

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

7

8

9

ThermoLife International, LLC,

)

No. 12-CV-144-PHX-PGR

10

Plaintiff,

)

vs.

)

11

Pure Assay Ingredients, Inc.,

)

**ORDER**

12

Defendant.

)

13

)

14

Pending before the Court is Defendant’s Motion to Stay Pending Patent Reexamination (Doc. 23.)<sup>1</sup> For the reasons set forth below, the Court will grant the motion.

15

16

17

Plaintiff ThermoLife International owns U.S. Patent No. 7,777,074 (“’074 Patent”).

18

The ‘074 Patent issued on August 17, 2010, and covers certain amino acid compounds,

19

including Citrulline Nitrate, used in dietary supplements. Defendant Pure Assay Ingredients

20

also sells nutritional supplements. Plaintiff alleges that Defendant has infringed the ‘074

21

patent by selling and marketing products containing Citrulline Nitrate.

22

On December 17, 2010, a third party filed a request with the U.S. Patent & Trade

23

Office (“PTO”) for reexamination of the ‘074 Patent. The PTO granted the request.

24

Reexamination proceedings are still pending.

25

On January 20, 2012, Plaintiff filed its Complaint in this action, bringing claims

26

against Defendant for patent infringement, inducement of patent infringement, contributory

27

\_\_\_\_\_

28

<sup>1</sup> Also pending is Plaintiff’s Motion to Strike and Motion for Entry of Default. (Doc. 11.) The Court will deny this motion as moot. (See Docs. 28, 30.)

1 patent infringement, and false advertising. (Doc. 1.) Defendant moved to stay the  
2 proceedings pending the PTO's reexamination of the '074 Patent. (Doc. 23.)

3 "[C]ourts have inherent power to stay their proceedings pending the reexamination  
4 of a patent," and "there is a liberal policy in favor of granting motions to stay proceedings  
5 pending the outcome of USPTO reexamination . . . proceedings." *Medicis Pharm. Corp. v.*  
6 *Upsher-Smith Laboratories, Inc.*, 486 F. Supp.2d 990, 993 (D. Ariz. 2007) (internal citation  
7 and quotation marks omitted). In determining whether to stay a case, courts consider  
8 whether a stay will simplify the issues, (2) whether discovery is complete and a trial date set,  
9 and (3) whether a stay would unduly prejudice the nonmoving party. *Id.* at 993-94.

10 On September 6, 2012, Defendant filed a Notice of Supplemental Authority, citing  
11 *ThermoLife International LLC v. Vital Pharmaceuticals Inc.*, No. CV-11-2469-PHZ-GMS,  
12 2012 WL 3821815 (D.Ariz. Sept. 4, 2012), in which the court granted the defendant's motion  
13 to stay the action pending the outcome of the PTO's reexamination of the "'074 patent." The  
14 court held that a stay was justified because the PTO determination would simplify the issues  
15 presented, the case was still in its early stages, and a stay would not unduly prejudice  
16 ThermoLife. *Id.* Subsequently, in *ThermoLife International LLC v. Hi-Tech*  
17 *Pharmaceuticals, Inc.*, No. CV-12-1466-PHX-DGC, 2012 WL 6608778, at \*2 (D.Ariz. Dec.  
18 18, 2012), the court stayed proceedings after ThermoLife "conceded" that a stay was  
19 appropriate based on the ruling in *ThermoLife v. Vital Pharmaceuticals*.

20 Accordingly,

21 **IT IS HEREBY ORDERED THAT:**

22 1. Defendant's Motion to Stay Pending Patent Reexamination (Doc. 23) is  
23 granted.

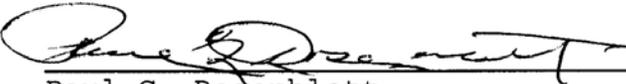
24 2. This action is stayed pending the completion of the PTO's reexamination.  
25 Plaintiff's counsel is directed to file a Status Report on or before February 15, 2013, and  
26 every 60 days thereafter until the stay is lifted.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. Within five days of receiving notice of the outcome of the reexamination, Plaintiff shall file and serve a notice of the outcome on this Court and Defendant.

4. Plaintiff's Motion to Strike and Motion for Entry of Default (Doc. 11) is denied.

DATED this 24<sup>th</sup> day of January, 2013.

  
\_\_\_\_\_  
Paul G. Rosenblatt  
United States District Judge