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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

TECHNOLOGY PROPERTIES LIMITED LLC,  
PHOENIX DIGITAL SOLUTIONS LLC, and  
PATRIOT SCIENTIFIC CORPORATION,

Plaintiffs,

v.

LG ELECTRONICS, INC. AND LG  
ELECTRONICS U.S.A., INC.,

Defendants.

Case No. 3:12-cv-03880-SI

**NOTICE OF MOTION TO STAY  
PATENT INFRINGEMENT CASE;  
MEMORANDUM AND POINTS OF  
AUTHORITIES IN SUPPORT**

Date: November 7, 2014  
Time: 9:00 a.m.  
Courtroom: 10  
Judge: Hon. Susan Illston

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**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that on DATE, at TIME or as soon thereafter as it may be heard, in Courtroom 10 of this Court before the Honorable Susan Illston, Defendants LG Electronics, Inc. and LG Electronics, U.S.A., Inc. (collectively, “LG”) will respectfully move for an order staying this action filed by Technology Properties Limited LLC, Phoenix Digital Solutions LLC and Patriot Scientific Corporation (collectively, “Plaintiffs” or “TPL”) until the conclusion of Federal Circuit appellate proceedings in *HTC Corp. et. al. v. Technology Properties Ltd., et. al.*, Case Nos. 14-1076, -1317 (the “HTC Appeal”). The HTC Appeal involves two of the three patents-in-suit in this action (the ’336 Patent and the ’890 Patent), and will resolve issues regarding the construction of disputed claim terms in those patents and intervening rights with respect to the ’890 Patent. Because Plaintiffs Technology Properties Limited LLC and Patriot Scientific Corporation are parties to the HTC Appeal, the Federal Circuit’s ruling in that case will be binding on Plaintiffs, and may have a dispositive impact on claim construction and other proceedings in this action.

This motion is made pursuant to the Court’s inherent discretionary power to stay an action in the interest of judicial efficiency. It is based on the accompanying Memorandum of Points and Authorities, the accompanying Declaration of Shelley K. Mack, such oral argument as the Court may permit on this motion, and all pleadings and papers of record and on file in this case.

Plaintiffs have informed LG that they intend to oppose this motion to stay.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

In this patent case, Plaintiffs allege that certain LG mobile phones infringe three patents owned by Plaintiffs. Plaintiffs are also engaged in infringement litigation in this District involving the same three patents with more than a dozen other parties, among them HTC Corporation and HTC America, Inc. (“HTC”). Issues pertaining to claim construction, infringement, and intervening rights with respect to two of the three patents-in-suit in this action are currently before the Federal Circuit in *HTC Corp. et. al. v. Technology Properties Ltd., et. al.*, Case Nos. 14-1076, -1317 (the “HTC Appeal”). The Federal Circuit’s decisions in the HTC Appeal will be binding on

1 Plaintiffs, and thus may directly influence the claim construction proceedings in this action and  
2 have a dispositive effect on them. Briefing in that Federal Circuit cross-appeal is due to be  
3 complete by September 26, 2014, and the Federal Circuit's decision in that case is expected in  
4 early 2015. Ex. 6<sup>1</sup> (Fed. Cir. docket).

5 LG submits that this Court should exercise its inherent discretionary authority to stay this  
6 action in its entirety until the Federal Circuit has issued its ruling in the HTC Appeal. The HTC  
7 Appeal will resolve certain claim construction matters relating to two of the three patents-in-suit in  
8 this case, and because there will be substantial overlap in the issues, discovery and defenses  
9 relevant to all three patents, this case should be stayed in full pending the Federal Circuit's ruling.  
10 All three patents belong to the same patent family, name the same two co-inventors, share nearly  
11 identical patent specifications and figures, and cite many of the same prior art references and  
12 diagrams. The three patents further share common claim terms that will require consistent  
13 construction. Furthermore, Plaintiffs accuse the same LG products of infringing all three patents.  
14 As a result, staying this action in its entirety until the conclusion of the HTC Appeal will serve the  
15 interest of judicial efficiency, will narrow the issues ultimately requiring discovery and decision by  
16 this Court, and will provide guidance as to other issues the Court is likely to resolve in this action.  
17 The Court will benefit from the efficiencies gained by allowing the HTC Appeal to conclude  
18 before this case proceeds.

