IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LG ELECTRONICS, INC., and LG ELECTRONICS U.S.A., INC., Plaintiffs, v. TOSHIBA SAMSUNG STORAGE TECHNOLOGY KOREA CORPORATION Defendant.	))))))))))))	Civil Action No. 12-1063-LPS-CJB

MEMORANDUM ORDER

1. Before the Court is a "Motion for Interim Stay" ("Motion"), (D.I. 138), filed by Defendant Toshiba Samsung Storage Technology Korea Corp. ("Defendant" or "TSST-K"), seeking an "interim stay" of 60 days in this proceeding. TSST-K seeks the stay pending: (1) a decision by the Seoul Central District Court in Seoul, Korea (the "Korean Court") regarding whether to institute a bankruptcy proceeding, in light of TSST-K's filing for bankruptcy protection in the Korean Court under the Republic of Korea's Debtor Rehabilitation and Bankruptcy Act (the "Korean Proceeding"); and (2) a subsequent decision on a (yet-to-be filed) Chapter 15 petition in a United States Bankruptcy Court for recognition of the Korean Proceeding as a "foreign main proceeding," which in turn would trigger an automatic stay of the instant case under 11 U.S.C. § 362 ("Section 362"). (*Id.* at 1) Plaintiffs LG Electronics, Inc. and LG Electronics U.S.A., Inc. (collectively "Plaintiffs" or "LG") oppose the Motion.

2. This Court has typically considered three factors in deciding whether to issue a discretionary stay of proceedings: (1) whether granting the stay will simplify the issues for trial; (2) the status of the litigation, particularly whether discovery is complete and a trial date has been

set; and (3) whether a stay would cause the non-movant to suffer undue prejudice from any delay, or allow the movant to gain a clear tactical advantage. *See, e.g.*, *FMC Corp. v. Summit Agro USA, LLC*, Civil Action No. 14-51-LPS, 2014 WL 3703629, at *2 (D. Del. July 21, 2014) (citing cases).[1]

3. TSST-K explains that it seeks a 60-day stay to preserve "the Court's and the parties' resources . . . in light of significant upcoming deadlines [in this case] including opening claim construction briefs and technology tutorials[.]" (D.I. 138 at 1; *see also* D.I. 143) TSST-K reports that the Korean Court is expected to issue an institution decision by mid-June 2016. (D.I. 138 at 4; D.I. 148 at 3) It suggests that this decision and a follow-on decision by a U.S. Bankruptcy Court recognizing the Korean proceeding as a foreign main proceeding are "very likely" to occur. (D.I. 138 at 3; *see also* D.I. 148 at 3) As a result, TSST-K argues that it would be most efficient to stay the case now and not require the parties to: (1) continue with discovery; (2) complete initial claim construction briefing (now due July 8, 2016); (3) complete responsive claim construction briefing (now due August 10, 2016); and/or (4) proceed to a *Markman* hearing (set for September 7, 2016). (D.I. 138 at 3-4; *see also* D.I. 143) Below, the Court assesses TSST-K's arguments in light of the three stay factors.

4. With regard to the "simplification of issues for trial," here (unlike in most instances where a stay is sought in favor of another judicial proceeding) the Court does not expect that the result of the Korean Proceeding will shed any light on the strength or weakness of

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[1] The Court assumes this well-known three-factor test applies to resolution of this stay motion. LG suggests that a different standard might apply instead, (D.I. 146 at 13-14 & n.8), but the Court need not resolve that issue, as its decision would not differ depending on the standard employed.

the current legal claims and defenses at issue in this case. With that said, there might be an outcome of the Korean Proceeding that would "simplify" the issues in this case—in the sense that the Korean Proceeding's outcome might impact (or extinguish) LG's ability to obtain a monetary judgment against TSST-K regarding the claims at issue in this matter. And so, one could read TSST-K's arguments about cost savings and efficiency (summarized above), as a kind of non-traditional "simplification of issues" argument—an argument that an automatic stay will soon be triggered, any further litigation efforts in this case may not end up occurring, and so the case should now be paused.

5. Even if that were the right way to look at the "simplification of issues" factor here,[2] the Court would conclude that the factor does not favor a stay. This is so for at least a few reasons.

6. First, the Court (like LG) has been provided with little information about the Korean Proceeding. TSST-K has made available only a few filings from that proceeding, (D.I. 139, exs. 2-4), all of which are in Korean and none of which are translated into English, (D.I. 146 at 7-9). TSST-K has provided no declaration from any person with knowledge of the Korean Proceeding—someone who could better: (1) explain where that proceeding stands; (2) explain the relevant ins and outs of Korean bankruptcy law; and/or (3) provide factual information that is

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[2] It may not be. It could be TSST-K means this "efficiency"-based argument to relate instead to the "undue prejudice" stay factor (in that a stay now would not "unduly prejudice" LG, since this case will soon be subject to an automatic stay under Section 362). Or it could simply amount to a separate, stand-alone argument: that staying the case now would be "consistent with the fundamental policy objectives of the stay provision of [Section] 362[.]" (D.I. 148 at 4) But either of these arguments hinge in significant part on how likely it is that an automatic stay will, in fact, be triggered in this case. And, as noted herein, the Court does not have a great deal of information on that question.

relevant to the likelihood of whether an automatic stay will later be required in this case. In the absence of more information, the Court is left with little to go on in drawing reasonable inferences as to how likely it is that the Korean Proceeding will impact the instant case's schedule in the future.[3]

