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8 **United States District Court**
9 **Central District of California**

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11 MYMEDICALRECORDS, INC.,

12 Plaintiff,

13 v.

14 JARDOGS, LLC; ALLSCRIPTS

15 HEALTHCARE SOLUTIONS, INC.,

16 Defendants.

Case № 2:13-cv-03560-ODW(SHx)

**ORDER DENYING DEFENDANT'S
MOTION TO STAY [83]**

17 Defendant Allscripts Healthcare Solutions Inc. (“Allscripts”)¹ moves to stay
18 this case until the United States Patent and Trademark Office (“PTO”) and its Patent
19 Trial and Appeal Board (“PTAB”) has completed its review of Allscripts’ petition for
20 “Covered Business Method” (“CBM”) of U.S. Patent No. 8,301,466 (“the ’466
21 Patent). Defendants argue that all the factors under § 18 of the America Invents Act
22 (“AIA”) are met to justify staying the case. For the reasons discussed below, the
23 Court **DENIES** Defendant’s Motion to Stay.² (ECF No. 83.)

24 On September 23, 2013, Plaintiff MyMedicalRecords (“MMR”) filed suit in
25 this Court against Defendant Allscripts, accusing Allscripts of infringing the ’466

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27 ¹ Defendant Jardogs LLC filed a statement of non-opposition to Allscripts’ Motion to Stay. (ECF
No. 90.)

28 ² After carefully considering the papers filed in support of and in opposition to the Motion, the Court
deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 Patent and U.S. Patent No. 8,498,883 (“the ’883 Patent”). (Case No. 2:13-cv-07052,
2 ECF No. 1.) MMR filed an Amended Complaint against Defendants Jardogs and
3 Allscripts on November 5, 2014. (ECF No. 30.) The Court coordinated this case for
4 claim construction purposes with several other cases brought by MMR. (See ECF No.
5 43.) The parties engaged in claim construction and this Court issued a Claim
6 Construction Order on September 3, 2014. (Case No. 2:13-cv-00631, ECF No. 86.)
7 Defendants filed a Covered Business Method Petition (“CBM”) for the ’466 Patent to
8 United States Patent and Trademark Office’s Patent Trial and Appeal Board
9 (“PTAB”) on November 4, 2014. (Rizzolo Decl. Ex. E.) Defendants filed their
10 Motion to Stay pending the PTAB’s review of the CBM petition, which is currently
11 before this Court. (ECF No. 83.)

12 Section 18 of the AIA identifies four factors that a district court should consider
13 when deciding whether to grant a stay: (A) whether a stay, or the denial thereof, will
14 simplify the issues in question and streamline the trial; (B) whether discovery is
15 complete and a trial date has been set; (C) whether a stay, or the denial thereof, would
16 unduly prejudice the nonmoving party or present a clear tactical advantage for the
17 moving party; and (D) whether a stay, or the denial thereof, will reduce the burden of
18 litigation on the parties and on the court. AIA, Pub. L. 112-29, § 18(b)(1), 125 Stat.
19 284, 331 (2011).

20 The Court finds that a stay is not warranted under the totality of the
21 circumstances. Defendant has petitioned for CBM review, but at this point the Court
22 can only speculate as to whether the PTAB will grant review and, even if it does, to
23 what extent the review will encompass the claims at issue in this case. Based on the
24 speculative nature of Defendant’s petition, this Court is unable to ascertain whether
25 issues will be simplified. In addition, the speculative nature of the petition also limits
26 this Court’s consideration of whether the parties would be prejudiced. Likewise, this
27 Court is unable to determine whether the burden of litigation will be reduced. Further,
28 consideration of the case schedule seems to weigh in favor of denying this motion as

1 the trial date is five months (May 19, 2015) away and discovery cut-off is a mere two
2 months away (February 18, 2015). The earliest projected date by which the Patent
3 Office will decide whether to institute the CBM proceeding is sometime after May 3,
4 2015.

5 Therefore, the Court agrees with other courts that have held that the stay of a
6 patent infringement action is not warranted when based on nothing more than the fact
7 that a petition has been filed in the PTO. *See Automatic Mfg. Sys., Inc. v. Primera*
8 *Tech., Inc.*, No. 6:12-CV-1727-ORL-37, 2013 WL 1969247, at *3 (M.D. Fla. May 13,
9 2013) (stay “not warranted when based on nothing more than the fact that a petition
10 for inter partes review was filed in the USPTO”); *see also Ultratec, Inc. v. Sorenson*
11 *Commc’ns, Inc.*, No. 13-cv-346-BBC, 2013 WL 6044407, at *3 (W.D. Wis. Nov. 14,
12 2013) (“[T]he fact that the Patent Office has not yet granted the petitions to review the
13 nine patents adds an additional layer of doubt whether the inter partes review will
14 even occur, let alone whether it will simplify the issues or reduce the burden of
15 litigation for the parties or the court.”); *Comcast Cable Commc’ns Corp., LLC v.*
16 *Finisar Corp.*, No. C 06–04206 WHA, 2007 WL 1052883, at *1 (N.D. Cal. Apr. 5,
17 2007) (“If litigation were stayed every time a claim in suit undergoes reexamination,
18 federal infringement actions would be dogged by fits and starts. Federal court
19 calendars should not be hijacked in this manner.”).

20 Defendants are advised to re-file this motion, if and when, the CBM is
21 instituted.

22 **IT IS SO ORDERED.**

23
24 December 16, 2014

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27 **OTIS D. WRIGHT, II**
28 **UNITED STATES DISTRICT JUDGE**