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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 RYOBI TECHNOLOGIES, INC., a
22 Delaware corporation; TECHTRONIC
23 INDUSTRIES NORTH AMERICA,
24 INC., a Delaware corporation; and DOES
25 1 – 100,

26 Defendants.

) Case No. 08cv0070 BTM CAB
)
) **MEMORANDUM OF POINTS &**
) **AUTHORITIES IN SUPPORT OF**
) **PLAINTIFF’S MOTION TO**
) **TERMINATE IMMODERATE AND**
) **UNLAWFUL STAY**

)
) Date: December 11, 2009
) Time: 11:00 A.M.
) Courtroom 15 – 5th Floor
) The Hon. Barry T. Moskowitz
)
) *Per Chambers: No Oral Argument*
) *Unless Requested By The Court*

) **PLAINTIFF RESPECTFULLY**
) **REQUESTS ORAL ARGUMENT**

28 _____)

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22 1981)..... 8

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INTRODUCTION

1
2 A stay is immoderate and unlawful “unless so framed in its inception that its
3 force will be spent within reasonable limits” and “once those limits have been
4 reached, the fetters should fall off.” *Landis v. No. American Co.*, 299 U.S. 248, 257
5 (1936).

6 This case has been effectively stayed since its inception almost two years ago.
7 The patent reexamination proceeding, which has been pending for well over two
8 years and upon which this stay is based, has recently taken a new turn essentially
9 returning the procedure to square one. The recent issuance of a second, non-final,
10 office action by the PTO raising entirely new issues not previously addressed in the
11 prior office action reveals that the reexamination is not on target to be completed
12 anytime soon.

13 More than a reasonable amount of time has passed; continued stay is
14 immoderate and unlawful, and runs afoul of Plaintiff’s fundamental rights under the
15 U.S. Constitution. Furthermore, Federal Circuit precedent prohibits district courts
16 from using their inherent discretion to manage cases to require patent-holders to
17 involuntarily submit to reexamination proceedings prior to litigating a patent.
18 Continued stay is the equivalent of requiring the Plaintiff/Patentee to involuntarily
19 submit to completion of reexamination proceedings prior to litigating the ’184 patent.

20 For these reasons, as more fully set forth below, this Court is obligated to
21 vacate stay immediately and allow this case to proceed.
22

FACTUAL SUMMARY

Stay Origins

24 Over two years ago, in July 2007, Plaintiff and Black & Decker were
25 embroiled in a massive and contentious patent infringement dispute in this Court
26 related to U.S. Patent No. 4,935,184 (“’184 patent”). On July 21, 2007, after a year
27
28

1 of litigation, Black & Decker filed an *ex parte* request for reexamination of the '184
2 patent with the United States Patent and Trademark Office ("PTO"), and a
3 corresponding request to stay the litigation. Stay was entered in that case in
4 September 2007 ("B&D Stay Order") and was never lifted.

5 In December 2007, Black & Decker's supplier and co-defendant filed a
6 separate request for reexamination. Both requestors of reexamination subsequently
7 withdrew their allegations of invalidity of the '184 patent before this Court via
8 dismissal with prejudice of all claims. *Sorensen v. The Black & Decker*
9 *Corporation, et al*, Case No. 06cv1572, Doc. #326. The reexamination (including
10 the now-merged subsequent reexamination request by co-defendant Phillips Plastics)
11 is still unfinished.

12 This Court has refused to allow any other '184 patent cases to proceed beyond
13 initial pleadings since July 2007, including this case.

14
15 *Procedural Status Of This Case*

16 On January 11, 2008, Sorensen filed a Complaint for Patent Infringement
17 alleging infringement of U.S. Patent No. 4,935,184 ("184 patent") against
18 Defendants. See Doc. #1.

19 Subsequent to answers being filed (Doc. #14), the Defendants filed a motion
20 for stay (Doc. #15). No scheduling order was ever issued. No ENE was ever held.
21 Discovery was never opened.

22 The Court stayed this case on April 25, 2008. (Doc. #38, hereinafter "Stay
23 Order").

24 The Stay Order contained no specific factual findings, and expressed no
25 limitations on the length of stay, stating:

26 For the reasons stated in the Court's order granting stay in *Sorensen v.*
27 *Black and Decker*, 06cv1572, Docket No. 243 and on the record at the
28 February 25, 2008 status conference in *Sorensen v. Helen of Troy*,

1 07cv2278, the Court GRANTS without prejudice Defendants' motion
2 for stay. The Court concludes that a reasonable stay is appropriate in
3 this case because the litigation is in its early stages, Plaintiff has not
4 established undue prejudice, and the reexamination will simplify issues
5 for the Court and save expense for the parties. See, e.g., Xerox Corp. v.
6 3Com Corp., 69 F. Supp. 2d 404, 406 (W.D.N.Y. 1999). However, if it
7 appears that the reexamination will not be effected within a reasonable
8 time, Plaintiff may move to vacate the stay.

9 (Doc. #38, pg. 1:21-2:1).

10 A closer look at the two referenced related '184 patent cases is warranted.

11 *Black & Decker Stay Order*

12 The referenced *Sorensen v. Black & Decker* order issued on September 10,
13 2007, shortly prior to the present case being filed, and was based on facts and issues
14 specific to that case, which are absent in this case. (see *Sorensen v. Black & Decker,*
15 *et al*, Case No. 06cv1572, at Doc. #243).

16 The Stay Order in this case does not specify what portion of the Black &
17 Decker stay order was relied upon. However, the Black & Decker stay order
18 contained factual findings and conclusions that are demonstrably inapplicable here,
19 including the following statement:

20 An average delay for reexamination of approximately 18-23 months is
21 especially inconsequential **where Plaintiff himself waited as many as**
22 **twelve years before bringing the present litigation.**

23 (*Sorensen v. The Black & Decker Corporation, et al*, Case No. 06cv1572, at Doc.
24 #243, pg 7:19-21)

25 The '184 reexamination has already extended longer than this cited average –
26 26 months and counting. Furthermore, in the present case, there was no significant
27 delay between Plaintiff's first having contact with the Defendant regarding
28 infringement allegations and initiating this lawsuit.

1 Plaintiff first contacted Defendants regarding infringement of the ‘184 patent
2 in September 2004, only a little over three years before this suit was filed. *Kramer*
3 *Decl.* ¶ 4.

