

Judge Denise J. Casper: ELECTRONIC ORDER entered re: 309 Motion to Stay. Plaintiff Energetiq Technology, Inc. ("Energetiq") has filed a motion to stay this case pending a final determination by the International Trade Commission (the "Commission"). D. 309. For the reasons stated below, the Court DENIES the motion. On January 30, 2015, Energetiq filed this lawsuit against Defendants ASML Netherlands B.V., Excelitas Technologies Corp., and Qioptiq Photonics GmbH & Co. KG. D. 1. On November 30, 2015, the Patent Trial and Appeal Board instituted inter partes review ("IPR") of some of the patents at issue here. D. 328-1 at 2. Two weeks later, Energetiq filed a complaint with the Commission against two of the three defendants here and another party. Institution of Investigation, 81 Fed. Reg. 3473, 3473 (January 21, 2016). On March 4, 2016, the administrative law judge presiding over the Commission proceeding denied a request to stay the matter until a final written decision from IPR. D. 328-1 at 10. Under 28 U.S.C. § 1659, a district court "shall stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission, but only if such request is made" within a certain period by the respondents in the Commission proceeding. The mandatory stay provision of this statute, however, does not apply here because the respondents in the Commission proceeding have not made a stay request. *Aliphcom v. Fitbit, Inc.*, No. 15-cv-02579-HSG, 2015 WL 9489751, at *2 (N.D. Cal. Dec. 30, 2015). Instead, the Court must decide whether to exercise the discretionary "power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. American Co.*, 299 U.S. 248, 254 (1936). In deciding whether to grant the stay, courts consider: "(1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party without a stay; and, (3) judicial economy." *Alves v. Prospect Mortgage, LLC*, No. 13-cv-10985-JLT, 2013 WL 5755465, at *2 (D. Mass. Oct. 22, 2013) (internal quotation marks and citation omitted); see *Aliphcom*, 2015 WL 9489751, at *2 (stating the three factors as the following: (1) "the possible damage which may result from the granting of a stay"; (2) "the hardship or inequity which a party may suffer in being required to go 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") (internal quotation marks and citation omitted). "The proponent of a stay bears the burden of establishing its need." *Clinton v. Jones*, 520 U.S. 681, 708 (1997). Energetiq has failed to carry its burden here. First, as the non-moving parties, Defendants will face potential prejudice. Only two of the six patents at issue here are being contested in the Commission proceeding. D. 321 at 12. Additionally, Excelitas is not a party to that proceeding. *Id.* To stay this case would force Defendants to wait a considerable amount of time before they have an opportunity to vindicate their rights, particularly when Defendants here have filed two pending dispositive motions on certain issues after the result of some discovery. D. 206, D. 210. Energetiq argues that no prejudice to Defendants will occur because Defendants had expressed a desire to have the Court stay the case to allow IPR to proceed. D. 310 at 7. Defendants, however, note that their desire to stay this litigation hinged on staying all litigation in favor of the IPR process. D. 321 at 8-9. At the time that they proposed such a stay pending the IPR process, they were not aware of Energetiq's decision to pursue additional litigation before the Commission, and they do not consent to pausing this case only to have some of the defendants litigate over a few of the patents in a new

forum. Id. The Court agrees with defendants that, under these circumstances, the Defendants' earlier suggestion to a stay in favor of IPR to be materially different from an agreement to stay in favor of the Commission. This is particularly true where the Commission's rulings are not binding here, *Texas Instruments Inc. v. Cypress Semiconductor Corp.*, 90 F.3d 1558, 1569 (Fed. Cir. 1996), while actions taken during the IPR process may have more substantive effect. See, e.g., *Aplix IP Holdings Corp. v. Sony Computer Entm't, Inc.*, No. 14-cv-12745-MLW, 2015 WL 5737145, at *3 (D. Mass. Sept. 28, 2015) (noting that if the U.S. Patent and Trademark Office ("PTO") finds all five patents invalid, "the inter partes review would simplify the case by rendering all of [Aplix]'s claims for infringement moot" and if the PTO finds at least one patent valid, "the issues in this case will be simplified because Sony will be estopped from raising the same invalidity contentions before this court") (internal quotation marks and citations omitted). Second, Energetiq has not shown sufficient hardship to justify staying its own case. Energetiq argues that Defendants oppose the stay because they seek "a tactic to increase costs yet more." D. 310 at 8. Defendants' desire, however, to stay all litigation in favor of IPR undercuts such argument. Moreover, as the party who initiated both this lawsuit and the Commission proceeding, Energetiq had control over when and where to file which cases-and therefore when and where and in which cases costs would accrue. Third, Energetiq has not shown how a stay will further the orderly course of justice. As the Court has stated, the effect of a Commission proceeding is different than the effect of an IPR proceeding on this action. Waiting for the Commission proceeding to end, which does not involve identical parties or patents, is unlikely to simplify the case here substantially. In *Aliphcom*, 2015 WL 9489751, at *4, where a court granted a plaintiff's request to stay, the Commission proceeding concerned the same issues about the same six patents. At the same time, discovery in the Commission proceeding was set to be completed three months after the court's decision on the stay, while the case before that court was in its infancy. Id. By contrast, Energetiq's Commission proceeding has only just begun, while the litigation here has proceeded through several phases before it transferred to this Court. For all of these reasons, Energetiq's motion to stay, D. 309, is DENIED. (Hourihan, Lisa) (Entered: 04/01/2016)
As of April 4, 2016, PACER did not contain a publicly available document associated with this docket entry. The text of the docket entry is shown above.

Energetiq Technology, Inc. v. ASML Netherlands BV et al
1-15-cv-10240 (MAD), 4/1/2016, docket entry 332