

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

EMERGING AUTOMOTIVE LLC,

*Plaintiff,*

v.

TOYOTA MOTOR CORP., et al.,

*Defendants.*

Civil Action No.: 2:25-cv-00782-JRG  
(Lead Case)

EMERGING AUTOMOTIVE LLC,

*Plaintiff,*

v.

KIA CORPORATION, et al.,

*Defendants.*

Civil Action No.: 2:25-cv-00799-JRG  
(Member Case)

**TOYOTA DEFENDANTS' MOTION TO STAY THIS ACTION PENDING FINAL  
DISPOSITION OF ASSERTED CLAIMS CHALLENGED IN PROCEEDINGS  
BEFORE THE U.S. PATENT AND TRADEMARK OFFICE**

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## I. INTRODUCTION

On June 19, 2025, Emerging Automotive LLC (“EA”) voluntarily agreed to stay its case against Toyota and Kia in the related predecessor case: *Emerging Automotive LLC v. Kia Corp. et al.*, No. 2:23-cv-00437 (E.D. Tex.) at Dkt. 298 (“*EAI*”). Just eight weeks later, EA filed the present case (“*EA2*”), asserting three more patents—all nearly identical to the patents in *EAI*—against the very same products accused of infringement in *EAI*. Within 10 weeks of the *EA2* case being filed, Toyota and Kia filed petitions challenging the validity of all three new patents at the U.S. Patent and Trademark Office (“USPTO”).<sup>1</sup>

It is an understatement to say that it would be an inefficient use of the Court’s time, the jury’s time, and the witnesses’ time to do what EA seeks—conduct two trials on nearly the same patents accusing the same products. That tactic imposes needless burden on the Court and all participants. The path that best serves judicial economy is straightforward: stay this case pending completion of the USPTO challenges, just like *EAI* which EA voluntarily agreed to stay. And to the extent any claims survive, the Parties can then assess a schedule for their efficient resolution.

Accordingly, pursuant to this Court’s inherent power to control its docket, Defendants Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Connected North America, Inc., and Toyota Motor Corporation (collectively, “Toyota”) respectfully move the Court to stay this action in its entirety, pending final disposition of all asserted claims in co-pending Inter Partes Review (“IPR”) and Post Grant Review (“PGR”) proceedings before the USPTO.

EA opposes the motion. The consolidated Kia defendants take no position.

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<sup>1</sup> These challenges are IPR2026-00059, IPR2026-00070, and PGR2026-00008. As U.S. Patent No. 12,337,716 is asserted against Toyota only, Toyota is the petitioner in IPR2026-00070.

## II. STATEMENT OF FACTS

### A. EA Agreed to Stay *EAI* Pending IPR/EPR Challenges.

In *EAI*, EA filed its complaints against Toyota (No. 2:23-cv-434) and Kia<sup>2</sup> (No. 2:23-cv-437) in September of 2023, asserting infringement of U.S. Patent Nos. 10,407,026 (“’026 Patent”), 11,738,659 (“’659 Patent”), and 9,365,188 (“’188 Patent”) against Toyota and Kia, and U.S. Patent Nos. 9,171,268 (“’268 Patent”) and 11,396,244 (“’244 Patent”)<sup>3</sup> against Toyota only. In March of 2024, a third party, Unified Patents, LLC, filed a request for Ex Parte Reexamination (“EPR”) of the ’659 Patent. Between April and July of 2024, Toyota and/or Kia filed IPR petitions on each of the ’026, ’659, ’188, ’268, and ’244 Patents. EA later dropped the ’244 Patent from its litigation against Toyota due to the patent containing uncorrected errors. *EAI* at Dkt. 103. Following institution of the ’188, ’268, and ’244 Patent IPRs and grant of EPR on the ’659 Patent, Toyota and Kia filed an opposed motion to stay. *EAI* at Dkt. 136. The Court denied that motion without prejudice due to denial of institution in the ’026 Patent IPR, for which rehearing of the institution decision was still pending. *EAI* at Dkt. 162. Then, at the pretrial conference on June 12, 2025, the Court granted Toyota’s and Kia’s request for summary judgment of non-infringement as to the ’026 Patent. *EAI* at Dkt. 293. With all remaining asserted claims now under USPTO review, on June 19, 2025, Toyota, Kia, and EA *jointly* filed a motion to stay pending resolution of USPTO proceedings and EPR appeal. *EAI* at Dkt. 298. The Court granted the Parties’ joint motion on June 30, 2025. *EAI* at Dkt. 301 (“Plaintiff’s affirmative joinder in the Motion makes it clear that it has lost interest in receiving a jury verdict in this case. The Court is not inclined to expend even more

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<sup>2</sup> “Kia” refers collectively to Kia Corporation and Kia America, Inc. “Defendants” refers collectively to Toyota and Kia. “Parties” refers collectively to EA and Defendants.

