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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 INTERVAL LICENSING LLC,

11 Plaintiff,

12 v.

13 AOL, INC.,

14 Defendant.

CASE NO. C10-1385 MJP

ORDER GRANTING JOINT
REQUEST TO STAY

15 This Order Relates to:
16 C10-1385 MJP, C11-708 MJP,
C11-709 MJP, C11-710 MJP,
17 C11-711 MJP, C11-712 MJP,
C11-713 MJP, C11-714 MJP,
18 C11-715 MJP, C11-716 MJP,
C11-717 MJP.

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20 This matter comes before the Court on Defendants' joint motion to stay the case pending
21 reexamination of the four patents by the U.S. Patent and Trademark Office. (Dkt. No. 245 (all
22 references to the docket are to C10-1385 MJP).) Having reviewed the motion and briefing (Dkt.
23 No. 198), the opposition (Dkt. Nos. 206, 246), the reply (Dkt. No. 211), and all related papers,
24 the Court GRANTS the request.

1 **Background**

2 Interval Licensing LLC has filed suit against 11 companies for allegedly and variously
3 infringing on four patents. A Markman hearing is set for July 22, 2011. The first trial in these
4 consolidated cases is not set to commence until June 8, 2012. (Dkt. No. 178.) Defendants
5 requested and have been granted reexamination of the four patents at issue by the U.S. Patent and
6 Trademark Office. (Dkt. No. 243.)

7 **Analysis**

8 The court has the authority to decide whether to order a stay pending the outcome of a
9 reexamination proceeding. Ethicon, Inc. v. Quigg, 849 F.2d 1422, 1426-27 (Fed. Cir. 1988). To
10 determine whether to grant a stay pending reexamination by the U.S. Patent and Trademark
11 Office, courts generally consider three factors: “(1) whether a stay will simplify the issues in
12 question and the trial of the case; (2) whether discovery is complete and whether a trial date has
13 been set; and (3) whether a stay will unduly prejudice or present a clear tactical disadvantage to
14 the non-moving party.” Implicit Networks, Inc. v. Advanced Micro Devices, Inc., No. 08-
15 184JLR, 2009 WL 357902, at *2 (W.D. Wash. Feb. 9, 2009.)

16 The Court finds the three factors weigh in favor of a stay in these cases. First, the
17 reexamination of the four patents is likely to simplify some issues and claims for both trial and
18 the Markman hearing. Defendants have presented a substantial body of prior art that they
19 believe will reshape the four patents at issue in this litigation. The Court believes that there is a
20 reasonable probability the PTO will simplify the issues for the Court and jury. Second, although
21 the Markman hearing is fast approaching, discovery in this case is not particularly far along and
22 the trial is roughly a year away. Though the Court recognizes the parties have expended
23 substantial resources, the Court does not find the case to be so advanced as to cut against
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1 issuance of a stay. Moreover, the discovery work to date will not be wasted. Third, the Court is
2 not able to find undue prejudice to Interval Licensing by granting the stay. Interval Licensing, a
3 holding company, does not compete with Defendants and there is no danger it will lose
4 customers, market share, or other intangible benefits. Rather, it can likely be compensated for
5 damages suffered even if a stay is issued. The Court also does not believe that the stay will
6 produce a clear tactical disadvantage to Interval Licensing.

7 **Conclusion**

8 Having balanced the relevant factors, the Court finds the issuance of a stay to be proper.
9 The Court GRANTS the motion and STAYS all of these cases pending reexamination by the
10 PTO of the four patents at issue. The Court requires the parties to file a status update regarding
11 the PTO proceedings every 6 months from entry of this order. The Court expects to be notified
12 immediately upon resolution of the reexamination process of each individual patent, not just at
13 the conclusion of all four reexaminations.

14 The clerk is ordered to provide copies of this order to all counsel.

15 Dated this 16th day of June, 2011.

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18 Marsha J. Pechman
19 United States District Judge
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