19 A stay of proceedings pending the conclusion of the HTC Appeal will cause no prejudice to  
20 Plaintiffs, as explained in more detail below, and will avoid substantial hardship that LG would  
21 otherwise face. Absent a stay, LG would be forced to expend significant resources on discovery  
22 and motion practice relating to issues that the Federal Circuit's decision in the HTC Appeal may  
23 obviate or narrow. Without a stay, when the HTC Appeal has concluded, the parties may be forced  
24 to re-litigate many of the same issues and engage in duplicative discovery, for example, by  
25 deposing the same two inventors a second time. A stay of this action for the brief period of time  
26 during which the HTC Appeal remains pending would eliminate these concerns.

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27  
28 <sup>1</sup> Unless otherwise noted, all references herein to exhibits refer to those appended to the  
Declaration of Shelley K. Mack, filed concurrently with this Motion.

For all of these reasons, LG respectfully requests the Court to stay this case in its entirety pending the Federal Circuit's ruling in *HTC Corp. et. al. v. Technology Properties Ltd., et. al.*, Case Nos. 14-1076, -1317.

## **II. STATEMENT OF ISSUES TO BE DECIDED**

LG's motion raises the following issue to be decided by the Court:

1. Whether the district court should, in its discretion, stay this case in its entirety pending the Federal Circuit's decision in *HTC Corp. et. al. v. Technology Properties Ltd., et. al.*, Case Nos. 14-1076, -1317, where the Federal Circuit's decision in that case will be binding on Plaintiffs in this action, where such a discretionary stay would benefit the orderly course of justice and could substantially narrow the issues for discovery by the parties and decision by this court, and where such a stay would cause little or no harm to Plaintiffs while eliminating the risk of substantial hardship to LG should this case proceed before the HTC Appeal concludes.

## **III. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. The Current Lawsuit and ITC Investigation No. 337-TA-853**

On July 24, 2012, Plaintiffs sued LG in this Court alleging infringement of three United States patents: U.S. Patent No. 5,809,336 ("the '336 Patent"); U.S. Patent No. 5,440,749 ("the '749 Patent"); and U.S. Patent No. 5,530,890 ("the '890 Patent") (collectively, "the patents-in-suit"). See D.I. 1 (Plaintiffs' Compl.), at ¶¶ 13, 16, 19; Exs. 1-3. Plaintiffs accuse the same LG products – its Lucid 4G LTE mobile phones – of infringing all three patents-in-suit: specifically, claim 1 of the '336 Patent, claim 1 of the '749 Patent, and claim 7 of the '890 Patent. D.I. 1, at ¶¶ 21, 25, 29.

On July 24, 2012, the same day Plaintiffs filed their Complaint in this case, Plaintiffs filed a complaint with the U.S. International Trade Commission ("ITC") against LG and nineteen other respondents. Plaintiffs requested that the ITC investigate, *inter alia*, certain LG products which allegedly infringed the '336 Patent, one of the three patents-in-suit in this action. In their ITC complaint, Plaintiffs specifically accuse the only LG product at issue in this action: LG's Lucid 4G LTE mobile phone. D.I. 1, at ¶¶ 21, 25, 29; Ex. 4 (ITC Compl.). On August 24, 2012, the ITC instituted Investigation No. 337-TA-853 (the "ITC Action"), captioned *In the Matter of Certain*

1 *Wireless Consumer Electronics Devices and Components Thereof*, to determine “whether there is a  
 2 violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale  
 3 for importation, or the sale within the United States after importation of certain wireless consumer  
 4 electronic devices and components thereof that infringe one or more of claims 1, 6, 7, 9-11, and  
 5 13-16 of the ’336 patent. . . .” Ex. 5 (8/24/2012 Fed. Reg. Pub.).

