

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

YODLEE INC.,)	
)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 14-1445-LPS
)	
PLAID TECHNOLOGIES INC.,)	
)	
)	
Defendant.)	
)	

MEMORANDUM ORDER

Before the Court is Defendant Plaid Technologies Inc.’s (“Defendant” or “Plaid”) motion to stay the proceedings pending the resolution of its motion to dismiss and pending the United States Patent and Trademark Office’s (“USPTO”) resolution of its *inter partes* review (“IPR”) and Covered Business Method (“CBM”) challenges to the patents-in-suit (the “Motion”). (D.I. 151) For the reasons stated below, the Court GRANTS-IN-PART and DENIES-IN-PART Defendants’ Motion.¹

I. BACKGROUND AND STANDARD OF REVIEW

A. Background

In its Complaint, Plaintiff Yodlee Inc. (“Plaintiff” or “Yodlee”) alleges infringement of a

¹ The Court assumes familiarity herein with its July 20, 2015 Memorandum Order in this case, in which it denied Defendant’s prior motion to stay the matter (the “prior motion” or “prior motion to stay”). (D.I. 51) Defendant had therein sought a stay pending resolution of its motion to dismiss, which was filed pursuant to Federal Rule of Civil Procedure 12(b)(6) and which argued that all claims of the patents-in-suit were subject matter ineligible. (*Id.* at 1) Since that time, the Court has issued a Report and Recommendation denying-in-part and granting-in-part Defendant’s motion to dismiss, *see Yodlee, Inc. v. Plaid Techs. Inc.*, Civil Action No. 14-1445-LPS, 2016 WL 2982503 (D. Del. May 23, 2016), to which the parties have filed objections, (D.I. 198; D.I. 199; D.I. 210; D.I. 211).

total of seven patents: United States Patent Nos. 6,199,077 (the “’077 patent”), 6,317,783 (the “’783 patent”), 6,510,451 (the “’451 patent”), 7,263,548 (the “’548 patent”), 7,424,520 (the “’520 patent”), 7,752,535 (the “’535 patent”), and 8,266,515 (the “’515 patent”) (collectively, the “asserted patents” or the “patents-in-suit”). (D.I. 1 at ¶ 1) Since filing its Complaint, Plaintiff has narrowed its asserted claims down to 21 claims across the seven patents: claims 1-3, 6-9 and 12 of the ’077 patent; claims 1, 11, 14-15, 18, 20 and 30 of the ’783 patent; claim 8 of the ’451 patent; claims 20 and 36 of the ’548 patent; claim 38 of the ’520 patent; claim 6 of the ’535 patent; and claim 7 of the ’515 patent. (D.I. 153, ex. I at 2)² In the case, Chief Judge Leonard P. Stark has referred certain types motions for resolution by the Court, including the instant stay Motion. (D.I. 7)

Defendant filed its Motion on April 22, 2016. (D.I. 151) At the time, it had submitted five petitions to the USPTO’s Patent Trial and Appeal Board (“PTAB”). Two were IPR petitions which, respectively, challenged the validity of every claim in the ’077 patent and ’783 patent. (D.I. 152 at 6-7) The remaining three were CBM petitions that challenged the validity and eligibility of every claim in the ’077 patent, the eligibility of every claim in the ’783 patent, and the eligibility of every claim and validity of claim 8 in the ’451 patent. (*Id.* at 1-2, 7) After the filing of the Motion, Defendant filed CBM petitions challenging the eligibility of every claim (and the validity of certain claims) of the ’548 patent, the ’520 patent, the ’535 patent and the ’515 patent. (D.I. 207 at 1)

For reasons the Court has expressed in a number of recent decisions, it is now often not

² In its Report and Recommendation on Defendant’s motion to dismiss, the Court recommended that two of these 21 claims be found to be subject matter ineligible: claim 8 of the ’451 patent and claim 20 of the ’548 patent. *Yodlee, Inc.*, 2016 WL 2982503, at *30.