<sup>3</sup> “*EAI* Patents” refers collectively to the ’026 Patent, ’659 Patent, ’188 Patent, ’268 Patent, and ’244 Patent.

resources to push this case toward a jury trial when Plaintiff apparently no longer wants one”). The *EAI* case remains stayed.

**B. The *EAI* USPTO Challenges Address Validity of All Asserted *EAI* Claims.**

With *EAI* stayed, the co-pending IPRs and EPR challenges have addressed or will address validity of all asserted claims in that case. The tables below summarize the status of these IPR and EPR proceedings in *EAI*:

<b>IPR Proceeding</b>	<b>U.S. Patent</b>	<b>Status</b>
IPR2024-00786	'268 Patent	FWD <sup>4</sup> issued on Oct. 21, 2025; <i>6 claims found unpatentable</i> with 5 claims found patentable. <sup>5</sup>
IPR2024-00785	'026 Patent	Institution denied on Nov. 21, 2024; rehearing denied on <i>Fintiv</i> grounds, but the Court granted summary judgment of non-infringement. <i>EAI</i> at Dkt. 293.
IPR2024-00814	'244 Patent	FWD issued on Nov. 19, 2025 finding <i>all challenged claims unpatentable</i> .
IPR2024-00981	'188 Patent	FWD issued on Dec. 9, 2025 finding <i>all challenged claims unpatentable</i> .
IPR2024-01167	'659 Patent	FWD is expected by Jan. 27, 2026.

<b>EPR Proceeding</b>	<b>U.S. Patent</b>	<b>Status</b>
90/019,456	'659 Patent	<i>All claims rejected as unpatentable</i> on Feb. 11, 2025; EA’s appeal is currently pending.

**C. EA Filed *EA2* Eight Weeks After Agreeing to Stay *EAI*.**

Eight weeks after agreeing to stay *EAI*, however, EA filed the pending actions against Toyota (No. 2:25-cv-00782) and Kia (No. 2:25-cv-00799) alleging infringement of U.S. Patent Nos. 11,104,245 (“’245 Patent”) and 12,337,715 (“’715 Patent”) against Toyota and Kia, and alleging infringement of U.S. Patent No. 12,337,716 (“’716 Patent”) only against Toyota. These new patents claim nearly the same subject matter as the *EAI* Patents. *See, e.g., 2:25-cv-00782* (E.D. Tex. Aug. 18, 2025), Dkt. 1.

<sup>4</sup> “FWD” refers to a Final Written Decision.

<sup>5</sup> Toyota filed a Notice of Appeal on Dec. 23, 2025. *See* IPR2024-00786, Paper 29.

In fact, the *EA2* Patents share the same specification as the *EAI* Patents, are nearly identical in claim scope, and are asserted against the same products as in *EAI*. EA’s infringement contentions are also exceedingly similar as shown in the table below identifying the allegedly infringing products asserted in both actions:

<b><i>EAI</i> Accused Products</b>	<b><i>EA2</i> Accused Products</b>
'026 Patent (“Toyota Remote Connect technology—whether offered in conjunction with Digital Key or as a standalone service”)	'245 Patent (“Toyota Remote Connect technology—whether offered in conjunction with Digital Key or as a standalone service”)
'659 Patent (“Toyota Remote Connect technology—whether offered in conjunction with Digital Key or as a standalone service”)	'715 Patent (“Toyota Remote Connect technology—whether offered in conjunction with Digital Key or as a standalone service”)
'244 Patent (“Toyota Connected Services technology—whether offered in conjunction with User Profile technology or as a standalone service”)	'716 Patent (“Toyota Connected Services technology—whether offered in conjunction with User Profile technology or as a standalone service”)

In the infringement charts attached to the *EA2* complaint, the vast majority of purported evidence is drawn from the *EAI* infringement contentions, other than trivial additions, *e.g.*, the camera limitation in the '245 Patent. EA itself acknowledges the overlap between both cases, proposing that the parties agree to a cross-use provision such that discovery from the *EAI* case be used in *EA2*. *See* Dkt. 40 (Discovery Order) at §12(g); *see also* Dkt. 38 (Jt. Mot. for Entry of Agreed Discovery Order) at §12(g)).

