

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

AIRWATCH LLC,

Plaintiff,

v.

GOOD TECHNOLOGY  
CORPORATION AND GOOD  
TECHNOLOGY SOFTWARE, INC.,

Defendants.

CIVIL ACTION FILE  
No. 1:14-cv-02281-SCJ

**ORDER**

This patent infringement action is before the Court on Defendants Good Technology Corporation and Good Technology Software, Inc.'s Motion to Stay Pending *Inter Partes* Review of the Patent-in-Suit (see Doc. No. [28], hereinafter the "Motion to Stay"), and the parties' Joint Stipulation and Proposed Order Regarding Extension of Claim Construction Deadlines (Doc. No. [44]).

**I. BACKGROUND**

On July 18, 2014, Plaintiff AirWatch LLC (the "Plaintiff") filed suit against Defendants Good Technology Corporation and Good Technology Software, Inc. (the "Defendants"), seeking damages for Defendants' alleged infringement of U.S. Patent No. 8,713,646 (the "'646 Patent"). See Doc. No. [1]. On November 6, 2014, Defendants responded by filing a petition for *inter partes* review ("IPR")

with the Patent Trial and Appeal Board (the "PTAB"), in which they argue that all of the '646 Patent's claims are invalid and should be cancelled. See Doc. No. [28-1], p. 5; Doc. No. [28-4]. On November 12, 2014, Defendants filed the instant Motion to Stay. See id. Plaintiff opposes the Motion to Stay. See Doc. No. [38].

## II. ANALYSIS

A district court has discretion to grant (or deny) a motion to stay a patent infringement case pending the outcome of a petition for IPR. See Interface, Inc. v. Tandus Flooring U.S., LLC, No. 4:13-cv-46-WSD, 2013 U.S. Dist. LEXIS 158608, at \*11 (N.D. Ga. Nov. 5, 2013) (citing Procter & Gamble Co. v. Kraft Foods Global, Inc., 549 F.3d 842, 849-50 (Fed. Cir. 2008)); see also Southwire Co. v. Cerro Wire, Inc., No. 3:08-CV-92-JTC, 2009 U.S. Dist. LEXIS 131922, at \*6-7 (N.D. Ga. May 12, 2009) (observing that there is "a liberal policy in favor of granting motions to stay" in light of post-grant proceedings (quoting ASCII Corp. v. STD Entm't USA, Inc., 844 F. Supp. 1378, 1381 (N.D. Cal. 1994))). As the Federal Circuit has recognized,

while some district courts [have] ruled on motions to stay before the PTAB [has] granted the petition for post-grant review . . . , others have waited until post-grant review was instituted, and still others [have]

denied as premature the motion to stay without prejudice to refiling after institution of post-grant review.

VirtualAgility Inc. v. Salesforce.com, Inc., 759 F.3d 1307, 1315-16 (Fed. Cir. 2014) (internal citations omitted). And while there is “no doubt the case for a stay is stronger after post-grant review has been instituted,” the Federal Circuit also has stated that “a motion to stay could be granted even before the PTAB rules on a post-grant review petition,” and ultimately has offered “no opinion on which is the better practice.” See id.<sup>1</sup>

As both parties have observed (see Doc. No. [28-1], p. 7; Doc. No. [32], p. 10), courts in the Northern District of Georgia consider three factors when determining whether to grant a stay: “(1) whether discovery is complete and a trial date has been set; (2) whether a stay will simplify the issues in the case; and (3) whether a stay would unduly prejudice or present a tactical disadvantage to the nonmovant.” See Interface, Inc. v. Tandus Flooring U.S., LLC, No. 4:13-cv-46-WSD, 2013 U.S. Dist. LEXIS 158608, at \*13 (N.D. Ga. Nov. 5,

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<sup>1</sup> The Court agrees with Plaintiff that while VirtualAgility involved “CBM proceedings and not *IPR* proceedings,” it nonetheless “shed[s] light on the value of waiting to rule on stays pending the PTAB’s institution of post-grant proceedings.” See Doc. No. [32], p. 12, n.1.

2013) (internal quotations omitted). Having reviewed the parties' briefing on this issue, the Court finds that a stay is warranted.

With respect to the first factor (the stage of the litigation), discovery in this case is not complete, and no trial date has been set. Courts consider the status of the case at the time the motion to stay was filed. See VirtualAgility Inc. v. Salesforce.com, Inc., 759 F.3d 1307, 1315–17 (Fed. Cir. 2014) (“Generally, the time of the motion is the relevant time to measure the stage of litigation.”). Here, fact discovery began on September 17, 2014 (see Doc. No. [24]), and Defendants' motion to stay was filed less than two months later (see Doc. No. [28]). And to the extent the current status of the case is also relevant, the Court observes that the parties are still in the early stages of discovery, and recently have jointly requested an extension to the claim construction deadlines (see Doc. No. [44]). This case is far from an advanced stage, and the first factor thus weighs in favor of a stay.

