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16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**  
18 **SOUTHERN DIVISION**

19 GAME AND TECHNOLOGY CO.  
20 LTD,  
21 Plaintiff,  
22 vs.  
23 BLIZZARD ENTERTAINMENT INC.,  
24 et al.,  
25 Defendants.

Case No. 2:16-cv-06499 BRO (SKx)  
**BLIZZARD'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF ITS MOTION TO  
STAY LITIGATION PENDING IPR**  
Date: November 7, 2016  
Time: 1:30 pm  
Judge: Hon. Beverly Reid O'Connell  
Dept: 14

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1 Defendant Blizzard Entertainment, Inc. (“Blizzard”) respectfully submits this  
2 Memorandum of Points and Authorities in Support of Its Motion to Stay Litigation  
3 Pending *Inter Partes* Review.  
4

5 **I. INTRODUCTION**

6 This is a patent infringement case. All three asserted patents are currently the  
7 subject of petitions for *inter partes* review (“IPR”) filed by Blizzard in the United  
8 States Patent and Trademark Office (USPTO). Accordingly, Blizzard respectfully  
9 moves to stay this case pending final resolution of the IPR petitions. These petitions  
10 involve all claims of United States Patent Nos. 7,682,243 (“the ‘243 patent”);  
11 8,035,649 (“the ‘649 patent”); and 8,253,743 (“the ‘743 patent”) (collectively, “the  
12 patents-in-suit”).  
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16 The relevant factors and totality of the circumstances all weigh in favor of  
17 granting Blizzard’s motion.  
18

19 This litigation is still in its early stages. This case was recently transferred from  
20 the Eastern District of Texas. Prior to transfer, virtually no discovery had been  
21 conducted – no witnesses were deposed, no expert discovery occurred, and no claim  
22 construction briefing or argument had occurred. Since the transfer, a case  
23 management conference has not yet been scheduled and no discovery or other  
24 litigation activity has occurred. Thus, this case has effectively only just commenced.  
25

26 In addition, the IPR proceedings are likely to simplify the issues in this case.  
27 First, any final written decision by the PTAB in the IPR proceedings will likely  
28

1 change and/or narrow the issues to be decided here. If the PTAB invalidates (and thus  
2 cancels) any of the claims, the canceled claims may no longer be asserted against  
3 Blizzard in this case. [Fresenius USA, Inc. v. Baxter Int'l, Inc., 721 F.3d 1330, 1340](#)  
4 [\(Fed. Cir. 2013\)](#). Conversely, if the PTAB upholds the validity of any claim, Blizzard  
5 will be estopped from asserting, in this litigation, any invalidity ground which was  
6 raised, or reasonably could have been raised, in the IPR proceedings. Second, if  
7 claims are amended during the IPR proceedings, the amendments will eliminate past  
8 damages, and the focus of this litigation should shift from the currently asserted  
9 claims to the amended claims. Third, the IPR proceedings will develop the intrinsic  
10 record of the patent, which may impact and simplify claim construction issues in the  
11 litigation.  
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15 Finally, granting a stay will not unduly prejudice plaintiff Game and  
16 Technology Co., Ltd. (“GAT”) or give Blizzard a clear tactical advantage. Because  
17 GAT is a non-practicing entity and is not a competitor to Blizzard, GAT can be  
18 adequately compensated through monetary damages and is not at risk of “irreparable  
19 harm,” such as lost sales or a loss of market share, if a stay is granted.  
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22 For these reasons, and consistent with the objectives of Congress in providing  
23 these mechanisms for challenging patent validity, Blizzard respectfully requests that  
24 the Court stay this litigation pending completion of the IPR proceedings.  
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1 **II. BACKGROUND**

2 **A. Procedural history and case status.**

3 GAT filed its complaint against Blizzard in the Eastern District of Texas on  
4 July 9, 2015, alleging infringement of the patents-in-suit. *See Game and Technology*  
5 *Co., Ltd. v. Blizzard Entertainment, Inc.*, No. 2:15-cv-01257-RWS-RSP, [Dkt. No. 1](#)  
6 (E.D. Tex. July 9, 2015). Blizzard was served with the complaint on October 13,  
7 2015.  
8

9  
10 On July 9, 2015, GAT also filed complaints against Riot Games, Inc. (“Riot”),  
11 Wargaming Group Ltd. (“Wargaming”), and Valve Corporation (“Valve”), in the  
12 United States District Court for the Eastern District of Texas, alleging infringement of  
13 one or more of the patents-in-suit. Against Riot, GAT filed a complaint alleging  
14 infringement of the ‘649 and ‘743 patents. Against Wargaming, GAT filed a  
15 complaint alleging infringement of the ‘243 patent. And against Valve, GAT filed a  
16 complaint alleging infringement of the ‘743 patent. *See Game and Technology Co.,*  
17 *Ltd. v. Riot Games, Inc.*, No. 2:15-cv-1258-RWS-RSP; *Game and Technology Co.,*  
18 *Ltd. v. Wargaming Group Ltd.*, No. 2:15-cv-1260-RWS-RSP; *Game and Technology*  
19 *Co., Ltd. v. Valve Corp.*, No. 2:15-cv-1259-RWS-RSP.  
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21

