

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BABY JOGGER, LLC,)
)
 Plaintiff,)
)
 v.) C.A. No. 24-725 (GBW)
)
 BABY GENERATION, INC. d/b/a)
 MOCKINGBIRD,)
)
 Defendant.)

**DEFENDANT BABY GENERATION, INC. d/b/a MOCKINGBIRD'S
OPENING BRIEF IN SUPPORT OF ITS MOTION TO STAY**

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I. NATURE AND STAGE OF THE PROCEEDINGS

Plaintiff Baby Jogger, LLC (“Plaintiff”) filed this patent infringement case against Defendant Baby Generation, Inc. d/b/a Mockingbird (“Mockingbird”) well over a year ago on June 18, 2024. (D.I. 1). Specifically, Plaintiff asserts in its First Amended Complaint (FAC) that Mockingbird infringes one or more claims of U.S. Patent Nos. 8,955,869 (the “869 patent”); 9,403,550 (the “550 patent”); 11,192,568 (the “568 patent”); 11,505,231 (the “231 patent”); and 11,878,729 (the “729 patent”) (collectively, the “Asserted Patents”). (D.I. 14). In response, Mockingbird moved to dismiss all claims of the FAC pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(6), and 12(b)(7). (D.I. 18). Notably, Mockingbird’s Motion to Dismiss the FAC raised, *inter alia*, the Court’s lack of subject matter jurisdiction resulting from Plaintiff’s lack of standing. (D.I. 19 at 10-12).

Because Mockingbird’s Motion to Dismiss the FAC remains pending before this Court, this case has been effectively in stasis for nearly ten months. The Parties have not conducted a Rule 26(f) conference, exchanged initial disclosures, or engaged in any discovery whatsoever, and the Court has not conducted a Scheduling Conference or issued a Scheduling Order. And, until quite recently, both parties appeared quite content to wait on the outcome of Mockingbird’s Motion to Dismiss the FAC before proceeding with the case.

However, on August 11, 2025 – more than 14 months after the case was filed and nearly 10 months after Mockingbird’s Motion to Dismiss the FAC was fully briefed – Plaintiff is suddenly eager to move forward with the case and has requested a Rule 26(f) conference and a scheduling order so discovery may proceed in the case (*See* D.I. 24 & 25). Because Mockingbird believes the arguments regarding the Court’s lack of subject matter jurisdiction in its Motion to Dismiss the FAC will be dispositive of all issues before the Court, Mockingbird respectfully moves the Court to stay this case pending the Court’s ruling on Mockingbird’s Motion to Dismiss the FAC.

II. SUMMARY OF THE ARGUMENT

Discovery on Plaintiff's operative claims should be stayed until the Court resolves Mockingbird's Motion to Dismiss the FAC. Plaintiff's claims suffer from numerous dispositive flaws, most notably for purposes of the instant motion, Plaintiff's lack of standing to enforce the Asserted Patents. Resolution of Mockingbird's Motion—and specifically its challenge to Plaintiff's standing—should therefore be determinative of all claims of the FAC. Significantly, discovery is unnecessary to resolve the arguments presented by the parties in their respective briefs on Mockingbird's Motion to Dismiss the FAC.

That this case is in its infancy is also highly relevant to, and supportive of, a stay. Both the Court and the parties have invested relatively few resources in this case since its filing approximately 14 months ago, and to be sure, a stay pending the Court's resolution of Mockingbird's Motion will save both the Court and the parties from expending significant resources while the Court considers the Motion. Mockingbird expects that the Court's decision on its Motion will ultimately obviate the need for discovery altogether, and the significant associated expenditure of the Court's and the parties' resources. Notably, a stay would neither cause undue prejudice to Plaintiff, nor would it present Mockingbird with any tactical advantage in this litigation. Moreover, should this case proceed past the Court's ruling on Mockingbird's Motion, and Mockingbird ultimately be held liable for patent infringement, monetary damages would adequately compensate Plaintiff for any brief delay that results from a stay.

Because all these factors counsel toward entry of a stay pending resolution of Mockingbird's Motion to Dismiss the FAC, Mockingbird respectfully requests that the Court exercise its discretion and grant this motion.