Finally, Toyota and Kia diligently filed IPR and PGR petitions against each of the newly asserted *EA2* Patents on October 21, 2025—just ten weeks after the complaint was filed and over a month before the scheduling conference. Toyota’s and Kia’s petitions rely on substantially the same art and arguments relied on in the instituted IPRs on the '188, '659, '268, and '244 Patents from *EAI*.

### III. LEGAL STANDARD

The Court possesses the inherent power to control its own docket, including the power to stay proceedings. *Customedia Techs., LLC v. DISH Network Corp.*, No. 2:16-cv-129-JRG, 2017 WL 3836123, at \*1 (E.D. Tex. Aug. 9, 2017) (citing *Clinton v. Jones*, 520 U.S. 681, 706 (1997)); *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426–27 (Fed. Cir. 1988)). One goal of an IPR is to “‘limit unnecessary and counterproductive litigation costs.’” *Regents of the Univ. of Minnesota v. LSI Corp.*, 926 F.3d 1327, 1335 (Fed. Cir. 2019) (citing H.R. Rep. 112-98, pt. I, at 40 (2011)). “A stay is particularly justified when the outcome of a PTO proceeding is likely to assist the court in determining patent validity or eliminate the need to try infringement issues.” *OnPoint Sys., LLC v. Protect Animals With Satellites, LLC*, No. 4:20-cv-657-ALM, 2022 WL 2704166, at \*1 (E.D. Tex. July 12, 2022) (internal quotations omitted). In the context of EPR, a stay is appropriate when there is a “significant likelihood that the outcome of the reexamination proceeding will streamline the scope of this case to an appreciable extent if not dispose of it entirely.” *Veraseal LLC v. Wal-Mart Stores, Inc.*, No. 2:17-cv-00527-JRG, 2018 WL 2183235, at \*2 (E.D. Tex. May 10, 2018).

When deciding whether to stay a case pending USPTO proceedings (including IPR and EPR), district courts consider “‘(1) whether the stay will unduly prejudice the nonmoving party, (2) whether the proceedings before the court have reached an advanced stage, including whether discovery is complete and a trial date has been set, and (3) whether the stay will likely result in simplifying the case before the court.’” *OnPoint*, 2022 WL 2704166 at \*2 (quoting *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-cv-1058-WCB, 2015 WL 1069111, at \*2 (E.D. Tex. Mar. 11, 2015)). “Based on [those] factors, courts determine whether the benefits of a stay outweigh the inherent costs of postponing resolution of the litigation.” *Id.* The Federal Circuit and courts in this District have also considered “whether a stay will reduce the burden of litigation on the parties and

the court.” *See, e.g., Murata Mach. USA v. Daifuku Co.*, 830 F.3d 1357, 1362 (Fed. Cir. 2016) (internal quotations omitted); *CyWee Grp. Ltd. v. Samsung Elecs. Co.*, No. 2:17-cv-00140-WCB-RSP, 2019 WL 11023976, at \*2 (E.D. Tex. Feb. 14, 2019).

#### IV. ARGUMENT

EA’s agreement to stay *EAI* and then assert essentially the same claims in *EA2* filed just two months later is tactical gamesmanship. Simply put, EA manufactured two “separate” cases, hoping that its second bite at the apple might end differently. EA agreed to stay *EAI* knowing it had another arrow in its quiver via the patents asserted in *EA2*. But EA already had its opportunity to prove infringement of its “user profile” and “e-key” claims in *EAI* and agreed to a stay. While Toyota is cognizant that pre-institution stays are rarely granted, the circumstances in this case warrant an exception. Because the patents and products in *EA2* are so similar to *EAI*, the Court should stay this case too, pending the USPTO challenges.

##### A. *EA2* is Essentially the Same as *EAI*.

The *EA2* Patents all share the same specification as those in *EAI*. They all have common inventors, the claimed priority dates are identical, and the claim scope is nearly identical. Slight differences in language are unlikely to meaningfully affect claim scope.<sup>6</sup>

Both *EAI* and *EA2* present the same dispute repackaged: EA asserts materially indistinguishable claims against the same accused products made by the same Parties.<sup>7</sup> Both

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<sup>6</sup> The USPTO already determined that none of the claims of the ’245 and ’715 *EA2* Patents are “patentably distinct” from the ’026 and ’659 *EAI* Patents, respectively, having issued double patenting rejections in all of the prosecutions of these *EA2* Patents. Patent claims that are “patentably indistinct are essentially the same.” *SimpleAir, Inc. v. Google LLC*, 884 F.3d 1160, 1167 (Fed. Cir. 2018). Further, the invalidated claims of the ’244 *EAI* Patent are substantially similar to the claims of the ’716 *EA2* Patent.