22 Each defendant filed a motion to transfer venue. Prior to the Court’s decisions  
23 on these motions, the cases were consolidated for pretrial purposes. *See, e.g., Game*  
24 *and Technology Co., Ltd. v. Blizzard Entertainment, Inc.*, No. 2:15-cv-1257-RWS-  
25 RSP, [Dkt. No. 17](#) (E.D. Tex. Jan. 29, 2016).  
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1 GAT served infringement contentions on Blizzard, Riot, Valve, and Wargaming  
2 on March 9-10, 2016, and invalidity contentions were served on June 10, 2016. *See*  
3 *id.* at [Dkt. No. 52](#). The parties exchanged proposed terms for construction on June 29,  
4 2016, and preliminary claim constructions on July 22, 2016. *Id.* at Dkt. Nos. [54](#) & [63](#).

5  
6 The Blizzard, Riot, Valve, and Wargaming cases were transferred out of the  
7 Eastern District of Texas on August 5, 2016. *Id.* at [Dkt. No. 70](#); *Game and*  
8 *Technology Co., Ltd. v. Riot Games, Inc.*, No. 2:15-cv-1258-RWS-RSP, [Dkt. No. 21](#)  
9 (E.D. Tex. Aug. 5, 2016); *Game and Technology Co., Ltd. v. Wargaming Group Ltd.*,  
10 No. 2:15-cv-1260-RWS-RSP, [Dkt. No. 9](#) (E.D. Tex. Aug. 5, 2016); *Game and*  
11 *Technology Co., Ltd. v. Valve Corp.*, No. 2:15-cv-1259-RWS-RSP, [Dkt. No. 13](#) (E.D.  
12 Tex. Aug. 5, 2016). The Blizzard, Riot, and Wargaming cases were transferred to this  
13 Court, and the Valve case was transferred to the Western District of Washington. *See*  
14 *Game and Technology Co., Ltd. v. Riot Games, Inc.*, No. 2:16-cv-06486 BRO (SKx);  
15 *Game and Technology Co., Ltd. v. Wargaming Group Ltd.*, No. 2:16-cv-06554 BRO  
16 (SKx); *Game and Technology Co., Ltd. v. Valve Corp.*, No. 2:16-cv-01382.

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Blizzard and Riot filed a petition for IPR on all claims of the ‘743 patent on  
September 23, 2016. *See Activision Blizzard, Inc. v. Game and Technology Co., Ltd.*,  
IPR2016-01885 (PTAB Sept. 23, 2016). The same day, Blizzard and Riot also filed a  
petition for IPR on all claims of the ‘649 patent. *See Activision Blizzard, Inc. v. Game*  
*and Technology Co., Ltd.*, IPR2016-01880 (PTAB Sept. 23, 2016). Finally, Blizzard  
filed a petition for IPR on all claims of the ‘243 patent on September 30, 2016. *See*

1 *Activision Blizzard, Inc. v. Game and Technology Co., Ltd.*, IPR2016-01918 (PTAB  
2 Sept. 30, 2016).

3 Fact discovery has commenced in this litigation but is still in its very early  
4 stages. The parties have engaged in some written discovery. However, no depositions  
5 have been taken, and the parties have not yet engaged in any expert discovery. No  
6 *Markman* briefs have been filed, and no *Markman* hearing in this case has yet been  
7 held. Finally, the Court has not set a trial date. This case is still at a very early stage,  
8 and there has been no initial scheduling conference in this jurisdiction.  
9

10  
11 **B. GAT has shown no urgency in prosecuting its case.**

12 In response to GAT's infringement contentions, Blizzard notified GAT, by  
13 letter, of the numerous deficiencies in its infringement contentions. *See* Ex. 1, April 8,  
14 2016 Ltr. from Blizzard. GAT responded by expressing a need to inspect source code  
15 in order to supplement the infringement contentions. *See* Ex. 2, May 2, 2016 Email  
16 ("If Blizzard agrees to make the programming details available to GAT, GAT will  
17 then provide details."). Pursuant to Patent L.R. 3-4(a) in the Eastern District of Texas,  
18 Blizzard made source code and technical documents available for inspection on June  
19 10, 2016. *See* Ex. 3, June 10, 2016 Ltr. from Blizzard. Per the Discovery Order in  
20 E.D. Texas, GAT had until July 25 to supplement its infringement contentions with  
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1 source code citations.<sup>1</sup> *See Game and Technology Co., Ltd. v. Blizzard Entertainment,*  
2 *Inc.*, No. 2:15-cv-1257-RWS-RSP, [Dkt. No. 37](#) at ¶ 3(a) (E.D. Tex. April 19, 2016);  
3 *see also* Ex. 5, July 14, 2016 Ltr. from Blizzard (informing GAT of the pending  
4 deadline). GAT did not do so. To-date, GAT still has made no effort to review the  
5 source code or technical documents. Nor has it otherwise sought to supplement its  
6 infringement contentions. GAT also has not followed up on its initial set of written  
7 discovery, whether by seeking depositions or otherwise.  
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10 **C. All three patents are subject to IPR.**