4 Despite the passage of over two years, this Court has continued to explicitly
5 rely upon the Black & Decker Stay Order as grounds to stay this case and every
6 other case involving the ‘184 patent, including a declaratory relief action in which
7 the validity of the ‘184 patent is not even at issue¹.

8
9 *Sorensen v. Helen of Troy Status Conference*

10 The referenced *Sorensen v. Helen of Troy* status conference consists of a 22-
11 page transcript. See *Request for Judicial Notice*, Hearing Transcript, February 25,
12 2008. The Stay Order does not identify what portion of the status conference it
13 intended to incorporate. It was during that hearing, however, that the Court first
14 made the oft-quoted comment that “two years is, well, let’s say it’s long enough.”
15 “Two years” was subsequently explained by the Court to mean two years from the
16 filing of the first reexamination request.

17 THE COURT: . . . My two years is two years when the ball is in the Patent
18 Office’s PTO’s court to deal with it; that if they can’t get it done within two
19 years, then, you know, I start to wonder whether I should be staying the
20 proceedings. Because I saw somewhere that sometimes it can take up to five
21 years. I don’t find that acceptable. There is just no finality and there is lots
22 of economic issues that companies are involved with that they can’t have this
23 hanging over their head for five years, plus the time of litigation. So when I
24 say two years, that means two years that the Patent Office has had it to
25 decide. . . .

26 *Request for Judicial Notice*, Hearing Transcript, August 20, 2008, page 33:11-22.

27
28 *Original Motion to Lift Stay*

¹ See *Acco v. Sorensen*, Case No. 08cv1670, First Amended Complaint at Doc. #5.

1 In March 2009, an interview between the PTO and the Plaintiff/Patentee was
2 conducted. Following the interview, the PTO Examiner stated in a written summary
3 of the interview that “he would withdraw the [35 U.S.C. §] 103 rejections” and that
4 “Agreement with respect to the claims . . . was reached.” *Kramer Decl.* ¶ 5, Exhibit
5 A (*Ex Parte Reexamination Interview Summary*, dated March 23, 2009, signed by
6 Alan Diamond, Primary Examiner).

7 Subsequent to those assurances from the PTO, Plaintiff filed a motion to lift
8 stay. Doc. #41. However, on July 10, 2009, just days prior to expiration of two
9 years from the original reexamination request filing, the Court denied Plaintiff’s
10 Motion to Lift Stay on the grounds that the reexamination was not yet finished. See
11 Doc. #52 (“Joint Order Denying Lift of Stay”).

12 13 Issues In The Litigation

14 Defendants have made cursory allegations of invalidity of the ‘184 patent in
15 its answer, but has never served Preliminary Invalidity Contentions nor otherwise
16 identified to the Court or Plaintiff the details of its invalidity positions.

17 Neither Plaintiff nor Defendant(s) in this case requested the pending
18 reexamination proceedings ongoing with the PTO. In fact, not a single current
19 litigant in the more than 30 pending ‘184 patent infringement cases still pending
20 before this Court requested reexamination of the ‘184 patent. In the related *Acco*
21 *Brands v. Sorensen*, Case No. 08cv1670, validity of the ‘184 patent is not even at
22 issue. See *Acco v. Sorensen*, Case No. 08cv1670, at Doc. #5.

23 24 Procedural Status Of The Reexamination

25 On August 21, 2009, the PTO issued a second Non-Final Office Action
26 (“SOA”) in the reexamination of the ‘184 patent. In this SOA, the Examiner entirely
27 reversed prior positions taken in his October 31, 2008 office action, as well as verbal
28 assurances the Examiner made during the March 2009 interview with the

1 Plaintiff/Patentee as documented in the Examiner's written summary of the March
2 2009 interview. *Kramer Decl.* ¶ 6; see also *Declaration of J. Michael Kaler* at Doc.
3 #41.

4 Plaintiff's response to the SOA is due on October 21, 2009. Subsequent
5 thereto, however, the PTO Examiner has no deadline for taking the next step in the
6 reexamination. For instance, after the Plaintiff/Patentee's response to the first Non-
7 Final Office Action was received by the PTO mailroom on January 2, 2009, it took
8 nearly eight months until August 21, 2009, for the PTO to issue its next office action.
9 *Kramer Decl.* ¶ 7.

10 The timeline of the reexamination thus far has been as follows:

11 July 2007 - Black & Decker files *ex parte* request for reexamination

12 Dec 2007 - Phillips Plastics files *ex parte* request for reexamination

13 Oct 2008 - PTO issues first Non-Final Office Action ("FOA") on merged
14 reexaminations

15 Dec 2008 - Plaintiff/Patentee responds to FOA (FOA received by PTO on
16 Jan. 2, 2009)

17 Mar 2009 - Interview held between PTO and Plaintiff/Patentee (Examiner's
18 summary of interview stated "Agreement with respect to the claims ...
19 was reached" and "all [35 U.S.C. §] 103 rejections will be withdrawn")

20 Aug 2009 - PTO issues second Non-Final Office Action ("SOA"), reversing
21 prior positions and raising an entirely new set of issues

22 *Kramer Decl.* ¶ 8.

23 24 ARGUMENT

25 I. CONTINUANCE OF THE STAY IN THIS CASE WILL CONSTITUTE AN
26 UNLAWFUL STAY OF IMMODERATE AND INDEFINITE DURATION.

27 A. An Immoderate and Indefinite Stay Constitutes an Abuse of Discretion
28 Under the Supreme Court Decision in *Landis v. No. American Co.*

1 A court's discretionary authority to stay a pending lawsuit is not without
2 boundaries. Stay orders will be reversed when they are found to be immoderate or
3 indefinite in length. *Landis v. No. American Co.*, 299 U.S. 248, 254 (1936)
4 (Cardozo, J.); *see also McKnight v. C.H. Blanchard*, 667 F.2d 477, 479 (5th Cir.
5 1982); *Dependable Highway Express, Inc. v. Navigators Inc. Co.*, 498 F.3d 1059,
6 1066-67 (9th Cir. 2007); *Ortega Trujillo v. Conover & Co. Communications, Inc.*,
7 221 F.3d 1262, 1264 (11th Cir. 2000); *Cherokee Nation of Oklahoma v. United*
8 *States*, 124 F.3d 1413, 1416-18 (Fed. Cir. 1997); *Ohio Environmental Council v.*
9 *United States District Court, Southern District of Ohio, Eastern Div.*, 565 F.2d 393,
10 396 (6th Cir. 1977).

