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12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 UNIVERSITY OF BRITISH COLUMBIA,

15 Plaintiff,

16 v.

17
18 CAPTION HEALTH, INC.; GE
HEALTHCARE TECHNOLOGIES INC.,

19 Defendants.
20

Case No. 5:24-cv-03200-EKL

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO STAY CASE PENDING
INTER PARTES REVIEW**

Date: July 29, 2025
Time: 10:30 a.m.
Place: Courtroom 7, 4th Floor
Judge: Eumi K. Lee

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NOTICE OF MOTION

Please take notice that on Tuesday, July 29, 2025 at 10:30 a.m., or as soon thereafter as the matter may be heard, in the courtroom of the Honorable Eumi K. Lee located in the United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 7, 4th Floor, 280 South First Street, San Jose, CA 95113, Defendants Caption Health, Inc. and GE HealthCare Inc. (“Defendants”) will and hereby do move for an order staying all proceedings in this action pending final resolution of the pending *inter partes* review (“IPR”) proceedings relating to U.S. Patent Nos. 11,129,591 (“the ’591 patent”) and 10,751,029 (“the ’029 patent”)¹ before the Patent Trial and Appeal Board (“PTAB”), including any appeals therefrom.

STATEMENT OF RELIEF SOUGHT

Defendants respectfully request that the Court order this case stayed pending *inter partes* review of the ’591 and ’029 patents.

¹ Defendants intend to file a petition for IPR of the ’029 patent long before the statutory deadline of December 20, 2025.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants respectfully request that the Court stay this case pending IPR proceedings.
4 Plaintiff, the University of British Columbia (“Plaintiff” or “UBC”), asserts infringement of the
5 ’591 patent and the ’029 patent. Defendants recently petitioned for *inter partes* review of the ’591
6 patent and will soon petition for *inter partes* review of the ’029 patent.

7 Each of the relevant factors justifies a stay of this case. First, the case is still at an early
8 stage. Though the parties have exchanged some discovery, there has been no email discovery, no
9 depositions, no expert discovery, no *Markman* hearing (or briefing), and no dispositive motions.
10 Indeed, Plaintiff has barely begun its document production (producing only 69 documents to date).
11 Second, a stay would simplify the issues in this case. A stay will save the Court and the parties from
12 spending significant resources on issues that PTAB review will narrow or potentially foreclose.
13 Defendants submit that the IPR proceedings will likely invalidate all of Plaintiff’s asserted claims
14 under the ’591 and ’029 patents. Third, a stay will not cause any undue prejudice or tactical
15 disadvantage to Plaintiff. Defendants promptly filed their first IPR petition after receiving Plaintiff’s
16 infringement contentions and filed this motion shortly after filing their first IPR petition (for the
17 ’591 patent). Further, by Plaintiff’s own admission, Defendants and Plaintiff are not competitors.
18 Defendants are commercial entities that sell products, whereas Plaintiff is an educational institution
19 that does not sell or license competing products or services. Accordingly, Defendants respectfully
20 request that the Court stay this case pending resolution of the IPR petitions.

21 **II. BACKGROUND**

22 Plaintiff filed its initial Complaint on May 28, 2024, alleging infringement of only the ’591
23 patent. (*See* ECF No. 1.) Defendants responded on August 30, 2024 by filing an Answer and
24 Counterclaims to the Complaint, including claims for declaratory judgment of non-infringement and
25 invalidity of the ’591 patent. (*See* ECF No. 33.)

26 On October 23, 2024, Plaintiff served its Disclosure of Preliminary Asserted Claims and
27 Infringement Contentions. (*See* Declaration of Jesse Jenike-Godshalk (“Godshalk Decl.”) at ¶ 2.)
28

1 Then on November 22, 2024, it served its First Supplemental Disclosure of Asserted Claims and
2 Preliminary Infringement Contentions. (*Id.* at ¶ 3.)

3 Plaintiff filed its operative Amended Complaint on December 20, 2024, adding a claim for
4 infringement of the '029 patent. (*See* ECF No. 46.) The '591 and '029 patents are both addressed to
5 the same technology of AI-driven analysis of ultrasonic medical imaging, and Plaintiff admits that it
6 has never commercially practiced or licensed these patents. (*Id.* at ¶ 5 & Ex. 1 at 4, 8.)

