

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

GUNTERT & ZIMMERMAN  
CONSTRUCTION DIVISON, INC.,

Plaintiff/Counter-Defendant,

vs.

GOMACO CORP.,

Defendant/Counter-Claimant.

No. 20-CV-4007-CJW-KEM

**MEMORANDUM OPINION  
AND ORDER**

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Currently pending before the court is Defendant/Counter-Claimant Gomaco Corp.'s motion to stay proceedings pending a decision by the United States Trademark and Patent Office (USPTO) whether to grant Gomaco's request for inter partes review (IPR). Doc. 78. Plaintiff/Counter-Defendant Guntert & Zimmerman Construction Division, Inc., (G&Z) resists. Doc. 80. I **grant** the motion.<sup>1</sup>

***I. BACKGROUND***

G&Z initiated this patent-infringement action in late February 2020, alleging infringement of five patents. Docs. 1, 29. The court issued the scheduling order in June 2020. Doc. 34. Under the scheduling order, the parties have already produced initial disclosures and preliminary infringement and invalidity contentions, and they have prepared the joint claim-construction statement and briefed claim construction. *See id.* The claim-construction hearing has not yet been set, but the parties must be ready for the hearing by January 20, 2021. *Id.* Other outstanding deadlines include the completion of fact discovery in mid-May 2021; the completion of expert discovery in mid-September

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<sup>1</sup> The parties have thoroughly briefed the issue, and I do not find oral argument necessary. *See* LR 7(c).

2021; the dispositive-motion deadline in mid-October 2021; and trial beginning on April 4, 2022. Docs. 34, 35.

G&Z moved for a preliminary injunction in July 2020, which involved only one of G&Z's patents at issue in this case. Doc. 40. The court denied the motion in September 2020. Docs. 70, 72. The court found that although G&Z had shown a likelihood of success in proving Gomaco infringed the patent, Gomaco's argument that G&Z's patent was invalid had "substantial merit" due to obviousness based on a prior patent. Doc. 72. The court also found that G&Z had not proved irreparable harm in the absence of an injunction, noting that the evidence did not establish the insufficiency of money damages to compensate G&Z in the event it won the lawsuit. *Id.*

In connection with the motion for preliminary injunction, the parties submitted exhibits and declarations from experts. The parties also conducted four depositions, at least two of which were limited to three hours and examination on the information contained in the deponent's declaration. *See* Doc. 48. The parties have conducted no other depositions, and they will likely need to re-depose those persons deposed in a limited manner in connection with the motion for injunctive relief. The parties have issued and responded to interrogatories and requests for production, both producing thousands of pages of documents, but at the time Gomaco filed its motion, no email discovery had been conducted as of yet. Neither have the parties engaged in any third-party discovery.

In October and November 2020, Gomaco filed petitions for IPR with the USPTO. Gomaco's petitions challenge the validity of each of G&Z's five patents at issue in this case. According to Gomaco, it decided to institute IPR proceedings upon receipt of G&Z's preliminary infringement contentions in June 2020, which revealed the broad scope G&Z applied to its patent claims (although the petitions were not filed until more than three months later, Gomaco notes the substantial time and effort that went into preparing the petitions, as well as the ongoing preliminary-injunction proceedings

consuming its legal resources at the time). On December 1, 2020, Gomaco filed the current motion to stay these proceedings pending IPR. Doc. 78. G&Z resists. Doc. 80. Gomaco filed a reply. Doc. 81.

## ***II. DISCUSSION***

Congress created IPR proceedings in 2011, replacing the sometimes lengthy inter partes reexamination process. *Masa LLC v. Apple Inc.*, No. 4:15-CV-00889-AGF, 2016 WL 2622395, at \*2 (E.D. Mo. May 9, 2016); *Intellectual Ventures II LLC v. Commerce Bancshares, Inc.*, No. 2:13-CV-04160-NKL, 2014 WL 2511308, at \*1 (W.D. Mo. June 4, 2014). The IPR “process offers a number of benefits for parties and courts involved in related litigation,” as it is “‘a timely, cost-effective alternative to litigation,’ designed to produce ‘a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs.’” *Commerce Bancshares*, 2014 WL 2511308, at \*1 (quoting Changes to Implement *Inter Partes* Review Proceedings, 77 Fed. Reg. 48680, 48680 (Aug. 14, 2012)).

