

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

SYNVENTIVE MOLDING SOLUTIONS, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 2:08-cv-136
	:	
HUSKY INJECTION MOLDING SYSTEMS, INC.,	:	
	:	
Defendant.	:	

RULING ON MOTION TO STAY

Before the Court is Husky Injection Molding Systems, Inc. ("Husky")'s Motion to Stay (Doc. 382). For the reasons that follow the motion is **denied**.¹

Husky seeks a stay of this action pending the results of requests for reexamination of the three patents-in-suit it filed with the United States Patent & Trademark Office on October 16, 2009. As of the date of this decision Husky has not yet received a "filing date" for commencing the reexamination process; it refiled its requests for reexamination on November 30, 2009, after having received a notice of incomplete filing.

Motions to stay pending patent reexamination are committed to the discretion of the district court. See *Hoechst Celanese Corp. v. BP Chems. Ltd.*, 78 F.3d 1575, 1584 (Fed Cir. 1996) (holding that refusal to stay was "within the court's discretion, lest the trial schedule be manipulated or unduly delayed");

¹ Synventive's Motion to Exceed Page Limit (Doc. 391) is **granted**.

Ethicon, Inc. v. Quigg, 849 F.2d 1422, 1426-7 (Fed. Cir. 1988) ("Courts have inherent power to manage their dockets and stay proceedings."). In determining whether to grant a stay pending reexamination, courts generally consider "(1) whether a stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether discovery is complete and whether a trial date has been set." *Xerox Corp. v. 3Com Corp.*, 69 F. Supp. 2d 404, 406 (W.D.N.Y. 1999).

Although Synventive argues that it continues to suffer ongoing harm from Husky's alleged infringement, actual prejudice to Synventive does not appear to be significant, given the availability of monetary damages for past as well as ongoing infringement. Synventive's tactical disadvantage arguments are directed more to having to undergo reexamination of the patents-in-suit than to whether a stay should be granted. (Opp'n 1-3, summarizing three of six reasons a stay should not be granted.) The first factor weighs slightly in favor of a stay.

Reexamination will still leave this Court with triable issues however, even if reexamination is granted and some of the claims are amended or canceled upon reexamination. Were the case to be stayed pending reexamination, in all likelihood the parties would require additional discovery on the issues remaining to be

tried. Although the PTO is charged with conducting reexamination proceedings with dispatch, in reality reexamination proceedings remain pending for one to two years from the filing date. United States Patent & Trademark Office, *Ex Parte* Reexamination Filing Data - September 30, 2009, http://www.uspto.gov/patents/stats/ex_parte_historical_stats_sept302009.pdf (last visited Dec. 14, 2009). Granting a stay would therefore substantially increase the total time necessary to resolve this litigation. The reexamination proceeding may or may not simplify the issues remaining for trial. Thus, the second factor weighs against granting a stay of the action.

The parties have engaged in unusually acrimonious discovery practice, which is now drawing to a close. A trial date has been set. The Court can perceive no advantage to delaying the resolution of this litigation. The third factor weighs decidedly against granting a stay.

Reviewing the circumstances as a whole, weighing the decided advantages of having the benefit of the PTO's views on the patents' validity, mindful that reexamination will not resolve all of the issues in this litigation, and reluctant to put this case, now close to trial, on hold for up to two years, the Court **denies** Husky's motion for stay.

Dated at Burlington, Vermont this 15th day of December,
2009.

/s/ William K. Sessions III
William K. Sessions III
Chief Judge