11 *Landis* is the landmark Supreme Court case on the issue of immoderate stays.
12 The *Landis* Court fully recognized that the “power to stay proceedings is incidental
13 to the power inherent in every court to control the disposition of the causes on its
14 docket with economy of time and effort for itself, for counsel, and for litigants.”
15 *Landis*, 299 U.S. at 254. The Court, *however*, also recognized that this “discretion
16 [is] abused if the stay [is] not kept within the bounds of moderation.” *Id.* at 256.

17 In *Landis*, nonregistered holding companies had brought suits in the district
18 court for the District of Columbia to enjoin enforcement of the Public Utility
19 Holding Company Act on the ground that the Act was unconstitutional and void. At
20 the same time, the Securities and Exchange Commission (SEC) had filed suit in the
21 Southern District of New York against other holding companies seeking to compel
22 them to register with the SEC under the Act. The District of Columbia court stayed
23 the cases before it pending an eventual determination by the Supreme Court of the
24 validity of the Act in the proceeding brought by the SEC. *Id.* at 250-53.

25 The Supreme Court in *Landis* held that a

26 stay is immoderate and hence unlawful unless so framed in its inception
27 that its force will be spent within reasonable limits, so far at least as
28 they are susceptible of prevision and description, When once those
limits have been reached, the fetters should fall off.

1 *Id.* at 257. The *Landis* Court found that it was an abuse of discretion for the District
2 of Columbia to have stayed the lawsuits until after a decision by another district
3 court regarding the constitutionality of the Act, and until determination by the
4 Supreme Court of any appeal therefrom. As the Supreme Court noted, two or more
5 years would likely go by before the Court could even pass upon the Act. *Id.* at 256.
6 “Relief so drastic and unusual overpasses the limits of any reasonable need. . .” *Id.*
7 at 257. The *Landis* Court reversed the immoderate stay order and remanded the
8 matter to the District Court for determination of the stay motion in accordance with
9 the principles handed down by the Court. *Id.* at 259.

10 In *Landis*, the district court’s stay was not only lengthy, it was also indefinite.
11 It was unknown how long it would take for the SEC proceeding to travel through the
12 district court to the intermediate court and finally reach a decision by the Supreme
13 Court. *Id.* at 256-57. “Discretion [is] abused by a stay of indefinite duration in the
14 absence of a pressing need.” *Id.* at 255. Even in a case of great significance
15 involving the constitutionality of an Act of Congress as was presented in *Landis*,
16 there was insufficient “pressing need” to support the grant of a stay for an indefinite
17 period of time. *Id.* at 255-57; *see also Unidisco, Inc. v. Schattner*, 1981 WL 40523,
18 210 U.S.P.Q. 622, 629 (D.Md. June 15, 1981) (“it is an abuse of discretion to grant a
19 stay for an indefinite period of time, even in a case of great public moment like
20 *Landis*, absent a showing of ‘pressing need’”).

21 Thus, *Landis* teaches that a plaintiff may be properly subjected to a stay, if the
22 public welfare or convenience is promoted, but only if the stay is not immoderate or
23 oppressive in nature. *Landis*, 299 U.S. at 256. *Landis* also teaches that such a stay
24 exceeds the limits of fair discretion when it becomes excessively long or indefinite in
25 scope. *Id.* at 255-257; *see also McKnight*, 667 F.2d at 479; *Ohio Environmental*
26 *Council v. United States District Court, Southern District of Ohio, Eastern Div.*, 565
27 F.2d 393, 396-98 (6th Cir. 1977); *Muhammad v. Warden, Baltimore City Jail*, 849
28 F.2d 107, 113 (4th Cir. 1988) (“In considering the propriety of a stay of proceedings,

1 the court should be specifically mindful of the Supreme Court’s admonition in
2 *Landis* ... that a stay may not be ‘immoderate in extent’ nor ‘oppressive in its
3 consequences’”); *Static Control Components, Inc. v. Lexmark Int’l, Inc.*, 2005 WL
4 2122641, at *3 (E.D.Ky. Aug. 29, 2005) (“Generally, lengthy stays pending
5 resolution of another case are unduly burdensome if the likely duration is entirely
6 uncertain.”).

7 In fact, some district courts have declined to stay patent infringement cases
8 pending reexamination due to the fact that the stay would be of indefinite length and
9 thus unduly prejudicial. *See, e.g., Lexington Lasercomb I.P.A.G. v. GMR Products,*
10 *Inc.*, 442 F.Supp.2d 1277, 1278 (S.D.Fla. 2006); *George Kessel Int’l Inc. v. Classic*
11 *Wholesales, Inc.*, 544 F.Supp.2d 911, 912-23 (D.Ariz. 2008) (“Although this case is
12 in its early stages, the Court is reluctant to issue a stay of indefinite length.”);
13 *StorMedia Texas, LLC v. Compusa, Inc.*, 2008 WL 2885814, at *1 (E.D.Tex. July
14 23, 2008).

15 This case has been stayed pending completion of reexamination proceedings
16 with the PTO. Although the Stay Order itself does not set forth a deadline or
17 duration, this Court has indicated on more than one occasion that “two years is long
18 enough.” However, the Court has also backtracked on the two-year-limitation
19 comments by failing to lift stay just days before two years had expired on the
20 grounds that the reexamination is not yet done.

21 The current reexamination proceeding has been pending now for over two
22 years and is, with the most recent non-final office action, for all purposes back at
23 square one with a new set of validity issues identified.

24 Per the *Manual of Patent Examining Procedure* § 2260, a first office action is
25 not a final determination by the PTO on the reexaminations, but rather “establish[es]
26 the issues which exist between the examiner and the patent owner insofar as the
27 patent is concerned.” Issues were established in the FOA, responded to by
28 Plaintiff/Patentee, and, per the PTO as of March 2009, the PTO and the

1 Plaintiff/Patentee reached agreement on all the claims, and the initial rejections were
2 being withdrawn. However, the PTO has decided to put forth another round of new
3 issues to which the Plaintiff/Patentee is currently responding.