“[A]ny person other than the patent owner can request IPR to challenge the validity of” a patent, which will be decided “by a panel of three specialized Administrative Patent Judges of the” USPTO’s Patent Trial and Appeal Board (the Board). *Id.* at \*1-2. Once an IPR petition is filed, the patent owner has three months to respond. *Id.* at \*2. By statute, the Board must decide whether to institute IPR proceedings within three months of receiving the patent owner’s response. *Id.* “The decision to institute IPR signals that at least one of the subject claims may be modified or cancelled.” *Id.* at \*1 (quoting *PersonalWeb Techs., LLC v. Facebook, Inc.*, No. 5:13-CV-01356-EJD, 2014 WL 116340, at \*2 (N.D. Cal. Jan. 13, 2014)). Once the Board institutes IPR proceedings, it “must issue a final determination within one year of undertaking the IPR, though this deadline may be extended by up to six months for good cause.” *Id.* at \*2. IPR “streamline[s] litigation and reduces the likelihood of inconsistent judgments” by

“impos[ing] an estoppel requirement that precludes the petitioner from asserting invalidity, during a later civil action, on any ground that the petitioner raised or reasonably could have raised during [IPR].” *Id.* at \*1 (quoting *PersonalWeb*, 2014 WL 116340, at \*2). A party may challenge the validity of a patent claim in the IPR “only on the basis of prior art consisting of patents or printed publications” and only under grounds in 35 U.S.C. § 102 or § 103, “because the invention was patented or described in a prior patent before the effective filing date of the claimed invention, or because the invention was obvious.” *Intellectual Ventures II L.L.C. v. JP Morgan Chase & Co.*, No. 13 Civ. 3777 (AKH), 2014 WL 10919562, at \*1 (S.D.N.Y. Aug. 11, 2014).

Here, Gomaco filed seven IPR petitions, challenging every claim of the five patents at issue in this case. Gomaco filed its first two petitions in early October 2020, and the Board must decide whether to institute IPR by April 20, 2021; Gomaco filed three of its petitions on November 6, 2020, and the Board must decide whether to institute IPR by May 25, 2021; and Gomaco filed the remaining two petitions in late November 2020. *See* Doc. 79 at 10. Gomaco seeks to stay this case pending the Board’s decision on whether to institute IPR proceedings and, if granted, through the conclusion of the IPR proceedings.

When deciding whether to grant a stay pending IPR, courts generally consider three factors: (1) the stage of the court proceedings; “(2) whether a stay of litigation will simplify the issues in question and facilitate the trial of the case; and (3) whether a stay would unduly prejudice the non-moving party or would present a clear tactical disadvantage for that party.” *Commerce Bancshares*, 2014 WL 2511308, at \*2, \*4 (quoting *Sanders v. Mosaic Co.*, No. 09-00016-CV-W-JTM, 2012 WL 640159, at \*2 (W.D. Mo. Feb. 27, 2012)). “Although the decision to grant a stay remains firmly in the district court’s discretion, the interests of judicial economy and deference to the [USPTO’s] expertise have given rise to ‘a liberal policy in favor of granting stays.’” *Id.* (quoting *Sanders*, 2012 WL 640159, at \*2).

Here, the stage of the court proceedings does not weigh strongly in either direction. The case has proceeded past the earliest stages: the parties have exchanged some written discovery, produced thousands of pages of documents, litigated a preliminary injunction and conducted limited depositions in connection therewith, and completed the claim-construction briefing. On the other hand, there is still plenty of outstanding discovery, including most depositions, expert discovery, third-party discovery, and all email discovery.<sup>2</sup> The court has not yet scheduled or held the claim-construction hearing or ruled on claim construction. The dispositive-motion deadline is still many months away, and trial is not scheduled for another sixteen months. Thus, much work remains to be done in this case. *See Lineweight LLC v. Firstspear, LLC*, No. 4:18-cv-00387-JAR, 2019 WL 4015824, at \*1-2 (E.D. Mo. Aug. 26, 2019) (holding that stage of proceedings weighed in favor of stay when the parties had briefed and argued claim construction but the court had not yet ruled, noting that “the discovery completed by the parties in advance of the *Markman* hearing, while substantial, is less than the amount left to do,” including expert reports and depositions); *IOENGINE, LLC v. PayPal Holdings, Inc.*, No. CV 18-452-WCB, 2019 WL 3943058, at \*4-5 (D. Del. Aug. 21, 2019) (noting that although the parties had completed claim-construction briefing, produced 100,000 pages of documents in discovery, and served third-party subpoenas, “the bulk of the expenses that the parties would incur in pretrial work and trial preparation are still in the future,” including all depositions, expert discovery, and preparing for trial); *Parsons Xtreme Golf LLC v. Taylor Made Golf Co.*, No. CV-17-03125-PHX-DWL, 2018 WL 6242280, at \*4 (D. Ariz. Nov. 29, 2018) (holding stage of proceedings weighed in favor of stay when at the time motion to stay was filed, the parties had produced thousands of documents in discovery, taken one deposition, and completed