III. FACTUAL BACKGROUND

On June 18, 2024 – approximately 14 months ago – Plaintiff Baby Jogger, LLC (“Plaintiff”) filed a Complaint (the “Original Complaint”) against Defendant Baby Generation, Inc. d/b/a Mockingbird (“Mockingbird”), purporting to assert claims for infringement of the Asserted Patents. Mockingbird moved to dismiss the Original Complaint pursuant to Fed. R. Civ. P. 12(b)(6) on August 26, 2024. (D.I. 9). In response, Plaintiff amended its complaint. (D.I. 14). Plaintiff’s amendment, however, could not remedy the numerous fatal problems with its complaint, including Plaintiff’s lack of standing to enforce the Asserted Patents—in fact, it only compounded them. Accordingly, on October 7, 2024, Mockingbird moved to dismiss Plaintiff’s FAC under Fed. R. Civ. P. 12(b)(1), 12(b)(6), and 12(b)(7). (D.I. 18). Mockingbird’s Motion to Dismiss the FAC challenged Plaintiff’s standing to bring the asserted claims, and thus the Court’s subject matter jurisdiction. (D.I. 19 at 10-12). Plaintiff responded in opposition to Mockingbird’s Motion to Dismiss the FAC on October 21, 2024. (D.I. 20). Mockingbird filed a reply supporting its Motion on October 28, 2024. (D.I. 21). On November 18, 2024, the Court denied Plaintiff’s request for oral argument concerning the Motion. (D.I. 22, 23).

Between June 6 and June 20, 2025, Mockingbird filed five petitions with the Patent Trial and Appeal Board, seeking *inter partes* review of the patentability of the claims in each of the five Asserted Patents. Institution decisions on Mockingbird’s five petitions have not yet been made.

Meanwhile, Mockingbird’s Motion to Dismiss the FAC remains pending before this Court. The parties have yet to conduct a Rule 26(f) conference, they have not exchanged initial disclosures, and in fact have exchanged no discovery at all. In turn, the Court has not held a Scheduling Conference, issued a Scheduling Order, nor requested a proposed Scheduling Order from the parties. Indeed, the idea of initiating discovery was not even suggested by either party until Plaintiff’s counsel emailed Mockingbird’s counsel on August 11, 2025—nearly ten months

after Mockingbird’ Motion to Dismiss the FAC became fully briefed, and more than 14 months after the case was filed—suddenly requesting that the parties conduct a Rule 26(f) conference.

IV. LEGAL STANDARDS

The decision whether to grant a stay “is a matter of the court’s inherent power to conserve judicial resources by controlling its own docket.” *Cost Bros., Inc. v. Travelers Indem. Co.*, 760 F.2d 58, 60 (3d Cir. 1985). Courts typically consider three factors to determine whether a stay is appropriate: (1) whether granting the stay will simplify the issues for trial; (2) the status of the litigation, particularly whether 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. *See Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, C.A. No. 15-1168-LPS, 2021 U.S. Dist. LEXIS 29287, at *3-4 (D. Del. Feb. 17, 2021) (citing *Ethicon LLC v. Intuitive Surgical, Inc.*, C.A. No. 17-871-LPS, 2019 U.S. Dist. LEXIS 45452, at *3 (D. Del. Mar. 20, 2019)). Courts may also consider any hardship brought on the moving party if required to move forward with the litigation. *Ethicon*, 2019 U.S. Dist. LEXIS 45452, at *4.

Where these factors favor the exercise of the Court’s discretion, a stay can be appropriate pending resolution of an early-stage motion to dismiss that challenges a Plaintiff’s standing. *See, e.g., Uniloc USA, Inc. v. Motorola Mobility, LLC*, C.A. No. 17-1658-CFC, 2019 U.S. Dist. LEXIS 21899, at *3-4 (D. Del. Feb. 11, 2019) (granting stay pending resolution of Rule 12(b)(1) motion to dismiss for lack of standing). *See also Tamburo v. Dworkin*, No. 04-C-3317, 2010 U.S. Dist. LEXIS 121510, at *3-4 (N.D. Ill. Nov. 17, 2010) (“a stay of discovery is generally only appropriate when a party raises a potentially dispositive threshold issue such as a challenge to a plaintiff’s standing”) (citing *U.S. Cath. Conf. v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 79-80 (1988)).

V. ARGUMENT

A. A Stay Pending Resolution of Mockingbird's Motion to Dismiss the FAC Will Simplify Issues for Trial.

The first factor of the discretionary stay analysis clearly favors entering a stay because, if granted, Mockingbird's Motion to Dismiss would resolve this entire case. As this Court has noted, this factor favors a stay where, as here, a party's motion to dismiss, "if resolved in its favor, would be entirely case-dispositive." *Bataan Licensing LLC v. DentalEZ, Inc.*, C.A. No. 22-238-GBW, 2023 U.S. Dist. LEXIS 4058, at *4 (D. Del. Jan. 10, 2023).