4 As has now been made exceedingly clear in this reexamination, there is
5 nothing to prevent the PTO from raising additional new issues in a subsequent office
6 action that have not been addressed in the two office actions issued thus far. Further,
7 if the PTO ultimately stands by its rejections of any claims, there are multiple levels
8 of “appeal” available to the Plaintiff/Patentee that will require additional time before
9 any final ruling from the PTO issues. These multiple levels of “appeal,” within the
10 USPTO and even up to the Federal Circuit, are part of the reexamination proceeding
11 and constitute steps that must occur before a reexamination certificate can issue.

12 Plaintiff/Patentee is confident that the PTO will review the detailed rebuttals
13 to the SOA and agree to withdraw the pending objections and none of these appeal
14 mechanisms will be used. However, for purposes of this motion, it must be
15 acknowledged that whatever the PTO’s next action, this reexamination has no
16 definitive or speedy end in sight.

17 There is no telling when the reexamination will reach conclusion, much less
18 how long it would take the patent to travel through the appellate process from the
19 Board of Patent Appeals and Interferences (BPAI) to the Federal Circuit. *See Ortega*
20 *Trujillo v. Conover & Co. Communications, Inc.*, 221 F.3d 1262, 1264 (11th Cir.
21 2000) (stay that expired only after resolution of related case in another court,
22 including exhaustion of appeals, was immoderate and indefinite in scope and thus an
23 abuse of discretion under *Landis*); *see also Orion IP, LLC v. Mercedes-Benz USA,*
24 *LLC*, 2008 WL 5378040, at *8 (E.D.Tex. Dec. 22, 2008) (noting that reexamination
25 process, including multiple office actions, responses thereto, and appeals to BPAI
26 and Federal Circuit, “could take years”).

27 As other courts have noted, “the PTO has not provided any definitive guidance
28 on the length of time required for the reexamination.” *See, e.g., StorMedia Texas,*

1 *LLC v. Compusa, Inc.*, 2008 WL 2885814 at *1 (E.D.Tex. July 23, 2008).

2 In her concurring opinion in the recent *Fresenius* decision by the Federal
3 Circuit, Judge Newman stated the following with regard to litigation stays for
4 reexamination:

5 [I]f routinely available to delay the judicial resolution of disputes, the
6 procedure is subject to inequity, if not manipulation and abuse, through
7 the delays that are inherent in PTO activity. The statistical data of the
8 Patent and Trademark Office place this aspect in sharp relief, for the
9 number of reexamination requests is increasing, as is the time for
10 completion of reexamination and appeal in the PTO, as well as the right
11 of judicial review. In its recent statistical summaries, the PTO reports a
12 54% increase in filing of ex parte reexaminations since 2004 (from 441
13 in 2004 to 680 in 2008, and with 481 filings through June 2009). *See*
14 USPTO, Reexamination Operational Statistics (June 30, 2009),
15 *available* *at*
16 [http://www.uspto.gov/web/patents/documents/reexam_operations06-](http://www.uspto.gov/web/patents/documents/reexam_operations06-09.pdf)
17 [09.pdf](http://www.uspto.gov/web/patents/documents/reexam_operations06-09.pdf). Of these filings 31% were reported to be in litigation. *Id.* . . .
18 The PTO also reports that as of the third quarter of 2009, the average
19 pendency for ex parte reexamination is 36.1 months, an increase from
20 the 34.6 months at December 2008. *Id.*

21 *Fresenius USA, Inc. v. Baxter Intern'l, Inc.*, --- F.3d ---, 2009 WL 2881629, at *15
22 (Fed. Cir. Sept. 10, 2009) (concurring opinion). *See Kramer Decl.* ¶ 9, Exh. B for a
23 copy of the referenced statistics.

24 This case has been pending for almost two years, but effectively stayed since
25 commencement, a time period which the Supreme Court in *Landis* has already found
26 to be immoderate in length. Furthermore, the stay is more indefinite than ever with
27 the PTO's recent office action beginning anew the hashing out of issues with the
28 Plaintiff/Patentee.

Because continued stay of this case is both immoderate and indefinite, it
would be an abuse of discretion under *Landis* to not immediately terminate stay.

B. Allowing Plaintiff to Request Lift of Stay Does Not Cure the
Immoderate or Indefinite Stay Problem.

1 The Stay Order states “if it appears that the reexamination will not be effected
2 within a reasonable time, Plaintiff may move to vacate the stay.”

3 This statement in the Stay Order, however, does not transform this into a stay
4 of moderate length.

5 An order which is to continue by its terms for an immoderate stretch of
6 time is not to be upheld as moderate because conceivably the court that
7 made it may be persuaded at a later time to undo what it has done.

8 *Landis*, 299 U.S. at 257; *see also Ortega*, 221 F.3d at 1264 n.3 (“requirement of
9 status reports does not guarantee that the district court will reassess the propriety of
10 the stay”).

11 A plaintiff cannot be placed in the situation of having to convince a district
12 court at intervals that it should modify an immoderate stay. The Stay Order has
13 become immoderate in length, has no established duration, and because there is no
14 indication of how long it will take to resolve the pending reexamination, this Stay
15 Order is one of indefinite, as well as immoderate, duration. Under *Landis*, the Stay
16 Order is improper and must be lifted.

17 C. An Immoderate Stay is Unlawful Because It Adversely Impacts
18 Fundamental Constitutional Rights Causing Severe Prejudice to
19 Plaintiff.

20 Courts recognize that a stay of immoderate duration is severely prejudicial to a
21 plaintiff. In “weighing the competing interests and maintaining an even balance” as
22 *Landis* instructs, the undue prejudice to a plaintiff that arises from an immoderate
23 stay far outweighs any benefit to the defendant, or court, making such a stay
24 unlawful. *See, e.g., Landis*, 299 U.S. at 255-57 (hardship caused by stay of two or
25 more years far outweighed “the limits of any reasonable need”). The undue
26 prejudice stems from the impact of a stay on Plaintiff’s constitutional rights.

27 1. *The Stay Order Is A “Drastic and Unusual” Denial Of Plaintiff’s*
28 *Fundamental Constitutional Right Of Access To The Courts.*

1 An immoderate stay severely impacts a plaintiff's constitutional right of
2 access to the courts. The right of meaningful access to judicial procedure is a
3 fundamental right of every citizen grounded in the Constitution. *Christopher v.*
4 *Harbury*, 536 U.S. 403, 415 & n.12 (2002); *Soranno's Gasco, Inc. v. Morgan*, 874
5 F.2d 1310, 1314 (9th Cir. 1989); *Flores v. Emerich & Fike*, 416 F.Supp.2d 885, 901
6 (E.D.Cal. 2006).² "An individual is entitled to 'free and unhampered access to the
7 courts.'" *Harrison v. Springdale Water & Sewer Comm'n*, 780 F.2d 1422, 1427(8th
8 Cir. 1986).

