UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV-19-9230-MWF (JDEx) **Date: December 30, 2020**
Title: Nike, Inc. v. Skechers U.S.A., Inc.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER DENYING DEFENDANT SKECHERS U.S.A., INC.'S MOTION TO STAY PENDING INTER PARTES REVIEW [71]

Before the Court is Defendant Skechers U.S.A., Inc.'s Motion to Stay Pending *Inter Partes* Review (the "Motion"), filed on November 23, 2020. (Docket No. 71). Plaintiff filed an opposition on November 30, 2020. (Docket No. 72). Defendant filed a reply on December 7, 2020. (Docket No. 73).

The Court has read and considered the papers filed in connection with the motion and held a telephonic hearing on December 21, 2020, pursuant to General Order 20-09 and the Continuity of Operations Plan ("COOP"), effective December 9, 2020, through and including January 8, 2021, arising from the COVID-19 pandemic.

The Motion is **DENIED**, essentially for all the reasons argued by Plaintiff.

"[A] court is under no obligation to delay its own proceedings by yielding to ongoing PTAB patent reexaminations — even if the reexaminations are relevant to the infringement claims before the Court." *Pinn, Inc. v. Apple, Inc.*, SACV 19-1805-DOC-(JDEx), 2020 WL 6064642, at *1 (C.D. Cal. Aug. 27, 2020) (citation omitted).

This Court considers several factors when evaluating whether to grant a stay, including: "(1) whether discovery is complete and whether a trial date has been set; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether

a stay would unduly prejudice or present a clear tactical disadvantage to the nonmoving party." *Pinn*, 2020 WL 6064642, at *1 (citation omitted).

Plaintiff correctly argues that staying litigation is not warranted under these circumstances. (Opposition at 4-11). Although a trial date has not been set, the Court agrees with Plaintiff that significant activity has occurred and will shortly occur.

In addition, the Court notes that the Patent Trial & Appeal Board ("PTAB") has not yet decided whether to institute *inter partes* review ("IPR") proceedings. (Motion at 1). A decision from the PTAB regarding whether to institute IPR proceedings is several months away. (Motion at 2) ("[T]he PTAB's institution decision is expected in May of 2021."). Even if the PTAB institutes IPR proceedings, this action will likely be ready for trial before the PTAB issues a final decision — a decision that could then be appealed.

At the hearing, Defendant emphasized its argument that the case is still at an early stage in the proceedings, noting that no depositions have been taken, no expert reports have been submitted, and no motions have been filed. The lack of significant activity is an important factor to consider, but the persuasive value of this argument is undermined by the fact that the parties (1) have already exchanged patent contentions, which was scheduled to take place on December 23, 2020, and (2) are currently engaged in claim construction, which is scheduled for a hearing on April 12, 2021. By the time the PTAB decides whether to institute IPR, the parties will have already made several exchanges and completed a claim construction hearing.

The Court also notes that Defendant waited almost a year after it was served with the Complaint to file its IPR petitions. (Motion, Ex. 2 (Docket No. 71-4)) (IPR2021-00159, filed on October 30, 2020). Defendant's delay in filing its IPR petitions also weighs against granting a stay. *Jiaxing Super Lighting Elec. Appliance Co. v. MaxLite, Inc.*, CV 19- 4047 PSG (MAAx), 2020 WL 5079051, at *4 (C.D. Cal. June 17, 2020) ("Such a delay cuts against granting a stay because 'courts expect accused infringers to evaluate whether to file, and then to file, IPR petitions as soon as possible after learning that a patent may be asserted against them.'") (citation omitted).

Finally, the Court agrees with Plaintiff that the simplification of the issues here, ultimately, is speculative.

Accordingly, the Motion is **DENIED**.

IT IS SO ORDERED.