productive to rule on a motion to stay in favor of PTAB proceedings when the PTAB has not yet determined whether to institute those proceedings in the first place. *See, e.g., Advanced Microscopy Inc. v. Carl Zeiss Microscopy, LLC*, Civil Action No. 15-516-LPS-CJB, 2016 WL 558615, at *2 (D. Del. Feb. 11, 2016); *Toshiba Samsung Storage Tech. Korea Corp. v. LG Elecs., Inc.*, — F. Supp. 3d —, Civil Action No. 15-691-LPS-CJB, 2015 WL 7824098, at *2 n.3 (D. Del. Dec. 3, 2015).³ As a result, the Court has deferred resolution of the Motion until the present—a time when the PTAB has now provided institution decisions as to most of the petitions at issue (decisions relating to five of the seven patents, and to 19 of the 21 asserted claims).⁴ This, in turn, has given the Court a much better factual basis on which to assess some of the arguments made in the Motion. The following chart displays the current status of each of Defendant’s PTAB challenges as of the issuance of this Memorandum Order:

³ For example, of the five CBM petitions filed by Defendant where the PTAB has since issued a decision as to whether review will be instituted, the PTAB has determined to institute review as to only one of those petitions. Had the Court ruled on the Motion prior to those decisions and stayed the case in favor of each of those CBM review petitions, the case would have stalled as to many patents for what turned out to be no good reason. (*See also* D.I. 173 at 12-13)

⁴ The parties have timely updated the Court as the various PTAB institution decisions were made. (*See* D.I. 207; D.I. 244; D.I. 256; D.I. 257; D.I. 258) Although (1) Defendants’ filing of petitions regarding certain PTAB proceedings and (2) the PTAB’s decisions as to whether to institute certain proceedings occurred after the filing of Defendant’s Motion, the Court may still consider this evidence in addressing the Motion. *Cf. VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1317 n.6 (Fed. Cir. 2014) (“[T]he district court may consider evidence that develops after the date of the stay motion—for example, the fact that the PTAB granted the CBM petition, any claim amendments proposed or entered in the post-grant proceeding, further evidence of competition, and so on—as it pertains to [certain stay] factors.”).

Patent	Number of Asserted Claims	PTAB Action	Current Status
'077	8	Denied IPR and CBM petitions. Denied request for rehearing.	All PTAB challenges exhausted.
'783	7	Instituted IPR as to all claims. Denied CBM petition.	Pending IPR ruling.
'451	1	Instituted CBM review as to all remaining claims.	Pending CBM ruling.
'548	2	Denied CBM petition.	All PTAB challenges exhausted.
'520	1	Denied CBM petition.	All PTAB challenges exhausted.
'535	1	N/A	CBM institution decision due by December 20, 2016.
'515	1	N/A	CBM institution decision due by December 20, 2016.

B. Standard of Review

This Court has typically considered three factors when deciding a motion to stay:

(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).

When deciding whether to stay litigation pending CBM review, Section 18 of the America Invents Act (“AIA”) mandates that courts consider four factors: (1) whether a stay, or

the denial thereof, will simplify the issues in question and streamline the trial, (2) whether discovery is complete and whether a trial date has been set, (3) whether a stay, or the denial thereof, would unduly prejudice the nonmoving party or a present clear tactical advantage for the moving party, and (4) whether a stay, or the denial thereof, will reduce the burden of litigation on the parties and on the court. *See* AIA, § 18(b)(1); *see also VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1309 (Fed. Cir. 2014). The test is similar to this Court’s traditional three-factor stay test, except for the fourth consideration, which, some courts have concluded, appears to have been adopted in order “to place a thumb on the scale in favor of granting stays.”

Hewlett-Packard Co. v. ServiceNow, Inc., Case No. 14-cv-00570-BLF, 2015 WL 1737920, at *2 (N.D. Cal. Apr. 9, 2015) (quoting *Moneycat Ltd. v. Paypal Inc.*, No. 14-cv-02490-JST, 2014 WL 5689844, at *2 (N.D. Cal. Nov. 4, 2014)); *see also Market-Alerts Pty. Ltd. v. Bloomberg Fin. L.P.*, 922 F. Supp. 2d 486, 489-90 & n.4 (D. Del. 2013).