11 Blizzard filed an IPR petition for each asserted patent at the end of September  
12 2016. Each petition requests that all claims be canceled as invalid: claims 1-11 of the  
13 ‘743 patent, claims 1-16 of the ‘649 patent, and claims 1-8 of the ‘243 patent.  
14

15 These patents describe and claim technology that actually originated in the late  
16 1990s to early 2000s. This is long before the patents were filed, rendering them  
17 invalid.  
18

19 As set forth in Blizzard’s IPR petitions, the claims of the ‘649 patent purport to  
20 cover nothing beyond the merging of multiple images, generated using different  
21 techniques, to create a game screen. *See* Ex. 6, ‘649 Petition at 5-9. The claims of the  
22 ‘243 patent purport to cover little more than a player-controlled character associated  
23 with a non-player-controlled character, where characters may obtain special abilities  
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26 <sup>1</sup> To accommodate scheduling conflicts Blizzard extended the original July 11,  
27 2016 deadline by two weeks. *See* Ex. 4.  
28

1 in the game. *See* Ex. 7, ‘243 Petition at 7-11. Finally, the claims of the ‘743 patent  
2 purport to cover simply generating a game character. *See* Ex. 8, ‘743 Petition at 6-9.  
3 Each petition explains why specific prior art combinations disclose every claim  
4 limitation, and why the claims should thus be canceled. The Patent Office did not  
5 have these prior art combinations during its original examination of these patent  
6 applications.  
7

8  
9 **D. IPR proceedings helps alleviate the burdens of litigating invalid  
10 claims.**

11 By enacting the Leahy-Smith America Invents Act, Congress sought to  
12 “establish a more efficient and streamlined patent system that will improve patent  
13 quality and limit unnecessary and counterproductive litigation costs” and to provide a  
14 “timely, cost-effective alternative to litigation.” [Changes to Implement \*Inter Partes\*](#)  
15 [Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for](#)  
16 [Covered Business Method Patents, 77 Fed. Reg. 48,680 \(Aug. 14, 2012\)](#) (codified at  
17 [37 C.F.R. § 42.100, et seq.](#)). To that end, Congress created the IPR, which allows for  
18 expeditious review by the USPTO of patents of questionable validity. IPR allows a  
19 full adversarial challenge—including an oral hearing and discovery—to the validity of  
20 patents under 35 U.S.C. §§ [102](#) and/or [103](#) based on prior art patents and printed  
21 publications. *See* 35 U.S.C. §§ [311\(b\)](#), [316\(a\)](#); 37 C.F.R. §§ [42.51](#), [42.53](#). A panel of  
22 three technically-trained patent judges on the PTAB conducts the review. 35 U.S.C.  
23 §§ [6](#) & [311](#). The review affords several “advantages to the parties and the district  
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1 court in any corollary civil action,” including a “path to receive expert guidance from  
2 the PTO under a more accelerated timeline.” [PersonalWeb Techs., LLC v. Facebook,  
3 Inc., No. 5:13-CV-01356-EJD, 2014 U.S. Dist. LEXIS 4095, at \\*10 \(N.D. Cal. Jan.  
4 13, 2014\)](#) (granting stay pending IPR).  
5

6 The first step in an IPR proceeding is for the challenger to file a written petition  
7 seeking review. Blizzard and Riot completed this step on September 23, 2016, with  
8 respect to the ‘649 and ‘743 patents, and Blizzard completed this step on September  
9 30, 2016, with respect to the ‘243 patent. *See* Exs. 6-8. The PTAB issued a Notice of  
10 Filing Date for the ‘743 patent on September 29, 2016. *See* Ex. 9. The PTAB also  
11 issued a Notice of Filing Date for the ‘243 patent on October 7, 2016. *See* Ex. 10.  
12 The PTAB should issue a Notice of Filing Date for the ‘649 petition within the next  
13 few weeks. Within three months of the Notice of Filing Date, the patent owner may  
14 file a preliminary response. [35 U.S.C. § 313](#); [37 C.F.R. § 42.107\(b\)](#). The PTAB then  
15 determines whether to institute an IPR based on whether the petitioner has shown “a  
16 reasonable likelihood that the petitioner would prevail with respect to at least 1 of the  
17 claims challenged in the petition.” [35 U.S.C. § 314\(a\)](#). The PTAB must make this  
18 decision within six months of the PTAB’s Notice of Filing Dates of the IPRs. [35](#)  
19 [U.S.C. §§ 313 & 314](#); [37 C.F.R. § 42.107\(b\)](#); [Office Patent Trial Practice Guide, 77](#)  
20 [Fed. Reg. 48756 \(Aug. 14, 2012\)](#). In other words, the PTAB must decide whether to  
21 institute an IPR on the ‘743 petition by March 29, 2017, and on the ‘243 petition by  
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1 April 10, 2017. Moreover, the PTAB must decide to institute an IPR on the ‘649  
2 petition a few weeks thereafter.