6 Less than a month after the ITC investigation was instituted, on September 20, 2012, LG  
 7 filed a motion to stay this action in its entirety pending resolution of the ITC Action. D.I. 5.  
 8 Following briefing on that motion, on October 2, 2012, Magistrate Judge Grewal issued an order  
 9 granting LG’s motion and staying proceedings in this case until the conclusion of the ITC Action.  
 10 D.I. 9.

11 After a trial in June, 2013, Administrative Law Judge E. James Gildea issued an Initial  
 12 Determination in which he found, among other things, no infringement by LG of claims 1, 6, 7, 9-  
 13 11, and 13-16 of the ’336 Patent. The Commission later reviewed this Initial Determination, and in  
 14 February, 2014, issued an opinion affirming the Initial Determination’s finding of non-  
 15 infringement as to LG. Ex. 7 (3/14 Public Comm. Op.).

16 Following the conclusion of the ITC Action, Magistrate Judge Grewal convened a case  
 17 status conference with the parties in this action on September 4, 2014. D.I. 18. At that conference,  
 18 LG argued that the case should remain stayed pending the conclusion of HTC’s Federal Circuit  
 19 appeal. To give the parties the opportunity to brief the issue fully, Magistrate Judge Grewal  
 20 indicated he would set a briefing schedule for a further motion to stay, but deferred setting that  
 21 schedule pending LG’s decision<sup>2</sup> on whether or not to consent to his jurisdiction for all purposes in  
 22 this case. *Id.* The stay in this case remains in place, and has not been lifted.

23 On September 11, 2014, LG filed a declination to proceed before a magistrate judge, and  
 24 requested reassignment of this case to a United States District Judge. D.I. 19. On September 12,  
 25 2014, this Court issued an order reassigning this case to Judge Illston for all further proceedings.  
 26 D.I. 21. On September 15, 2015, the Court issued an order setting a case management conference

27 \_\_\_\_\_  
 28 <sup>2</sup> At the same case management conference, Plaintiffs represented through their counsel that they  
 would consent to proceed in this case before Magistrate Judge Grewal. D.I. 18.



1 in this action for October 10, 2014. D.I. 22. To date, no answer has been filed in this action, no  
 2 infringement or invalidity contentions have been served, no discovery has been taken, and no  
 3 deadlines have been set regarding claim construction, discovery, motions or trial.

#### 4 **B. Plaintiffs' Litigation with HTC and the HTC Appeal**

5 After the collapse of licensing negotiations between the parties, HTC filed suit on February  
 6 8, 2008 against Technology Properties Limited ("TPL"), Patriot Scientific Corporation ("Patriot")  
 7 and Alliacense Ltd. in the Northern District of California, seeking a declaratory judgment of non-  
 8 infringement and/or invalidity on two of the three patents-in-suit in this action (the '336 Patent and  
 9 the '749 Patent) plus two other patents in the same family owned by Plaintiffs. Ex. 8 (HTC DJ  
 10 complaint). On July 10, 2008, HTC filed an amended complaint additionally requesting  
 11 declaratory judgment of non-infringement and invalidity as to the '890 Patent, the third and final  
 12 patent-at-issue in this action. Ex. 9 (HTC amended DJ complaint). On September 17, 2013, the  
 13 Court granted summary judgment in favor of HTC and found that absolute intervening rights  
 14 barred any claims of infringement of the '890 Patent based on activities occurring prior to March 1,  
 15 2011.<sup>3</sup> Ex. 10 (MSJ Order). After full pre-trial litigation, including two rounds of claim  
 16 construction and motions for reconsideration, a jury trial of HTC's '336 Patent declaratory  
 17 judgment action took place in this District in late September through early October, 2013. On  
 18 October 3, 2013, the Court entered judgment on a jury verdict finding that HTC literally infringed  
 19 claims 6, 7, 9, and 13-15 of the '336 Patent. Ex. 11 (10/3/13 HTC verdict).