II. DISCUSSION

A. Analysis of Six of the Seven Patents-in-Suit

The Court will analyze the Motion on a patent-by-patent basis, as the considerations relating to the stay requests are not the same across all patents. *Cf. LG Elecs., Inc. v. Toshiba Samsung Storage Tech. Korea Corp.*, Civil Action No. 12-1063-LPS-CJB, 2015 WL 8674901, at *7 (D. Del. Dec. 11, 2015); *Anascape, Ltd. v. Microsoft Corp.*, 475 F. Supp. 2d 612, 615-17 (E.D. Tex. 2007). In doing so, it can dispense with its analysis as to six of the seven patents-in-suit in brief fashion, in light of the current circumstances. It does so taking into account the relevant stay-related factors set out above.

With regard to the '077 patent, the PTAB has decided not to institute review of the

challenged claims. And in resolving Defendant's motion to dismiss, the Court did not recommend that any of the currently asserted claims of the '077 patent be found patent ineligible. Thus, there is no conceivable reason why the Court would grant a stay as to the '077 patent, and the Court DENIES the Motion as it relates to that patent.

With regard to the '548 patent and the '520 patent, the PTAB has also decided not to institute review of the challenged claims. Thus, no stay could be justified in favor of PTAB proceedings as to these patents. In resolving Defendant's motion to dismiss, the Court recommended that (as to the currently asserted claims regarding these patents) claim 20 of the '548 patent be found patent ineligible, but that claim 36 of the '548 patent and claim 38 of the '520 patent not be found to be patent ineligible. An independent basis for the Court's decision that claim 36 of the '548 patent and claim 38 of the '520 patent should survive through at least the summary judgment stage was that Defendant had failed to provide sufficient analysis as to the patent ineligibility of those claims. *Yodlee, Inc.*, 2016 WL 2982503, at *30. With at least one claim per patent currently viable, the Court sees no basis, therefore, to stay the case as to these patents. As a practical matter, the Court's decision here will have little impact, as Chief Judge Stark will soon rule—either as to Defendant's objections to the Court's decision on the motion to dismiss, or as to Defendant's recently-filed motion for summary judgment, (D.I. 265 at 14-16)—on the patent eligibility of these claims. Therefore, the Court will DENY the Motion as to these patents.

As to the '535 patent and the '515 patent, the PTAB has not yet decided whether it will even institute review of the challenged claims. As the Court noted above, it does not believe that it makes sense to stay a case as to these patents in favor of a PTAB proceeding, when the PTAB

has not yet decided whether it will even institute that proceeding. *See, e.g., Advanced Microscopy Inc.*, 2016 WL 558615, at *2; *Toshiba Samsung Storage Tech. Korea Corp.*, 2015 WL 7824098, at *2 n.3; *see also Copy Prot. LLC v. Netflix, Inc.*, C.A. No. 14-365-LPS, 2015 WL 3799363, at *1 (D. Del. June 17, 2015). Thus the Court will DENY the Motion without prejudice as to these two patents.⁵

With regard to the '451 patent, there is only one asserted claim: claim 8. The Court has already recommended that this claim be found subject matter ineligible. The PTAB, for its part, has instituted review as to this claim, finding that it is more likely than not that the claim is subject matter ineligible (and also that the claim is more likely than not obvious). (D.I. 256, ex. A) The Court has no basis to suggest that the case should move forward as to this patent, since (were the Court's prior decision to be upheld), the only asserted claim regarding this patent would be out of the case. Therefore the Court GRANTS the Motion as to this patent, with the exception that the stay will not affect (1) the District Court's ability to rule on pending objections to the Court's Report and Recommendation regarding the motion to dismiss as it relates to this patent; and (2) the District Court's ability to resolve Defendant's summary judgment motion as to this patent.

B. Analysis as to the '783 Patent

The Court finally addresses the stay request as it relates to the '783 patent, which provides the closest call. The patent is currently the subject of an instituted IPR proceeding, and so the four-factor test set out in AIA Section 18(b)(1) does not apply. Instead, the Court will utilize the

⁵ Defendant notes that a PTAB institution decision on these two challenges is due in late December. If the PTAB decides to institute review of the asserted claims as to these patents, Defendant can re-raise the Motion as to those patents at that time.

familiar three-factor stay test set out above to analyze the stay request.