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<sup>2</sup> See *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1317 (Fed. Cir. 2014) (noting in connection with motion to stay proceedings pending a different type of USPTO review that “[g]enerally, the time of the motion is the relevant time to measure the stage of the litigation”).

claim-construction briefing); *Wonderland Nursery Goods Co. v. Baby Trend, Inc.*, No. EDCV 14-01153-VAP (SPx), 2015 WL 1809309, at \*3 (C.D. Cal. Apr. 20, 2015) (holding stage of proceedings weighed in favor of stay when “the parties have submitted claim construction briefs,” but “the *Markman* hearing has not yet taken place and no disputed claim terms have been construed by th[e] Court”); *Commerce Bancshares*, 2014 WL 2511308, at \*4 (noting that although “some discovery had been exchanged and claim construction has been briefed, this case is still at a relatively early stage,” as “[d]iscovery does not close for another six months, it is nearly a year before trial, there have been no depositions, the claim construction hearing has not occurred, and significant work, including substantive expert discovery and summary judgment motions, remains to be completed after the claim construction hearing). To the extent these courts weighed the stage-of-the-proceedings factor in favor of a stay, none of them involved a case in which the court had already ruled upon a preliminary-injunction motion.

The cases cited by G&Z do not convince the court that the stage-of-the-case factor should be weighed any differently. In *Peloton Interactive, Inc. v. Flywheel Sports, Inc.*, No. 2:18-cv-00390-RWS-RSP, 2019 WL 3826051, at \*1 (E.D. Tex. Aug. 14, 2019), the court ultimately noted that the stage of the proceedings had “little impact on the analysis,” making its decision to deny a stay based on the other two factors. I also note that the court in *Peloton* would benefit less from the Board’s expertise than this court, as Judge Payne, who issued the *Peloton* decision, is a patent expert who has construed thousands of patent claims.<sup>3</sup> And in two of G&Z’s cited cases, the court had already held the claim construction hearing and issued its decision on claim construction, unlike here. *Int’l Test Sols., Inc. v. Mipox Int’l Corp.*, No. 16-cv-00791-RS, 2017 WL 1316549, at

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<sup>3</sup> Roy S. Payne, Wikipedia, [https://en.wikipedia.org/wiki/Roy\\_S.\\_Payne](https://en.wikipedia.org/wiki/Roy_S._Payne) (last visited January 8, 2021). Similarly, the court does not find persuasive *Promethean Insulation Tech. LLC v. Sealed Air Corp.*, No. 2:13-CV-1113-JRG-RSP, 2015 WL 12910768, at \*1 (E.D. Tex. July 22, 2015), which was also issued by Judge Payne and addressed a motion to stay pending the resolution of claims against codefendants, rather than a stay pending IPR proceedings.

\*1 (N.D. Cal. Apr. 10, 2017) (issuing claim construction ruling contemporaneously with order denying stay); *Asetek Holdings, Inc. v. Cooler Master Co.*, No. 13-cv-00457-JST, 2014 WL 1350813, at \*4 (N.D. Cal. Apr. 3, 2014) (claim construction completed).<sup>4</sup>