20 Following post-trial motions, on February 20, 2014, HTC filed a notice of appeal of this  
 21 Court's judgment with the Federal Circuit, and TPL and Patriot filed a notice of cross-appeal with  
 22 the Federal Circuit on February 27, 2014. Issues presented by HTC for the Federal Circuit's  
 23 resolution include (1) the proper construction of the disputed '336 Patent term "entire oscillator;"  
 24 and (2) whether the district court erred in denying HTC's renewed motion for judgment of non-  
 25 infringement as a matter of law. Ex. 12 (HTC 6/27/14 Ap. Br.), at 4. Issues presented by TPL and  
 26

27 <sup>3</sup> Following entry of that summary judgment order, the parties stipulated to an order dismissing all  
 28 claims under the '890 patent because the Court's intervening rights ruling precluded liability for all  
 HTC products accused of infringing the '890 patent. Ex. 12 (HTC 6/27/14 Ap. Br.), at 5.

Patriot for the Federal Circuit's decision include (1) whether the district court erred in granting summary judgment for HTC that absolute intervening rights barred any claims of infringement of the '890 Patent based on activities occurring prior to March 1, 2011; and (2) the proper construction of the phrase "separate direct memory access central processing unit," as recited in claim 11 of the '890 Patent. *Id.* at 4-5. Because two of the three patents-at-issue in this case are the subject of the HTC Appeal (the '336 Patent and the '890 Patent), the Federal Circuit's decision in the HTC Appeal will be binding on Plaintiffs TPL and Patriot, and thus may have a dispositive impact on claim construction proceedings in this action.

TPL and Patriot filed their opening appellate brief on May 1, 2014. Ex. 6 (Fed. Cir. docket), at 5. HTC filed its opening appellate brief on June 27, 2014. Ex. 12 (6/27/14 HTC Op. Ap. Br.). TPL and Patriot then filed their reply appellate brief on September 2, 2014, and HTC is due to file its reply appellate brief by September 26, 2014. Ex. 6 (Fed. Cir. docket) at 6. The Federal Circuit's ruling in the HTC Appeal is expected to issue sometime in early 2015.

### C. The Patents-in-Suit

The '336 Patent, the '890 Patent and the '749 Patent share many commonalities, such that issues, proof, and discovery relating to all the three patents will overlap significantly in this case. Not only do these three patents all belong to the same patent family, but they also name identical co-inventors, share nearly identical specifications and drawing figures, cite the same prior art references, and contain common claim terms. This extensive commonality is to be expected, since the '336 and '890 Patents, at issue in this action and the HTC Appeal, are both divisionals of the '749 Patent.

Table 1 below illustrates the substantial overlap between the '336 and '890 Patents at issue both in this case and in the HTC Appeal, and the '749 Patent asserted only in this action:

Patent No.	Title	Inventors	Asserted Forum(s)
5,440,749	High Performance, Low Cost Microprocessor Architecture	Charles H. Moore and Russell H. Fish III	N.D. Cal.
5,530,890 (divisional of '749 patent)	High Performance, Low Cost Microprocessor	Charles H. Moore and Russell H. Fish III	N.D. Cal. & HTC Appeal

1 2 3	5,809,336 (divisional of '749 patent)	High Performance Microprocessor Having Variable Speed System Clock	Charles H. Moore and Russell H. Fish III	N.D. Cal. & HTC Appeal
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4 See Exs. 1-3.