9 In *Landis*, the Supreme Court expressed serious concern that the plaintiffs
10 would be denied access to the courts for the extended period of two or more years,
11 while another proceeding made its way from the trial court through the appellate
12 process. The Court described this denial of plaintiffs' civil liberty as "drastic and
13 unusual." *Landis*, 299 U.S. at 255-57.

14 Even where the denial of the stay would have the impact of occupying the
15 attention of a sitting President of the United States during much of his term in office,
16 the Eighth Circuit in *Jones v. Clinton* recognized that a lengthy stay of proceedings
17 has an unacceptably adverse impact on a plaintiff's fundamental right of access to
18 the courts. In its decision to reverse a district court's stay of proceedings in *Jones*,
19 the court noted that the plaintiff:

20 Mrs. Jones is constitutionally entitled to access to the courts and to the
21 equal protection of the laws. **"The very essence of civil liberty**
22 **certainly consists in the right of every individual to claim the**
23 **protection of the laws, whenever he receives an injury."** *Marbury*
v. Madison, 5 U.S. (1 Cranch) 137, 163, 2 L.Ed. 60 (1803).

24 *Jones v. Clinton*, 72 F.3d 1354, 1360 (8th Cir. 1996) (majority opinion) (emphasis
25

26 ² The Supreme Court has based the right of access to courts in the Article VI
27 Privileges and Immunities Clause, the First Amendment Petition Clause, the Fifth
28 Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection
and Due Process Clauses. *Christopher*, 536 U.S. at 415 & n.12.

1 added), *aff'd by Clinton v. Jones*, 520 U.S. 681 (1997). As Judge Beam explained
2 further in his concurring opinion, “a stay of the litigation . . . involves fundamental
3 constitutional rights governing access to and use of the judicial process” *See*
4 *Jones*, 72 F.3d at 1365 (concurring opinion).

5 Further, the Federal Circuit has noted that to stay a suit pending another
6 speculative and protracted proceeding is to place the plaintiff effectively out of court.
7 *Cherokee Nation of Oklahoma v. United States*, 124 F.3d 1413, 1418 (Fed. Cir.
8 1997).

9 From the inception of this lawsuit, Plaintiff has been denied access to the
10 courts and the opportunity to enforce Plaintiff’s patent rights. Every day that this
11 Stay Order continues is an additional day that Plaintiff is denied the fundamental
12 constitutional right of meaningful access to the courts.

13 Because this stay will now easily exceed two years and continue for an
14 indefinite period of time until all reexamination procedures are exhausted, the
15 continued existence of this stay tramples on Plaintiff’s right of access to courts in the
16 very same “drastic and unusual” manner that was denounced in *Landis*.

17 The Court must immediately lift stay and permit Plaintiff to exercise its
18 fundamental right of access to judicial process.

19
20 2. *An Immoderate Stay Is Unduly Prejudicial To Plaintiff’s*
21 *Fundamental Constitutional Right To A Jury Trial Because It*
22 *Creates A Substantial Risk Of Loss Of Evidence.*

23 An immoderate stay adversely impacts the right to a jury trial under the
24 Seventh Amendment because it impairs a plaintiff’s ability to plead its causes of
25 **fade**, litigation costs will balloon, and resolve will dwindle. These factors will make
26 it difficult for the [plaintiff] to retool for litigation when, and if, their claim is
27 allowed to proceed.” *Cherokee Nation*, 124 F.3d at 1418 (emphasis added).

28 In *Jones v. Clinton*, the Eighth Circuit addressed the issue of whether to stay a

1 civil action against a sitting President until after he left office because of the burdens
2 that such a suit would impose on the Office of the President. Judge Beam in his
3 concurring opinion to the Eighth Circuit decision to reverse the district court's stay
4 in *Jones* noted that even where a party seeks only civil monetary damages, an
5 immoderate stay causes prejudice to the plaintiff of constitutional magnitude:

6
7 It is incorrect, in my view, for Mr. Clinton and his amicus to assert that
8 the delay is of no consequence to Ms. Jones. **Aside from the adage**
9 **that justice delayed is justice denied, Ms. Jones faces real dangers of**
10 **loss of evidence through the unforeseeable calamities inevitable with**
11 **the passage of time. To argue that this problem may be dealt with**
12 **by episodic exceptions when the risk of loss is apparent is to miss**
13 **the point. Only rarely does life proceed in such a foreseeable**
14 **fashion.**

15
16 The dissent states, “[w]here there is no urgency to pursue a suit for civil
17 damages, the proper course is to avoid opportunities for breaching
18 separation of powers altogether by holding the litigation in abeyance
19 until a President leaves office.” *Infra* at 1369. The dissent urges total
20 abeyance of both discovery and trial. I perceive this, perhaps
21 incorrectly, to be an implicit finding that there is, indeed, no real
22 urgency to Ms. Jones's suit for civil damages and, thus, the
23 constitutionally based separation of powers doctrine *demand*s that this
24 litigation, in all of its manifestations, be abated until Mr. Clinton leaves
25 office-this to protect the constitutional grant of executive authority
26 given to a sitting President. In my view, this greatly oversimplifies the
27 issues in this appeal and overstates the danger to the presidency. The
28 potential for prejudice to Ms. Jones, as earlier noted, reaches, or at least
approaches, constitutional magnitude. **If a blanket stay is granted and**
discovery is precluded as suggested by Mr. Clinton and his amicus,
Ms. Jones will have no way that I know of (and none has been
advanced by those counseling this course of action), to perpetuate
the testimony of any party or witness should they die or become
incompetent during the period the matter is held in abeyance.
Should the death or incompetence of a key witness occur, proving
the elements of Ms. Jones's alleged causes of action will become
impossible. Thus, her “chase in action” would be obliterated, or at least
substantially damaged if she is denied reasonable and timely access to
the workings of the federal tribunal.

1 *Jones*, 72 F.3d at 1363-64 (concurring opinion) (emphasis added).