The next factor the court considers is whether a stay could aid in simplifying the issues in this case. As an initial matter, G&Z argues that a stay is premature regardless of whether IPR would simplify the issues, because the Board has not yet decided whether to institute IPR. G&Z argues that a majority of district courts deny stay requests when the Board has not yet ruled on the petition, citing several cases, including *KFx Med., LLC v. Stryker Corp.*, No. 18-cv-01799-H-WVG, 2019 WL 2008998, at \*2 (S.D. Cal. May 7, 2019) (“[T]he majority of district courts ‘have postponed ruling on stay requests or have denied stay requests when the [Board] has not yet acted on the petition for review.’” (quoting *Trover Grp., Inc. v. Dedicated Micros USA*, No. 2:13-CV-1047-WCB, 2015 WL 1069179, at \*5 (E.D. Tex. Mar. 11, 2015))). *See also Skky, Inc. v. Manwin USA, Inc.*, No. 13-2085 (PJS/JJG), 2014 WL 12527215, at \*6 (D. Minn. Oct. 29, 2014) (“In [the District of Minnesota], it appears that most judges deny requests for a stay before the [Board] has decided whether it will grant a petition.”). But from my review of the case law, plenty of courts grant stay requests before the Board has ruled on the IPR petition, and there does not appear to be a clear majority one way or the other. *See Provisur Techs., Inc. v. Weber, Inc.*, No. 5:19-cv-06021-SRB, 2019 WL 4131088, at \*1-2 (W.D. Mo. Aug. 29, 2019) (granting stay before Board decided whether to grant IPR review after recognizing split in authority on timing of stays, noting the Federal Circuit has declined to express an “opinion on which is the better practice” (quoting *CANVS Corp. v. United States*, 118 Fed. Cl. 587, 593-94 (Fed. Cl. 2014))); *Lineweight*,

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<sup>4</sup> G&Z also relied upon *Affinity Labs of Tex. v. Apple Inc.*, No. 09-04436 CW, 2010 WL 1753206, at \*1 (N.D. Cal. Apr. 29, 2010), but that case was issued before IPR replaced the inter partes reexamination process—indeed, the court relied on the fact that on average, inter partes reexamination took thirty-six months.



2019 WL 4015824, at \*2-3 (granting stay even though the Board “may decline to review the petitions,” reasoning that “[i]f the Court stays the case but the [Board] declines to review [the] petitions, no resources will be saved but neither will any have been wasted”; but “[i]f the Court does not stay the case and the [Board] institutes review, any discovery conducted between now and then may well have been for naught”); *TeleSign Corp. v. Twilio, Inc.*, No. CV 15-3240 PSG (SSx), 2016 WL 6821111, at \*4 (C.D. Cal. Mar. 9, 2016) (granting stay after noting that simplification factor “only marginally favor[ed] a stay” because the Board had “not yet stated whether IPR proceedings will occur, and even if they do, the IPR proceedings will not completely resolve the case” because the IPR petitions involved only some of the claims at issue in the case); *Think Prods., Inc. v. ACCO Brands Corp.*, No. 14-cv-6659-KAM-SIL, Doc. 31 (E.D.N.Y. June 19, 2015) (granting stay prior to Board’s decision whether to institute IPR and noting that while “some courts have embraced” the argument that a motion to stay is premature when the Board has not yet acted on the petition, “many have rejected” that argument); *Select Comfort Corp. v. Tempur Sealy Int’l, Inc.*, No. CV 14-245 (JNE/JSM), 2014 WL 12600114, at \*3-4, \*9 (D. Minn. Oct. 10, 2014) (granting stay before Board granted petition for IPR, noting that in creating the IPR process, Congress did not create any categorical rules for stays; and that given the Board granted review of 76% of the petitions that year, it was “not sheer speculation” for the court to conclude “the [Board] will more likely than not grant review of some or all of the claims in the petition”); *Commerce Bancshares*, 2014 WL 2511308, at \*4 (“[A]lthough the [Board] has not yet decided whether to institute IPR, courts routinely grant stays based on the filing of an IPR petition because the high probability that the request will be granted and potential benefits of IPR outweigh the relatively modest delay resulting from the stay if the petition for IPR is denied.”). I agree with those courts holding that the potential the Board declines to institute IPR should not act as a per se bar to a stay. It should be something the court considers, however, when evaluating the simplification factor.



Statistical evidence shows the Board institutes IPR review more than half the time, and that percentage is even higher when mechanical patents are involved.<sup>5</sup> Gomaco also cites to a study showing that since the Board's recent adoption of a new test to decide whether to institute IPR when related litigation is pending, the Board has granted IPR petitions much more frequently when the related litigation is pending outside of the "so-called 'fast track' district courts, . . . the Eastern and Western Districts of Texas": the Board granted 24/55 petitions when related litigation was pending in the fast-track districts, but 30/31 petitions when the related litigation was pending elsewhere. Doc. 81-2 at 3-4. As the study notes, however, it involved a relatively small sample size of petitions.