7 On January 2, 2025, the Court issued a Modified Scheduling Order, which remains the
8 operative scheduling order in this case. (*See* ECF No. 49.) The schedule calls for claim construction
9 briefing to begin on July 11, 2025, with the *Markman* hearing set for August 26, 2025. (*Id.* at 2–3.)
10 There currently is no date for the close of fact discovery or for the beginning or close of expert
11 discovery. The Court also has not yet scheduled a date for a jury trial. Indeed, the parties have not
12 even proposed a definite date for trial.

13 On February 7, 2025, Plaintiff served its Second Supplemental Disclosure of Asserted
14 Claims and Preliminary Infringement Contentions for both the '591 and '029 patents. (Godshalk
15 Decl. at ¶ 4.)²

16 On February 28, 2025, Defendants filed their Answer and Counterclaims to the First
17 Amended Complaint, claiming that both of the asserted patents are not infringed and are invalid.
18 (*See* Doc. No. 52.) On March 21, 2025, Plaintiff answered Defendants' counterclaims, thus closing
19 the pleadings in this case. (*See* Doc. No. 60.)

20 On May 9, 2025, Plaintiff sought leave to amend its infringement contentions yet again.
21 (Doc. No. 65.) That motion remains pending.

22 On May 28, 2025, Defendants filed a petition for IPR of the '591 patent. (Godshalk Decl.
23 ¶ 6 & Ex. 2.) Defendants' petition challenges the patentability of all of the claims of the '591 patent
24 that have been asserted in this case. (*Id.*) Defendants intend to file a petition for IPR of the asserted
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27
28 ² Plaintiff's supplemental claim charts for the '591 patent are the subject of a pending motion to
strike. (*See* Doc. No. 58.)

1 claims of the '029 patent long before the statutory deadline of December 20, 2025 per 35 U.S.C. §
2 315(b).

3 The U.S. Patent and Trademark Office (“PTO”) releases trial statistics by fiscal year.³ For
4 FY2024, the PTO reported that the PTAB instituted review of 74% of patents petitioned. Of those
5 claims instituted for review by the PTAB, only 14% were found patentable in a final written
6 decision. The remainder were either found unpatentable by a final written decision (49%), were
7 disclaimed by the patentee (4%), or resulted in no final written decision, typically because of a
8 settlement (33%). (Godshalk Decl. at ¶ 8 & Ex. 3 at 7–11, 13.)

9 **III. LEGAL STANDARD**

10 “Courts have inherent power to manage their dockets and stay proceedings, . . . including the
11 authority to order a stay pending conclusion of a PTO reexamination.” *Oyster Optics, LLC v. Ciena*
12 *Corp.*, No. 17-cv-05920-JSW, 2021 U.S. Dist. LEXIS 254575, at *3 (N.D. Cal. Nov. 9, 2021)
13 (quoting *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426–27 (Fed. Cir. 1988)). Courts recognize “a
14 liberal policy in favor of granting motions to stay proceedings pending the outcome of USPTO
15 reexamination or reissuance proceedings.” *Finjan, Inc. v. Symantec Corp.*, 139 F. Supp. 3d 1032,
16 1035 (N.D. Cal. 2015) (citation omitted). Courts use a multi-factor test to determine whether to
17 grant a stay pending *inter partes* review considering: “(1) [w]hether discovery is complete and
18 whether a trial date has been set; (2) [w]hether a stay will simplify the issues in question and trial of
19 the case; and (3) [w]hether a stay would unduly prejudice or present a clear tactical disadvantage to
20 the nonmoving party.” *HD Silicon Sols. LLC v. Microchip Tech. Inc.*, No. 21-cv-08295-SK, 2022
21 U.S. Dist. LEXIS 138373, at *3–4 (N.D. Cal. Aug. 3, 2022) (internal citations and quotations
22 omitted); accord *PersonalWeb Techs., LLC v. Apple Inc.*, 69 F. Supp. 3d 1022, 1025 (N.D. Cal.
23 2014).

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28 ³ The PTO’s trial statistics cover IPRs and the closely related post-grant reviews, or PGRs.
According to the PTO, 97% of petitions filed in FY2024 were IPR petitions. *See* Ex. E at 3.

1 **IV. ARGUMENT**

2 **A. The Early Stage of This Case Favors a Stay.**

3 The early stage of this case favors a stay. When weighing this factor, “courts examine the
4 posture and circumstances of [each] case” on an individual basis. *Cortex MCP, Inc. v. Visa, Inc.*,
5 No. 5:23-cv-05720-EJD, 2024 U.S. Dist. LEXIS 129034, at *5 (N.D. Cal. July 22, 2024) (internal
6 citations omitted). Courts in this District typically look to (1) “whether the parties have engaged in
7 costly expert discovery and dispositive motion practice”; (2) “whether the parties have fully briefed
8 the issue of claim construction, attended a *Markman* hearing and received a claim construction
9 order,” and (3) “whether the court has set a trial date.” *HD Silicon Sols.*, 2022 U.S. Dist. LEXIS
10 138373, at *4.