#### 5 IV. LEGAL STANDARD

6 “[D]istrict courts have inherent authority to stay proceedings before them.” *Rohan ex rel.*  
7 *Gates v. Woodford*, 334 F.3d 803, 817 (9th Cir. 2003); *see also, e.g., Landis v. North Am. Co.*, 299  
8 U.S. 248, 254 (1936). “[T]he power to stay proceedings is incidental to the power inherent in  
9 every court to control the disposition of the causes on its docket with economy of time and effort  
10 for itself, for counsel, and for litigants.” *Landis*, 299 U.S. at 254; *see also, e.g., CMAX, Inc. v.*  
11 *Hall*, 300 F.2d 265, 268 (9<sup>th</sup> Cir. 1962); *Minor v. FedEx*, 2009 WL 1955816, at \*1 (N.D. Cal. July  
12 6, 2009). As the Ninth Circuit noted in *Leyva v. Certified Grocers of Calif., Ltd.*, 593 F.2d 857,  
13 863-864 (9<sup>th</sup> Cir. 1979):

14 A trial court may, with propriety, find it is efficient for its own  
15 docket and the fairest course for the parties to enter a stay of an  
16 action before it, pending resolution of independent proceedings  
17 which bear upon the case. This rule applies whether the separate  
18 proceedings are judicial, administrative, or arbitral in character, and  
19 does not require that the issues in such proceedings are necessarily  
20 controlling of the action before the court.

21 See also, *e.g., Versata Software, Inc. v. Dorado Software, Inc.*, slip copy, 2014 WL 1330652, at \*4  
22 (E.D. Cal. Mar. 28, 2014) (quoting *Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708 F.2d  
23 1458, 1465 (9th Cir. 1983)); *Negotiated Data Solutions, LLC v. Dell Inc.*, 2008 WL 4279556, at \*1  
24 (N.D. Cal. Sept. 16, 2008).

25 In deciding whether to exercise this inherent discretion to stay proceedings before it, a  
26 district court should consider and balance three factors: (1) possible damage that may result from  
27 the granting of a stay, (2) the hardship or inequity that a party may suffer in being required to go  
28 forward, and (3) “the orderly course of justice measured in terms of the simplifying or  
complicating of issues, proof, and questions of law which could be expected to result from a stay.”  
*Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005); *see also, e.g., CMAX*, 300 F.2d at

268 (citing *Landis*, 299 U.S. at 254-55); *Bascom Research LLC v. Facebook, Inc.*, No. 3:12-cv-06294, Dkt. 133 at 2 (N.D. Cal. Jan. 13, 2014) (Illston, J.); *Gabriella v. Wells Fargo Financial, Inc.*, 2009 WL 188856, at \*1 (N.D. Cal. Jan. 26, 2009) (Illston, J.). As demonstrated below, each of these three factors in this case favors a stay of proceedings pending the conclusion of Federal Circuit proceedings in the HTC Appeal.

## V. ARGUMENT

### A. This Action Should Be Stayed in Its Entirety Pending Resolution of HTC's Federal Circuit Appeal

#### 1. Plaintiffs Will Suffer No Prejudice From a Brief Stay Pending Resolution of HTC's Appeal

The first factor to be weighed in considering whether to grant a discretionary stay of proceedings is the possible damage that the non-moving party may suffer if a stay is granted. *See, e.g., Negotiated Data*, 2008 WL 4279556, at \*1. It is well-established that “[d]elay, by itself, does not constitute prejudice.” *Advanced Analogic Techs., Inc. v. Kinetic Techs., Inc.*, 2009 WL 4981164, at \*1 (N.D. Cal. Dec. 15, 2009); *see also, e.g., Lemoge v. United States*, 587 F.3d 1188, 1196 (9th Cir. 2009) (holding, in context of motion to set aside judgment, that “[p]rejudice requires greater harm than simply that relief would delay resolution of the case”); *Nanometrics, Inc. v. Nova Measuring Instruments, Ltd.*, 2007 WL 627920 at \* 3 (N.D. Cal. 2007) (holding, in context of motion for stay pending reexamination, that “[m]ere delay, without more [], does not demonstrate undue prejudice”).