More persuasive than this general statistical evidence, here, there is case-specific evidence suggesting the Board may grant review of at least one of the IPR petitions. In ruling on the preliminary-injunction motion, the district court already determined that Gomaco's argument for invalidity with respect to one of the patents had "substantial merit." Doc. 72 at 13. Specifically, the court found that there was a "substantial question" whether the difference between G&Z's '749 patent and a third party's Rio patent would be "obvious to a person of ordinary skill in the art." *Id.* at 12-13.<sup>6</sup> In its IPR petition challenging the '749 patent, Gomaco argues that the '749 patent was obvious in light of Rio and other patents. Doc. 78-3. Gomaco's challenges to three of the other patents also rely on Rio. *See* Docs. 78-4, 78-6, 78-8. On the other hand, as G&Z notes,

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<sup>5</sup> *See Trial Statistics – Nov. 2020*, USPTO, 6-7 (2020), [https://www.uspto.gov/sites/default/files/documents/trial\\_statistics\\_20201130.pdf](https://www.uspto.gov/sites/default/files/documents/trial_statistics_20201130.pdf); *see also* Doc. 78-10.

<sup>6</sup> G&Z emphasizes that the district court concluded Gomaco's Rio invalidity argument "has some substantial merit even if it is not the likely outcome." Doc. 72 at 13. Contrary to G&Z's argument, the district court did not find Gomaco's invalidity argument an unlikely outcome; rather, the district court emphasized that it was not determining whether invalidity was more likely than not under the standard it employed to analyze likelihood of success on the merits. *Id.* at 8, 13.

the district court rejected Gomaco's challenges based on its Commander III patent and a third party's Littman patent, finding this prior art did not create a "substantial question" of invalidity, and some of Gomaco's IPR petitions continue to rely on this prior art (in combination with other prior art). *See* Docs. 78-3 to 78-7. Indeed, Gomaco's only IPR challenge to the '167 patent involves Commander III, which the district court rejected, and a third party's Guntert patent, which the USPTO considered during prosecution. *See* Ex. Doc. 78-7. Thus, although the district court's preliminary-injunction ruling supports that some of Gomaco's IPR petitions are not frivolous, it also supports that at least one of them may not be granted.

If IPR is instituted for most of the petitions (e.g., the ones relying on Rio), a stay will facilitate simplification of the issues in this case. The Board may cancel some or all of the claims, reducing the complexity of a case that currently involves five patents, eighty-seven claims, and seven accused product lines. *See IOENGINE*, 2019 WL 3943058, at \*9 ("[I]f the [Board] invalidates all of the claims before it, . . . [o]ne patent will be removed from the case altogether, and the task of dealing with the remaining 15 related claims from the other patents—for the parties, the jury, and the Court—will become significantly easier than it would have been with the 20 claims from three different patents. In a case involving technology as complex as the technology in this case, which is sure to challenge the ability of the jury to absorb and rationally decide issues of infringement and invalidity, there is a particularly high premium on simplification."); *Advanced Micro Devices, Inc. v. LG Elecs., Inc.*, No. 14-cv-01012-SI, 2015 WL 545534, at \*3 (N.D. Cal. Feb. 9, 2015) ("This case, which involves nine AMD patents-in-suit, forty-five asserted claims, and 324 accused LG products, is precisely the type of complex infringement lawsuit that stands to benefit from the streamlining effects of IPR.") And even if the Board does not invalidate any claims, Gomaco will be estopped from raising any invalidity argument that it could have raised in the IPR proceedings, including its arguments for invalidity based on Rio and other

prior art. In addition, the court will benefit from the Board's insight and expertise in analyzing the patents at issue and in its characterization of prior art. *See E-Watch, Inc. v. Lorex Canada, Inc.*, No. CV H-12-3314, 2013 WL 5425298, at \*2 (S.D. Tex. Sept. 26, 2013); *NST Glob., LLC v. SIG Sauer Inc.*, No. 19-cv-792-PB, 2020 WL 1429643, at \*4-5 (D.N.H. Mar. 24, 2020).

As G&Z notes, IPR proceedings will not resolve all of Gomaco's invalidity arguments. All of Gomaco's IPR petitions note that in this court, it argues invalidity based on prior-art combinations "relying on prior art machines as base references that cannot be asserted" in the IPR proceedings. *See* Docs. 78-3 to 78-9. And unlike in some of Gomaco's cited cases, Gomaco's IPR petitions do not ask the Board to engage in claim construction of the terms at issue in this court. But the district court could still benefit from the Board's expertise in analyzing prior art when considering it in combination with prior art machines. And although the district court already became somewhat familiar with the parties' invalidity arguments during the preliminary-injunction proceedings, the court's order specifically noted the "factual findings here are provisional and not binding in future proceedings." Doc. 72 at 3. In addition, as Gomaco notes, the preliminary-injunction proceedings involved a limited record and only two of the claims at issue.

