

1 MELODY A. KRAMER, SBN 169984  
2 KRAMER LAW OFFICE, INC.  
3 9930 Mesa Rim Road, Suite 1600  
4 San Diego, California 92121  
5 Telephone (858) 362-3150

6 J. MICHAEL KALER, SBN 158296  
7 KALER LAW OFFICES  
8 9930 Mesa Rim Road, Suite 200  
9 San Diego, California 92121  
10 Telephone (858) 362-3151

11 Attorneys for Plaintiff JENS ERIK SORENSEN,  
12 as Trustee of SORENSEN RESEARCH AND  
13 DEVELOPMENT TRUST

14 UNITED STATES DISTRICT COURT  
15 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

16 JENS ERIK SORENSEN, as Trustee of )  
17 SORENSEN RESEARCH AND )  
18 DEVELOPMENT TRUST, )

19 Plaintiff,

20 v.

21 HELEN OF TROY TEXAS )  
22 CORPORATION; OXO )  
23 INTERNATIONAL LTD.; )  
24 and DOES 1 – 100, )

25 Defendants. )

26 and related counterclaims. )

Case No. 07cv2278 BTM CAB

**PLAINTIFF’S MEMORANDUM OF  
POINTS & AUTHORITIES IN  
SUPPORT OF MOTION FOR  
LEAVE TO PROCEED WITH  
LITIGATION ON PATENT CLAIM  
THAT IS NOT SUBJECT TO  
REEXAMINATION**

Date: June 18, 2010

Time: 11:00 a.m.

Courtroom 15 – 5<sup>th</sup> Floor

The Hon. Barry T. Moskowitz

*Per Chambers: No Oral Argument*

*Unless Requested By The Court*

1 **FACTUAL SUMMARY**

2 This case involves accused infringement of U.S. Patent No. 4,935,184 (“184  
3 patent”). See Doc. #1 and 41.

4 Although Claims 1, 2, 4, and 6-10 of the ‘184 patent have been the subject of  
5 merged *ex parte* reexaminations by the United States Patent and Trademark Office  
6 (“USPTO”) for the past 33 months, Claim 3 is not part of that reexamination.  
7 *Request for Judicial Notice*, Exhibit A. Thus, irrespective of the outcome of the  
8 reexamination proceedings overall, Claim 3 cannot be invalidated in the pending  
9 reexamination. Furthermore, Claim 3 has never been rejected or invalidated by any  
10 other USPTO or court actions either.

11 The present action was filed on December 4, 2007. While the case is now two  
12 years and five months old, due to a stay pending reexamination, it has yet to proceed  
13 beyond the initial pleading stage.

14 **Sorensen hereby advises the Court that it will be asserting Claim 3 of the**  
15 **‘184 patent against at least one or more of the accused products in this**  
16 **litigation.**

17 **ARGUMENT**

18 **SORENSEN SHOULD BE ALLOWED TO PROCEED WITH PATENT**  
19 **INFRINGEMENT LITIGATION ON CLAIMS NOT SUBJECT TO**  
20 **REEXAMINATION.**

21  
22 The ‘184 patent is presumed valid and “the burden of establishing invalidity of  
23 a patent or any claim thereof shall rest on the party asserting such invalidity.” 35  
24 U.S.C. § 282. “A patentee shall have remedy by civil action for infringement of his  
25 patent.” 35 U.S.C. § 281.

26 The ‘184 patent is valid, enforceable, and Patentee Sorensen is entitled to a  
27 remedy by civil action of infringement.  
28

1 Claim 3 is not at issue in the pending reexamination and thus cannot be  
2 cancelled in the reexamination. Thus, even if every '184 patent claim that is before  
3 the USPTO on reexamination were given a final order of invalidity, this case would  
4 still have to proceed because asserted Claim 3 would remain.

5 Therefore, there is no reason why infringement claims against Defendants, at  
6 least as to Claim 3, should be delayed any further. Patentee Sorensen should be  
7 allowed to proceed in prosecuting this case forthwith.

8  
9 **CONCLUSION**

10 Because Claim 3 of the '184 patent is not subject to the pending reexamination  
11 and will, by definition, remain intact after reexamination of the '184 patent  
12 concludes, there is no reason to further delay prosecution of this case.

13 WHEREFORE, Sorensen respectfully requests the Court to lift stay and allow  
14 this case to proceed.

15  
16 DATED this Friday, May 07, 2010.

17  
18 JENS ERIK SORENSEN, as Trustee of  
19 SORENSEN RESEARCH AND DEVELOPMENT  
20 TRUST, Plaintiff

21 /s/ Melody A. Kramer

22 Melody A. Kramer, Esq.

23 J. Michael Kaler, Esq.

24 Attorneys for Plaintiff  
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