1. Simplification of Issues

The PTAB has instituted an IPR proceeding as to all seven asserted claims of the '783 patent: claims 1, 11, 14-15, 18, 20 and 30. As a result, there is a strong likelihood that a stay as to claims relating to the patent would simplify the case in certain ways; for example, the PTAB's ultimate decision might well be that all seven asserted claims are invalid, in which case the patent would no longer be at issue here. *Cf. 454 Life Scis. Corp. v. Ion Torrent Sys., Inc.*, Civil Action No. 15-595-LPS, 2016 WL 6594083, at *3 (D. Del. Nov. 7, 2016) (citing cases); *Softview LLC v. Apple Inc.*, C.A. No. 12-989-LPS, C.A. No. 10-389-LPS, 2013 WL 4757831, at *1 (D. Del. Sept. 4, 2013). Moreover, even if one or more of the claims are not found invalid, Defendant will still be estopped from asserting in the instant litigation that the seven claims of the '783 patent are invalid "on any ground that [Defendant] raised or reasonably could have raised during" the IPR proceeding. 35 U.S.C. § 315(e)(2); *see also Zoll Med. Corp. v. Respironics, Inc.*, C.A. No. 12-1778-LPS, 2015 WL 4126741, at *1 (D. Del. July 8, 2015).

On the other hand, when one looks at the question of simplification from the perspective of what a stay will mean as to the burden placed on the Court (and a jury) at the March 2017 trial, the benefits of a stay seem a little less pronounced. The '783 patent is, after all, just one of seven patents asserted in the case, and is the source of just one third of the 21 remaining asserted claims. Thus, omitting claims and defenses as to that patent from the trial could "simplify" things for the District Court and the jury only so much. *See Fairchild Semiconductor Corp. v. Power Integrations, Inc.*, 100 F. Supp. 3d 357, 362 (D. Del. 2015) ("Additionally, because the '972 patent is but one of eight patents asserted in this case, the simplification to be gained from

the stay, while not negligible (a seven-patent case is somewhat less involved than an eight-patent case), is not overwhelming.”).⁶

Nevertheless, in light of the total overlap between the claims at issue in this case and those at issue in the IPR, this factor surely favors a stay.

2. Status of the Litigation

Granting a stay early in a case can be said to advance judicial efficiency and “maximize the likelihood that neither the Court . . . nor the parties expend their assets addressing invalid claims.” *454 Life Scis. Corp.*, 2016 WL 6594083, at *4 (internal quotation marks and citation omitted). Yet when a request for a stay comes after discovery is complete or nearly complete, and a trial is imminent, it is less likely to be granted. *Id.* In such circumstances, the Court and the parties have already expended significant effort on the litigation, and the principle of maximizing the use of judicial and litigant resources is best served by seeing the case through to its conclusion. *Id.*

When the Motion was filed in late April 2016, this matter was not at an early stage. At that point, the case was about a year and a half old. Moreover, the following case events had already occurred: (1) the parties had engaged in extensive discovery, (*see, e.g.*, D.I. 59-60, 62, 92, 95, 103-04, 135, 138 & 148); (2) the District Court had resolved discovery disputes, (*see, e.g.*, D.I. 47, 49-50), and the Court had resolved the prior motion to stay, (D.I. 51); (3) a number of depositions had been taken and many efforts had been made to arrange depositions for other

⁶ Moreover, the scope of the issues to be decided in the PTAB proceeding is more narrow than the scope of the issues in this litigation as to the '783 patent. *See TruePosition, Inc. v. Polaris Wireless, Inc.*, C.A. No. 12-646-RGA/MPT, 2013 WL 5701529, at *5 (D. Del. Oct. 21, 2013).

witnesses, including inventors, (D.I. 126-130; D.I. 173 at 18); (4) Plaintiff narrowed its asserted claims across the seven patents to 21 claims, and had provided its final infringement contentions, (D.I. 131; *see also* D.I. 153, ex. I); (5) Defendant served its final invalidity contentions, (D.I. 146); (6) the Court had issued its Report and Recommendation regarding the motion to dismiss; and (7) the parties had proceeded through the entirety of claim construction, with the District Court having issued an order resolving the parties' claim construction disputes, (D.I. 96). (*See also* D.I. 173 at 18) As for other case milestones, at the time of the Motion's filing, fact discovery was set to close in a month and the cutoff for expert discovery was less than four months away. (D.I. 26; *see also* D.I. 184)⁷