3 If an IPR is instituted, the PTAB must, under most circumstances, issue a final  
4 determination within one year. See [35 U.S.C. § 316\(a\)\(11\)](#). This ensures that IPR  
5 provides “an effective and efficient alternative to often costly and protracted district  
6 court litigation.” [MCM Portfolio v. Hewlett-Packard Co., 812 F.3d 1284, 1291-92](#)  
7 [\(Fed. Cir. 2015\)](#) (quoting H.R. Rep. No. 112–98, at 45).  
8  
9

### 10 **III. LEGAL STANDARD**

11 “Courts have inherent power to manage their dockets and stay proceedings,  
12 including the authority to order a stay pending conclusion of a PTO reexamination.”  
13 [Ethicon, Inc. v. Quigg, 849 F.2d 1422, 1426–27 \(Fed. Cir. 1988\)](#) (internal citations  
14 omitted). A stay may be “particularly justified where the outcome of the  
15 reexamination would be likely to assist the court in determining patent validity and, if  
16 the claims were cancelled in the reexamination, would eliminate the need to try the  
17 infringement issue.” [In re Cygnus Telecomms. Tech., LLC Patent Litig., 385 F. Supp.](#)  
18 [2d 1022, 1023 \(N.D. Cal. 2005\)](#). “There is a liberal policy in favor of granting  
19 motions to stay proceedings pending the outcome’ of re-examination, especially in  
20 cases that are still in the initial stages of litigation and where there has been little or no  
21 discovery.” [Skip Hop, Inc. v. Munchkin, Inc., No. 2:15-cv-06339 SJO \(AGRx\), slip](#)  
22 [op. \(Dkt. No. 53\) at \\*3 \(C.D. Cal. Mar. 15, 2016\)](#) (attached as Ex. 11).  
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1 When evaluating a request to stay litigation pending a reexamination or IPR,  
2 district courts consider three factors—(1) whether discovery is complete and whether  
3 a trial date is set; (2) whether a stay will simplify the issues in question and trial of the  
4 case; and (3) whether a stay would unduly prejudice or present a clear tactical  
5 disadvantage to the non-moving party. *See id.*; [ResMed Inc. v. Apex Medical Corp.](#),  
6 [No. 8:13-cv-00498 BRO \(RNBx\), slip op. \(Dkt. No. 50\) at 1 \(C.D. Cal. Oct. 4, 2013\)](#)  
7  
8 (attached as Ex. 12). In addition to these three factors, “the totality of the  
9 circumstances governs.” [Mophie, Inc., v. uNu Elecs. Inc., No. 8:13-cv-01705 CAS](#)  
10 [\(JCGx\), 2014 U.S. Dist. LEXIS 166930, at \\*5 \(C.D. Cal. Dec. 1, 2014\)](#) (citation and  
11  
12 internal quotation marks omitted).  
13

#### 14 **IV. ARGUMENT**

15 All three factors favor a stay in this case. Discovery is in the early stages, and a  
16 trial dates has not yet been set. The determinations by the PTAB during IPR of the  
17 patents-in-suit will also simplify the issues in litigation. Finally, a stay would not  
18 unduly prejudice GAT—a non-practicing entity who is not a competitor of Blizzard—  
19 and would not present a clear tactical advantage to Blizzard, because Blizzard has not  
20 delayed in filing this motion to stay.  
21  
22

##### 23 **A. This case is in its early stages.**

24 The stage of the litigation is measured as of the date of the filing of the motion  
25 to stay. [VirtualAgility v. Salesforce.com, 759 F.3d 1307, 1316 \(Fed. Cir. 2014\)](#).  
26 Under this factor, courts consider whether discovery is complete and whether a trial  
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1 date has been set. [\*Pi-Net Int'l, Inc. v. Hertz Corp.\*, No. 2:12-cv10012 PSG \(JEMx\),](#)  
2 [2013 U.S. Dist. LEXIS 81570, at \\*4 \(C.D. Cal. June 5, 2013\)](#) (granting stay pending  
3 IPR). When discovery is not complete, no claim construction order has issued, no  
4 depositions have taken place, and trial is “more than one year away,” the stage of the  
5 case weighs in favor of granting a stay. *Id.* at \*6-7.

7 Moreover, when the scheduling conference has not occurred, the case is at an  
8 early stage. Dates for a scheduling conference and a trial date have not yet been set in  
9 this case, illustrating the early state of litigation. [\*Brass Smith, LLC v. Advanced\*](#)  
10 [\*Design Mfg. LLC\*, No. 2:10-cv-04945 PSG \(FFMx\), 2010 U.S. Dist. LEXIS 141422,](#)  
11 [at \\*3 \(C.D. Cal. Dec. 20, 2010\)](#) (granting stay pending re-examination).