2 The Supreme Court affirmed on the grounds that the stay failed to take into
3 account Ms. Jones' "interest in bringing the case to trial." *Clinton v. Jones*, 520 U.S.
4 681, 707 (1997) (Supreme Court held that district court's stay was abuse of
5 discretion). The Supreme Court noted: "The complaint was filed within the statutory
6 limitations period – albeit near the end of that period – and delaying trial would
7 increase the danger of prejudice resulting from the loss of evidence, including the
8 inability of witnesses to recall specific facts, or the possible death of a party."
9 *Clinton*, 520 U.S. at 707-08; *see also LG Elecs., Inc. v. Eastman Kodak Co.*, 2009
10 WL 146 8703, at *2 (S.D.Cal. May 26, 2009) (Huff, J.).

11 Recognizing the potential for undue prejudice, district courts have refused to
12 stay patent infringement suits pending reexamination because of the harm to the
13 patent holder associated with the loss of evidence. *George Kessel Int'l Inc. v.*
14 *Classic Wholesales, Inc.*, 544 F.Supp.2d 911, 913 (D. Ariz. 2008) ("stay could
15 prejudice Plaintiffs by delaying access to discovery"); *Fresenius Medical Care*
16 *Holdings, Inc. v. Baxter Int'l, Inc.*, 2007 WL 1655625, at *5 (N.D.Cal. June 7, 2007)
17 ("In the lengthy delay that would inevitably ensue if a stay were granted [pending
18 reexamination], evidence could be lost and witnesses' memories could fade.");
19 *Alltech, Inc. v. Cenzone Tech, Inc.*, 2007 WL 935516, at *2 (S.D.Cal. Mar. 21, 2007)
20 (court noted that "the risk that memories could fade while waiting for reexamination
21 is not insubstantial," where court assumed that stay pending reexamination could last
22 possibly 21 months); *Bartex Research, LLC v. Fedex Corp.*, 611 F.Supp.2d 647, 651-
23 52 (E.D.Tex. 2009) (stay pending *inter partes* reexamination would unduly prejudice
24 plaintiff due to risk of loss of evidence); *see also Gladish v. Tyco Toys, Inc.*, 1993
25 WL 625509, at *2 (E.D.Cal. Sept. 15, 1993) (defendant alleged infringer established
26 that it would suffer prejudice should stay be granted: "witnesses may become
27 unavailable, their memories may fade, and evidence may be lost while the PTO
28 proceeding takes place").

1 Here, Plaintiff risks loss of evidence due to a variety of causes. There is, of
2 course, the risk that witnesses may become unavailable, through either an inability to
3 locate them, or due to illness, death, or incompetence. Also, as has been noted in
4 many cases, human memory does not improve with time, rather as a general rule,
5 memory fades over time. There is also the risk that documentary evidence, or even
6 items such as the molds, may disappear or be discarded through sheer inadvertence
7 and mistake.

8 Setting aside the generally accepted risk of loss of evidence during a lengthy
9 stay, access to witnesses and evidence becomes even more challenging in the current
10 financial downturn. Businesses which have been engines of our economy have
11 disappeared from the U.S. landscape.

12 Thus far, one or more defendants in three of the related stayed ‘184 patent
13 cases have declared bankruptcy. See *Sorensen v. Global Machinery Company, et al*,
14 Case No. 08cv233; *Sorensen v. Senco*, Case No. 08cv0071; and *Sorensen v.*
15 *Spectrum*, Case No. 09cv0058. See *Request for Judicial Notice*. It is unknown how
16 many others may travel down that same road.

17 Other companies have engaged in massive layoffs which may include
18 knowledgeable witnesses regarding this case. For example, Emerson Electric has
19 reportedly laid off 14,000 employees as of April 15, 2009. See *Kramer Decl.* ¶ 10,
20 Exhibit C. If any of the laid-off employees are knowledgeable witnesses, they have
21 already become less accessible and may in fact be impossible to locate once stay is
22 lifted. See, e.g., *LG Elecs.*, 2009 WL 146 8703, at *2 (“as the parties naturally
23 experience turnover in workforces during a stay, they may lose their ability to
24 compel deposition and trial testimony from employees who leave the companies”).

25 The Stay Order’s clause permitting “any party [to] apply to the Court for an
26 exception to the stay if it has specific, valid reasons to believe that it needs to obtain
27 discovery in order to preserve evidence that will otherwise be unavailable after the
28 stay” is a hollow and largely useless clause. The Court’s recent order denying

1 Plaintiff's Motion for Exception to Stay to conduct discovery in view of layoffs by
2 one Defendant company demonstrates the futility of the exception to stay clause –

3 The Court has already ordered Defendants to preserve [several
4 categories of evidence]. . . . Plaintiff also does not provide specific
5 reasons why layoffs will hinder Defendants' ability to preserve this
6 evidence.

7 *Sorensen v. Emerson Electric, et al*, Case No. 08cv0060, Doc. #72, at page 2:10-13.
8 It is impossible for Plaintiff to acquire any such detailed reasons when not even the
9 most preliminary of discovery proceedings – initial disclosures under Fed.R.Civ.P.
10 Rule 26(a) – have occurred. Under such circumstances, it is impossible for a party to
11 present “specific, valid reasons” beyond the general and well-known fact that
12 witnesses may become unavailable and memories will invariably fade.

13 The passage of time leads to an increased risk of loss of evidence of all types,
14 but **evidence loss is not subject to definitive proof until the harm has already**
15 **occurred.** As was noted in *Jones*, a plaintiff “**faces real dangers of loss of**
16 **evidence through the unforeseeable calamities inevitable with the passage of**
17 **time. To argue that this problem may be dealt with by episodic exceptions when**
18 **the risk of loss is apparent is to miss the point. Only rarely does life proceed in**
19 **such a foreseeable fashion.”** *Jones*, 72 F.3d at 1363-64 (concurring opinion)
20 (emphasis added). Plaintiff cannot prove a witness is unavailable until he or she is
21 actually unavailable. Plaintiff cannot prove a loss of memory over time until that
22 loss has already occurred, and perhaps, not even then, as the loss of memory
23 includes the likelihood that the memory loss might prevent Plaintiff becoming aware
24 of what was lost. Requiring proof of loss requires prejudice to have been suffered
25 before relief can be considered – thus a futile act.

