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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EXONHIT THERAPEUTICS S.A.,  
a French Societe Anonyme, and EXONHIT  
THERAPEUTICS, INC., a Delaware  
corporation,

Plaintiff,

v.

JIVAN BIOLOGICS, INC., a Delaware  
corporation,

Defendant.

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No. C 07-01427 WHA

**REQUEST TO USPTO RE  
PENDING REEXAMINATION**

On March 12, 2007, plaintiff filed a complaint in this action alleging infringement of U.S. Patent No. 6,881,571 (“the ’571 patent”). The action has been stayed pending reexamination of the ’571 patent for almost a year.

Defendant filed its first request for *ex parte* reexamination of the ’571 patent on January 31, 2008, which was rejected by the United States Patent and Trademark Office for failure to comply with procedural rules. Defendants then filed a revised request for *ex parte* reexamination on March 17, 2008, and the USPTO granted this request on May 1, 2008, under control number 90/009,017.

On March 7, 2008, the Court issued its claim construction order in this action. Fact discovery closed on March 31, 2008, and a motion for summary judgment regarding infringement was briefed in April and May of 2008 but has not been heard. On May 22, 2008,

1 defendant moved to stay this action pending reexamination of the '571 patent, and on June 9,  
2 2008, the Court granted the stay pending resolution of the reexamination at the USPTO.

3 Plaintiff notified the USPTO of the stay in this action and requested that the  
4 reexamination be expedited but never received a response. On August 8, 2008, defendant  
5 submitted a second request for *ex parte* reexamination with control number 90/009,249, which  
6 was accorded a filing date of September 9, 2008.

7 The Court has received several status reports from the parties stating that no action has  
8 been taken on the merits in the reexamination proceedings. According to the latest status  
9 report, the USPTO has not issued an Office Action in connection with the two requests for *ex*  
10 *parte* reexamination. Although the Court has stayed the litigation in this action, the Court has  
11 an interest in having this case efficiently resolved. *At the request of the parties, the Court in*  
12 *turn requests that the USPTO promptly take action in the reexamination of the '571 patent and*  
13 *be mindful of the impact of its delay on the pending litigation.*

14 Plaintiff shall send this request to the USPTO within three days. If the USPTO fails to  
15 promptly move on the pending reexamination, the Court will entertain a motion to lift the stay.

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17 **IT IS SO ORDERED.**

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19 Dated: February 26, 2009

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22 WILLIAM ALSUP  
23 UNITED STATES DISTRICT JUDGE  
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