Though some significant work on the case was yet to occur, by the time the Motion was filed, the Court and the parties had already put a significant amount of time and effort into the matter. As a result, this factor disfavors a stay. *See Copy Prot. LLC*, 2015 WL 3799363, at *1 (concluding the same, where at the time of the motion's filing, the parties had engaged in a "substantial amount of discovery" and were set to complete claim construction briefing shortly); *TruePosition, Inc. v. Polaris Wireless, Inc.*, C.A. No. 12-646-RGA/MPT, 2013 WL 5701529, at *6 (D. Del. Oct. 21, 2013) (concluding the same, where the motion was filed after significant discovery had proceeded, the Court had resolved many discovery disputes, and a *Markman* hearing had occurred), *adopted by* 2013 WL 6020798 (D. Del. Nov. 12, 2013); *cf. Pragmatus*

⁷ Since the filing of the Motion, this Court amended the Scheduling Order, (*see* D.I. 184), and various deadlines were extended thereafter, (D.I. 238; D.I. 246; D.I. 253). The deadlines for fact and expert discovery were extended to July 22, 2016, and September 30, 2016, respectively. (D.I. 184) The deadline for filing *Daubert* and case dispositive motions was extended to October 12, 2016. (*Id.*) The trial date (March 13, 2017) remained unchanged. (D.I. 26)

AV, LLC v. Yahoo! Inc., Civil Action No. 11-902-LPS-CJB, 2013 WL 2372206, at *2-3 (D. Del. May 30, 2013) (concluding that this factor weighed slightly against a stay, where the motion was filed 19 months after the filing of the Complaint, a number of depositions had been taken or were scheduled, the Court had resolved multiple motions and discovery disputes, but the Court had not yet issued a *Markman* order).

3. Undue Prejudice

This Court has often analyzed whether a non-movant (here, Plaintiff) would suffer undue prejudice (and whether a movant would gain an unfair tactical advantage) if a stay is granted, by examining a number of subfactors: (1) the timing of the request(s) for review (e.g., for PTAB review of certain claims); (2) the timing of the request for a stay; (3) the status of the proceedings (e.g., a PTAB proceeding); and (4) the relationship of the parties. *SenoRx, Inc. v. Hologic, Inc.*, Civ. Action No. 12-173-LPS-CJB, 2013 WL 144255, at *6 (D. Del. Jan. 11, 2013). The parties' briefs addressed each of these subfactors, and so the Court will as well.

a. Timing of the request for review and the request for stay

This Court has explained that in some sense, the timing of a request for IPR (and a follow-on stay request) can always be said to seek a tactical advantage, in that they “would not have been filed but for [a movant’s] belief that the granting of a stay would [be to its] benefit[.]” *Round Rock Research LLC v. Dole Food Co. Inc.*, Civil Action No. 11-1239-RGA, 2012 WL 1185022, at *2 (D. Del. Apr. 6, 2012). However, if the timing of the filing appears less focused on facilitating an orderly review of patent validity, and more focused on simply disrupting the progression of the non-movant’s district court case for disruption’s sake, that will weigh against a stay. *See, e.g., Belden Techs. Inc. v. Superior Essex Commc’ns LP*, Civ. No. 08-63-SLR, 2010

WL 3522327, at *2 (D. Del. Sept. 2, 2010) (finding that requests for *inter partes* reexamination made 17 to 20 months after the lawsuit was initiated, followed by a motion to stay filed 11 days before trial, gave rise to such an inference); *St. Clair Intellectual Prop. Consultants, Inc. v. Sony Corp.*, No. Civ.A. 01-557JJF, 2003 WL 25283239, at *1 (D. Del. Jan. 30, 2003) (denying a motion to stay and noting that “the fact that the instant motion was filed after the close of discovery and weeks before the commencement of the scheduled trial date” supported the conclusion that delay would occasion undue prejudice).