With respect to the second factor, the Court also finds that a stay will simplify the pending issues. This would obviously be the case if post-grant review resulted in the modification or cancellation of some of the patent claims at issue. However, even if all of the '646 Patent's claims are confirmed, both the

parties and the Court will benefit from the arguments and evidence developed and presented during the IPR proceedings. Likewise, the PTAB's responses to the parties' arguments will also be instructive, and this will be the case even if the PTAB simply issues a decision in which it declines to institute a review. Accordingly, the second factor also weighs in favor of a stay.

The third factor (prejudice to the nonmovant) presents the greatest concern, as Plaintiff has argued that it will suffer "irreparable harm" if a stay is granted. See Doc. No. [32], pp. 19-20. According to Plaintiff, the parties are competitors in the "Mobile Device Management software" market, and the technology at issue in this case involves "single-sign-on" solutions that provide Bring Your Own Device ("BYOD") capabilities to mobile device users. See id. Plaintiff argues that the market for this technology is "relatively young," and that any "loss of client[s] in the growing BYOD market during the stay period could cause AirWatch to lose substantial market share permanently." See id. at p 20.

Plaintiff cites to an undated "Good Technology State of BYOD Report" as evidence that the BYOD market is young and developing. See id. at pp. 19-20 (citing Doc. No. [32-19]). But this claim is undercut by the report's description of a "survey conducted in January 2011, wherein Good Technology learned that

60 percent of its customers were formally supporting BYOD programs.” See Doc. No. [32-19], p. 5. And while Plaintiff has stated that the parties “compete in certain circumstances,” there is little evidence of direct competition. The Court also notes that Plaintiff has not sought a preliminary injunction in this matter, as might be expected when a defendant’s alleged infringing activities are likely to cause a patentee irreparable harm that cannot be remedied through an award of money damages. See VirtualAgility Inc. v. Salesforce.com, Inc., 759 F.3d 1307, 1315–17 (Fed. Cir. 2014) (observing that failure to seek a preliminary injunction “contradicts [a patentee’s] assertion that it needs injunctive relief as soon as possible”). Finally, there is nothing to indicate that any lack of resources on Plaintiff’s part would cause it to be prejudiced if a stay is granted. Accordingly, the Court is not convinced that Plaintiff will be irreparably harmed through a loss of market share if the Court grants a stay pending IPR.

The Court further observes that if Plaintiff ultimately prevails in this case, it may recoup the full extent of any monetary damages suffered, which will include any damages resulting from Defendants’ actions during the pendency of the stay. And while Plaintiff argues that it will be tactically disadvantaged by a stay, and furthermore believes that Defendants have engaged in a “string of

attempts to delay [this] lawsuit” that “should not be rewarded” (see Doc. No. [32], p. 20), such concerns are easily remedied through discovery extensions, which the Court may enter as appropriate. Given the above, the Court finds that the third factor (prejudice to the nonmovant) is, at best, a wash.

### III. CONCLUSION

The Court finds that the first two factors (whether the case has reached an advanced stage and whether the pending issues may be simplified if a stay is granted) decidedly weigh in favor of a stay, and that the third factor (prejudice or tactical disadvantage to the nonmovant) weighs neither for nor against a stay. Accordingly, Defendants’ Motion to Stay (Doc. No. [28]) is hereby **GRANTED**, subject to the following:

- Within seven (7) days of the PTAB’s decision on whether to grant or deny *inter partes* review, Defendants are **ORDERED** to file notice with the Court that includes a brief description of the PTAB’s ruling;
- Should the PTAB decide to institute *inter partes* review, Defendants are **ORDERED** to file, within fifteen (15) days of the PTAB’s determination regarding patentability, notice with the Court that includes a brief description of the PTAB’s ruling. The Court will then consider whether to reopen the case and lift the stay, either *sua sponte*, or upon motion by either party filed within thirty (30) days of the PTAB’s ruling;<sup>2</sup>

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<sup>2</sup> To the extent that the parties continue to dispute (1) whether a stay should extend for the duration of any appeals of the PTAB’s decision, or (2) the extent to which

- If the PTAB declines to institute *inter partes* review, the parties are **ORDERED** to file, within thirty (30) days of the PTAB's decision, a supplemental joint preliminary report and discovery plan that sets forth revised deadlines for discovery and other case-related events.

In light of the Court's decision to grant a stay, the parties' Joint Stipulation and Proposed Order Regarding Extension of Claim Construction Deadlines (Doc. No. [44]) is **DENIED** as moot, and the Clerk is **DIRECTED** to administratively close this action pending further notice from the Court.

**IT IS SO ORDERED**, this 13<sup>th</sup> day of February, 2015.

  
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HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT JUDGE

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arguments before the PTAB may create an estoppel in this case (*see* Doc. No. [32], p. 22-23; Doc. No. [38], pp. 18-19)), such disputes may be addressed in an appropriately-filed motion to reopen the case.