The court finds the simplification factor weighs in favor of a stay. If the Board grants Gomaco's IPR petitions, "the continuation of this litigation will likely result in the unnecessary expenditure of the parties' and court's time and resources on claims that may be fundamentally altered by the [Board's] determination." *Commerce Bancshares*, 2014 WL 2511308, at \*4. And if the Board denies Gomaco's petitions, the stay will be relatively short—the court will know by the end of May whether the Board has granted or denied five out of seven of Gomaco's IPR petitions. Under these circumstances, the "potential benefits of IPR outweigh the relatively modest delay resulting from the stay if the petition for IPR is denied." *Id.*

Neither does the court find that G&Z will suffer *undue* prejudice as a result of a stay. Although the parties are direct competitors, the district court's preliminary-injunction findings note that other competitors exist and that Gomaco already had a large, loyal, existing customer base prior to any infringement, such that each "direct sale to Gomaco" does not necessarily constitute a lost sale to G&Z or affect G&Z's market share. Doc. 72. In addition, the district court determined that G&Z would not suffer irreparable harm in the absence of a preliminary injunction, because monetary damages would sufficiently compensate G&Z for any infringement. *Id.*

Of course, the prejudice to G&Z would be less if Gomaco had filed the IPR petitions earlier in time. Gomaco explained that it decided to file the IPR petitions upon receiving G&Z's preliminary infringement contentions in mid-June 2020, which construed its claims more broadly than anticipated. "[W]aiting until after receiving infringement contentions to analyze the claims alleged and then filing petitions for review does not cause undue prejudice." *See Clincomp Int'l, Inc. v. Cerner Corp.*, No. 17cv2479-GPC(BLM), 2018 WL 5617694, at \*2 (S.D. Cal. Oct. 30, 2018) (quoting *Cypress Semiconductor Corp. v. GSI Tech.*, No. 13cv2013-JST, 2014 WL 5021100, at \*4 (N.D. Cal. Oct. 7, 2014)). The court notes, however, that Gomaco did not file its first IPR petition until three and a half months after receiving G&Z's preliminary-infringement contentions. While somewhat suspect that Gomaco filed the first IPR petition about two weeks after the district court denied G&Z's request for injunctive relief, the court credits Gomaco's assertion that the filing of the first IPR petition was delayed because of the substantial amount of work that went into preparing the IPR petition and because Gomaco was simultaneously briefing the preliminary-injunction motion. The court does not find that Gomaco purposefully delayed filing the IPR petitions to gain a tactical advantage. Because the district court already rejected G&Z's other prejudice arguments in ruling on the preliminary-injunction motion, the only prejudice to G&Z is the delay in proceedings, which "is insufficient to

establish *undue* prejudice.” *Commerce Bancshares*, 2014 WL 2511308, at \*3 (quoting *Neste Oil OYJ v. Dynamic Fuels, LLC*, No. CV 12-1744-GMS, 2013 WL 3353984, at \*2 (D. Del. July 2, 2013)).

Ultimately, the court finds that the factors on balance support the grant of a stay. Although the parties have certainly devoted significant resources to this case, much remains to be done. Any delay would be relatively short and not “unduly prejudicial, especially when weighed against the potential for significant efficiencies in costs and resources should the IPR take place.” *Lineweight*, 2019 WL 4015824, at \*3. The court finds a stay should be granted. *See id.* at \*1-3 (granting stay when IPR petitions had been filed but not yet granted; parties had briefed and argued claim construction, but court had not yet ruled; and parties were direct competitors); *Commerce Bancshares*, 2014 WL 2511308, at \*3-4 (granting stay when IPR petitions had been filed but not yet granted; parties had briefed claim construction; and only prejudice to plaintiff was “risk of unnecessary delay”).

### ***III. CONCLUSION***

Accordingly, the court **grants** Gomaco’s motion to stay these proceedings pending IPR review. Doc. 78. The parties shall file a joint notice with the court by **Tuesday, June 1, 2021**, informing the court of the status of the IPR petitions (i.e., whether the Board has granted or denied review).

**IT IS SO ORDERED** this 13th day of January, 2021.



Kelly K.E. Mahoney  
Chief United States Magistrate Judge  
Northern District of Iowa