11 Here, the parties have not engaged in any expert discovery and have not filed any dispositive
12 motions; the parties have not fully briefed claim construction, attended a *Markman* hearing, or
13 received a claim construction order; and the Court has not set a trial date. In addition, the pleadings
14 closed only three months ago, and discovery is far from complete, with no closing date set for fact
15 discovery, and no start date or closing date set for expert discovery. Nor has Plaintiff expended
16 significant resources producing documents, as they have produced only 69 documents to date.
17 (Godshalk Decl. at ¶ 7.) While the parties have exchanged some written discovery and served
18 infringement and invalidity contentions, the resources spent on that work are a fraction of those that
19 would be required for the still-to-come document productions by the parties in addition to pending
20 email discovery, fact depositions, and expert discovery and reports. Moreover, there has been no
21 *Markman*-related briefing or hearing.

22 In similar circumstances, even where cases were further along, this Court has found this
23 stage-of-case factor to favor a stay. *See Cortex MCP*, 2024 U.S. Dist. LEXIS 129034, at *5 (finding
24 that although “[t]he parties [had] been engaging in discovery and claim construction briefing” that
25 “the claim construction hearing [was] not set until [two months from the order], and there [were] no
26 dates set for the close of fact or expert discovery, dispositive motions briefing, or trial . . .” and thus
27 “[t]here [was] substantial work remaining before the case [would be] ready for trial”); *directPacket*
28 *Research, Inc. v. Polycom, Inc.*, No. 19-CV-03918-LHK (N.D. Cal. Jan. 16, 2020) (Doc. No. 233 at

1 2) (granting stay pending IPR where “the Court has not held a claim construction hearing, and the
2 parties have not filed dispositive motions, both of which demonstrate that the case is still in its early
3 stages”); *Twilio, Inc. v. TeleSign Corp.*, No. 16-CV-06925-LHK, 2018 U.S. Dist. LEXIS 57057, at
4 *3 (N.D. Cal. Apr. 3, 2018) (finding that the stage of the litigation weighed in favor of a stay where
5 the parties had engaged in some written discovery, but had not taken fact depositions, exchanged
6 expert reports, or produced email discovery, finding that “although the parties have incurred some
7 costs related to discovery, significant discovery-related costs still remain that might be avoided by a
8 stay”); *Uniloc United States, Inc. v. Apple Inc.*, No. 18-cv-00361-PJH, 2018 U.S. Dist. LEXIS
9 88489, at *7–8 (N.D. Cal. May 25, 2018) (finding, although some discovery had occurred, that
10 “most of both fact and expert discovery [were] still largely incomplete and even unscheduled” and
11 that the analysis of cost, focusing on the *remaining* work in the case should weigh towards a stay
12 since “significant early litigation costs still remain[ed]” at this stage of litigation).

13 Because a substantial portion of the work has not yet even begun—let alone finished—in
14 this case, this factor weighs in favor of a stay.

15 **B. A Stay Will Simplify the Case.**

16 A stay of the case pending the IPR proceedings will serve to greatly simplify the issues
17 before the Court, as well as conserve judicial resources and avoid inconsistent results, which weighs
18 in favor of a stay. *See Uniloc USA, Inc., et al. v. Apple, Inc.*, No. 18-CV-00357-LHK (N.D. Cal.
19 Apr. 30, 2018) (Doc. No. 144 at 4) (“If the Patent Office invalidates any of the claims at issue, that
20 would narrow the scope of the litigation in this case.”) (citations omitted); *HD Silicon Sols.*, 2022
21 U.S. Dist. LEXIS 138373, at *5 (“A stay may also serve to avoid inconsistent results, obtain
22 guidance from the PTAB, or avoid needless waste of judicial resources.” (*citing Slip Track Sys. v.*
23 *Metal Lite*, 159 F.3d 1337, 1341 (Fed. Cir. 1998))).

