *1 (W.D. Tex. Oct. 19, 2016) ("[w]hile, in theory, a court may find good cause to stay discovery when there is a pending 12(b)(6) motion, in practice such stays are very rare, and almost never wise."). TankLogix makes no attempt to show good cause for such a "very rare" stay. Indeed, it is unclear why TankLogix relies on cases seeking stays of discovery, considering that fact discovery in this case has not opened, and will not open until October 30, 2025. *See* ECF

No. 32. As such, a stay would merely operate to delay SitePro's timely enforcement of its patent rights, and TankLogix's request should be denied.

### B. TankLogix Has Not Demonstrated That a Stay Would Provide Any Specific Simplification

TankLogix contends that "the IPR proceedings are likely to result in cancellation of some or all of the asserted claims of the Asserted Patents, thereby simplifying or eliminating major components of the case." Mot. at 5. But TankLogix has ignored this Court's guidance that it is too speculative to decide whether an IPR proceeding will simplify issues before institution. *See, e.g.*, *Affinity Labs of Tex., LLC v. Netflix, Inc.*, No. 15-cv-849, 2017 U.S. Dist. LEXIS 5928, at *3 (W.D. Tex. Jan. 17, 2017) ("the Court cannot conclude with any confidence that a stay will result in the simplification of issues and trial in this case" where IPR had not yet been instituted); *Datanet LLC v. Dropbox, Inc.*, No. 22-cv-01142, 2023 WL 9005604, at *4 (W.D. Tex. Dec. 28, 2023) ("the PTAB has not instituted the IPRs, and it is not certain that it will. '[S]implification is entirely speculative at this time because the PTAB has not made its decision on whether to institute IPR.'") (quoting *Neo Wireless LLC v. Dell Techs. Inc.*, No. 22-cv-60, 2022 WL 2763139, at *1 (W.D. Tex. June 7, 2022)). Three of TankLogix's IPRs were just afforded a filing date, with the fourth still without a filing date. The decision on institution is still six months away. Until then, any potential simplification is too speculative. Indeed, the cases TankLogix cites in support of its proposition that the issues would be simplified are inapposite, given that IPRs had already instituted before the movant requested a stay in those cases. *See LS Cloud Storage Techs, LLC v. Google, LLC*, No. 1:22-cv-00853-RP, 2023 WL 5004870 (W.D. Tex. July 25, 2023) and *Bell Semiconductor, LLC v. NXP Semiconductors, N.V.*, No. 1:20-cv-611-LY, 2022 WL 1447948 (W.D. Tex. Feb. 7, 2022).

Moreover, TankLogix did not challenge all of the asserted claims in all of its IPR petitions. Therefore, even in the unlikely event that the PTAB institutes the IPRs and determines all of the

challenged claims are invalid, it still will not have disposed of the entire litigation. Ultimately, a stay would cause SitePro undue prejudice and put it at a tactical disadvantage "in return for a speculative possibility of simplification. At this stage, whether the [IPR] will be instituted or not instituted is pure speculation." *Prytime*, No. 6:24-cv-00001-RP-DTG, ECF No. 37, at 1.

## IV. CONCLUSION

Given that SitePro would be unduly prejudiced by a stay in this case and any potential simplification of the issues is purely speculative, SitePro respectfully requests that the Court deny TankLogix's Motion to Stay.

Dated: April 23, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served April 23, 2025 to all counsel of record, via the Court's CM/ECF system.

*/s M. Craig Tyler*
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