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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE: AMERANTH PATENT
LITIGATION CASES,

CASE NO. 11cv1810 DMS (WVG)

**ORDER DENYING MOTION TO LIFT
STAY**

This case comes before the Court on Plaintiff’s motion to lift the stay on these proceedings. Defendants¹ filed an opposition to the motion, and Plaintiff filed a reply. For the reasons discussed below, Plaintiff’s motion is denied.

**I.
BACKGROUND**

On October 15, 2013, the majority of Defendants in this case filed petitions with the Patent Trial and Appeals Board (“PTAB”) seeking review of the validity of the

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¹ Defendant Apple filed the opposition brief, which is joined by Defendants Eventbrite, Inc., Starwood Hotels & Resorts Worldwide, Inc., Ticketfly, Inc., GrubHub Holdings, Inc. f/k/a GrubHub, Inc., Pizza Hut, Inc., Pizza Hut of America, Inc., Mobo Systems, Inc., Hyatt Corporation, Oracle Corporation, Agilysis, Inc., Usablenet, Inc., Papa John’s USA, Inc., Expedia, Inc., Fandango, Inc., Hotel Tonight, Inc., Hotels.com, L.P., Hotwire, Inc., Kayak Software Corporation, Live Nation, Inc., Orbitz, LLC, StubHub, Inc., Tickemaster, LLC, Travelocity.com LP, Wanderspot LLC, Open Table, Inc., Marriott International Inc., Starbucks Corporation, Ticketbiscuit, LLC, O-Webt Technologies, Ltd., Hilton Resorts Corporation, Hilton Worldwide, Inc., Hilton International Co., Domino’s Pizza, LLC, Domino’s Pizza, Inc., Quickorder, Inc., Best Western International, Inc. And ATX Innovation.

1 patents at issue in this case² under the Transitional Program for Covered Business
2 Method (“CBM”) Patents. These Defendants filed four petitions, one directed at each
3 of the patents at issue. Each petition challenged the validity of every claim of the
4 respective patent. In light of those petitions, Defendants moved to stay these
5 proceedings, and the Court granted that motion.

6 Thereafter, the PTAB granted the petitions as to all claims of the ‘733 Patent,
7 claims 1 through 11 of the ‘850 Patent and claims 1 through 10 of the ‘325 Patent. The
8 PTAB denied the petition to review the ‘077 Patent.

9 On March 20, 2015, the PTAB issued its final written decisions on the three
10 petitions it granted. On the ‘850 Patent, the PTAB found claims 1 through 11 invalid
11 for claiming unpatentable abstract ideas. On the ‘325 Patent, the PTAB found claims
12 1 through 10 invalid for claiming unpatentable abstract ideas. On the ‘733 Patent, the
13 PTAB found claims 1, 2, 4, 5, 10 and 12 invalid for claiming unpatentable abstract
14 ideas. The PTAB rejected Defendants’ challenges to claims 3, 6-9, 11 and 13-16 of the
15 ‘733 Patent.

16 Following these decisions, Plaintiff filed a request to lift the stay. Defendants
17 opposed that request on the grounds that the PTAB’s decisions were not yet final and
18 the parties had not yet decided whether to appeal the PTAB’s decisions to the Federal
19 Circuit. The Court agreed with Defendants, and thus denied Plaintiff’s request to lift
20 the stay.

21 Since that time, the parties decided not to seek reconsideration of the PTAB’s
22 decisions, but they have filed appeals to the Federal Circuit. Specifically, Defendants
23 Apple, Domino’s Pizza, Inc., Domino’s Pizza, LLC, Fandango, LLC and OpenTable,
24 Inc. filed an appeal of the PTAB’s decision on claims 3, 6-9, 11 and 13-16 of the ‘733
25 Patent, and Plaintiff filed an appeal of the PTAB’s decisions on claims 1 through 11 of
26 the ‘850 Patent, claims 1 through 10 of the ‘325 Patent and claims 1, 2, 4, 5, 10 and 12

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28 ² The patents at issue are United States Patent Numbers 6,384,850 (“the ‘850
patent”), 6,871,325 (“the ‘325 patent”), 8,146,077 (“the ‘077 patent”) and 6,982,733
 (“the ‘733 patent”).