Here, Defendant could not have waited any longer before filing certain of the petitions for PTAB review, including the IPR petition as to the '783 patent. It filed the petition as to the '783 patent on December 2, 2015, (D.I. 153, ex. B), which was the last day of the statutory deadline for doing so (and one year after the filing of this action), (D.I. 173 at 5, 10); *see also* 35 U.S.C. § 315(b).⁸ It waited even longer to file the first of its petitions for CBM review, filing that petition on February 17, 2016. (D.I. 152 at 1, 7; D.I. 173 at 5) The instant Motion was not filed until late April 2016, (D.I. 151), and the last of Defendants' CBM petitions were filed on June 10, 2016, (D.I. 207, exs. C, D).

Defendant, for its part, notes that it waited so long to file these petitions and its Motion because it was hoping the Court would rule on its motion to dismiss in the meantime. (D.I. 175 at 6-7) It faults the Court for not ruling sooner, and explains that if the Court had done so (and if the Court had ruled completely in Defendant's favor as to the motion to dismiss), then Defendant would not have been required to “needlessly multiply[] proceedings” by filing for PTAB review.

⁸ Indeed, as to its IPR petition for the '077 patent, Defendant missed the deadline for filing and asked the PTAB to waive that statutory requirement. (D.I. 173 at 5; D.I. 174, ex. 7) The PTAB declined to do so. (D.I. 207, ex. F)

(*Id.*) But because the Court had not ruled on the motion to dismiss by well over a year after it was filed, Defendant explains that it then had no choice but to file certain of the PTAB petitions on the cusp of the statutory deadline for doing so. (*Id.*)

Defendant is certainly correct that it took the Court a long time to rule on the motion to dismiss. The Court wishes it had been able to act sooner. But Defendant has able counsel, and had to know that there was a chance that, in a District with an already heavy docket, some time might be needed to resolve a motion originally seeking dismissal of seven patents and 162 different claims. *See Yodlee, Inc.*, 2016 WL 2982503, at *2-3 (noting that the motion to dismiss occasioned a “huge early investment of judicial resources[,]” which had militated in favor of the Court’s waiting to resolve the motion until after a *Markman* order issued in the case). It also had to know that there was chance that once the Court did rule, its motion to dismiss would not be wholly successful.⁹ And it knew that the case was otherwise proceeding forward while that motion to dismiss was pending, since the Court had found its prior motion seeking a stay wanting. Knowing all this, if Defendant felt that there were sufficiently problematic questions of validity as to the '783 patent, such that institution of an IPR was warranted, it *could* have taken action to file an IPR petition (and a motion to stay in favor of resolution of that proceeding) sooner. It decided not to do that. Instead, it filed the petition only after this case had gone through many additional stages, including the entirety of the claim construction process. *Cf. Adrain v. Vigilant Video, Inc.*, Civil Action No. 2:10-cv-173-JRG, 2012 WL 966200, at *2 (E.D.

⁹ Indeed, at least as to the '783 patent (the subject of the instant stay analysis), both the Court and the PTAB have now declined to find that the patent’s claims are subject matter ineligible. So, at least viewed *post-hoc*, the idea that the case would have been greatly simplified as to the claims regarding this patent—were the Court to have granted the prior stay motion as to this patent pending resolution of the motion to dismiss—does not hold water.

Tex. Mar. 21, 2012) (denying a motion for stay in favor of reexamination proceedings in part because the stay was not requested until “after the joint claim construction statement, opening claim construction brief, and responsive claim construction brief were each prepared and submitted to the Court”). That meant that the PTAB would not decide whether to grant the petition until this case had progressed even further.

In filing for IPR regarding the '783 patent when it did, and thereafter requesting a stay, no matter what Defendant’s intent was, the *effect* of its “delay [is that it] could create at least some tactical disadvantage for [Plaintiff.]” *Copy Prot. LLC*, 2015 WL 3799363, at *1. Issuing a stay as to the '783 patent now “may unduly prejudice [Plaintiff,]” who had prepared much of its case as to that patent as of the time the Motion was filed. *Id.* For these reasons, the Court concludes that these two subfactors weigh slightly against the grant of a stay. *See TruePosition, Inc.*, 2013 WL 5701529, at *6 (concluding this subfactor weighed slightly against granting a stay where defendant filed its request for IPR at “the end of the statutory deadline [albeit within the statutory window] . . . , close to the eve of claim construction briefing, and after substantial document discovery was conducted”).