14 Further, although the parties exchanged some written interrogatories and  
15 requests for production prior to the case transfer, no depositions have been taken and  
16 no expert discovery has been propounded. [\*Aten Int'l Co. v. Emine Tech. Co.\*, No.](#)  
17 [8:09-cv-00843 AG \(MLGx\), 2010 U.S. Dist. LEXIS 46226, at \\*22 \(C.D. Cal. Apr. 12,](#)  
18 [2010\)](#) (finding the case to be “in its early stages;” circumstances weighed in favor of a  
19 stay where some written discovery had been conducted, but no depositions had been  
20 taken and no expert discovery had been propounded).

23 While the parties have exchanged proposed terms for construction, the parties  
24 have not yet submitted Markman briefs, and the Court has not yet held a Markman  
25 hearing or issued a claim construction order in this case. This Court has commonly  
26 found that where the parties had not yet filed Markman briefs and the Court had not  
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1 yet held a Markman hearing or issued a claim construction ruling, the “stage of  
2 litigation” factor weighed in favor of a stay. [See Skip Hop, No. 2:15-cv-06339 SJO](#)  
3 [\(AGRx\), slip. op. \(Dkt. No. 53\) at \\*3](#) (finding that the early stage of litigation weighed  
4 against a stay where no Markman briefs had been filed) (Ex. 11); [Semiconductor](#)  
5 [Energy Lab. Co. v. Chimei Innolux Corp., No. 8:12-cv-00021 JST \(JPRx\), 2012 U.S.](#)  
6 [Dist. LEXIS 186322, at \\*5 \(C.D. Cal. Dec. 19, 2012\)](#) (finding the stage of litigation  
7 weighed in favor of a stay where the parties had not yet submitted Markman briefs  
8 and the Court had not issued a claim construction order); [Tierravision, Inc. v. Google,](#)  
9 [Inc., No. 3:11-cv-02170-DMS-BGS, 2012 U.S. Dist. LEXIS 21463, at \\*6 \(S.D. Cal.](#)  
10 [Feb. 21, 2012\)](#) (granting a stay when the parties had not submitted Markman briefs,  
11 stating that, “although the case has progressed past the initial stages, it is not so  
12 advanced that a stay is inappropriate.”); [Big Baboon, Inc. v. Dell, Inc., No. 2:09-cv-](#)  
13 [01198 SVW \(SSx\), 2011 U.S. Dist. LEXIS 155536, at \\*46 \(C.D. Cal. Feb. 8, 2011\)](#)  
14 (granting a stay where the Court had not yet construed the claims, even though  
15 discovery had continued for more than a year).

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18 In this case, a trial date has not been set and little discovery has taken place.  
19 Further, the parties have not yet submitted Markman briefs and the Court has not yet  
20 held a Markman hearing, nor issued a claim construction ruling. Like *Semiconductor*  
21 *Energy Lab.*, “considering the general time line of patent litigation, there is more work  
22 ahead of the parties and the Court than behind the parties and the Court” in this case.  
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28 [Semiconductor Energy Lab., No. 8:12-cv-21 JST \(JPRx\), 2012 U.S. Dist. LEXIS](#)

1 [186322](#), at \*5 (quotations omitted); *see also Mophie, Inc.*, No. 8:13-cv-01705 CAS  
2 [\(JCGx\)](#), 2014 U.S. Dist. LEXIS 166930, at \*6 (granting a stay even when a trial date  
3 was set, parties had served discovery requests, and Markman briefs were filed).  
4 Accordingly, the first factor weighs in favor of granting a stay.  
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6 **B. A stay will simplify the issues in this case, because all claims of the**  
7 **patents-in-suit are before the PTAB in the petitions for IPR.**

8 The second factor heavily weighs in favor of staying this litigation. As  
9 discussed above, Blizzard has challenged all claims of all the patents-in-suit in its  
10 petitions for IPR. Once the PTAB issues a final written decision, the scope of this  
11 case and the associated issues to be decided will be substantially narrowed. Assuming  
12 the claims are upheld, Blizzard will be estopped under [35 U.S.C. § 315\(e\)\(2\)](#) from  
13 raising before this Court those arguments which were raised, or reasonably could have  
14 been raised, in the IPRs. Assuming the claims are canceled, all of GAT's  
15 infringement allegations will be mooted, as all claims of the patents-in-suit are  
16 currently before the PTAB in Blizzard's IPR petitions. *See Fresenius*, 721 F.3d at  
17 [1340](#) (“[W]hen a claim is cancelled, the patentee loses any cause of action based on  
18 that claim, and any pending litigation in which the claims are asserted becomes  
19 moot.”); *Evolutionary Intelligence LLC v. Yelp Inc.*, No. 5:13-cv-03587-RMW, 2013  
20 [U.S. Dist. LEXIS 178547](#), at \*16 (N.D. Cal. Dec. 18, 2013) (“Here, if the PTAB  
21 cancels all of the asserted claims of the Asserted Patents, this action will be rendered  
22 moot. Should the PTAB cancel or narrow any of the asserted claims of the Asserted  
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1 Patents, the scope of this litigation may be significantly simplified.”). Even if only  
2 some of the claims are eliminated, this still provides simplification of issues and  
3 warrants a stay. See [Limestone Memory Sys. LLC v. Micron Tech., Inc., 8:15-cv-00278](#)  
4 [DOC \(RNBx\), 2016 U.S. Dist. LEXIS 90742, at \\*12 \(C.D. Cal. Jan. 12, 2016\)](#)  
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6 (granting a stay and finding there was simplification of issues even where the  
7 defendant only requested review of twenty-three out of twenty-six asserted claims).  
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9 Thus, a stay has a significant and realistic chance of simplifying the issues in this case  
10 by potentially eliminating all or some the asserted claims and/or possible invalidity  
11 defenses in this case, thus conserving both the Court’s and the parties’ time and  
12  
13 resources.

