

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

COLE HAAN LLC,

Plaintiff,

v.

TOP GLORY TRADING GROUP INC.
AND DP DREAM PAIRS INC.,

Defendants.

Case No. 2:25-cv-00176-ES-SDA

**PLAINTIFF COLE HAAN LLC'S OPPOSITION TO DEFENDANTS'
MOTION TO STAY PENDING *INTER PARTES* REVIEW**

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Plaintiff Cole Haan LLC (“Cole Haan”) respectfully submits this brief in opposition to Defendants Top Glory Trading Group Inc. and DP Dream Pairs Inc.’s (collectively “Defendants”) motion to stay this case in view of Defendants’ recently filed petitions for *inter partes* review (“IPR”). The Patent Trial and Appeal Board (“PTAB”) has not instituted any of the petitions, and will not decide whether to do so until March 2026. Defendants’ motion to stay, therefore, should be denied because it is premature, because a stay will not result in simplifying issues in this case, and because it will instead prejudice Cole Haan.

Courts routinely deny motions to stay as premature when they are filed prior to the PTAB’s institution decision. In view of such precedent, and particularly in view of the USPTO’s present policy of discretionarily denying petitions for IPR where the challenged patents are subject to settled expectations of validity, a stay is not appropriate at this juncture. Defendants’ motion further asserts that institution of IPR proceedings will simplify the dispute between the parties. This is not so. This case includes both issues of infringement as well as issues of invalidity that cannot be addressed by IPR. And, while Defendants would not be prejudiced by the denial of a stay, Cole Haan would be significantly prejudiced by the Court granting a stay pending the institution decision.

LEGAL STANDARD

District courts analyze three factors in deciding whether to exercise discretion to grant a stay: “(1) whether a stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether discovery is complete and whether a trial date has been set.” *Straight Path IP Grp., Inc. v. Vonage Holdings Corp.*, No. 14-502, 2014 WL 4271633, at *2 (D.N.J. Aug. 28, 2014). “[T]he court must weigh the benefits of the stay against the costs.” *Id.* “The party seeking a stay of civil litigation bears the burden to show that the stay would be appropriate.” *Eagle View Techs., Inc. v. Xactware Sols., Inc.*, No. CV 15-7025 (RBK/JS), 2016 WL 7165695, at *3 (D.N.J. Dec. 7, 2016).

ARGUMENT

I. Cole Haan Would Be Prejudiced by a Stay.

In determining whether a stay will likely result in undue prejudice to plaintiffs or place them at a clear tactical disadvantage, the Court considers several factors including the timing of the request for IPR, the timing of the request for a stay, the status of the IPR proceedings, and the relationship of the parties. *Eagle View Techs.*, 2016 WL 7165695, at *3. Here, such factors weigh against a stay.

a. Defendants were not diligent in filing their petitions.

Cole Haan filed this lawsuit in January of this year. ECF No. 1. But, since that time, the case has proceeded slowly because of Defendants’ piecemeal litigation

strategy. Defendants, for example, requested and were granted a one-month extension of time to answer or otherwise respond to the Complaint (ECF No. 11), and then responded with a motion to dismiss. ECF No. 25. Defendants subsequently argued against opening discovery until after their motion to dismiss was resolved (ECF No. 44), and it was not until after the Court indicated discovery would proceed that Defendants finally elected to file their petitions for IPR. Defendants' nine-month delay in filing their petitions, in combination with the motion to dismiss and opposition to opening discovery, suggests Defendants' actions are for a dilatory purpose.

This is especially true given Defendants were first made aware of many of the Asserted Patents as far back as 2022. Indeed, in July 2022, Cole Haan sent Top Glory a letter alleging infringement of, among other patents, the '511, '163, and '262 patents, and advised Top Glory against selling shoes that would infringe Cole Haan's patent rights. That dispute ultimately culminated in a settlement agreement. As detailed in the Amended Complaint, Cole Haan contacted Top Glory again in 2023 asserting infringement when it became aware of the Accused Products. Thus, Defendants could have filed the IPR petitions several months earlier than they did.

b. A pre-institution stay would be premature.

Defendants' request to stay this case is premature because the PTAB has not instituted review based on any of Defendants' petitions. As Defendants admit, it will

be nearly five months before the PTO issues its institution decisions. ECF No. 54-1 at 1-2 (acknowledging that the PTAB's institution decisions will not issue until March 2026). The Federal Circuit has recognized that, in pre-institution cases such as this case, courts often either (a) dismiss a motion to stay without prejudice or (b) wait to decide the motion until the PTAB has acted on the petition for a post-issuance review of a patent. *See VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1315-16 (Fed. Cir. 2014) (indicating that “the case for a stay is stronger after post-grant review has been instituted”).