In this case, a stay of proceedings until the HTC Appeal concludes is unlikely to delay this action longer than approximately six (6) months – certainly well less than a year. Briefing in the HTC Appeal already is complete, and given the speed with which the Federal Circuit typically rules on post-judgment appeals, a decision in that case is expected sometime in early 2015. Because the stay LG requests would be of a relatively short duration, the likelihood that Plaintiffs will suffer any genuine prejudice from such a stay is greatly diminished, and both this Court and others have found stays of similar duration to pose no prejudice to the non-moving party. *See, e.g., Bascom Research*, No. 3:12-cv-06294, Dkt. 133 at 3 (N.D. Cal. Jan. 13, 2014) (Illston, J.) (finding

no prejudice to non-moving party from a stay of five (5) months duration); *Negotiated Data*, 2008 WL 4279556, at \*1 (no prejudice resulting from stay of a “number of months”); *Minor*, 2009 WL 1955816, at \*1 (no prejudice resulting from stay lasting less than a year); *Alvarez v. T-Mobile USA, Inc.*, 2010 WL 5092971, at \*3 (E.D. Cal. Dec. 7, 2010) (no prejudice resulting from stay of approximately ten (10) months); *Lopez v. Am. Express Bank, FSB*, 2010 WL 3637755, at \*4 (C.D. Cal. Sept. 17, 2010) (no prejudice resulting from a stay of less than one year).

Plaintiffs also are unlikely to be prejudiced by a stay of proceedings because Plaintiffs’ Complaint in this case seeks only monetary damages from LG, not injunctive relief (*see* D.I. 1 at 7), and “the monetary damages period will continue to run while the case is stayed.” *Bascom Research*, No. 3:12-cv-06294, Dkt. 133 at 3 (N.D. Cal. Jan. 13, 2014) (Illston, J.); *see also, e.g., Sonics, Inc. v. Arteris, Inc.*, 2013 WL 503091, at \*4 (N.D. Cal. Feb. 8, 2013); *Nanometrics*, 2007 WL 627920, at \*3 (N.D. Cal. Feb. 26, 2007). The fact that Plaintiffs do not seek injunctive relief here militates against any finding of prejudice resulting from the requested stay. *See, e.g., VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1320 (Fed. Cir. 2014). Furthermore, any harm that Plaintiffs might suffer from ongoing damages while the stay is in effect can be easily remedied by an award of monetary damages. *See, e.g.*, 300 F.2d at 268-69; *Alvarez*, 2010 WL 5092971, at \*2; *Lopez*, 2010 WL 3637755, at \*5. Plaintiffs are unlikely to reap much more in ongoing damages in any event, because both the ’749 Patent and the ’890 Patent have already expired, and the ’336 Patent is due to expire in less than a year – all factors weighing against a finding of prejudice if a stay is granted. *See, e.g., VirtualAgility*, 759 F.3d at 1319.

Plaintiffs additionally are unlikely to suffer prejudice as a result of the requested stay because they are not competitors of LG. Plaintiffs are non-practicing entities that do not develop or sell any products of their own, and the Complaint does not allege any competitive relationship between the parties. That Plaintiffs do not compete with LG is of “particular importance” in determining what harm, if any, Plaintiffs are likely to suffer, and weighs in favor of granting a stay. *Vehicle IP, LLC v. Wal-Mart Stores, Inc.*, 2010 WL 4823393 (D. Del. Nov. 22, 2010); *see also, e.g., Bascom Research*, No. 3:12-cv-06294, Dkt. 133 at 3 (N.D. Cal. Jan. 13, 2014) (Illston, J.).