b. Status of review proceedings

The PTAB instituted IPR as to the '783 patent on June 8, 2016. (D.I. 207, ex. E) That proceeding is not expected to be fully resolved by the PTAB until June 2017.¹⁰ 35 U.S.C. § 316(a)(11). Considering that Plaintiff filed its Complaint in December 2014 and the trial date is scheduled for March 2017, a stay in favor of the IPR proceeding (and possibly, an appeal) would

¹⁰ With a possible six-month extension by the USPTO’s Director for “good cause[.]” 35 U.S.C. § 316(a)(11).

occasion some meaningful delay in (and consequently harm to) Plaintiff's ability to have its claims regarding the '783 patent timely adjudicated in this Court. *See Toshiba Samsung Storage Tech. Korea Corp. v. LG Elecs., Inc.*, Civil Action No. 15-691-LPS, 2016 WL 3437605, at *5 (D. Del. June 17, 2016). That said, because so much work has already now been done as to those claims, the magnitude of this delay may be less than it would be in other cases (in that, once the case in this Court resumed as to that patent, there would not be much more to do before the parties were ready for trial). In the end, this subfactor weighs slightly against a stay.

c. Relationship of the Parties

The final subfactor to consider is the relationship of the parties, which typically involves assessing whether the parties are direct competitors. *See, e.g., Cooper Notification, Inc. v. Twitter, Inc.*, Civ. No. 09-865-LPS, 2010 WL 5149351, at *5 (D. Del. Dec. 13, 2010) (citing cases). Courts have recognized that when the parties are direct competitors, there is a reasonable chance that delay in adjudicating the alleged infringement will have outsized consequences to the party asserting that infringement has occurred, including the potential for loss of market share and an erosion of goodwill. *See, e.g., SenoRx*, 2013 WL 144255, at *7 (citing *Nat'l Prods., Inc. v. Gamber-Johnson LLC*, No. 2:12-cv-00840, 2012 WL 3527938, at *2-3 (W.D. Wash. Aug. 14, 2012)).

In resolving the prior motion to stay, the Court determined that this subfactor weighed against a stay, explaining that Plaintiff had “demonstrated the potential for some amount of undue prejudice . . . due to the likelihood of competitive impact.” (D.I. 51 at 13) For purposes of the instant Motion, the Court will consider of record the materials provided as part of the briefing on the prior motion. This includes a declaration provided by Plaintiff's Chief Strategy

and Development Officer, in which he set out specific instances in which Defendant had, or had threatened to, siphon business away from Plaintiff due to alleged infringement. (*Id.* at 8-13)

Below the Court assesses any new information now provided by the parties.

Plaintiff did provide significant additional evidence of competition. For example, Plaintiff points to a list that Defendant disclosed in discovery, after the resolution of the prior motion. (D.I. 173 at 3-4) The list identifies 20 of Defendant's clients who were "won after known competition with Yodlee[.]" (D.I. 174, ex. 2; *see also* D.I. 173 at 4) Plaintiff also highlights its own discovery responses, in which it listed 47 of its customers that were allegedly impacted by Defendant's infringement. Additionally, Plaintiff references multiple e-mail conversations drawn from documents produced by Defendant, in which, for example: (1) Defendant is identified as "the Yodlee killer for the core big banks[.]" (D.I. 174, ex. 3 at PLA0031020); or (2) Defendant's co-founder describes Plaid as being able to "sweep up [Y]odlee's market[.]" (*id.*, ex. 4 at PLA0031135); or (3) the other of Defendant's co-founders describes Plaid as "definitely similar to Yodlee[]" when asked if Defendant's "API [application programming interface] is an alternative for Yodlee bank enrollment service[.]" (*id.*, ex. 5 at PLA0030900). (D.I. 173 at 4) Whether Defendant competes directly with Plaintiff is no longer a serious question, and Defendant's continued assertion that it and Plaintiff are not "strictly competitors," (D.I. 152 at 17), is beginning to border on the frivolous.