This practice is also true of decisions in New Jersey. *See Straight Path*, 2014 WL 4271633 at *2-3 (refusing to enter a stay six months prior to PTAB's expected decision concerning institution of an IPR, finding that a pre-institution stay would be “premature.”); *Eagle View Techs.*, 2016 WL 7165695, at *4-5 (denying stay pending IPR based in part on the fact the IPRs were pre-institution); *Derma Scis., Inc. v. Manukamed Ltd.*, No. CIV.A. 12-3388 JAP, 2013 WL 6096459, at *1 (D.N.J. July 18, 2013) (“[Plaintiffs] note, among other things, that while Defendants have applied for *inter partes* review, such review has not yet been granted. As such, they argue the Court should not address the instant motion until a determination is made on the initial application, at which time the Court can more fully evaluate the PTO's view and make a more informed determination of whether the reexamination proceeding merits a stay of this action. The Court agrees.”).

The cases Defendants cite in support of stays before an IPR has been instituted are easily distinguished from the present facts. *See* ECF No. 54-1 at 4-5 (citing *Horizon Therapeutics, Inc. v. Lupin Ltd.*, No. 15-7624, Dkt. No. 42 (D.N.J. Aug. 4, 2016); *Neste Oil OYJ v. Dynamic Fuels, LLC*, No. CV 12-1744-GMS, 2013 WL 3353984, at *4 (D. Del. July 2, 2013); *Miics & Partners Am. Inc. v. Toshiba Corp.*, No. 14-803, 2015 WL 9854845, at *1 (D. Del. Aug. 11, 2015); *Crossroads Sys., Inc. v. Dot Hill Sys. Corp.*, No. 13-1025, 2015 WL 3773014, at *3 (W.D. Tex. June 16, 2015). In *Horizon*, the Court acknowledged that “plaintiff has provided authority to support its argument that the majority of courts do not stay cases prior to the institution of an IPR” but elected to nevertheless stay the case due to “special circumstances.” No. 15-7624, Dkt. No. 42 at 3. Specifically, the Court elected to stay the case where the PTAB would render its decision within two months of the date of the Order and “little substantive work” would occur in that time. *Id.*

Here, as noted above, the PTAB will not issue its institution decision for five months and significant work will occur during that period. Indeed, per the Scheduling Order, the parties will have performed the following before the PTAB issues its institution decisions:

Event	Date
Plaintiff to Serve Disclosure of Asserted Claims and Infringement Contentions and Accompanying Disclosures	September 4, 2025
Defendants to Serve Non-Infringement	October 21, 2025

Contentions and Accompanying Disclosures	
Defendants to Serve Invalidity Contentions and Accompanying Disclosures	October 21, 2025
Plaintiff to Serve Responses to Invalidity Contentions and Accompanying Disclosures	November 4, 2025
Parties to Exchange List of Claim Terms to be Construed	November 18, 2025
Parties to Exchange Preliminary Claim Constructions and Supporting Intrinsic and Extrinsic Evidence	December 2, 2025
Parties to Exchange Identification of Intrinsic and Extrinsic Evidence To Oppose Another Party’s Proposed Construction	December 23, 2025
Parties to Meet and Confer to Narrow Issues and Prepare Joint Claim Construction and Prehearing Statement	January 7, 2026
Parties to file Joint Claim Construction and Prehearing Statement	January 14, 2026
Completion of Fact Discovery Relating to Claim Construction	February 13, 2026
Parties to file Opening Markman Submissions	March 3, 2026

See ECF No. 49. In short, the parties will have already exchanged contentions, completed claim construction discovery, and begun *Markman* briefing. *Id.* Such tasks are not considered “little substantive work” and therefore *Horizon* is simply inapplicable.

In *Miics*, the plaintiff was a non-practicing entity and the Court concluded that no prejudice would result from a stay. 2015 WL 9854845, at *1 (“Plaintiffs are non-

practicing entities. They do not compete with the defendants. . . . Plaintiffs are not competitors of the defendants, and despite requests for injunctive relief, are realistically looking only for monetary damages. It does not appear that they will suffer any undue prejudice if the motion is granted.”). Similarly, in *Crossroads*, the Court found that the plaintiff would not suffer undue prejudice in large part because only money damages were sought. 2015 WL 3773014, at *2 (“The fact of the matter is *Crossroads* seeks exclusively monetary damages, and mere delay in collecting those damages does not constitute undue prejudice.”). Here, by contrast, Cole Haan and Defendants directly compete in the footwear market, Cole Haan has sought injunctive relief in addition to monetary damages, and Defendants have continued to sell the Accused Products during the pendency of the suit. *See* ECF No. 8. Accordingly, a stay directly prejudices Cole Haan by extending the period during which Defendants continue to sell infringing products and harm Cole Haan’s market share.

Finally, in *Neste*, the Court relied in large part on PTO statistics regarding institution rates in 2013 to conclude it was likely IPR would be instituted and at least some claims cancelled. 2013 WL 3353984, at *4 n.5. The present USPTO statistics, however, support the exact opposite conclusion. On March 26, 2025, the Acting Director of the USPTO issued a Memorandum addressing “Interim Processes for PTAB Workload Management” (the “Process Memo”). The Process Memo indicates

that, among other considerations, the “[s]ettled expectations of the parties, such as the length of time the claims have been in force” should be considered in deciding whether to deny institution. Process Memo at 2-3.