2. **LG Will Suffer Substantial Hardship If This Case Continues to Proceed Before HTC's Appeal Concludes**

The second factor that the Court should consider in deciding whether to grant a discretionary stay is the hardship and prejudice that LG will endure if a stay of proceedings is denied. *See, e.g., Negotiated Data*, 2008 WL 4279556, at \*2. In this case, the prejudice and hardship LG would face if forced to proceed before the conclusion of the HTC appeal strongly favors the imposition of a discretionary stay. Without such a stay of proceedings, LG faces substantial costs associated with discovery, motion practice, and other litigation activities that all may be rendered unnecessary or moot by the Federal Circuit's impending decision in the HTC Appeal.

The Federal Circuit's ultimate construction of disputed terms in the '336 and '890 Patents, as well as its determination of intervening rights pertaining to the '890 Patent, will be binding on Plaintiffs TPL and Patriot in this action, and is likely to alter the content and scope of infringement and invalidity contentions, discovery proceedings, and claim construction in this case. "It would be burdensome for both parties to spend much time, energy, and resources on pre-trial and discovery issues, only to find those issues moot within less than a year," or to expend additional resources duplicating discovery already taken in light of the Federal Circuit's ruling. *Lopez*, 2010 WL 3637755, at \*4; *see also, e.g., FormFactor, Inc. v. Micronics Japan Co., Ltd.*, 2008 WL 361128, at \*2-3 (N.D. Cal., Feb. 11, 2008) (noting substantial hardship to defendant caused by overlapping discovery and double depositions of key witnesses). Where, as here, denial of a stay would result in unnecessary litigation and discovery expenses, in addition to duplicative discovery and litigation efforts, this Court and others have not hesitated to grant a discretionary stay of proceedings. *See, e.g., Minor*, 2009 WL 1955816, at \*1 (finding it a "hardship to conduct pointless discovery that may well be moot" if a stay is not granted); *Alvarez*, 2010 WL 5092971, at \*2; *Lopez*, 2010 WL 3637755, at \*4; *Negotiated Data*, 2008 WL 4279556, at \*2 (finding that "duplicative litigation costs and the pursuit of broad discovery when a far narrower scope of discovery would be required, are sufficient to make a showing of hardship justifying a stay"); *Munoz v. PHH Corp.*, 2011 WL 4048708, at \*4 (E.D. Cal. Sept. 9, 2011) ("As is clear, the parties

1 may suffer damage by conducting what could be pointless discovery and motion practice.”). The  
 2 substantial hardship LG would face from duplicative and unnecessary litigation and discovery  
 3 efforts and expenses if a stay is not granted strongly favors the imposition of a brief stay pending  
 4 the conclusion of the HTC Appeal.

5 **3. Staying this Case Until the Conclusion of HTC’s Appeal Will Benefit**  
 6 **the Orderly Course of Justice**

7 The third and final factor this Court should weigh in considering whether to grant a  
 8 discretionary stay is whether the orderly course of justice will be advanced through the simplifying  
 9 of issues, proof, and questions of law in the event a stay is granted. *See, e.g., Negotiated Data*,  
 10 2008 WL 4279556, at \*2. Simplification of the issues may occur if the “claims, arguments and  
 11 defenses can be narrowed or entirely disposed of, preserving the resources of the parties and the  
 12 court.” *Ricoh Co., Ltd. v. Aeroflex Inc.*, 2006 WL 3708069, at \*5 (N.D. Cal. Dec. 14, 2006).

