

1 Karen Boyd (State Bar No. 189808)  
 2 Steven W. Flanders (State Bar No. 206563)  
 3 TURNER BOYD LLP  
 4 2570 W. El Camino Real  
 5 Suite 380  
 6 Mountain View, CA 94040  
 7 Tel: (650) 521-5930  
 8 Fax: (650) 521-5931  
 9 boyd@turnerboyd.com  
 10 flanders@turnerboyd.com

Craig R. Smith (*pro hac vice*)  
 William J. Seymour (*pro hac vice*)  
 Eric P. Carnevale (*pro hac vice*)  
 LANDO & ANASTASI, LLP  
 Riverfront Office Park  
 One Main Street – 11th Floor  
 Cambridge, MA 02142  
 Tel: (617) 395-7000  
 Fax: (617) 395-7070  
 csmith@lalaw.com  
 wseymour@lalaw.com  
 ecarnevale@lalaw.com

*Counsel for Foursquare Labs, Inc.*

9  
 10 **UNITED STATES DISTRICT COURT**  
 11 **NORTHERN DISTRICT OF CALIFORNIA**  
 12 **SAN FRANCISCO DIVISION**

13 EVOLUTIONARY INTELLIGENCE, LLC,

14 Plaintiff-Counterclaim  
 15 Defendant,

16 v.

17 FOURSQUARE LABS, INC.,

18 Defendant-Counterclaim  
 19 Plaintiff.

Case No. **3:13-cv-04203-MMC**

**~~PROPOSED~~ ORDER**  
**GRANTING DEFENDANT’S**  
**MOTION TO STAY PENDING**  
**INTER PARTES REVIEW**  
**AND VACATING HEARING;**  
**DIRECTIONS TO PARTIES**

Date: January 24, 2014  
 Time: 9:00 AM  
 Courtroom: No. 7, 19<sup>th</sup> Floor  
 Honorable Maxine M. Chesney

26 [Proposed] Order Granting Defendant’s Motion to Stay Pending Inter Partes Review

28 Case No. 3:13-cv-04203-MMC

1           ~~On January 24, 2014,~~ Defendant's *Motion to Stay Pending Inter Partes Review* came ~~on~~  
2 for hearing at 9:00 AM, before the Honorable Maxine M. Chesney. ~~Plaintiffs and Defendants~~  
3 ~~were both represented by counsel.~~ Having read and considered the papers submitted in support  
4 of and in opposition to the motion, the Court deems the matter appropriate for decision thereon  
5 and VACATES the hearing set for January 24, 2014.

6           For the reasons set forth in Defendant's Motion, the supporting documents filed with the  
7 and  
8 Motion, the record herein, ~~and the arguments of counsel,~~ the Court orders as follows:

9           Defendant's *Motion to Stay Pending Inter Partes Review* is GRANTED. The Court's  
10 decision is based upon a review of the relevant case law, and the analysis of three factors  
11 traditionally considered in determining whether to stay a case pending the U.S. Patent &  
12 Trademark Office's ("PTO") review of a patent-in-suit: 1) whether discovery is complete and  
13 whether a trial date has been set; 2) whether a stay will simplify the issues in question and trial of  
14 the case; and 3) whether a stay would unduly prejudice or present a clear tactical disadvantage to  
15 the non-moving party. *Software Rights Archive, LLC v. Facebook, Inc.*, Nos. 12-CV-3970-  
16 RMW, 12-CV-3971-RMW and 12-CV-3972-RMW, 2013 WL 5225522, at \*2 (N.D. Cal. Sept.  
17 17, 2013) (new *inter partes* review); *see also Pragmatus AV, LLC v. Facebook, Inc.*, No. 11-CV-  
18 00494-EJD, 2011 WL 4635512, at \*2 (N.D. Cal. Oct. 5, 2011) (old *inter partes* reexamination).  
19 Accordingly, the court finds:

20           a) A stay is favored where, as here, the case is in the initial stage of litigation and there  
21 has been little discovery. *Internet Patents Corp. v. eBags, Inc.*, No. 12-cv-03385  
22 SBA, 2013 WL 4609533, at \*2 (N.D. Cal. Aug. 28, 2013).

23           b) A stay is likely to streamline this litigation based on the ~~high~~ likelihood that the Patent  
24 Trial and Appeals Board ("PTAB") will institute *inter partes* review with respect to at  
25 

---

[Proposed] Order Granting Defendant's Motion to Stay Pending Inter Partes Review  
26

1 least one claim. *Software Rights*, 2013 WL 5225522, at \*5. Additionally, because  
2 relatively expeditiously, see 35 U.S.C. §§ 314, 316(a)(11)  
3 any *inter partes* review will likely be completed ~~before this case reaches trial~~, a stay  
4 will promote judicial economy and the efficient use of judicial resources. *See, e.g.,*  
5 *Fresenius USA, Inc. v. Baxter International Inc.*, 721 F.3d 1330 (Fed. Cir. 2013)  
6 (remanding case with instructions to dismiss following ten years of litigation, after all  
7 asserted claims were canceled by the PTO during reexamination).  
8 Plaintiff has not shown it will be unduly prejudiced by a stay. It  
9 c) ~~A stay will not unduly prejudice Plaintiff, because it~~ has not sought a preliminary  
10 injunction and the parties are not direct competitors. *Semiconductor Energy Lab. Co.*  
11 *v. Chimei Innolux Corp.*, No. 12-cv-21-JST, 2012 WL 7170593, at \*4 (C.D. Cal. Dec.  
12 19, 2012). The potential for delayed resolution of this case, by itself, ~~cannot~~ <sup>does not</sup>  
13 constitute undue prejudice where any alleged infringement may eventually be  
14 redressed by monetary damages alone. *See, e.g. Implicit Networks, Inc. v. Advanced*  
15 *Micro Devices*, No. 08-cv-184-JLR, 2009 WL 357902, at \*3 (W.D. Wash. Feb. 9,  
16 2009).

17 For the foregoing reasons, and in light of the "liberal policy" in favor of granting motions to  
18 see ASCII Corp. v. STD Entertainment USA, Inc., 844 F. Supp. 1378, 1381 (N.D. Cal. 1994),  
19 stay proceedings pending the outcome of PTO proceedings, <sup>^</sup> the Court GRANTS Defendant's  
20 Motion to Stay, and this case is hereby STAYED pending the conclusion of all *inter partes*  
21 review proceedings of U.S. Patent Nos. 7,010,536 and 7,702,682, asserted by Evolutionary  
22 Intelligence, LLC in this action.

23 No later than six months from the date of this order, and every six months thereafter, the  
24 parties shall file a joint status report to apprise the Court of the status of the *inter partes* review

---

26 [Proposed] Order Granting Defendant's Motion to Stay Pending Inter Partes Review

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

proceedings.

**IT IS SO ORDERED.**

Dated: January 10, 2014

  
\_\_\_\_\_  
THE HONORABLE MAXINE M. CHESNEY

---

[Proposed] Order Granting Defendant's Motion to Stay Pending Inter Partes Review