IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LG ELECTRONICS U.S.A., INC. and LG ELECTRONICS, INC., Plaintiffs,	)	
v.	)	C. A. No. 08-234 (GMS)
WHIRLPOOL CORPORATION, Defendant.	)	
WHIRLPOOL CORPORATION et al., Counterclaim Plaintiffs,	)	
v.	)	
LG ELECTRONICS U.S.A., INC. et al. Counterclaim Defendants.	)	

ORDER

1. Presently before the court is Whirlpool Corporation, Whirlpool Patents Company, Whirlpool Manufacturing Corporation, and Maytag Corporation's (collectively, "Whirlpool") motion to sever and stay the proceedings concerning United States Patent Numbers 7,316,121 (the "'121 patent") and 7,383,689 (the "'689 patent") (D.I. 217). For the reasons that follow, the court will deny the motion.

2. On April 24, 2008, LG Electronics U.S.A., Inc. and LG Electronics, Inc. (collectively, "LG") filed this patent infringement action against Whirlpool. Both LG and Whirlpool have alleged infringement of certain patents related to refrigerators, their compartments, and their components.

3. On November 11, 2008, the court held a Rule 16 scheduling conference with the parties. On January 14, 2009, the court entered a Scheduling Order (D.I. 37), setting the close of fact discovery for August 7, 2009, and a trial date of March 1, 2010.

4. On December 19, 2008, Whirlpool filed with the Patent and Trademark Office (the "PTO") a suggestion for an interference, seeking a determination that the then-pending claims of its United States patent application Ser. No. 12/339,424 had an earlier priority date than certain claims of the '689 patent. On June 1, 2009, Whirlpool filed a supplemental suggestion for an interference, seeking a priority contest over additional claims of the '689 patent. On July 28, 2009, the PTO declared an interference between Whirlpool's application and the '689 patent. On September 14, 2009, the PTO issued a re-declaration adding the '121 patent to the interference.

5. On August 31, 2009, Whirlpool filed its motion to sever and stay.

6. The decision to stay a case is firmly within the discretion of the court. *See Cost Bros., Inc. v. Travelers Indem. Co.*, 760 F.2d 58, 60 (3d Cir. 1985). In determining whether a stay is appropriate, the court's discretion is guided by the following factors: "(i) whether a stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party; (ii) whether a stay will simplify the issues in question and trial of the case; and (iii) whether discovery is complete and whether a trial date has been set." *Xerox Corp. v. 3 Com Corp.*, 69 F. Supp. 2d 404, 406 (W.D.N.Y. 1999) (citing cases); *cf. United Sweetener USA, Inc. v. Nutrasweet Co.*, 766 F. Supp. 212, 217 (D. Del. 1991) (stating a similar test).

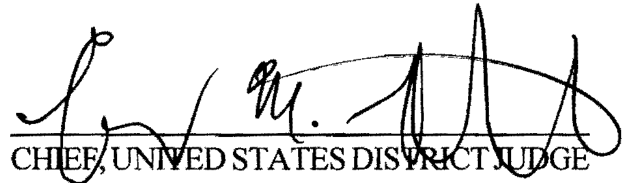
7. After having considered the above-cited factors, the court concludes that a severance and stay of the '121 and '689 patent proceedings is not warranted in this case. As previously noted,

Whirlpool filed its motion after the close of discovery and after a trial date had been set. Additionally, it appears that the resolution of the interference proceeding may not resolve all of the asserted claims or issues with respect to the '121 and '689 patents. As a result, the court concludes that a stay will not simplify the issues in question and a trial of the case.

Therefore, IT IS HEREBY ORDERED that:

1. Whirlpool's Motion to Sever and Stay Proceedings Concerning U.S. Patent Nos. 7,316,121 and 7,383,689 Based on a Pending Interference Proceeding with a Whirlpool Patent Application at the U.S. Patent and Trademark Office (D.I. 217) is DENIED.

Dated: January 6, 2010



CHIEF, UNITED STATES DISTRICT JUDGE