13 In this case, there can be no doubt that imposition of a stay pending the conclusion of the  
 14 HTC Appeal would serve judicial efficiency, best conserve the parties’ resources, and simplify and  
 15 provide guidance with respect to issues of claim construction and intervening rights in this action.  
 16 Because Plaintiffs TPL and Patriot are parties to the HTC Appeal, the Federal Circuit’s ruling in  
 17 that case will be binding on Plaintiffs, and may have a dispositive effect on issues of claim  
 18 construction and intervening rights in this action. The Federal Circuit’s ruling construing certain  
 19 disputed terms in the ’336 and ’890 Patents at issue in this case, as well as its decision on  
 20 intervening rights with respect to the ’890 Patent, are likely to substantially influence the scope of  
 21 issues for this Court’s decision and the scope of the parties’ discovery efforts. All of these facts  
 22 thus weigh heavily in favor of a discretionary stay pending the conclusion of the HTC Appeal.  
 23 *See, e.g., Bascom Research*, No. 3:12-cv-06294, Dkt. 133 at 2-3 (N.D. Cal. Jan. 13, 2014) (Illston,  
 24 J.); *Gabriella*, 2009 WL 188856, at \*1 (Illston, J.) (granting stay of proceedings where impending  
 25 Supreme Court decision would “significantly determine the course of this litigation”); *Minor*, 2009  
 26 WL 1955816, at \*1 (granting discretionary stay where impending higher court decision “will  
 27 enable the parties to conduct efficient discovery, which will simplify the issues and proof presented  
 28



1 in this matter”); *Advanced Analogic*, 2009 WL 4981164, at \*1 (granting discretionary stay where it  
2 would “likely narrow and clarify the issues for claim construction and for trial”).

3 Although only the ’336 and ’890 Patents are at issue in the HTC Appeal, and not the ’749  
4 Patent, the significant commonalities amongst all three patents-in-suit will result in related and, in  
5 some cases, substantially similar discovery efforts and infringement and invalidity contentions for  
6 all three patents. Not only do these three patents all belong to the same patent family, but they also  
7 name identical co-inventors, share nearly identical specifications and figures, cite the same prior  
8 art references, and contain common claim terms. The three patents-in-suit are so closely related  
9 that claim construction rulings pertaining to one patent are likely to simplify and resolve claim  
10 construction issues relating to all three, thus warranting a stay of these proceedings in their entirety  
11 for the sake of judicial efficiency and coordination. *See, e.g., Sonics*, 2013 WL 503091, at \*3.  
12 “[M]oving forward with this litigation in a piecemeal fashion” would result in duplicative  
13 discovery, and require unnecessary resources and effort on the part of the Court. *Id.* In light of the  
14 “overlapping issues” between the ’336 and ’890 Patents involved in the HTC Appeal and the ’749  
15 Patent asserted only in this action, “staying the entire case is warranted.” *Id.* (citing *KLA–Tencor*  
16 *Corp. v. Nanometrics, Inc.*, 2006 WL 708661, at \*4 (N.D.Cal.2006); *Methode Elec., Inc. v.*  
17 *Infineon Techs. Corp.*, 2000 WL 35357130, at \*3 (N.D.Cal.2000)); *see also, e.g., FormFactor*,  
18 2008 WL 361128, at \*1 (staying action in its entirety pending resolution of ITC proceedings  
19 relating to three of the five patents-in-suit).

20 Because a stay will simplify and narrow the issues for discovery and resolution in this case,  
21 and will promote the orderly course of justice, this factor thus weighs heavily in favor of a stay of  
22 proceedings pending the conclusion of the HTC Appeal.

## 23 VI. CONCLUSION

24 Because a discretionary stay of this action in its entirety “will further the orderly course of  
25 justice, promote judicial economy and avoid the waste of judicial and party resources,” *Munoz*,  
26 2011 WL 4048708, at \*4), and because Plaintiffs will suffer no prejudice from such a stay, LG  
27  
28



1 respectfully requests that the Court grant this motion and stay this action in its entirety until the  
2 conclusion of HTC's Federal Circuit appeal.

3 Dated: September 29, 2014

FISH & RICHARDSON P.C.

4  
5 By: /s/ Shelley K. Mack

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on September 29, 2014 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Fed. R. Civ. P. 5(b)(3). Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

Dated: September 29, 2014

By: /s/ Shelley K. Mack  
Shelley K. Mack