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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JENS ERIK SORENSEN, as Trustee of  
SORENSEN RESEARCH AND  
DEVELOPMENT TRUST,  
  
Plaintiff,  
  
v.  
  
GIANT INTERNATIONAL (USA) LTD.,  
  
Defendant.

Case No. 07cv2121 BTM (CAB)  
07cv2278, 08cv60, 08cv70, 08cv134,  
08cv136, 08cv234, 08cv304,  
08cv305, 08cv411, 08cv559,  
08cv1080, 08cv1670, 09cv56,  
09cv57, 09cv58, 09cv558

**JOINT ORDER RE MOTION FOR  
RECONSIDERATION**

Plaintiff has filed a motion for reconsideration of the Court’s order continuing the stay in the above-captioned cases. For the reasons discussed below, the Court **GRANTS in part** and **DENIES in part** the motion, and partially lifts the stay in order to finalize the pleadings and permit limited discovery.

Plaintiff has asserted patent infringement claims against each of the defendants in the seventeen above-captioned cases. These claims are all related to the same patent: U.S. Patent No. 4,935,184 (“184 Patent”). Plaintiff filed these suits at various times over the past several years, and because the Court has stayed each of these cases, virtually all of them are in the early stages of litigation.

The Court stayed each of these cases because the United States Patent and Trademark Office (“PTO”) was conducting a reexamination of the ‘184 Patent. In January 2010, the PTO issued a final rejection of the ‘184 Patent, which Plaintiff has appealed. If Plaintiff’s appeal is unsuccessful, all of these cases will likely be subject to immediate

1 dismissal. On the other hand, if Plaintiff is successful, these cases will proceed.

2 The Court is concerned that the passage of time will prejudice Plaintiff if it is eventually  
3 allowed to litigate these cases. Many of these cases have been stayed for well over a year,  
4 and some have been stayed for over two years. And by the time the current stay is set to  
5 expire, some cases would have been stayed for three years. Although the Court is aware  
6 that litigating these cases could result in wasted judicial and litigant resources if the rejection  
7 of the '184 Patent is affirmed, that risk must be balanced against the risk of prejudice to  
8 Plaintiff. So in an effort to balance the parties' rights and the Court's interest in efficiently  
9 managing its docket, the Court partially lifts the stay.

10 The main purpose of this limited litigation is to preserve vital evidence and finalize the  
11 pleadings. The parties may take the following actions:

12 (1) Any party may file motions directed at the sufficiency of the pleadings. The  
13 Court will liberally allow amendment of pleadings, so the parties *must* confer before bringing  
14 motions to strike, motions to dismiss, or motions for judgment on the pleadings, and if  
15 possible should jointly move to amend their pleadings if necessary to properly state a claim  
16 or defense. Any moving party must certify that they have physically met and conferred with  
17 the non-moving party and failed to resolve the issue involved with the motion.

18 (2) After motions directed at the pleadings, if any, the parties must meet with the  
19 magistrate judge for the purpose of making Rule 26(a)(1) disclosures and, if the magistrate  
20 judge decides it is appropriate, Rule 26(a)(2) expert disclosures as well.

21 (3) The magistrate judge will determine what discovery may proceed in order to  
22 identify witnesses and documents and obtain and preserve evidence that may otherwise be  
23 lost or unavailable after final action of the PTO.

24 (4) The magistrate judge shall also set a date for interrogatories and document-  
25 production requests to be exchanged between the parties.

26 (5) Plaintiff must file its preliminary infringement contentions and document  
27 production accompanying disclosure under Patent Local Rules 3.1 and 3.2 against each  
28 Defendant within forty-five days of the filing of this order.

1 (6) Defendants shall file their preliminary invalidity contentions at such time as the  
2 magistrate judge determines.

3 (7) The Court will not set a date for the claim-construction hearing until further  
4 notice.

5 (8) The magistrate judge shall allow discovery on defenses other than invalidity of  
6 the patent.

7 (9) The magistrate judge shall hold early neutral evaluation conferences and  
8 settlement conferences at such times as she shall designate.

9 (10) The Court will not entertain any motions for summary judgment related to the  
10 substantive issues being litigated before the Board of Patent Appeals and Interferences  
11 ("BPAI"). But the Court will entertain motions for summary judgment on limited, discrete  
12 issues. For example, if a defendant is able to establish that, even accepting Plaintiff's  
13 construction of the '184 Patent as true, that its product does not infringe, that defendant may  
14 request the Court's permission to file a motion for summary judgment on that issue. If a  
15 defendant wishes to file such a motion, the Court, in fairness to Plaintiff, would allow Plaintiff  
16 to have discovery on the issues presented in the motion. Or, for another example, if a  
17 Defendant has sufficient evidence to support a motion for summary judgment on an  
18 affirmative defense, other than invalidity, the Court may also entertain that motion after  
19 allowing relevant discovery to Plaintiff. This is not meant to be an exhaustive list of  
20 permissible motions. But in any case, any party who wishes to file a motion for summary  
21 judgment on a discrete issue not before the BPAI must first ask leave of the Court.

22 The Court will hold a status conference in all the related cases on **May 4, 2011 at 3:30**  
23 **p.m.**

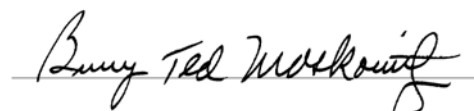
24 The Court will not entertain any motions for reconsideration of this order.

25 **IT IS SO ORDERED.**

26 DATED: August 4, 2010

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Honorable Barry Ted Moskowitz  
United States District Judge