26 It is unknown how many defendants, suppliers, and manufacturers involved in
27 these cases have already closed up shop or engaged in massive layoffs. Plaintiff has
28 attempted to contact many manufacturers, importers, and suppliers identified to

1 Plaintiff as a part of evidence preservation orders. Of these, only a few have even
2 responded to Plaintiff in any fashion, and many letters have been returned as refused
3 or undeliverable. See *Kramer Decl.* ¶ 11; see, e.g., *LG Elecs.*, 2009 WL 1468703, at
4 *2 (“This risk [of losing evidence] is greater when important documents are under
5 the control of third parties, as these entities might not be obligated to preserve that
6 evidence. Here, Defendant contracts with several non-party entities who supply it
7 with hardware for its allegedly infringing products.”)

8 Continued stay will make it increasingly impossible for Plaintiff to access
9 evidence regarding design of the molds and manufacturing of the allegedly
10 infringing products, as well as sales information, and other evidence necessary for a
11 full resolution of these lawsuits. Plaintiff’s ability to plead infringement and pursue a
12 jury trial will be adversely impacted, if not eliminated, as a result of a lengthy stay in
13 this case. As Circuit Judge Beam so poignantly noted, “justice delayed is justice
14 denied.”

15 This immoderate and indefinite stay is unduly prejudicial to Plaintiff’s
16 fundamental constitutional right to a jury trial because it creates a substantial and
17 daily-increasing risk of loss of evidence. Thus, stay must immediately be
18 terminated.

19
20 **II. DISTRICT COURTS ARE PROHIBITED, EVEN UNDER THEIR
21 INHERENT POWER AND DISCRETION TO MANAGE CASES, FROM
22 REQUIRING PATENT HOLDERS TO SUBMIT TO REEXAMINATION
23 PRIOR TO PROCEEDING WITH INFRINGEMENT LITIGATION.**

24 District courts do not have the power to require a patentee to submit and
25 surrender its patent to the PTO for reexamination as a condition precedent to pursuit
26 of remedies against an alleged infringer. See *In re Continental General Tire, Inc.*, 81
27 F.3d 1089, 1091-93 (Fed. Cir. 1996); see also *Johnson & Johnson, Inc. v. Wallace A.
28 Erickson & Co.*, 627 F.2d 57, 61 (7th Cir. 1980).

1 A. District Courts Have Been Prohibited From Requiring That A Patentee
2 Pursue A Reissue Proceeding In The PTO Prior To Litigating
3 Infringement.

4 Prior to the enactment of statutes allowing for *ex parte* reexamination of
5 patents in 1980, reissue proceedings were used for post-issuance reviews of
6 additional prior art. In the event a patentee became aware of prior art not previously
7 considered by the Patent Office, the patentee could voluntarily submit its patent to
8 the Patent Office and apply for reissue of the patent.³ *See Continental General Tire*,
9 81 F.3d at 1092 n. 3.

10 Certain district courts had attempted to compel a patentee in a pending
11 infringement proceeding to submit the subject patent to the Patent Office for a
12 reissue proceeding prior to adjudication of the infringement action. When such an
13 order was challenged by a patentee, the Seventh Circuit found that a district court
14 could not compel a patentee to file an involuntary application for reissue. *Johnson &*
15 *Johnson, Inc. v. Wallace A. Erickson & Co.*, 627 F.2d 57, 61 (7th Cir. 1980).

16 At the outset, the *Johnson* court noted that seeking reissue was a “time-
17 consuming and often futile” process. The *Johnson* court reviewed cases wherein the
18 patentee voluntarily initiated reissue proceedings giving rise to a stay of litigation.
19 In one case, litigation was stayed for 2.5 years, but in the end the district court
20 determined that it was not bound by the Board of Appeal’s finding of validity. In
21 another, litigation was stayed for 3 years during which the reissue proceeding
22 produced a finding of validity, but where the district court nonetheless held the
23 patent to be invalid. *Johnson*, 627 F.2d at 61.⁴

24 ³ This was known as the “no defect” reissue proceeding because it did not require an
25 admission of error by the patentee before the Patent Office. That procedure was
26 discontinued and now a patentee must attest to an error in the patent if the patentee wishes
27 to seek reissue. *See Continental General Tire*, 81 F.3d at 1092 n. 3.

28 ⁴ In evaluating whether the district court’s order was a final order over which the
 Seventh Circuit could exert jurisdiction, the *Johnson* court directly commented on the
 lengthiness of the litigation stay associated with the pending reissue proceeding: “The
 effect of the stay order in this case was to put the patentee ‘effectively out of court’ for a

1 Setting aside the wastefulness of delays associated with reissue proceedings,
2 the *Johnson* court found that “involuntary compulsion upon the patentee to seek
3 reissue in this case must be reversed for more fundamental reasons.”

4 A patent is a property right of exclusion for seventeen years and is
5 presumed valid. A federal district court, after a trial on the merits, has
6 the power to invalidate the patent. **None of the district court cases**
7 **cited above, nor Erickson in its briefs, has advised us by what**
8 **authority a district court, prior to a trial on the merits, can require**
9 **a patentee to submit and surrender his patent right to the Patent**
10 **Office as a condition to pursuing his remedies against an alleged**
11 **infringer. If such power were authorized, it would be a taking of**
12 **property without due process of law. If such power were**
13 **authorized to be exerted upon the discretion of the district court, it**
14 **would raise problems of equal protection.**

15 *Johnson*, 627 F.2d at 61 (emphasis added). The *Johnson* court determined that
16 courts have no power to compel reissue proceedings thus avoiding such
17 constitutional infractions.

18 Congress has not yet deemed it proper to vest district courts with the
19 power to initiate reissue proceedings, nor do courts possess inherent
20 power which extends to compulsion upon patentees to seek reissue.

21 *Id.* at 61. The Federal Circuit held that the decision of the “Seventh Circuit [in
22 *Johnson*] was clearly correct.” *In re Continental General Tire, Inc.*, 81 F.3d 1089,
23 1091-92 (Fed. Cir. 1996); *see also Green v. Rich Iron Co.*, 944 F.2d 852, 853 (Fed.
24 Cir. 1991) (under revised reissue statute which requires patentee to admit defect in
25 patent when filing reissue application, Federal Circuit held that district court cannot
26 order patentee to seek reissue of patent because district court cannot compel patentee
27 to attest to error in patent it does not believe exists).