Generally speaking, the Acting Director has indicated that a patent being issued for more than six years “create[es] strong settled expectations” which weigh in favor of discretionary denial. *HS Hyosung Advanced Materials Corp. v. Kolon Industries, Inc.*, IPR2025-00662, -00663, -00664, Paper 12 at 2 (Director Aug. 14, 2025) (citing *Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025- 00408, Paper 21 at 2–3 (Director June 18, 2025)). The ’511, ’163, and ’969 patents will all have been issued for at least 6 years by the time the USPTO renders its decision as to discretionary denial. *See* ECF Nos. 8-1 (’511 patent issued June 25, 2019); 8-2 (’163 patent issued October 15, 2019); 8-4 (’969 patent issued October 18, 2016). Accordingly, at least three of Defendants’ four petitions are prime candidates for discretionary denial. Defendants’ motion for a stay, therefore, may be nothing more than another dilatory litigation tactic, much like its motion to dismiss.

Denial statistics from the PTO further support that Plaintiffs’ petitions will likely be denied. Based on the most recently available statistics from the PTO, the PTO now denies institution for approximately 60% of petitions. *See, e.g., PTAB Trial Statistics July 2025*, USPTO, at 6, https://www.uspto.gov/sites/default/files/documents/Trial_Statsistics_July_2025.p

df. In view of these statistics and given the age of the '511, '163, and '969 patents, it is highly unlikely the PTAB will institute IPRs on all of the Asserted Patents. Thus, three of Defendants' petitions are likely to be denied for this reason alone without even considering any other grounds for denial. And all four petitions are likely to be denied, either on discretionary grounds or on consideration of the merits. *Neste*, therefore, is either irrelevant or weighs in favor of denying a stay.

Because the balance of the authority relied on by Defendants in its motion to stay does not support the very relief it requests given the pre-institution posture of this case, Defendants' motion should be denied as premature.

c. The delay caused by a stay would prejudice Cole Haan.

A stay at this initial stage would unnecessarily force Cole Haan into a legal limbo without discovery from Defendants for at least five months. The Local Patent Rules require early substantive disclosure to efficiently manage discovery and pretrial motion practice. *See generally* D.N.J. Local Patent Rules. To the present, however, Defendants have not produced any documents or identified any witnesses. Although some challenges to the Asserted Patents' validity are laid out in Defendants' IPR petitions, Defendants are likely to provide invalidity contentions on grounds that are not available in IPR proceedings. If a stay is granted and the PTAB decides not to institute an IPR on any or all of the claims challenged in Defendants' petitions, the parties will be no closer to resolving this case despite over

a year passing since Cole Haan filed its complaint. ECF Nos. 1, 8. Denying Defendants' motion to stay at this early stage and allowing discovery to proceed (at least until March 2026) will permit the parties "sufficient time to ferret out the issues involved in this action, identify the relevant claims and defenses, and solidify their claim construction positions," which would allow the Court to make a more informed decision as to whether a stay would simplify the issues, should the request be renewed upon institution of the IPRs by the PTAB. *See Straight Path IP*, 2014 WL 4271633, at *3 n.2.

II. A Stay Will Not Simplify the Issues.

Defendants' assertion that a stay would simplify issues rests on the assumption that the PTO institutes IPRs and invalidates all challenged claims. Per the statistics above, however, it is unlikely that IPR will be instituted on any of the patents in this case. *See* § I(b), *supra*. And, regardless of whether any of the 59 asserted claims are found invalid by the PTO, the IPR proceedings will not eliminate most issues pertinent to this litigation. The PTO will not determine any issues relating to infringement of any surviving claims, nor damages for that infringement. It will not consider any prior art that does not take the form of a patent or published paper. *See* 35 U.S.C. § 311(b) (IPR invalidity grounds are limited to grounds under (35 U.S.C. §§ 102 and 103 based on patents or printed publications). This is particularly notable given Defendants' IPR expert seemingly asserts invalidity under

§ 112 and reasserts the same invalidity arguments which Defendants previously made under § 101 in their motion to dismiss.

Unless the PTAB invalidates all challenged claims, the issues in this case will not be simplified. Defendants will almost certainly re-litigate any IPR challenges they lose based on non-institution, resulting in duplicative arguments raised before both the PTAB and this Court. The effect the IPRs will have on the issues in this case may be practically nil, and on the current record, is purely speculative. Simply put, proceeding with this case presents the best chance of the dispute being resolved. While the IPR petitions are pending, the parties can still make progress toward interpreting the asserted claims and moving toward resolution. In the unlikely event that the PTAB institutes the IPRs, the Court can then reassess a motion to stay if requested by Defendants at that time.

CONCLUSION

For the foregoing reasons, Cole Haan respectfully requests that the Court deny Defendants' request for a stay.

Dated: October 20, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 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.

*/s/ Steven F. Gooby*_____