The Court's logic in *Bataan Licensing* also supports a stay in this case. Mockingbird's brief in support of its Motion to Dismiss the FAC demonstrates that Plaintiff holds no interest in four of five Asserted Patents, and therefore lacks standing to assert them, and that the fifth Asserted Patent is co-owned with a non-party, which similarly defeats Plaintiff's claim of standing to enforce that patent. (D.I. 18, pp. 10-12). Without standing to assert any of the five Asserted Patents, none of Plaintiff's claims can proceed. *See Intellectual Ventures I v. Erie Indemnity Co.*, 850 F.3d 1315, 1323 (Fed. Cir. 2017) ("only patentees and their successors in title to a patent may bring an action for infringement."); *Taylor v. Taylor Made Plastics, Inc.*, 565 Fed. App'x 888, 889 (Fed. Cir. 2014) ("[i]f any co-owner should refuse to join as a co-plaintiff, the suit must be dismissed for lack of standing."). The Court should grant the instant motion to stay pending resolution of Mockingbird's Motion to Dismiss the FAC, so that the Court can resolve these threshold issues of standing before the parties embark on costly patent infringement discovery. *See Tenax Corp. v. Tensar Corp.*, C.A. No. H-89-424, 1991 U.S. Dist. LEXIS 20765, at *10 (D. Md. Apr. 30, 1991) ("significant cost is involved in defending a patent infringement claim, whether or not the claim is actually tried. Discovery, often expensive, must proceed on the assumption the case will be tried.").

B. The Court Should Grant a Stay Because Discovery Has Not Yet Commenced.

Where, as here, the parties have “invested relatively few resources” in a case since its filing, the second discretionary factor “strongly favors a stay.” *Bataan Licensing*, 2023 U.S. Dist. LEXIS 4058, at *4. As in *Bataan Licensing*, the current procedural posture of the instant case counsels toward entering a stay. There can be no reasonable dispute that discovery in this case has not commenced, and that until last week, the parties have done nothing to even attempt to establish discovery timelines. The Court has not scheduled, much less held, a Case Management Conference, nor has it entered a Scheduling Order or even requested a proposed Scheduling Order from the parties. The parties therefore have not conducted a Rule 26(f) conference, nor have they exchanged initial disclosures. Critical deadlines in this case such as *Markman* briefing, dispositive motions, and trial, are not even yet on the horizon.

Further, discovery is not necessary to resolve Mockingbird’s standing challenges, and Plaintiff has not argued otherwise. Instead, Plaintiff’s response to Mockingbird’s standing arguments focused entirely on the “publicly available assignment records” discussed in Mockingbird’s supporting brief and their legal effect, which, according to Plaintiff, “demonstrate” or “make clear” Plaintiff’s purported rights. (D.I. 20, pp. 5-6, 8). Although Mockingbird vehemently disputes Plaintiff’s claim that its purported standing is demonstrated or clear, it agrees with Plaintiff’s implicit admission that the information necessary for the Court to resolve that disagreement is already before the Court and that no additional discovery is needed.

Last, it “simply cannot be ignored” that if Mockingbird’s Motion to Dismiss for lack of standing is granted, discovery would be unnecessary and that both the Court and the parties would thereby conserve valuable resources. *Bataan Licensing*, 2023 U.S. Dist. LEXIS 4058, at *4. *See also Mann v. Brenner*, 375 F. App’x 232, 239 (3d Cir. 2010) (“it may be appropriate to stay discovery while evaluating a motion to dismiss where, if the motion is granted, discovery would

be futile.”). Accordingly, the second factor of the Court’s discretionary analysis favors a stay pending resolution of Mockingbird’s Motion to Dismiss.

C. A Stay Would Not Cause Undue Prejudice Or Tactically Disadvantage Plaintiff.

The third discretionary factor to be considered by the Court likewise favors a stay because any delay would not be prejudicial to Plaintiff or present Mockingbird with a tactical advantage. This Court has noted that delay “does not, by itself, amount to undue prejudice.” *Bataan Licensing*, 2023 U.S. Dist. LEXIS 4058, at *6 (quoting *Ever Win Int’l Corp. v. Radioshack Corp.*, 902 F. Supp. 2d 503, 509 (D. Del. 2012)). Although “[c]ourts have recognized that, when the parties are direct competitors, there is a reasonable chance that delay in adjudicating the alleged infringement will have outsized consequences to the party asserting infringement has occurred,” they also agree that any such concern “can be adequately addressed and remedied through monetary damages” if the asserting party should ultimately prevail at trial. *Id.* at *5-6.

This is a case that is almost exclusively about money damages. Had Plaintiffs believed that Mockingbird’s presence in the marketplace would cause it irreparable harm that could not be remedied by monetary damages, it would have sought a preliminary injunction barring Mockingbird’s alleged infringement. It has not done so. Simply put, “[a]ny purported harm that [Plaintiff] suffers from a stay can be fully compensated by monetary damages. This factor therefore has little impact.” *CallWave Commc’ns, LLC v. AT&T Mobility, LLC*, C.A. No. 12-1701-RGA, 2015 U.S. Dist. LEXIS 33153, at *5 (D. Del. Mar. 18, 2015).

VI. CONCLUSION

For the foregoing reasons, Mockingbird respectfully requests that the Court stay this case pending entry of its order on Mockingbird’s Motion to Dismiss the First Amended Complaint.

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August 20, 2025

CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2025, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on August 20, 2025, upon the following in the manner indicated:

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