7. Second, as LG notes, (*id.* at 9-12), a number of steps must occur before any automatic stay would be entered here. Among these are that the Korean Court must decide to institute a proceeding, a petition must then be filed in a United States Bankruptcy Court seeking recognition of the Korean Proceeding as a foreign main proceeding, and the U.S. Bankruptcy Court must in fact recognize the Korean Proceeding as a foreign main proceeding. (*Id.*); *see also Reserve Int'l Liquidity Fund, Ltd. v. Caxton Int'l Ltd.*, No. 09 Civ. 9021(PGG), 2010 WL 1779282, at *5 (S.D.N.Y. Apr. 29, 2010) ("Chapter 15 makes clear that recognition is required before a foreign representative may avail themselves of the federal courts."). It is hard for the Court to know for sure whether, as LG suggests, TSST-K will face meaningful hurdles in seeing these steps come to fruition. (D.I. 146 at 8, 11-12 (LG suggesting that a petition in a U.S. Bankruptcy Court might face a challenge on the ground that the Korean proceeding was filed in bad faith, or because the Korean proceeding might not qualify as a "foreign main proceeding" under the law)) At a minimum though, the Court cannot say that it is a certainty (or near-certainty) that a future automatic stay will issue. *Cf. Andrus v. Dig. Fairway Corp.*, Civil Action No. 3:08-CV-119-O, 2009 WL 1849981, at *2-3 (N.D. Tex. June 26, 2009) (denying the

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[3] To put it differently, the Court of course does not wish to unnecessarily deplete the assets of a debtor like TSST-K in a manner that is inconsistent with the principles of United States bankruptcy law. (D.I. 148 at 4) But it is also not clear to the Court that denial of the instant Motion would, in fact, *be inconsistent* with the principles of United States bankruptcy law (or Korean bankruptcy law, for that matter).

defendant's request for a stay of an indefinite length where the defendant had indicated "the intention to file bankruptcy" in a foreign jurisdiction but it was still only the case that "there *might* be a Chapter 15 bankruptcy case opened in the United States[,]" and depending on the appointed foreign representative's decision, that "there *might* be a request . . . to suspend [the court's] proceedings[]" (emphasis in original) (internal citation omitted)).

8. And third, it is not a *fait accompli* that, even were an automatic stay required at some point in the next few months, significant harm will have come to TSST-K in the meantime. Any claim construction- or discovery-related efforts that take place in the interval might end up being helpful to the resolution of this dispute after any automatic stay is lifted. Moreover, TSST-K suggests in its briefing that it may not be long until the preconditions for an automatic stay are met. If that is truly so, then the amount of case-related work that will occur in the meantime will at least be somewhat cabined.

9. With regard to the "status of the litigation" factor, in a lengthy Memorandum Order issued on December 11, 2015, (D.I. 107), the Court denied TSST-K's request for a stay as to one of the four patents-in-suit.[4] There, the Court repeatedly noted the delay that LG has faced in this case in proceeding forward with their infringement claims. (D.I. 107 at 8-10) Although discovery had just begun at the time that Memorandum Order was issued, the magnitude of the delay LG had faced ultimately caused the Court to then conclude that the "status of the litigation" factor was neutral. (*Id.*) Since then, nearly six months have passed, and this case has now progressed well into fact discovery. In light of this, this factor now disfavors a stay.

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[4] There are four patents-in-suit in the case, (D.I. 1 at ¶¶ 8-11), and the case is currently stayed (pending resolution of an appeal of the decision in an *inter partes* review proceeding) as to claims regarding one of those four patents, (D.I. 107 at 1, 15).

10. Lastly, in the Court's December 11, 2015 Memorandum Order, it found that the "undue prejudice" factor weighed against a stay, due to the prejudice that LG would face in light of further delay. (*Id.* at 12-13, 14-15) The Court finds that the risk of such prejudice is just as acute now for LG as it was then. And so the factor also weighs against a stay here.[5]

11. The stay factors (and the overall equities) thus do not militate in favor of a stay. For the above-referenced reasons, the Motion is DENIED.

12. Because this Memorandum Order may contain confidential information, it has been released under seal, pending review by the parties to allow them to submit a single, jointly proposed, redacted version (if necessary) of the Memorandum Order. Any such redacted version shall be submitted no later than **June 16, 2016**, for review by the Court, along with a detailed explanation as to why disclosure of any proposed redacted material would "work a clearly defined and serious injury to the party seeking closure." *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994) (internal quotation marks and citation omitted). The Court will subsequently issue a publicly-available version of its Memorandum Order.

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[5] The Court is not aware of (and TSST-K has not cited) precedent in which a United States District Court has stayed a patent case (or any case) based on the mere filing of a foreign bankruptcy petition. Indeed, in the one case cited by TSST-K in which a U.S. court stayed a district court case before an automatic stay under Section 362 was required, the circumstances were very different. (D.I. 138 at 3 (citing *In re SIVEC SRL.*, No. 11-80799-TRC, 2011 WL 2445754 (Bankr. E.D. Okla. June 15, 2011)) There a U.S. Bankruptcy Court in the Eastern District of Oklahoma issued an interim stay of a district court proceeding, pending the Bankruptcy Court's decision on a request for recognition of a foreign bankruptcy proceeding (which, if granted, would in turn have triggered Section 362's automatic stay provision). *See In re SIVEC SRL*, 2011 WL 2445754, at *1. But in that case: (1) a foreign bankruptcy petition had already been granted; (2) a petition seeking recognition of that proceeding as a foreign main proceeding was pending; and (3) the stay was issued because a trial in the district court case was about to begin in just five days. *Id.* In contrast, the posture of the bankruptcy proceedings here are less far along, and the parties are not imminently set to incur the very significant costs associated with a full trial on the merits.

Dated: June 9, 2016

Christopher J. Burke
UNITED STATES MAGISTRATE JUDGE