Many of Defendant's contrary arguments on the competition issue are a re-hash of arguments it made regarding the prior motion to stay. The Court will not address them again

here. And some of Defendant's new arguments are similarly unavailing.¹¹ Defendant does make a fair point that Plaintiff has not done as strong a job in articulating the *extent* to which it may face anti-competitive impact from a stay (i.e., the extent of the harm to it that could not be remedied by money damages)—particularly in light of Defendant's lesser financial position as compared to Plaintiff, and what appears to be the presence of some other competitors in the relevant markets. (D.I. 152 at 18; D.I. 175 at 8)

Nevertheless, there is multi-faceted evidence here that Defendant has taken business from Plaintiff due to allegedly infringing activity, particularly in the API space. It is thus a fair inference that were such conduct to continue during a stay, this could harm Plaintiff in ways that a monetary payment may not be able to remedy in full. *See Cooper Notification*, 2010 WL 5149351, at *5; *see also Asetek Holdings, Inc v. Cooler Master Co., Ltd.*, Case No. 13-cv-00457-JST, 2014 WL 1350813, at *5 (N.D. Cal. Apr. 3, 2014). This subfactor continues to weigh against a stay.¹²

¹¹ For example, Defendant's assertion that the facts in *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307 (Fed. Cir. 2014), are in parallel to those here, (D.I. 175 at 7 n.2), misses the mark. In *VirtualAgility* there was "no evidence in [the] record that the two companies ever competed for the same customer or contract[.]" 759 F.3d at 1318, while here there is ample evidence of that. Nor does Defendant adequately explain why, in assessing the impact of its competition on Yodlee, the Court should be focused on the business of Yodlee's new corporate parent, Envestnet Inc. ("Envestnet"). (D.I. 152 at 16-17; D.I. 175 at 8; *see also* D.I. 93) Corporate forms are typically respected, and Yodlee is not Envestnet. (D.I. 173 at 14)

¹² Defendant also argues, as to the undue prejudice factor, that the burdens it would face were a stay not granted are "especially great for Plaid, a small start-up[.]" (D.I. 152 at 19) Defendant made the same argument in pressing the prior motion to stay. But in resolving that prior motion, the Court noted that it could not credit the argument, since Defendant had not supported it with any "evidence specific to its company (such as an affidavit from one of its employees) in support of its claim that, were it required to go forward and defend the suit, this would severely disrupt its operations." (D.I. 51 at 15) Inexplicably, Defendant again fails to provide the Court with any record evidence on this point. As such, again, the Court "cannot give

d. Conclusion

In light of the cumulative effect of the subfactors, all of which work against a stay, the Court concludes that the “undue prejudice” factor weighs squarely against granting a stay.

4. Overall Conclusion as to Stay Factors

Of the three stay factors, one weighs in favor of a stay, but the other two weigh against a stay. What gains a stay of the case as to the '783 patent might bring on the “simplification of issues” front are not significant enough, in the Court’s view, to overcome the impact of the other two factors. The litigation as to this patent is well-developed and was nearly ready for trial at the time of the Motion’s filing. And Plaintiff would be unduly harmed were trial postponed as to the patent at this late stage. For these reasons, the Court DENIES the Motion as to the '783 patent.

III. CONCLUSION

For the reasons set out above, Defendant’s Motion is DENIED as to claims relating to the '077 patent, the '548 patent, the '520 patent and the '783 patent.

The Motion is DENIED without prejudice as to the '535 patent and the '515 patent. The parties shall alert the Court as to the outcome of the PTAB’s decision on whether to institute review on the petitions relating to each of these patents within 3 business days of the PTAB’s decisions.

The Motion is GRANTED with regard to claims relating to the '451 patent, with the exception that the stay will not affect: (1) the District Court’s ability to rule on pending objections to the Court’s Report and Recommendation regarding the motion to dismiss as to this patent; or (2) the District Court’s ability to resolve Defendant’s summary judgment motion as to

weight to Defendant’s argument here.” (*Id.*)

this patent. The parties shall advise the Court within 3 business days of the date from which the District Court has ruled on both the outstanding objections and on the summary judgment motion as it relates to this patent.

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 **November 23, 2016** for review by the Court, along with a motion for redaction that includes 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.

Dated: November 16, 2016

Christopher J. Burke
UNITED STATES MAGISTRATE JUDGE