14 In addition, if GAT amends its claims during the IPRs, those amendments will  
15 eliminate past damages. The focus of this litigation would then shift from the  
16 currently asserted claims to the amended claims. If the Court denies a stay, and the  
17 PTO cancels or modifies some or all of the claims of the patents-in-suit, “the Court  
18 will have wasted judicial resources and the parties will have unnecessarily expended  
19 funds addressing invalid claims . . . .” [Finjan, Inc. v. Fireeye, Inc., No. 4:13-cv-](#)  
20 [03133-SBA, 2014 U.S. Dist. LEXIS 75456, at \\*8 \(N.D. Cal. May 30, 2014\)](#). And  
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22 “even if the[] claims are not all cancelled, the IPR could encourage settlement or lead  
23 to amendments to the claims, which could create intervening rights and limit potential  
24 damages.” [Software Rights Archive, LLC v. Facebook, Inc., No. 5:12-cv-03970-](#)  
25 [RMW, 2013 U.S. Dist. LEXIS 133707, at \\*15 \(N.D. Cal. Sep. 17, 2013\)](#).  
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1 Finally, even if claims are not eliminated, granting a stay would still facilitate a  
2 trial of the issues in this case by developing the intrinsic record available to the Court  
3 for claim construction. “One purpose of the reexamination procedure is . . . to  
4 facilitate trial . . . by providing the district court with the expert view of the PTO  
5 (when a claim survives the reexamination proceeding).” Gould v. Control Laser  
6 Corp., 705 F.2d 1340, 1342 (Fed. Cir. 1983); see also Mophie, Inc., No. 8:13-cv-  
7 01705 CAS (JCGx), 2014 U.S. Dist. LEXIS 166930, at \*9-10 (citing *Gould*);  
8 Semiconductor Energy Lab., No. 8:12-cv-00021 JST (JPRx), 2012 U.S. Dist. LEXIS  
9 186322, at \*5-7; Black Hills Media, LLC v. Pioneer Elecs. (USA) Inc., No. 2:14-cv-  
10 00471 SJO (PJWx), 2014 U.S. Dist. LEXIS 133664, at \*17 (C.D. Cal. May 8, 2014)  
11 (“The Court may also derive benefit from the PTAB’s claim construction for the  
12 patents under review. While the PTAB interprets claim terms using the ‘broadest  
13 reasonable construction,’ . . . its analysis would likely prove helpful to this Court, no  
14 matter its final determination.”) (internal citation omitted); Convergence Techs.  
15 (USA), LLC v. Microloops Corp., No. 5:10-cv-02051-EJD, 2012 U.S. Dist. LEXIS  
16 51794, at \*10 (N.D. Cal. Apr. 12, 2012) (“Even a confirmation by the PTO of all  
17 claims is assistive here . . . since staying the case pending reexamination will allow the  
18 parties to complete the prosecution history, which will inform the parties’ and the  
19 Court’s constructions of the asserted claims.”) (citation and internal quotation marks  
20 omitted).