28 protected [*sic*] and indefinite period, and possibly forever.” *Johnson*, 627 F.2d at 62.
Likewise, the effect of the uniform stay order in the ‘184 patent cases pending before this
Court is to put the Plaintiff “effectively out of court” for a protracted and indefinite period
of time which has already exceeded two years.

1
2 B. Prohibition Against Requiring PTO Review Of An Issued Patent Prior
3 To Litigating Infringement Continues Under Reexamination Statutes.

4 In 1980, Congress enacted the *ex parte* reexamination statute, allowing any
5 person, patent holders or third parties to file a request for *ex parte* reexamination of
6 any claim of a patent based on prior art that the requestor believes to have a bearing
7 on patentability. 35 U.S.C. § 302.

8 As with reissue proceedings, the Federal Circuit has held that district courts,
9 even under their inherent power and discretion to manage cases, do not have the
10 power to initiate proceedings in the PTO. Further, the courts cannot force litigants to
11 file reexamination requests in advance of proceeding with litigation. *In re*
12 *Continental General Tire, Inc.*, 81 F.3d 1089, 1091-93 (Fed. Cir. 1996).

13 Congress has not vested courts with the power to initiate proceedings in
14 the PTO. Such power, if intended by Congress, could readily have been
15 provided by the statute. Goodyear argues that the district court has the
16 *inherent* power and discretion to manage its cases and that this order is
17 justifiable as an exercise of that discretion. . . . The cases cited by
18 Goodyear concerning the inherent power of a district court to manage
19 its docket reflect a court's power to control the parties' conduct before
20 the court. **These cases do not support a broad inherent power that
21 includes the authority to require a party to participate in a
22 permissive, and potentially expensive, agency proceeding that the
23 party within its rights chooses not to pursue.**

24 *Id.* at 1092 (citations omitted) (emphasis added); *see also Emerson Electric Co. v.*
25 *Davoil, Inc.*, 88 F.3d 1051, 1053-54 (Fed. Cir. 1996) (Federal Circuit held that courts
26 cannot mandate the contents of a patent holder's filings in a reexamination before the
27 PTO).

28 In *Continental*, Goodyear Tire had sued Continental General Tire for
infringement of five patents. In return, Continental counterclaimed for declaratory
judgment of invalidity and non-infringement. Upon Goodyear's motion, the district
court ordered Continental to file requests for reexamination of the five patents and
Continental appealed. *Id.* at 1089-90. The Federal Circuit reversed noting that

1 neither party had chosen to voluntarily request reexamination and that, as with
2 reissue proceedings, a party's choice whether to initiate reexamination "should
3 remain undisturbed by the courts." *Id.* at 1092. The Federal Circuit held that

4
5 [A] party, . . . when sued for infringement, has the right to have its
6 defenses considered by a federal district court, **without being first**
7 **compelled to go to the PTO.** A patentee . . . has the right to seek
8 reexamination as well. . . . Apparently in this case it has chosen not to
do so, and it has no right to force its opponent to take an action which it
declined to do."

9 *Id.* at 1093 (emphasis added); *see also Bartex*, 611 F.Supp.2d at 652 ("this Court is
10 hesitant to elevate this process [reexamination] – one that could take years – into a
11 requisite procedure before a lawsuit may move forward"). As the Federal Circuit
12 further noted:

13 Both Goodyear and Continental General have chosen not to voluntarily
14 request reexamination.^{FN5} That choice should end the matter.

15 FN5. A request for reexamination of one of the patents at issue
16 was voluntarily filed by a different entity. That request does not
17 affect our disposition of the petition.

18 *Id.* at 1093.

19 Neither Plaintiff/Patentee nor Defendants in this case requested the pending
20 reexamination proceedings. In fact, not a single current litigant in the 30 pending
21 '184 patent infringement cases still pending before this Court requested
22 reexamination of the '184 patent. Oddly enough, the requestors of the pending
23 reexamination are no longer before this Court, as their allegations of invalidity of the
24 '184 patent were withdrawn through a dismissal with prejudice of the Black &
25 Decker lawsuit. *Sorensen v. The Black & Decker Corporation, et al*, Case No.
26 06cv1572, Doc. #326.

27 Neither the initial reexamination requestors, nor Plaintiff/Patentee, have any
28 ability under the reexamination statutes to resolve, settle, or otherwise suspend the

1 reexamination once commenced. However, his Court has no ability to force
2 Plaintiff/Patentee to complete the procedure before litigating. Placing such a
3 requirement on Plaintiff, as has been done in this case, runs directly contrary to
4 Federal Circuit law. It leaves Plaintiff in the same position as the trial court left
5 Continental General – being compelled to first go to the PTO for reexamination
6 before having its case considered by a federal district court. As the Federal Circuit
7 has held, a party has the right to have its case heard by a court “without being first
8 compelled to go to the PTO” for reexamination. *Continental General Tire*, 81 F.3d
9 at 1093.

10 Thus, stay of this case must immediately be terminated because its
11 continuance amounts to requiring Plaintiff to “participate in a permissive, and
12 potentially expensive, agency proceeding that the party within its rights chooses not
13 to pursue” in violation of controlling Federal Circuit law.

14 15 CONCLUSION

16 The stay of this case is both immoderate and indefinite, and thus in direct
17 contravention of *Landis* and Plaintiff’s fundamental constitutional rights.
18 Furthermore, continued stay violates Federal Circuit law that prohibits a district
19 court from requiring Plaintiff/Patentee to endure reexamination proceedings
20 involuntarily before proceeding with infringement litigation to enforce Plaintiff’s
21 patent rights.

22 As with the plaintiff in the *Jones v. Clinton* case, Plaintiff/Patentee “faces real
23 dangers of loss of evidence through the unforeseeable calamities inevitable with the
24 passage of time. To argue that this problem may be dealt with by episodic exceptions
25 when the risk of loss is apparent is to miss the point. Only rarely does life proceed in
26 such a foreseeable fashion.”
27
28

1 WHEREFORE, Plaintiff respectfully requests the Court to terminate the stay
2 of the above-captioned case immediately.

3
4 RESPECTFULLY SUBMITTED this Thursday, October 15, 2009,

5
6 JENS ERIK SORENSEN, as Trustee of
7 SORENSEN RESEARCH AND DEVELOPMENT
8 TRUST, Plaintiff

9 /s/ Melody A. Kramer

10 _____
11 Melody A. Kramer, Esq.
12 J. Michael Kaler, Esq.
13 Attorneys for Plaintiff