<sup>7</sup> Toyota Connected North America, Inc. was not a party in *EAI* but appears to have been improperly included in *EA2* as it is not involved with the accused products.

actions accuse Toyota and Kia vehicles of infringing, cite similar evidence of infringement in the respective complaints, and will require much of the same technical and documentary proof to establish—or refute—infringement. The *EA2* Patents recite many nearly identical terms to those at issue in claim construction in *EAI*. Because all the *EA2* Patents share a common specification and prosecution histories with the previously asserted *EAI* Patents, these terms should be construed consistently.

Discovery will come from the same fact witnesses in both actions. The named inventors are identical. Because EA advances essentially the same accusations against the same products, both fact witnesses with knowledge and third-party witnesses will be the same.

**B. The Court Should Exercise Its Discretion to Stay.**

The three stay factors—potential undue prejudice to the non-moving party, stage of the proceedings, and simplification of issues—all strongly weigh in favor of granting a stay.

**1. A Stay Will Not Unduly Prejudice EA.**

EA already demonstrated that it is not prejudiced by a stay because it *agreed* to a stay in *EAI*. There is no dispute that EA is a non-practicing entity. EA has no employees, no offices, no facilities, and no revenue. EA does not compete with any car company and does not seek injunctive relief. Monetary damages will be sufficient to compensate EA for any alleged damages, and a stay will not affect EA’s damage recovery—just delay it. Courts routinely find that delay in collecting monetary damages does not amount to undue prejudice. *See NFC Tech.*, 2015 WL 1069111, at \*2 (prejudice based on “delay in the vindication of patent rights” is “not sufficient, standing alone, to defeat a stay motion”); *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1318 (Fed. Cir. 2014) (“A stay will not diminish the monetary damages to which [the patentee] will be entitled if it succeeds in its infringement suit—it only delays realization of those damages[.]”).

Most importantly, as EA already agreed to stay *EAI*, the *EA2* litigation is nothing more than an attempt to take a second shot and diminish the effect of the agreed stay, allowing EA to proceed to trial sooner on substantially similar claims. EA should not be rewarded for its gamesmanship.

Any purported burden to EA is greatly outweighed by the savings of time and effort to the Parties and the Court offered by a stay. The only possible prejudice is a delay in the trial of this action, which is currently set for July 2027. *See EA2* at Dkt. 36. But EA has already demonstrated that it is in no rush to get to trial, as evidenced by its agreement to stay *EAI*. *See EAI* at Dkt. 301 (“The Court has expended unrecoverable time and resources resolving pretrial motions, conducting a *Markman* hearing, issuing a claim construction order, and conducting a comprehensive pretrial conference”). Any marginal delay from consolidation would be of EA’s own making. EA’s decision to sit on patents and later file a second action does not justify forcing the Court, the jury, the witnesses, and the Parties to endure the same burdens all over again. Indeed, EA could have sought to add the ’245, ’715, and ’716 Patents to the *EAI* litigation—relief it likely would have been denied for lack of good cause. Instead, EA elected to split its claims by filing a second action, reserving for itself a second bite at its “e-key” and “user profile” infringement cases. This factor strongly favors a stay.

## **2. The Stage of the Case Weighs in Favor of a Stay.**

This case is in its infancy. Fact discovery has just begun, and no discovery has occurred other than the agreement to a document cross-use from *EAI*. *See* Dkt. 40 (Discovery Order) at §12(g). The claim construction hearing is over a year away. No party or third-party depositions have been scheduled. Expert discovery is months away.

This factor favors a stay where “the most burdensome parts of the case—filing and responding to pretrial motions, preparing for trial, going through the trial process, and engaging in

post-trial motions practice—all lie in the future.” *See, e.g., CyWee*, 2019 WL 11023976, at \*6–7 (granting stay motion filed after claim construction and near completion of discovery and collecting cases); *Intellectual Ventures II LLC v. BITCO Gen. Ins. Corp.*, No. 6:15-CV-59, 2016 WL 4394485, at \*3–4 (E.D. Tex. May 12, 2016) (granting stay motion filed after claim construction hearing).

Defendants diligently pursued their IPR/PGR petitions by filing them even *before* receiving EA’s infringement contentions in this case,<sup>8</sup> and just 10 weeks after the case was filed. *NFC Tech.*, 2015 WL 1069111, at \*4 (finding IPR petitions filed four months after service of infringement contentions to be reasonable and collecting cases finding the same). Toyota will provide the Court with updates as the USPTO challenges progress. Further, staying the case at this early stage would allow the Parties and the Court to avoid duplicating effort and risking inconsistent rulings with *EAI*. This factor strongly favors a stay.