24 Defendants’ IPR petitions will challenge all the asserted claims of the ’591 and ’029 patents.
25 Defendants submit that those claims will all likely be invalidated in the IPR proceedings. Notably,
26 the already-filed petition challenges the ’591 patent on multiple grounds, including some prior art
27 references not previously considered by the U.S. Patent and Trademark Office. (*See Godshalk Decl.*
28 ¶ 6 & Ex. 2.) Even if some claims were to survive, the IPR petitions would clarify the scope and

1 interpretation of those claims. For example, Plaintiff is likely to take positions before the PTAB
2 relating to the scope and meaning of the patent claims. These statements can inform and simplify
3 the issues for this Court in determining the proper construction of any surviving claims after the
4 IPRs have concluded. *See, e.g., Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1359 (Fed. Cir.
5 2017) (“[S]tatements made by a patent owner during an IPR proceeding can be relied on to support
6 a finding of prosecution disclaimer during claim construction.”).

7 Thus, a stay of the case will simplify the issues in the litigation and reduce the burden on the
8 Court and parties—factors that strongly favor a stay.

9 **C. Plaintiff Will Suffer No Undue Prejudice or Tactical Disadvantage from a Stay.**

10 There will be no undue prejudice or tactical disadvantage to Plaintiff, which favors a stay.
11 To weigh this factor, Courts in this District evaluate four subfactors: “(i) the timing of the
12 reexamination request; (ii) the timing of the request for the stay; (iii) the status of reexamination
13 proceedings; and (iv) the relationship of the parties.” *Synopsys, Inc. v. Siemens Indus. Software Inc.*,
14 No. 20-cv-04151-WHO, 2022 U.S. Dist. LEXIS 244276, at *9 (N.D. Cal. June 7, 2022)
15 (considering a motion to stay pending IPR) (internal quotations omitted). Each of these subfactors
16 weighs in favor of granting a stay.

17 **1. The timing of the IPR petitions**

18 The petition for IPR of the ’591 patent was filed on May 28, 2025, and the petition for IPR
19 of the ’029 patent will be filed long before the statutory deadline of December 20, 2025. (*See*
20 *Godshalk Decl.* at ¶ 6.) These filing dates are within the one-year statutory deadline from service of
21 the respective complaints. 35 U.S.C. § 315(b) (providing defendants one year from the date of
22 service of the complaint to submit a petition for IPR). Intrinsicly, this timing does not constitute
23 delay or unduly prejudice Plaintiff. *Jenam Tech, LLC v. Google LLC*, No. 21-cv-07994-JST, 2022
24 U.S. Dist. LEXIS 240241, at *10 (N.D. Cal. Mar. 28, 2022) (“Delay alone [within the statutory
25 deadline] does not usually constitute undue prejudice because parties having protection under the
26 patent statutory framework may not complain of the rights afforded to others by that same statutory
27 framework.” (internal citations omitted)). Because a defendant is “statutorily entitled to file its IPR
28 petitions at any point within the one-year limitations period[, courts] [do] not find that [the] decision

1 to [file for review] at the close of that period demonstrates undue delay.” *Id.* (internal quotations
2 omitted).

3 Further, Defendants filed their first IPR petition less than six months after Plaintiff filed its
4 Amended Complaint, only approximately three months after Plaintiff served its second
5 supplemental infringement contentions for the ’591 patent, and less than a month after Plaintiff
6 requested leave to supplement its infringement contentions a third time. “[C]ourts in this District
7 have concluded that waiting until after receiving infringement contentions to analyze the claims
8 alleged and then filing petitions for review does not cause undue prejudice.” *Trusted Knight Corp.*
9 *v. IBM*, No. 19-cv-01206-EMC, 2020 U.S. Dist. LEXIS 158218, at *12 (N.D. Cal. Aug. 31, 2020)
10 (internal quotations omitted); *see also Karl Storz Endoscopy-Am., Inc. v. Stryker Corp.*, No. 14-cv-
11 00876-RS, 2015 U.S. Dist. LEXIS 53627, at *10–11 (N.D. Cal. Mar. 30, 2015) (noting that “the
12 proper frame of reference for evaluating undue prejudice is the interval between [defendant’s]
13 receipt of [plaintiff’s] infringement contentions and its filing of IPR petitions” and finding a period
14 of three and half to six months reasonable even when outside of the one year statutory deadline
15 under 35 U.S.C. § 315(b)). Here, considering the shifting sands nature of Plaintiff’s infringement
16 claims (*see* ECF No. 58, 67), the timing of Defendants’ IPR petitions is even more reasonable.

