

United States District Court
For the Northern District of California

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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,

Plaintiffs,

v.

JIVAN BIOLOGICS, INC., a Delaware
corporation,

Defendant.

No. C 07-01427 WHA

**ORDER GRANTING MOTION
TO LIFT STAY, SCHEDULING
STATUS CONFERENCE, AND
VACATING HEARING**

In this patent infringement action, plaintiffs Exonhit Therapeutics S.A. and Exonhit Therapeutics, Inc. move to lift the stay of litigation granted over eighteen months ago pending reexamination of the patent-in-suit by the PTO (*see* Order Granting Motion to Stay, Dkt. No. 143). For the reasons set forth below, the motion is hereby **GRANTED**.

This case, filed over 32 months ago, was originally scheduled for trial on September 29, 2008 (Dkt. No. 22). Following the close of discovery, and shortly after plaintiffs filed a summary judgment motion, defendant Jivan Biologics, Inc. filed a motion to

1 stay this action pending *ex parte* examination by the PTO of the patent-in-suit, U.S. Patent No.
2 6,881,571 (Dkt. No. 129). The motion was reluctantly granted on June 9, 2008, after careful
3 consideration of the unusual circumstances of this case led to the conclusion that a more efficient
4 resolution of the action would likely result from the PTO's reexamination.


5 On October 1, 2009, the PTO gave "Notice of Intent to Issue *Ex Parte* Reexamination
6 Certificate," whereby it indicated its intent to re-affirm the validity of all 22 claims of the '571
7 patent (Exh. A to Thomson Decl., Dkt. No. 157-1).¹ As such, the sole justification for issuing the
8 stay – awaiting the outcome of the PTO's reexamination – is now absent. While the formal
9 issuance of the reexamination certificate is pending, the Court sees no reason why the gears of
10 litigation should not resume turning now.

11 Since defendant failed to file any opposition to plaintiffs' motion before the filing
12 deadline, plaintiffs' motion to lift the stay is hereby **GRANTED**, the stay is to be lifted
13 immediately, and the hearing on this motion set for December 17, 2009, is **VACATED**.

14 The parties are **ORDERED** to appear for a status conference on **DECEMBER 10, 2009, AT**
15 **11:00 P.M.** in courtroom 9. Please file a joint case management statement no later than noon on
16 December 7.

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18 **IT IS SO ORDERED.**

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20 Dated: December 1, 2009.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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¹ While affirming the validity of all 22 claims, the notice indicated that two clarifying amendments were made to claims 1 and 12 of the '571 patent. The significance (if any) of these amendments will be addressed at the appropriate time.