1 Courts in this district have commonly granted stays pending the PTAB's  
2 decision to institute IPR. See, e.g., [ResMed., No. 8:13-cv-00498 BRO \(RNBx\), slip](#)  
3 [op. \(Dkt. No. 50\) at 1](#) (Ex. 12); [Limestone, No. 8:15-cv-00278 DOC \(RNBx\), 2016](#)  
4 [U.S. Dist. LEXIS 90742, at \\*15](#) (granting a stay pending a decision to institute IPR  
5 and explaining that “[k]nowing whether the USPTO will commence [IPR]  
6 proceedings will require a relatively short pause in these proceedings, which could  
7 result in saving significant, and otherwise unnecessary expenditure of time and  
8 resources by the parties and the Court.”) (citation and internal quotation marks  
9 omitted); [Skip Hop, slip op. at \\*4-6](#) (granting a stay pending a decision to institute  
10 IPR, finding that “[e]ven if the PTO does not ultimately grant review ‘the stay will be  
11 relatively short’”) (Ex. 11); [Polymer Tech. Sys., Inc. v. Jant Pharmacal Corp., No.](#)  
12 [2:15-cv-02585-JAK-E, slip op. \(Dkt. No. 96\) at 6 \(C.D. Cal. Aug. 20, 2015\)](#)  
13 (explaining that granting a stay prior to an institution decision “will require a  
14 relatively short pause in these proceedings, which could result in saving significant,  
15 and otherwise unnecessary expenditure of time and resources by the parties and the  
16 Court.”) (attached as Ex. 13); [Wonderland Nurserygoods Co. v. Baby Trend, Inc., No.](#)  
17 [5:14-cv-01153 VAP \(SPx\), 2015 U.S. Dist. LEXIS 53053, at \\*8 \(C.D. Cal. Apr. 20,](#)  
18 [2015\)](#) (granting a stay pending a decision to institute IPR, explaining that “if an IPR is  
19 not instituted, the stay will be relatively short and the action can continue with  
20 minimal delay. . . [T]he risk of delay attending an unnecessary stay is minimal relative  
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1 to the risk of unnecessary expenditure of resources should the stay be denied and an  
2 IPR subsequently commence.”).

3           Importantly, the simplification effects of the IPR proceedings will not only  
4 impact the Blizzard case, but at least one other case currently before the Court,  
5 namely, the Riot case involving the ‘649 and ‘743 patents. Indeed, at least the  
6 Blizzard and Riot cases will be affected by the attendant consequences of a final  
7 written decision in the IPR proceedings. Thus, staying this litigation pending a final  
8 written decision by the PTAB will result in a reduction and simplification of the issues  
9 across multiple cases before the Court. *See [Star Envirotech v. Redline Detection, LLC](#), No. 8:12-cv-01861 JGB (MLGx), 2013 U.S. Dist. LEXIS 58866, at \*6 (C.D. Cal. Apr. 3, 2013)* (“As Defendants would be barred from seeking this Court’s review  
10 on any grounds [they] could have raised in the IPR, the Court finds that staying the  
11 case pending review would significantly simplify the issues.”); *see also*  
12 *Semiconductor Energy Lab.*, No. 8:12-cv-00021 JST (JPRx), 2012 U.S. Dist. LEXIS  
13 [186322](#), at \*6 (“the IPR ‘[is] guaranteed to finally resolve at least some issues of  
14 validity because the requesting party is barred from seeking district court review on  
15 any grounds it could have raised in the reexamination.’”) (citation omitted).

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23           Accordingly, the second factor strongly weighs in favor of a stay.  
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1           **C. A Stay would not unduly prejudice GAT, because GAT is a non-**  
2           **practicing entity and does not compete with Blizzard.**

3           GAT will not be subjected to undue prejudice or tactical disadvantage if the  
4 Court stays this litigation pending resolution of the IPR proceedings.

5           GAT is a non-practicing entity in the business of licensing its patents. GAT has  
6 never sold any product using the technology described in the patents-in-suit. GAT's  
7 status as a non-practicing entity weighs in favor of a stay, because GAT can  
8 adequately be compensated with monetary damages for any infringement and will not  
9 suffer "irreparable harm," such as lost sales or a loss of market share, due to a stay.

10           See [Black Hills Media, No. 2:14-cv-00471 SJO \(PJWx\), 2014 U.S. Dist. LEXIS](#)  
11 [133664, at \\*19](#) ("Plaintiff is a patent licensing company and does not compete directly  
12 with Defendants, so monetary damages will sufficiently compensate Plaintiff for any  
13 delay caused by a stay."); [Limestone, No. 8:15-cv-00278 DOC \(RNBx\), 2016 U.S.](#)  
14 [Dist. LEXIS 90742, at \\*17](#) (granting a stay and explaining that "the Court [was]  
15 unconvinced" that the non-moving party would suffer undue prejudice "because [the  
16 non-moving party] is a non-practicing entity," so any damages would likely be  
17 compensable); [Pragmatus AV, LLC v. Facebook, Inc., No. 5:11-cv-02168-EJD, 2011](#)  
18 [U.S. Dist. LEXIS 117147, at \\*11-12 \(N.D. Cal. Oct. 11, 2011\)](#) ("[C]ourts have  
19 consistently found that a patent licensor cannot be prejudiced by a stay because  
20 monetary damages provide adequate redress for infringement.") (citation and internal  
21 quotation marks omitted).  
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1 The fact that GAT and Blizzard are not direct competitors strongly favors a  
2 stay. Numerous courts have found that, for parties which are not direct competitors, a  
3 stay would not prejudice the non-moving party by causing “irreparable harm” such as  
4 a loss of market share. *See id.* at \*9 (finding there was “no potential for irreparable  
5 harm” because the parties were not competitors and any harm suffered could be  
6 compensated through monetary damages); *see also* [Tas Energy, Inc. v. San Diego Gas](#)  
7 [& Elec. Co., No. 3:12-cv-02777-GPC-BGS, 2014 U.S. Dist. LEXIS 26107, at \\*15-16](#)  
8 [\(S.D. Cal. Feb. 26, 2014\)](#) (“The fact that the parties are not competitors weigh[s] in  
9 favor of a stay as any harm from a stay can be addressed through damages.”).