1 of the '733 Patent. Despite those appeals, Plaintiff now moves to lift the stay on these
2 proceedings.

3 **II.**
4 **DISCUSSION**

5 Plaintiff raises two arguments in support of its motion to lift the stay. First,
6 Plaintiff argues the stay should be lifted because the condition of the stay has been
7 fulfilled. Second, Plaintiff asserts the appeals do not warrant continuance of the stay.

8 In support of its first argument, Plaintiff relies on the Court's November 26, 2013
9 Order Granting Defendants' Motion to Stay, which stated, "Upon issuance of a final
10 decision from the PTAB, the parties shall request that the stay be lifted so this case may
11 proceed." That is an accurate recitation of the Court's Order, but contrary to Plaintiff's
12 assertion, it does not place a condition on the imposition or continuance of the stay.
13 Rather, the Court was merely indicating that the parties could file a motion to lift the
14 stay once the proceedings before the PTAB were completed.

15 Plaintiff did so, but considering the decisions of the PTAB were not yet final, and
16 the parties had not yet decided whether they would appeal those decisions, the Court
17 denied Plaintiff's motion. In that Order, the Court stated, "The stay shall remain in
18 place until the time for seeking reconsideration or filing an appeal of the PTAB's
19 decision has expired. If either party decides to seek reconsideration or file an appeal,
20 the stay shall remain in place until those proceedings are completed." The parties have
21 filed appeals, and thus, by the terms of the Court's April 3, 2015 Order, the stay should
22 remain in place.

23 Nevertheless, Plaintiff argues the stay should be lifted for several reasons. First,
24 it asserts there are several claims of the patents at issue that are not subject to review by
25 the Federal Circuit. Second, Plaintiff contends that continuing the stay will cause
26 further delay and prejudice. Third, Plaintiff argues the PTAB's decision not to
27 invalidate claims 3, 6-9, 11, and 13-16 is entitled to deference. None of these
28 arguments, however, warrants lifting the stay in this case.

1 Plaintiff is correct that the PTAB refused to review the claims of the ‘077 Patent,
2 claims 12 through 16 of the ‘850 Patent and claims 11 through 15 of the ‘325 Patent.
3 It is also true the PTAB upheld the validity of certain claims of the ‘733 Patent.
4 However, those claims are indisputably related to the claims on appeal to the Federal
5 Circuit, and as Plaintiff stated in its reply brief, “all of the patents-in-suit are from the
6 same family, and should be construed consistently[.]” (Reply Br. at 3.) Thus, although
7 there are some claims not subject to review by the Federal Circuit, or that have been
8 found valid by the PTAB, there are other claims that have been found invalid and are
9 currently on appeal to the Federal Circuit. It makes little sense to proceed on those
10 claims that are not on appeal when related claims are on appeal, and Plaintiff concedes
11 the claims should be construed consistently.

12 Plaintiff is also correct that continuing the stay will further delay this case.
13 However, that continued delay is outweighed by the interests of efficiency and economy
14 for the parties and the Court. As mentioned above, it makes little sense to have the
15 parties engage in claim construction discovery and briefing, and for the Court to
16 construe claims, when the Federal Circuit may undertake that same task in considering
17 the parties’ appeals.

18 Plaintiff’s third argument also fails to show why the stay should be lifted.
19 Although the PTAB’s decisions may be entitled to deference, those decisions are
20 currently on appeal to the Federal Circuit. Their precedential value, therefore, remains
21 to be seen pending the Federal Circuit’s decision.

22 **III.**

23 **CONCLUSION AND ORDER**

24 Considering the factors discussed above, the Court denies Plaintiff’s motion to

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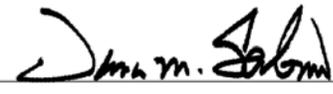
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1 lift the stay of these proceedings. The parties shall notify the Court when the Federal
2 Circuit issues its decision on the pending appeals.

3 **IT IS SO ORDERED.**

4 DATED: June 4, 2015



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6 HON. DANA M. SABRAW
7 United States District Judge
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