17 Thus, the timing of the filing of the IPR petitions, which is both within the statutory deadline
18 and within an eminently reasonable time period after receipt of Plaintiff’s infringement contentions,
19 shows an absence of any undue prejudice to Plaintiff, which weighs in favor of a stay.

20 **2. The timing of the request for the stay**

21 Defendants bring this motion expeditiously after filing their first IPR petition less than a
22 month ago. Plaintiff cannot credibly argue that such timing constitutes prejudicial delay. Moreover,
23 as discussed above, this case is in the early stages of fact discovery. And while the parties have
24 exchanged proposed terms for claim construction, briefing does not begin until next month, with the
25 *Markman* hearing scheduled for August 26, 2025. Given the early stage of proceedings, and with
26 the close of fact discovery, the start and close of expert discovery, and trial in this matter not
27 currently scheduled, a stay will not result in undue prejudice to Plaintiff. *See Neodron, Ltd. v.*
28 *Lenovo Grp., Ltd.*, No. 19-cv-05644-SI, 2020 U.S. Dist. LEXIS 155934, at *6 (N.D. Cal. Aug. 27,

1 2020) (citing *PersonalWeb Techs., LLC v. Apple Inc.*, 69 F. Supp. 3d 1022, 1029 (N.D. Cal. 2014)
2 (“Courts have repeatedly found no undue prejudice unless the patentee makes a specific showing of
3 prejudice beyond the delay necessarily inherent in any stay.”)).

4 **3. The status of the review proceedings**

5 Defendants filed their first IPR petition on May 28, 2025. In accordance with a statutory
6 deadline, the PTAB is expected to decide whether to institute proceedings on the ’591 patent by no
7 later than about January 2026. *See* 35 U.S.C. § 314(b). By statute, the IPRs will be complete no
8 more than a year later, around January 2027. 37 C.F.R. § 42.100(c). Given that much of this case
9 has not yet been scheduled by the Court, this subfactor also indicates a lack of undue prejudice or
10 tactical disadvantage and thus weighs in favor of a stay.

11 **4. The relationship of the parties**

12 Plaintiff admits that it does not offer products or services that practice any claim of the
13 asserted patents and does not compete with Defendants. (Godshalk Decl., ¶ 5 & Ex. 1 at 4 (“UBC
14 has never licensed the patents[.]”); *id.* at 6 (“UBC and Defendants do not participate in the same
15 line of business and are not competitors.”); *id.* at 8 (“UBC . . . has no commercial embodiment of
16 the patented invention.”).) Thus, there can be no dispute that Plaintiff and Defendants are not in
17 competition and that Plaintiff will not suffer prejudice if the case is stayed. *See Cortex MCP*, 2024
18 U.S. Dist. LEXIS 129034, at *8 (finding that since the parties were not direct competitors this
19 “alleviate[d] the risk of prejudice” especially since the non-moving party was “a non-practicing
20 entity without any products or market share related to the Patents-in-Suit”); *Uniloc*, No. 18-CV-
21 00357-LHK (Doc. No. 144 at 5) (finding lack of undue prejudice and granting a motion to stay
22 where the plaintiff was “a ‘non-practicing entity that licenses its intellectual property’ and therefore
23 ‘does not compete directly with [defendant]’”); *see also Finjan, Inc. v. Symantec Corp.*, 139 F.
24 Supp. 3d 1032, 1038 (N.D. Cal. 2015) (quoting *DSS Tech. Mgmt., Inc. v. Apple, Inc.*, No. 14-cv-
25 05330-HSG, 2015 U.S. Dist. LEXIS 57704, at * 4 (N.D. Cal. May 1, 2015) (“[C]ourts generally
26 find that a plaintiff ‘does not risk irreparable harm by [the defendant’s] continued use of the accused
27 technology and can be fully restored to the *status quo ante* with monetary relief” if there is no
28

1 indication that the parties “are direct competitors and that the plaintiff’s competitive position would
2 be prejudiced by a stay.”).

3 For these reasons, the non-competitive relationship between Defendants and Plaintiff weighs
4 in favor of a stay.

5 **V. CONCLUSION**

6 Because all the relevant factors support a stay of this action pending resolution of
7 Defendants’ IPR petitions, Defendants respectfully request that the Court grant its motion to stay
8 this case pending final resolution of the IPR proceedings.

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1 Dated: June 27, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2025, I caused a true and correct copy of the foregoing to be filed in this Court’s CM/ECF system, which will send notification of such filings to all parties who have appeared in this matter.

/s/ Jesse Jenike-Godshalk
Jesse Jenike-Godshalk