10 At worst, GAT’s ability to collect monetary damages would merely be delayed  
11 by a stay. The Federal Circuit already held that “[a] stay will not diminish the  
12 monetary damages to which [the plaintiff] will be entitled if it succeeds in its  
13 infringement suit – it only delays realization of those damages.” [VirtualAgility, 759](#)  
14 [F.3d at 1318](#). Moreover, the shortened timeline of IPR compared to the prior  
15 reexamination process also shortens any stay granted by the Court, reducing the  
16 likelihood of undue prejudice to a plaintiff. *See, e.g.,* [Pi-Net Int’l, Inc., No. 2:12-cv-](#)  
17 [10012 PSG \(JEMx\), 2013 U.S. Dist. LEXIS 81570, at \\*10-12](#) (finding that “any delay  
18 that Plaintiff will experience would be minimal” in consideration of the one-year  
19 timeline for IPR imposed by 35 U.S.C. § 316(a)(11)). Because GAT can be  
20 adequately compensated through monetary damages, a stay is proper in this case.  
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1 Moreover, Blizzard did not delay in petitioning for IPR of the patents-in-suit.  
2 Rather, Blizzard filed IPR petitions for all of the patents-in-suit only two months after  
3 completing its invalidity contentions in the underlying case, after having received  
4 GAT's infringement contentions. It was not unreasonable, or a litigation tactic, for  
5 Blizzard to assess GAT's disputed claims before filing its IPR petition. *See*  
6 [Semiconductor Energy, No. 8:12-cv-00021 JST \(JPRx\), 2012 U.S. Dist. LEXIS](#)  
7 [186322, at \\*8-9](#) (rejecting the argument that the defendant's ten-month delay in filing  
8 its first IPR after receiving the complaint was tactical, because the defendant filed its  
9 IPR within three or four months after receiving infringement contentions—"the Court  
10 finds the need to assess the disputed claims a valid reason for not filing a petition  
11 shortly after the Complaint was filed."). Blizzard worked diligently following service  
12 of its invalidity contentions on July 11, 2016, in response to GAT's March 9-10, 2016  
13 infringement contentions, to complete the IPR petitions, which were filed on  
14 September 23 and 30, 2016. *See* [Software Rights Archive, No. 5:12-cv-03970-RMW,](#)  
15 [2013 U.S. Dist. LEXIS 133707, at \\*19-20](#) (granting a stay where the "[d]efendants  
16 served preliminary invalidity contentions on April 29, 2013 and then spent three  
17 additional months to prepare and file the IPR petitions" which the Court found was "a  
18 reasonable amount of time given the complexity of the claims, prosecution history and  
19 prior art at issue.").

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21 Because the possibility of a delay is present in every case where a stay is sought  
22 pending reexamination, "Courts have long acknowledged that a delay inherent to a  
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1 stay does not, in and of itself, constitute prejudice.” [PersonalWeb Techs., No. 5:13-](#)  
2 [CV-01356-EJD, 2014 U.S. Dist. LEXIS 4095, at \\*20.](#) Thus, any prejudice that GAT  
3 claims might result because of the mere passage of time, including for example, the  
4 possibility of employees leaving the company or witness memory fading, “are  
5 consequences that apply to any case where reexamination is sought and cannot alone  
6 demonstrate undue prejudice.” [Evolutionary Intelligence, No. 5:13-cv-03587RMW,](#)  
7 [2013 U.S. Dist. LEXIS 178547, at \\*24-25.](#)  
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10 Nor does Blizzard seek a stay for an improper purpose, such as obtaining a  
11 tactical advantage or purposefully delaying the proceedings. Rather, Blizzard seeks a  
12 stay to avoid the unnecessary expenditure of the resources and time of the Court and  
13 the parties. Rather than partaking in expensive discovery to determine invalidity,  
14 Blizzard believed it would be more time-efficient and cost-effective to file IPRs on the  
15 patents-in-suit so that their validity could be determined by the PTAB. Since all  
16 asserted claims are involved in the pending petitions for IPR, there is a substantial  
17 possibility that at least some claims of the patents-in-suit will be cancelled or  
18 modified. Moreover, it is Blizzard who will be prejudiced if the case is not stayed,  
19 because it will be forced to defend itself against unpatentable claims and risk  
20 inconsistent results from the PTAB and the Court.  
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25 Thus, the third and final factor weighs in favor of staying this case.  
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**V. CONCLUSION**

For at least the foregoing reasons, Blizzard respectfully requests that the Court grant Blizzard’s Motion to Stay This Action Pending IPR.

Dated: October 10, 2016

By:           /s/ Tony M. Diab            
          Tony M. Diab

Attorney for Defendant  
**BLIZZARD ENTERTAINMENT,  
INC.**