### **3. A Stay Will Simplify This Case.**

Granting a stay would simplify this case by likely eliminating many issues via the outcome of the USPTO proceedings. “[T]he most important factor bearing on whether to grant a stay in this case is the prospect that the inter partes review proceeding will result in simplification of issues before the Court.” *OnPoint*, 2022 WL 2704166, at \*3. “A stay is particularly justified when the ‘outcome of a PTO proceeding is likely to assist the court in determining patent validity or eliminate the need to try infringement issues.’” *Id.* at \*1.

All asserted claims from *EAI* and *EA2* are currently challenged before the PTAB. Although the PTAB has not yet instituted proceedings on the *EA2* Patents, a stay of this case is the best approach to conserve judicial resources. First, as described above, EA’s newly asserted claims are

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<sup>8</sup> EA served infringement contentions in *EA2* on November 24, 2025.

nearly identical to those at issue in *EAI*, which are either subject to instituted proceedings before the PTAB or a ruling of non-infringement. For the '245 Patent, which is patentably *indistinct* from the '026 Patent (not instituted), a new IPR petition has been filed relying on the same art and arguments from the instituted IPR petitions for the '659 and '188 Patents. Accordingly, there is a high likelihood that the ongoing instituted IPR and EPR proceedings will generate prosecution history that impacts the scope, meaning, and patentability of the *EA2* Patents. Indeed, the PTAB has already *invalidated* all challenged claims of two *EAI* Patents. It is likely that the PTAB will reach the same conclusion with respect to at least some and likely all of the *EA2* claims. Thus, a stay has the potential to eliminate all three of the newly asserted patents entirely.

Even if any of the asserted claims survive these USPTO proceedings, that, too, would simplify the case. For example, for any patent subject to IPR resulting in a final written decision, Defendants would be estopped under 35 U.S.C. § 315(e)(2) from asserting certain invalidity arguments at trial against these claims. Indeed, while certain claims were not found invalid in the '268 Patent IPR, the issues have still been narrowed because the estoppel provisions of § 315 now apply. A stay would also reduce the risk of inconsistent results regarding the scope of the shared terms and eliminate the possibility of the Parties and the Court having to revisit these issues based on ongoing IPR and PGR proceedings. This factor also strongly favors a stay.

## V. CONCLUSION

For the foregoing reasons, Toyota's motion to stay this action pending final disposition of all asserted claims in co-pending IPR, EPR, and PGR proceedings should be granted.

Dated: January 2, 2026

/s/ James R. Barney

James R. Barney (DC Bar No. 473732)

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**CERTIFICATE OF CONFERENCE**

I certify that pursuant to Local Rule CV-7(h), counsel for Toyota attempted to meet and conferred concerning the relief requested in this motion. On December 23, 2025, Aidan Skoyles, counsel for Toyota, emailed counsel for EA indicating Toyota's intent to file a motion to stay and requesting a time to meet and confer. EA did not respond. On December 29, 2025, Aidan Skoyles emailed counsel for EA again seeking its position. On December 29, 2025, Elizabeth Day, counsel for EA, indicated that EA opposed the motion. Toyota understands that the consolidated Kia Defendants take no position.

*/s/ James R. Barney* \_\_\_\_\_

James R. Barney

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing document was served on all parties who have appeared in this case on January 2, 2026, via the Court's CM/ECF system.

*/s/ James R. Barney* \_\_\_\_\_

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**[PROPOSED] ORDER GRANTING TOYOTA DEFENDANTS' MOTION TO STAY THIS ACTION PENDING FINAL DISPOSITION OF ASSERTED CLAIMS CHALLENGED IN PROCEEDINGS BEFORE THE U.S. PATENT AND TRADEMARK OFFICE**

The Court, having considered the Toyota Defendant's Motion to Stay This Action Pending Final Disposition of Asserted Claims Challenged in Proceedings Before the United States Patent and Trademark Office ("USPTO") (the "Motion to Stay"), finds that the Motion to Stay Should be **GRANTED**.

Accordingly, this case is stayed until the later of (a) the expiration of the stay in the related predecessor litigation *Emerging Automotive LLC v. Kia Corp. et al.*, No. 2:23-cv-00437 at Dkt. 301 (E.D. Tex.) ("*EAI*"), or (b) the last Final Written Decision from the PTAB in IPR/PGR proceedings on the *EA2* Patents: IPR2026-00059 (U.S. Patent 11,104,245), IPR2026-00070 (U.S. Patent 12,337,716), and PGR2026-00008 (U.S. Patent 12,337,715).