UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SLIDE FIRE SOLOUTIONS, LP,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:14-cv-3358-M
	§	
BUMP FIRE SYSTEMS, LLC, MICHAEL SMITH, and ANDRES HERRADA,	§	
	§	
	§	
Defendants.	§	

ORDER

Before the Court is a Motion for Stay of Proceedings Pending USPTO Decision on Patent Re-Examination [Docket Entry #66] filed by Defendant Bump Fire Systems, LLC ("Bump Fire"). By its Motion, Bump Fire asks the Court to stay this litigation pending resolution of its petitions for *ex parte* reexamination of six of the eight patents-in-suit in this patent infringement action. For the reasons stated, the Motion is DENIED.

Courts have inherent authority to manage their dockets, including the authority to stay proceedings pending reexamination of a patent. *Credit Card Fraud Control Corp. v. Maxmind, Inc.*, 2015 WL 1879747, at *1 (N.D. Tex. Apr. 24, 2015) (Lynn, J.) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426-27 (Fed. Cir. 1988)). "A stay pending an administrative proceeding is not automatic; rather, it must be based upon the circumstances of the individual case before the court." *Id.* (quoting *Norman IP Holdings, LLC v. TP–Link Techn., Co.*, 2014 WL 5035718, at *2 (E.D. Tex. Oct. 8, 2014). In deciding whether to stay litigation pending reexamination of a patent, a court typically considers: (1) whether a stay will unduly prejudice or present a clear tactical disadvantage to the non-moving party; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether discovery is complete and whether a trial date has been set.

Kaneka Corp. v. JBS Hair, Inc., 2012 WL 10464130, at *1 (N.D. Tex. Apr. 27, 2012). The court must weigh each factor on a case-by-case basis. *See DataTreasury Corp. v. Wells Fargo & Co.*, 490 F. Supp. 2d 749, 755 (E.D. Tex. 2006).

In this case, Bump Fire argues all three factors weigh in favor of granting a stay. It contends that the reexaminations will likely result in cancellation or amendment of one or more of the asserted claims and, thus, a stay will simplify the issues in question. Bump Fire further argues that the case is still in the relatively early stages of the litigation because no discovery has been served on Defendants Michael Smith or Andres Herrada, and no depositions have been conducted. Also, according to Bump Fire, a stay will not prejudice Plaintiff Slide Fire Solutions, LP ("Slide Fire"), but the failure to stay the case will result in prejudice to the Defendants because it will force them to expend resources litigating asserted claims that may be amended or canceled in the reexamination. Slide Fire disputes Bump Fire's argument on prejudice and contends that, as Bump Fire's direct competitor, it is losing hundreds of thousands of dollars in sales due to the alleged infringement. Slide Fire further contends that Bump Fire's assertion that reexamination will simplify the issues is question is wholly speculative, and that the litigation has actually proceeded beyond the nascent stages. Among other things, Slide Fire notes that Bump Fire was served with the complaint more than 15 months ago and that a technology tutorial and a *Markman* hearing are set for January 11 and January 19, 2016, respectively.

Having weighed the relevant factors, the Court determines that a stay of these proceedings is not warranted under the circumstances presented. Slide Fire and Bump Fire are direct competitors in the firearms industry. Therefore, any delay in deciding this case could potentially prejudice Slide Fire's right to exclusive use of the patented technology for its economic advantage. *Tesco Corp. v. Weatherford Int'l, Inc.*, 722 F. Supp. 2d 755, 762 (S.D. Tex. 2010); *see also Kaneka*

Corp., 2012 WL 10464130, at *1 (citing cases denying motions to stay infringement actions pending reexamination proceedings where accused infringers directly competed with patentee). Bump Fire's argument that Slide Fire will not suffer "irreparable harm" if a stay is not granted is inapposite. Irreparable harm is not the relevant standard. Nor does the fact that Slide Fire has not moved for a preliminary injunction change the Court's analysis. That Slide Fire may be "content to let this litigation proceed to its conclusion" is not the same as being content to endure the status quo while the PTO conducts reexamination proceedings, which according to evidence submitted by Bump Fire could average more than two years. *See* Def. App. [Docket Entry #69-1] at 291, 293, 296, 298, 300, 302. In view of the length of time it takes to complete reexamination proceedings, the prejudice factors weighs against a stay. *Kaneka Corp.*, 2012 WL 10464130, at *1; *Tesco Corp.*, 722 F. Supp. 2d at 762.

With regard to the second factor, the Court finds that whether a stay will simplify the issues in question is entirely speculative at this point. Indeed, Bump Fire's argument is based solely on statistics promulgated by the PTO that 92% of all *ex parte* petitions for reexamination are granted, and, of those petitions granted, 78% of all reexaminations result in some claims being amended or canceled. Def. Mot. at 3. However, the PTO has not yet granted any of Bump Fire's petitions for reexamination, and even if the PTO grants all of Bump Fire's petitions, it is still difficult to know whether any of the patent claims at issue will be cancelled or modified in a way that impacts this litigation. *BarTex Research, LLC v. FedEx Corp.*, 611 F. Supp. 2d 647, 653 (E.D. Tex. 2009) (recognizing speculative nature of determining whether reexamination will simplify issues in patent litigation). Moreover, Bump Fire has not filed petitions for reexamination of two of the patents asserted in this litigation. The Court will thus have to adjudicate two of the patents-in-suit regardless of the outcome of the reexamination proceedings. The second factor does not weigh

significantly in favor of a stay.

Nor does the third factor weigh in favor of a stay. While the parties have not completed discovery, the litigation has moved out of the initial stages and is progressing steadily towards the August 15, 2016 trial setting. Since the case was filed in September 2014, the parties and this Court have expended significant time and resources on resolving jurisdictional issues. Discovery has commenced, and Slide Fire represents that the corporate entities have served and responded to numerous document requests and interrogatories. The parties also have drafted and served their infringement and invalidity contentions and devoted significant efforts towards claims construction. The parties have exchanged disputed terms, served their respective expert reports on claim construction, submitted a joint claim construction chart to the Court, and filed opening claim construction briefs. The technology tutorial is set for January 11, 2016, and the *Markman* hearing is set for the next week on January 19, 2016. The progress of this litigation does not weigh in favor of a stay.

Because none of the relevant factors weighs in favor of a stay, the Court DENIES Bump Fire's Motion to stay the proceedings pending patent reexamination. However, this denial is without prejudice to Bump Fire's refiling the Motion should the USPTO grant one or more of its petitions for reexamination.

SO ORDERED.

December 18, 2015.

BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS